

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.774 of 2016

Arising Out of PS. Case No.-120 Year-2009 Thana- SARAI RANJAN District- Samastipur

1. Raj Narayan Jha Son of Late Ram Mayari Jha
2. Sushila Devi wife of Raj Narayan Jha
3. Anuja Kumari alias Anuja wife of Binay Kumar Jha
All resident of Village Jhakhra, P.S. Sarairanjan District Samastipur.

... .. Petitioners

Versus

1. State Of Bihar
2. Kalyani Kumari Daughter of Sri Ram Jha resident of Village Bhorai Jairam,
P.S. Khanpur District- Samastipur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr.Sujit Kumar Singh
For the Respondent/s : Mr. Satyadev Prasad Singh Yadav

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 06-08-2019

This revision application has been filed against order dated 11.5.2016 passed by the learned Sessions Judge, Samastipur in Criminal Revision No.1106 of 2015 , by which he has set aside the order dated 3.10.2015 passed by the learned A.C.J.M 6th, Samastipur in G.R.No.1554 of 2009 of 2009, T.R. No.1444 of 2015 arising out of Sarairanjan P.S. Case No.120 of 2009 dated 7.7.2009 filed under Sections 498(A), 323, 379 & 504/34 of the Indian Penal Code (hereinafter to be referred as ‘the IPC’)

2. Facts giving rise to this revision application in short is that the Opposite Party No.2 filed a case under Section 498(A) and other Sections of the IPC against her husband and the



petitioner nos. 1 to 3, who are father-in-law, mother-in-law and sister-in-law (*Gotani*) respectively of the Opposite Party No.2, which was registered as Sarairanjan P.S.Case no.120 of 2009. It further appears that the police after investigation submitted charge-sheet against the husband of the Opposite Party No.2 but against the petitioners final form has been submitted not finding the case true against the petitioners. It also appears that cognizance was taken only against her husband and later on the case was transferred to the files of the learned ACJM 6th, Samastipur for trial and disposal. Five witnesses have been examined in this case and thereafter an application has been filed by the Opposite Party No.2 under Section 319 of the Cr.P.C. for issuance of summons against the petitioners to face the trial as there are evidence available against them also.

3. Learned ACJM-6, Samastipur vide order dated 3.10.2015 rejected the application filed under Section 319 of the Cr.P.C.' by Opposite Party No.2. Against which the Opposite Party No.2 preferred Criminal Revision No.1106 of 2015 before the learned Sessions Judge, Samastipur and the learned Sessions Judge, Samastipur after hearing both the parties, vide order dated 11.5.2016 set aside the order dated 3.10.2015 passed by the learned ACJM, Samastipur and directed the learned ACJM,



Samastipur to issue summons against petitioners to face trial for offences under Section 498(A) of the IPC.

4. Being aggrieved by the same, the present revision application has been preferred by the petitioners. It further appears from perusal of the record that vide order dated 3.4.2018, a Co-ordinate Bench of this Court issued notice to the Opposite Party No.2 and directed that in the meantime, revisional order dated 11.5.2016 shall remain in abeyance. Notice to the Opposite Party No.2 has been issued and she appeared.

5. Learned counsel for the petitioner has assailed the impugned order passed by the appellate authority on the ground that the learned appellate court has failed to consider that the court does not have passed the order on petition under Section 319 of the Cr.P.C. in mechanical manner rather he has to consider the evidence available on record and other circumstances also and evidence which has come against the petitioners is general and omnibus and no specific instance has come. It has also been submitted that they are family members of the husband of the informant and there is tendency now-a-days to implicate the whole family members of the family of husband on vague and omnibus allegation and considering the same the proceeding against the family members has been quashed in several cases by



the Hon'ble Apex Court. In support of the above contention, he has relied upon the judgment of the Hon'ble Apex Court in the case of ***Krishnappa Vs State of Karnataka*** reported in **2005(1) PLJR (SC) 50** as well as the Single Bench judgment of this Court in the case of ***Ajay Kumar Chaudhry & Anr. Vs. The State of Bihar & Anr.*** reported in **2014(3) PLJR 263**. On the above submission it is submitted that the order of the the appellate court allowing the appeal filed by the Opposite Party No.2 and directing the trial court to issue process against the petitioners is a case of non-application of mind and allowing the appeal in a most mechanical manner as such it can not be sustained.

