

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.216 of 2021

Kailash Chandra Sahoo & others.* *Petitioners

M/s. U.C. Mishra, A. Mishra, Advocates

-versus-

State of Odisha & another.* *Opposite Parties

Addl. Standing Counsel – For O.P. No.1-State
M/s. B.K. Ragada, L.N. Patel, J. Mohapatra, H.K. Muduli, M.
Sahoo, Advocates – Fro O.P. No.2

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
29.07.2022**

**Order
No.**

5. **1.** This is an application filed under Section 401 of Cr.P.C. challenging the order dated 31.03.2021 passed by the learned 3rd Addl. Sessions Judge, Cuttack in Criminal Revision No.6 of 2021, vide which the order passed by the learned SDJM(S), Cuttack rejecting the application of the Informant (Opposite party no.2 herein) under Section 319 of Cr.P.C., has been reversed.

2. Heard the learned counsel for the petitioners and the learned counsel for the State. None appears for the opposite party no.2. Perused the relevant papers on record.

3. The petitioner no.1 is the father-in-law of the Informant, petitioner no.2 is his son, and petitioner no.3 is the wife of the petitioner no.2. The Informant lodged F.I.R. with police alleging dowry demand and torture against her husband, mother-in-law and the present petitioners. After investigation, police, however, submitted charge-sheet against the husband and mother-in-law of the informant only. The learned SDJM(S), Cuttack took cognizance of the offences under Sections 498-A, 506/34 of IPC accordingly and after framing charge, proceeded with the trial. During the trial, after the informant was examined as prosecution witness no.1, and while her cross-examination was deferred on the prayer of the defence counsel, the informant moved an application under Section 319 of Cr.P.C. before the learned SDJM

seeking for summoning the present petitioners to be proceeded against for the aforesaid offences, and the learned SDJM vide the order dated 14.10.2020 rejected the said application on the ground that there was no sufficient evidence on record to exercise jurisdiction under Section 319 of Cr.P.C. against the present petitioners. Being aggrieved thereby, the informant approached the revisional court by filing Criminal Revision No.6 of 2021 which was allowed by the learned 3rd Addl. Sessions Judge vide the impugned order, directing the trial Court to summon the present petitioners to face the trial, in view of Section 319 of Cr.P.C. The petitioners, therefore, have filed the present revision petition seeking for setting aside the impugned order.

4. It is the submission of the learned counsel for the petitioners that the learned 3rd Addl. Sessions Judge has erred in law by issuing the direction vide the impugned order, inasmuch as the evidence of the Informant which has not been tested by cross-

examination by defence does not make out any case for directing the petitioners to face the trial for the alleged offences. According to him, the untested cryptic statement of the informant in her examination-in-chief is vague in nature, and the alleged dowry demand or torture is vague in nature, having no specific attribute to the petitioners in the alleged incident.

5. Learned counsel for the State, however, supports the impugned order.

6. I have gone through the order of the learned SDJM(S), Cuttack as well as the impugned order passed by the learned First Revisional Court vis-à-vis the testimony-in-chief of the informant recorded by the learned SDJM(S), Cuttack.

7. The learned First Revisional Court has observed, inter-alia, that the learned trial Court failed to properly assess the materials available in the case record and the spirit of Section 319 of Cr.P.C. He has

placed reliance the decisions of the Apex Court in the case of **Hardeep Singh -Vrs.- State of Punjab & Others**, reported in (2014) 3 SCC 92 and **Sartaz Singh vrs. State of Haryana**. The principles settled in the case of **Hardeep Singh** have been followed in **Sartaz Singh's** case. It is true, as per the principles settled, for the purpose of exercising the jurisdiction under Section 319 of Cr.P.C., there is no necessity that the evidence of the witnesses must be tested with cross-examination by the defence. But, what it appears, the learned 3rd Addl. Sessions Judge in his haste has neither gone in detail through either of the above cited two decisions. Had he applied his mind correctly to those authorities, he could have decided the matter before him in right perspective. In para-6.1.6 of the judgment in Sartaz Singh's case (supra) para-105 and 106 of the judgment of Hardeep Singh's case have been quoted with the approval. Para-6.1.6 of the judgment in Sartaz Singh's case is reproduced here below:-

“6.1.6 While answering Question (iv), namely, what is the degree of satisfaction required for invoking the power under Section 319 CrPC, this Court after considering various earlier decisions on this point, has observed and 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 scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.”

8. As per the principles settled as above, the evidence to be taken into consideration for the purpose of exercising the power under Section 319 of Cr.P.C. needs to be much stronger evidence than mere probability of complicity of the new accused persons sought to be summoned. In the case at hand,

what it appears, the learned trial Court having regard to the nature of evidence available on record as on the date of the application in question had rightly decided to summon the present petitioners under Section 319 of Cr.P.C. The learned First Revisional Court, however, having not taken note of the settled principle quoted above, reversed the order of the learned trial Court. Hence, this Court restores the order of the learned SDJM(S), Cuttack while setting aside the impugned order.

9. In the result, this CRLREV is allowed. The Registry shall communicate a copy of this order forthwith to the trial Court, First Revisional Court as well as the Officer who has passed the impugned order while being in seisin over the Criminal Revision No.6 of 2021 in the court of the 3rd Addl. Sessions Judge, Cuttack.

(S.Pujahari)
Judge

