

HON'BLE DR.JUSTICE B.SIVA SANKARA RAO

Crl.R.C.No.56 of 2017

ORDER :

The revision petitioners are accused Nos.2 to 4 of C.C.No.497 of 2013 on the file of the Judicial First Class Magistrate at Yelamanchili of Visakhapatnam District. Impugning the order, dated 08-09-2016 of the learned Magistrate in Criminal M.P. No.4119 of 2016 pending in C.C.No.497 of 2013 on the application of the prosecution under Section 319 Cr.P.C. in impleading the petitioners as additional accused besides A1, as A2 to A4 from the evidence of the de facto-complainant under chief-examination as P.W.1, the revision is maintained.

2. The contentions in the grounds of revision vis-à-vis oral submissions of the learned counsel for the revision petitioners – additional accused are that the Court below gravely erred in impleading them as co-accused with A1 without any basis and without considering the legal consequence and the evidentiary proof and thereby the impugned order is liable to be set aside as unsustainable and baseless. Whereas it is the submission of the learned Public Prosecutor representing the State to the revision in support of the impugned order as holds good and within the parameters of Section 319 of Cr.P.C. and within the power of the learned Magistrate and no way required interference, hence to dismiss the revision.

3. Heard and perused the material on record. A perusal of the impugned order shows that in Crime No.125 of 2013 from the report of the de facto-complainant dated 31-07-2013 registered for the offence under Section 498-A I.P.C. and Sections 3 & 4 of Dowry Prohibition Act, the S.H.O., Payakaraopeta Police Station, after completion of investigation, filed final report against A1-husband of the de facto-complainant only by deleting the names of these petitioners arrayed as A2 to A4, who are no other than the mother, sister and brother-in-law of A1.

4. In fact, the petition filed by the de facto-complainant from the report called for of the learned Magistrate, xerox copies supplied shows same filed by the Assistant Public Prosecutor on 17-08-2016 which reads the prosecution let in evidence of P.W.1 – de facto-complainant in chief and she deposed in her evidence that she has mentioned specific overt acts of the harassment by in-laws by name Y.Rajeswari – A2, J.Prasanthi – A3 and J.Rajarao – A4 of Guntapalli Village and their names also born by Section 161 of Cr.P.C. statements and also in the report of the de facto-complainant to say from the inception, however, the Police in the final report deleted their names from accusation even the harassment meted by the de facto-complainant in their hands also disclosed from her report and statement to attract the provisions of the penal law supra, hence to take cognisance for the offences supra against them from the

deposition of P.W.1 - L.W.1 - de facto-complainant by issuing summons to accused and to proceed according to law.

5. Counter was filed opposing the petition by the sole accused stating that P.W.1 in her statement wilfully attributes with a false version as if she was harassed by A2 to A4 also with additional dowry demand. The police after investigation have found no role of A2 to A4 to sustain the accusation and deleted their names from the array of accused. There are no grounds to implead them as accused at this stage. The order passed by the learned Magistrate speaks that Ex.P1 report of de facto-complainant and her statement so also her evidence before the Court on 10-08-2016 categorically show the involvement of A2 to A4 in committing the offence under Section 498-A I.P.C. and Sections 3 and 4 of Dowry Prohibition Act along with A1 and thereby there is *prima facie* accusation of allowing the application.

6. A perusal of the deposition of P.W.1 – de facto-complainant Y.Radha, dated 10-08-2016 reads that she and A1 fell in love four years prior to the marriage and he was coming to her house and to the house of his *peddamma* nearby to her sister's house wherefrom they developed intimacy leading to love marriage. She deposed that accused (A1) also had acquaintance with her at Care Hospital in the year 2009 while she was undergoing nursing training where he used to work as pharmacist and again says where he worked in cancer hospital of Sithammadhara, Visakhapatnam and he made her to believe that he would marry and had conjugal relationship and he

started telling that his mother was demanding dowry of Rs.10,00,000/- and his family members including sister and brother-in-law are asking for dowry for their marriage and therefrom she raised dispute before the elders of village where mother, sister and brother-in-law of A1 demanded dowry to agree for the marriage and since elders advised to give report, she approached Payakaraopeta police and presented report. The Police made counselling where A1 agreed to marry her and later on 06-07-2013, he married her at Annavaram Temple in the presence of village elders and his friends like *Chinnanna* and B.Narsing Rao and they put up family in Tuni in a rented house of Ramakrishna Colony where they lived together for twenty days and in those twenty days, A1 used to harass her for dowry and thereafter her parents given Rs.2,00,000/- as dowry and Rs.20,000/- *ada padachu lanchanams* and 1 tola chain and ½ tola gold ring and also *sari saman* worth Rs.1,00,000/-.