6. On the other hand the learned counsel for the Opposite Party No.2 has defended the order of the appellate court allowing the appeal and directing the learned trial court to issue processes against the petitioners as there is *prima facie* evidence available against the petitioners that they have tortured the Opposite Party No.2 with respect to demand of the dowry and there is also allegation against the petitioner no.1 that he tried to kill her. It is also submitted that at this stage, the learned trial court does not have to weigh the evidence available on the record in order to see whether it can lead to conviction or not rather he has to see the evidence available on the record while passing order for



issuing of the summon against the accused persons under Section 319 of the Cr.P.C. In support of his contention he has relied upon a single Bench decision of this Court reported in the case of ***Julekha Khatoon Vs. The State of Bihar & Anr.*** reported in ***2014(1) PLJR 235*** .

7. Having heard both sides and on perusal of the record, it appears that a petition has been filed on behalf of the Opposite Party No.2 under Section 319 of the Cr.P.C. after examination of the five witnesses for summoning them under Section 319 of the Cr.P.C. as there are evidences against them and the learned Magistrate relying on the judgment of the Hon'ble Apex Court in the case of ***Krishnappa Vs. State of Karnataka*** reported in ***2005 (1) PLJR SC 50*** has rejected their prayer, against which revision application has been preferred by the Opposite Party No.2, which has been allowed.

8. On perusal of certified copy of deposition, supplied by Opposite Party No.2, it appears that five witnesses have been examined and evidence of P.W.1 (brother of the informant) discloses that all the accused persons including the petitioners were trying to kill her by hanging her, however as the nearby people assembled then they fled away, there is specific allegation



against her husband that he put Pistol on her head and ousted her from the house. P.W.2 appears to be a villager of the family members of the informant and his evidence is that Opposite Party No.2 was assaulted by all four persons and they have not obeyed the *panchayati*. So far P.W.3 is concerned, there is no evidence to show participation of the petitioners. P.W.4 is the father of the Opposite Party No.2 and his evidence also shows that all the accused persons including the petitioners were demanding from her to give them her salary and also one Maruti Car, thereafter he went there and tried to pacify them but they did not agree. P.W.5 is the informant herself. Her evidence also discloses that all the accused persons including the petitioners were demanding Maruti Car and also her salary, for which she was abused and assaulted and her mother-in-law used to threaten her. Her evidence also discloses that her husband and father-in-law (i.e. petitioner no.1) were trying to put rope around her neck and on hulla, the people assembled and thereafter she came back to her *maike*.

9. From the discussions made above, there appears to be general and omnibus allegation against all the petitioners that they were demanding Maruti Car and also her salary for which she was abused and assaulted. There is also allegation that the petitioner no.1 and husband of the O.P.no.2 tried to kill her but that has come



only in the evidence of P.W.5, who is complainant and that has not been corroborated by evidence of other witnesses on the witnesses who had come on *hulla*, in support of her contention. Apart from that it appears that trial is going on against the husband of the Opposite Party No.2 and several witnesses have already been examined. No doubt while considering a petition under Section 319 of the Cr.P.C. for issuance of summons against the persons who are not facing trial, the trial court is not required to see whether there is possibility of conviction of the person/persons or not, only he has to consider the evidence available on the record in order to find out that evidence discloses that the person/persons not being accused has committed offence for which he can be tried together with the accused already under trial. However, while considering power under Section 319 of the Cr.P.C. is an discretionary power and it should be used sparingly considering the evidence as well as other circumstances also and can not be used in mechanical manner. Even the Hon'ble Apex Court in the case of *Krishnappa Vs. State of Karnataka (Supra)* while considering the provisions of Section 319 of the Cr.P.C. considered the other judgments also in para 9 and held as follows in para 10 and 11 of the judgment :-

“9. In Michael Machado & Anr., v Central Bureau of Investigation & Anr., [2000] 3 SCC 262,



construing the words "the Court may proceed against such person" in Section 319 Cr.P.C., this Court held that the power is discretionary and should be exercised only to achieve criminal justice and that the Court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. This Court further held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. The court, while examining an application under Section 319 Cr.P.C., has also to bear in mind that there is no compelling duty on the Court to proceed against other persons. In nutshell, it means that for exercise of discretion under Section 319 Cr.P.C, all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.

