

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION Nos. 6307 of 2015 and 1517 of 2019

COMMON ORDER:

Since the issue in both the Criminal Petitions are inter-connected, the same are being disposed off by this common order.

Criminal Petition No.6307 of 2015 is filed, under Section 482 of Cr.P.C., to quash the docket order dated 25.06.2014 in C.F.R.No.2554 of 2013 in Crime No.18 of 2012 on the file of the Judicial Magistrate of First Class, Mahabubnagar, wherein the learned Magistrate ordered to issue summons to A1 to A7.

Criminal Petition No.1517 of 2019 is filed by the *complainant* seeking a direction to the Judicial Magistrate of First Class, Mahabubnagar to try the case in Crime No.18 of 2012 along with C.C.No.858 of 2010, which is pending on the file of the Judicial Magistrate of First Class, Mahabubnagar.

The facts in issue are that initially one Avilineni Kalyani (hereinafter referred to as “the complainant”) lodged a complaint against her husband and A-1 to A-7 alleging therein that her marriage was performed with one A.Gopal Rao on 26.05.2005 at Jupally Balamma Venkat Rao Kalyana

Mandapam, Nagarkurnool as per the rites and customs prevailing in their community. At the time of marriage, her father has given Rs.10.00 lakhs net cash, 20 tulas of gold ornaments, 1000 grams of silver ornaments, Rs.2.00 lakhs towards adapaduchu katnam and Rs.80,000/- for purchasing clothes. They lived happily for few days. After that, the complainant joined in Sri Indu B.Ed. College at Hyderabad with the permission of her husband and took a room on rent from the relatives of her husband and completed B.Ed. In the year 2005, she joined in DSC Coaching centre and took a rented portion at Vanasthalipuram, Hyderabad and lived along with her brother. Her husband is a contractor and also doing agriculture. After completion of DSC, she went to Kamadhenu Gouraram along with her in-laws and lived happily for few days. Her sister-in-law and her husband Niranjan Rao frequently visiting Kamadhenu Gouraram and at their instance, her in-laws started harassing her both physically and mentally for getting additional dowry of Rs.5.00 lakhs or a car from her parents. On being informed the same to her parents, her father came and spoke to her husband and father-in-law and at last agreed to pay Rs.3.00 lakhs; arranged two lakhs immediately and requested some time for arrangement of remaining one lakh. After few days, again her in-laws started harassing her

physically and mentally to get the remaining additional dowry. In the month of February, 2007, after the marriage of her brother-in-law, her in-laws taken her entire ornaments and threatened her that if she does not bring additional dowry amount, they would kill her and kicked out of the house. In the month of December, 2005, the complainant got a job at Mannanoor as Junior Lecturer in A.P.S.W.R.S. The complainant went to her in-laws house in Dussehra holidays, where they again started harassing her physically and mentally for additional dowry and Car and also threatened her. Her husband gave publicity that he divorced his wife and intend to go for second marriage. When the same was asked, her in-laws stated that "if you could not satisfy their demand, divorce will be given and we will perform second marriage to their son in order to get much dowry from them". Though the complainant was working as Junior Lecturer, A.P.S.W.R.S. at Mannanoor, she is residing at Achampet, where the close relatives of her husband also harassed the complainant physically and mentally and they blamed her character and asked to fulfil the demand of her in-laws. A panchayat was also held at Habsiguda in the house of one Rajeswara Rao. Therefore, she requested to take legal action against her husband and in-laws. Basing on the said complaint, the police registered a case in

Crime No.2 of 2010. After conducting investigation, the police filed charge sheet against the husband of the complainant (A.Gopal Rao) for the offences punishable under Section 498-A I.P.C. and Sections 3 and 4 of Dowry Prohibition Act, by deleting the other accused, and the same was taken cognizance and numbered as C.C.No.858 of 2010.