7. She deposed further that though they have given above said dowry and *lanchanams*, A1 did not satisfy and used to say that he would get more dowry, thereby demanding to give more dowry and he used to harass her mentally and physically. He used to beat her and he used not to allow her to talk to her parents even over phone. He used to keep her in the room, lock the doors and took away phone. He also got harassed her through his mother.

8. Even the Chief-Examination of her in fact only points out A1 and there is no whisper about A2 to A4 demanded anything after the

marriage, but for to say prior to the marriage when a mediations taken place, they demanded for dowry. In fact, subsequently, the marriage is, admittedly, performed and they set up separate family at Tuni. It is not even the case that mother-in-law, sister-in-law and her husband joined there.

9. What more she deposed if at all to implicate A2 to A4 in the subsequent few lines of her chief-examination reads that the accused (A1) also harassed her through his mother, sister and brother-in-law who by coming to Tuni harassed her both mentally and physically and she bore all the harassment of him and his family members. She later made a complaint to the Police against the accused (A1) and his family members i.e., mother, sister and brother-in-law of A1 and police made counselling where accused (A1) agreed to look after her properly, but he did not do so. As accused did not change and leaving the house frequently and he left the house and went to his parents house at Guntapalli, she intimated the same to her parents and her parents came to Tuni and given report to the Police which is Ex.P1, dated 31-07-2013. The accused (A1) used to beat her with legs. She thought to kill herself (to commit suicide) but could bear his harassment. Police examined her. As she gave report to Police, he refused to live with her, hence she came to her parents house from Tuni and living there. Ex.P2 is ten photos of marriage at Annavaram with CD. Cross-examination therefrom deferred at request.

10. Now it is to consider whether there is any *prima facie* material from that evidence even to add the proposed A2 to A4 as additional accused.

11. There is power to the Court even to differ with police report from even police stated in their final report showing against some of the accused, accusation not sustainable by deleting from the array, still to take cognisance on going through the entire prosecution material if there is a justification for coming to a different conclusion. Leave about also on giving notice to the de facto-complainant in so far as referred report against all or some of the accused concerned, from any protest filed and therefrom to take cognizance by conducting enquiry on the protest application as a private complaint procedure, but not by ignoring totally the referred report material but for in addition to the referred report material on further shown to substantiate any accusation. Here it is not the case as not the stage even.

12. The scope of law is well laid down by the Constitution Bench (5JB) expression of the Apex Court ***Dharampal Vs. State of Haryana***¹. There, no doubt, the scope of section 319 of Cr.P.C. including in case triable by Court of Session, power of the Magistrate, power of the Court of Session vis-à-vis the power under Section 156(3), 190 and 193 and 209 and Sections 226 to 228 were discussed therein apart from Section 319 of Cr.P.C. In fact, the issue on scope of Section 319 of Cr.P.C. again came up for consideration later before

¹ (2014) 3 SCC 306

co-equal five judges bench of the Apex Court in *Hardeep Singh v. State of Punjab and others*² where **Dharampal's case** supra also referred and explained. What is the conclusion ultimately arrived is from the evidence during the course of trial show accusation to implead the additional accused. No doubt the learned Magistrate could not have been discussed about the statements of witnesses, but however at best Ex.P1 report of the de facto-complainant who set the law in motion and her evidence in chief as P.W.1 i.e., only placed on record by her, leave about her marriage with A1 covered by photos. Therefrom nothing show against A2 to A4 for there is nothing of any specific overt acts against any of them as to when they came to Tuni and what harassment by all if any or each of them caused, much less within the meaning of Section 498-A of I.P.C. and Sections 3 and 4 of Dowry Prohibition Act.

13. Having regard to the above, from the evidence on record during trial against the additional accused under Section 319 of Cr.P.C. within the scope is not like material required to frame charge from the prosecution investigating material, but for some more to substantiate the accusation from that evidence available as on that time on record, which is lacking in this case for taking cognizance by allowing the application by Magistrate to implead the proposed A2 to A4 as co-accused under Section 319 of Cr.P.C., said order is *per se*

² (2014) 3 SCC 92

unsustainable, particularly from said constitution bench expression of *Hardeep Singh's case* supra.

14. Accordingly, the revision is allowed by setting side the impugned order of the learned Magistrate by holding that there is no substantial accusation from the evidence on record against A2 to A4 for array of them as additional accused. No order as to costs.

15. Consequently, miscellaneous petitions pending, if any, shall stand closed.

08th February, 2017.

skmr

DR.JUSTICE B.SIVA SANKARA RAO