10. Applying the test as aforesaid to the facts of the present case, in our view, the trial Magistrate is right in rejecting the application. The incident was of the year 1993. 17 witnesses had been examined. The statements of the accused under Section 313 Cr. P.C. had been recorded. The role attributed to the appellant, as per the impugned judgment of the High Court, was of instigation. Having regard to these facts complied with the quashing of proceedings in the year 1995 against the appellant, it could not be held that the discretion was illegally exercised by the trial Magistrate so as to call for interference in exercise of revisional jurisdiction by the High Court."

11. For the aforesaid reasons, we allow the appeal, set aside the impugned judgment of the High Court and restore the order of the trial Magistrate."



10. Further in the case of *Hardip Singh vs. State of Punjab & Ors.* reported in (2014) 2 SCR 1, five Judge Bench of Hon'ble Apex Court has also considered the provisions of Section 319 of the Cr.P.C. has held as follows in para 99 :

“Thus, this Court holds that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of cross examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power u/s 319 Cr.P.C. In s.319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is “therefore” no scope for the court acting u/s 319 Cr.P.C. to form any opinion as to the guilt of the accused.”

11. Further on perusal of the judgment as cited by the learned counsel for the petitioner in the case of *Ajay Kumar Chaudhary & Ors. Vs. The State of Bihar & Anr.*, it appears that this Court after consideration of the several judgments of the Hon'ble Apex Court including the case of *G.V. Rao Vs. L.H.V. Prasad and Ors.* reported in (2000)3 SCC 693 , case of *Preeti Gupta and Anr. Vs. State of Jharkahnd And Anr.* reported in (2010) 7 SCC 667, case of *Neelu Chopra and Anr. Vrs. Bharti*



reported in *(2009) 10 SCC 184* , in the case of *Geeta Mehrotra and Anr. Vrs. State of U.P. and Anr.* reported in *2013(1)PLJR (SC) 10* and other judgments also, those cases are under Section 482 of the Cr.P.C. for quashing complaint filed under Section 498(A) of the IPC, has observed that matrimonial litigation have rapidly increased which has taken in its ambit, a large number of people of the society and the tendency to implicate the entire in-laws with exaggerated version has become a routine of the day with the development of the society, the institution of marriage has ultimately confined to the nucleus of relationship between the husband and wife, quashed the prosecution of the petitioners in that case, who are brother, married sister, parents and the maternal aunt of the husband of the complainant in that case.

12. In the background of the above settled principal laid down by the Hon'ble Apex Court and also in the background of tendency to implicate the whole family members of the husband of the complainant in a case under Section 498(A) of the IPC and also considering the fact that in this case several witnesses have already been examined in a trial against the husband of the informant. No independent witnesses have been examined nor any injury report of informant is available to show that she suffered any injury and there are only vague and omnibus allegation



against the petitioners, issuing processes against the petitioners to face the trial along with the other accused or facing trial does not appear to be proper and that too after six years of the occurrence. As discussed above, the Hon'ble Apex Court has also held that while exercising the judicial discretion, the learned trial court has to see that the trial has already proceeded and also to bear in mind that there is no compelling duty of the court to proceed against other persons while passing an order under Section 319 of the Cr.P.C. especially when there are general and omnibus allegation against the petitioners who are parents and other members of the husband of the Opposite Party.

13. In such a situation, the learned trial court has rightly rejected the petition filed by the Opposite Party No.2 under Section 319 of the Cr.P.C. for summoning the petitioners, however, the learned revisional court has not considered the above settled principle and only on the ground that there are some evidence available on the record, has set aside the order of the learned Magistrate and directed the court below to issue summons against the petitioners, in a mechanical way..

14. In view of the discussions made above, order dated 11.5.2016 can not be sustained.



15. Accordingly, this revision application is allowed and
the order dated 11.5.2016 is set aside.

(Vinod Kumar Sinha, J)

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