As the police filed charge sheet against her husband only, the complainant filed a private complaint against the other accused (hereinafter referred to as the petitioners/Accused) under Section 200 of Cr.P.C., before the Judicial Magistrate of First Class, Mahabubnagar, which was referred to the police under Section 156 (3) Cr.P.C. Basing on the said reference, the Police, Women Police Station, Mahabubnagar, registered a case in Crime No.18 of 2012, for the offences punishable under Sections 498-A I.P.C and Sections 3 and 4 of the Dowry Prohibition Act. The police investigated into the matter and filed a final report referring the case as "Mistake of Fact". Against which, the complainant filed a petition under Section 319 of Cr.P.C. After examining P.Ws.1 to 3, the learned Magistrate ordered issuance of summons to the A-1 to A-7 herein. Challenging the same, the petitioners/accused filed Criminal Petition No.6307 of 2015.

Learned Counsel for the petitioners/accused herein submitted that earlier the complainant filed a complaint on 30.01.2010 against all the petitioners including her husband and basing on which a case in Crime No.2 of 2010 came to be registered and after due investigation, the police filed charge sheet against the husband of the complainant only by deleting the petitioners herein. Surprisingly, the complainant again filed the private complaint with similar set of facts on 08.05.2012 and a case in Crime No.18 of 2012 came to be registered against the petitioners, for the same offences. It is also submitted that two cases cannot be tried for the same offences against the same persons without any change of circumstances, as such the petitioners/accused filed Criminal Petition No.5427 of 2012, to quash the proceedings in Crime No.18 of 2012. The said quash petition was dismissed as infructuous on 14.07.2014 as the learned Public Prosecutor submitted that "action has been dropped against the petitioners in the said Crime No.18 of 2012". It is also submitted that instead of filing protest petition, the complainant filed a petition under Section 319 Cr.P.C. in CFR No.2554 of 2013. In the said petition the learned Magistrate examined three witnesses and accordingly ordered to issue summons to the petitioners, which is an abuse of process of law. It is also

submitted that after thorough investigation in Crime Nos.2 of 2010 and 18 of 2012, the proceedings have been dropped against the petitioners/accused. It is further submitted that no offence is made out against the petitioners/accused for the alleged offences under Section 498-A I.P.C. and Section 3 and 4 of the Dowry Prohibition Act, in view of the investigation revealed in C.C.No.858 of 2010 and also in Crime No.18 of 2012. The petitioners/accused are the mother-in-law, brother-in-law, sister-in-law and father-in-law of the complainant. Petitioner Nos.3 to 7 are married and they are staying at different places with their respective families, as such the question of harassing the complainant for additional dowry would not arise and the complainant made vague allegations against the petitioners/accused. Moreover, it is admitted by the complainant that she joined in INDU B.Ed. College and was staying at Hyderabad. Petitioner Nos.5 to 7 are retired Government employees and, therefore, the question of harassment by the petitioners/accused does not arise and it is very clear in the complaint that the complainant has not attributed any specific allegations against the petitioner Nos.5 to 7. It is further submitted that the police have examined several witnesses and after thorough investigation, the proceedings against the petitioners/accused were dropped as

there was no sufficient evidence to drive the petitioners/accused into the alleged offences and accordingly the proceedings against the petitioners were dropped twice. In order to harass the petitioners both physically and mentally, the complainant filed the case on a similar set of facts and grounds for the same offences. It is also submitted that it is nowhere alleged in the complaint that after filing the first complaint, the complainant has been residing with the petitioners and she was subjected to cruelty by the petitioners/accused. The summons issued by the Court against the petitioners/accused on the basis of a petition under Section 319 Cr.P.C., is liable to be quashed. In support of his contention, he relied on the judgment of High Court of Chhattisgarh, Bilaspur in *Vijay Saraswat and others v. Smt. Richa Ojha Saraswat*¹.

Learned Counsel for the complainant would submit that the Women Police Station, Mahabubnagar, filed a report in collusion with the petitioners/accused therein though there are specific allegations against them with regard to harassment for additional dowry. The police have changed the statements of the witnesses and filed false final report closing the case. As such, the complainant filed a petition under Section 319 of Cr.P.C. requesting the Court to record evidence on behalf of the

¹ CrI.R.C.No.444 of 2017, dt. 15.05.2018

complainant and take cognizance against the petitioners/accused. The learned Magistrate examined P.Ws. 1 to 3 and basing on their evidence, the learned Magistrate held that there is *prima facie* case against the petitioners/accused and issued summons to the petitioners/accused by docket order, dated 25.06.2014. Challenging the same, the petitioners/accused filed CrI.P.No.6307 of 2015 and that by an order dated 14.07.2015, this Court granted interim suspension of the said docket order until further orders. The complainant filed vacate stay petition in the said Criminal Petition and the same is pending. It is submitted that in view of the Apex Court judgment, the stay order passed in the Criminal Petition stands vacated after expiry of six months from March, 2018 unless a reasoned order is passed extending the stay. Till today, no reasoned order has been passed. Hence, the stay granted by this Court is no more existence and the same was brought to the notice of the learned Magistrate and also requested to try the case of the petitioners/accused along with the case against her husband in C.C.No.858 of 2010, but the learned Magistrate is proceeding with the case in C.C.No.858 of 2010 alone. It is also submitted that having taken cognizance of the offence against the petitioners/accused vide docket order, dated 25.06.2014 in Crime No.18 of 2012, the learned Magistrate failed to take up the case for trial along with

the case in C.C.No.858 of 2010 since the case against the petitioners/accused and the case in C.C.No.858 of 2010 based on same set of facts. Therefore, it is just and necessary to give a direction to the Magistrate to try the case along with C.C.No.858 of 2010, otherwise the complainant will be put to irreparable loss and injury. In support of her contentions, learned Counsel relied upon the following judgments.

1. *Rajesh and others v. State of Haryana*²
2. *Sukhpal Singh Khaira v. State of Punjab*³
3. *Shiv Prakash Mishra v. State of Uttar Pradesh and another*⁴

Section 319 Cr.P.C. provides that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. The Court, thus, during the trial on the basis of any evidence is fully empowered to proceed against any person, whose name was not even included in the F.I.R. or the Charge Sheet. The parameters of exercise of power under Section 319 Cr.P.C have been explained by the Apex Court time and again.

² (2019) 6 SCC 368

³ (2019) 6 SCC 638

⁴ (2019) 7 SCC 806

In *Hardeep Singh Vs. State of Punjab & Others*⁵, the Apex

Court held as under:

"105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold 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 under Section 319 CrPC. In Section 319 CrPC 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

⁵ (2014) 3 SCC 92

scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."

In the said case, the Constitution Bench has given a caution that power under Section 319 Cr.P.C. is a discretionary and extraordinary power, which should be exercised sparingly and only in those cases where the circumstances of the case so warrant. The crucial test, which has been laid down as noted above is "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 *Michael Machado v. Central Bureau of Investigation*⁶ the Apex Court held that "unless the Court is hopeful that there is a reasonable prospect of the case against the newly added accused ending in their conviction for the offence concerned , the Court shall refrain from adding them as accused".

In *Krishnappa v. State of Karnataka*⁷ the Apex Court was of the view that "invocation of power under Section 319 Cr.P.C. should not have been resorted to, since the chances of conviction on the basis of the evidence on record was remote. The power to summon an accused under section 319 Cr.P.C. is

⁶ (2000) 3 SCC 262

⁷ (2004) 7 SCC 792

an extraordinary power conferred on the Court and it should be used very sparingly and only if compelling reasons exist for taking cognizance against the person other than the accused”.

In *Mohd. Shafi v. Mohd. Rafiq and Another*⁸, the Apex Court summed up the legal position regarding summoning of any person as accused Under Section 319 Cr.P.C. which is as under:

- “1. The power Under Section 319 Cr.P.C. is not to be exercised mechanically on the ground that some evidence has come on record implicating the person sought to be made an accused.
2. There is no compelling duty on the Court to proceed against those persons against whom no charge sheet has been submitted.
3. The power Under Section 319 Cr.P.C. is discretionary and should be exercised to achieve criminal justice and the Court should not turn against another person simply because it has come across some evidence connecting that person also with the offence. The court should exercise judicial discretion in the matter considering all the relevant facts and circumstances.
4. The Court must be satisfied that the other person, who had not been arrayed as accused, had also participated in commission of the offence.

⁸ (2007) 58 ACC 254

5. The power Under Section 319 Cr.P.C. is extraordinary power conferred on the court and this should be used very sparingly if the compelling reasons exist for taking cognizance against other accused persons against whom no charge sheet has been submitted.

6. There must be reasonable prospect of the case against the newly added accused ending in his conviction for the offence concerned and then only that person should be summoned as an accused otherwise the Court should refrain from adding him as an accused.

7. The Court shall exercise a judicial discretion taking into consideration conspectus of the case including the stage at which the trial has proceeded and the quantum of evidence collected till the date and time spent by the Court for collecting such evidence while passing the order of summoning the person Under Section 319 Cr.P.C.

8. The satisfaction whether there exists likelihood of conviction of the person to be summoned as accused can be arrived at inter alia upon cross examination of the witness naming him and so the orders for summoning a person as accused Under Section 319 Cr.P.C. should be passed after cross examination of the witness.

9. The Court concerned may also take into consideration other evidence before passing an order for summoning a person as an accused Under Section 319 Cr.P.C.”

Similarly a three Judge Bench of the Apex Court in *Sunil Bharti Mittal v. Central Bureau of Investigation*⁹ while dealing with Sections 200 to 204, 190, 173 (2) and 319 Cr.P.C. held that the words “sufficient ground for proceeding” appearing in Section 204 Cr.P.C. is of immense importance. The Court held that all these words would amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The Court further held that the order is liable to be set aside if no reason is given therein while coming to the conclusion that there is *prima facie* case against the accused, though the order need not contain detailed reasons.

From the judgments referred to above, it is clear that showing application of mind is a pre-requisite at the time of taking cognizance.

In the instant case, it appears that the learned Magistrate has not taken into consideration the above aspects of the case which he was bound to consider while passing the order for taking cognizance against the petitioners/accused and the learned Magistrate has no where recorded any specific finding

⁹ 2015 (4) SCC 609

as to whether or not the evidence adduced under Section 319 Cr.P.C. would be sufficient to record a conviction against the petitioners/accused. Further, the order under challenge lacks reasons for coming to a conclusion as to the existence of *prima facie* case against the petitioners/accused. Moreover, the impugned order does not show as to whether the Magistrate has treated the petition filed by the complainant as that of a petition under Section 319 of Cr.P.C. or he treated the same as a complaint case and recorded the evidence of the witnesses. Therefore, it cannot be said that the Magistrate has totally applied his mind while issuing summons to the petitioners/accused, as the order under challenge is bereft of even basic reasons for taking a view different from what has been stated by the investigating agency.

For the aforesaid reasons and having regard to the law laid down by the Apex Court in the aforesaid decisions, the Criminal Petition No.6307 of 2015 is allowed and the docket order, dated 25.06.2014 passed in C.F.R.No.2554 of 2013 in Crime No.18 of 2012 on the file of the Judicial Magistrate of First Class, Mahabubnagar is hereby set aside.

Since Criminal Petition No.6307 of 2015 is allowed by setting aside the docket order, dated 25.06.2014 in

C.F.R.No.2554 of 2013 in Crime No.18 of 2012 on the file of the Judicial Magistrate of First Class, Mahabubnagar, Criminal Petition No.1517 of 2019, which was filed seeking a direction to the Judicial Magistrate of First Class, Mahabubnagar to try the case in Crime No.18 of 2012 along with C.C.No.858 of 2010, which is pending on the file of the Judicial Magistrate of First Class, Mahabubnagar is dismissed as infructuous as the cause in Criminal Petition No.1517 of 2019 does not survive for further adjudication.

Accordingly, Criminal Petition No.6307 of 2015 is allowed and Criminal Petition No.1517 of 2019 is dismissed as infructuous.

Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

04.06.2020

Gsn/gkv



