

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL REVISION CASE No.371 OF 2016

ORDER:

1. This Criminal Revision Case is filed by the petitioner-newly added accused No.2 against the order dated 19.01.2016 in CrI.M.P. No.1742 of 2015 in CC No.137 of 2010 on the file of Additional Judicial Magistrate of First Class, Gadwal.

2. The facts which led to filing of this revision are: as per the charge sheet filed in CC No.137 of 2010 on the file of the Judicial Magistrate of First Class, Gadwal, on 29.12.2006, the complainant lodged a report before the police stating that her marriage was performed with A1 on 28.04.1999 at Anjaneyaswamy Temple, Beechupally and she was blessed with a daughter, aged five years, and a son, aged two years. Her husband, who was working as Manager in Yamaha Showroom in Gadwal Town developed illegal intimacy with one Bhargavi, who was his co-worker at the showroom and was spending his entire salary on Bhargavi and started harassing the complainant physically and mentally demanding additional dowry of Rs.1,00,000/-. Her husband informed that he performed marriage with

Bhargavi and warned her to do whatever she could do. A panchayat was held in the presence of the elders, but her husband blatantly stated that he would leave her but not Bhargavi at any cost. During a subsequent panchayat, her husband gave assurance that he would look after her well and leave Bhargavi and executed an undertaking on a Ten rupee bond paper but there was no change in his attitude and continued the harassment. Basing on the said complaint, police registered a case in Crime No.122 of 2006 for the offence under Section 498-A and 494 IPC. During the course of investigation they also examined LWs.4 and 5, who stated that they had acquaintance with Bhargavi and that Bhargavi informed them that she performed love marriage with one Suman @ Laxminarayana-A1 and that they fell in love while they were working in Yamaha showroom at Gadwal. Later they vacated the rented house at Gadwal and went away. Police filed charge sheet against A1 and A2 initially for the offences under Sections 498-A and 494 IPC. At that stage, A2-D. Bhargavi filed Criminal Petition No.1446 of 2007 before the High Court of Andhra Pradesh for quashing the proceedings in the unnumbered CC on the file of Judicial Magistrate of First Class, Gadwal in Crime No.122 of 2006 of Gadwal Town Police Station, Mahabubnagar District. The High

Court allowed the petition quashing the proceedings against the petitioner-A2 observing that even as per the allegations in FIR and in the charge sheet, there was no whisper about any marriage between A1 and A2 on the said allegations, there might not be any offence of bigamy punishable under Section 494 IPC against anybody and more particularly against A-2. Thus, there was no *prima facie* case at all insofar as A2 was concerned. Subsequently, police filed charge sheet only against A1 by deleting the name of A2 as per the orders of this court in Crl.P.No.1446 of 2007 dated 04.02.2010. The case was taken cognizance only against A1 for the offence under Section 498-A and 494 IPC.

3. During the course of trial, the complainant was examined as PW.1 on 08.06.2015. She stated in her evidence that during her stay at Kurnool, she came to know that her husband got married with Bhargavi and that she also came to know that with the said Bhargavi, he set up a family in Kurnool. She approached Bhargavi and questioned her as to why she was interfering in her matrimonial life. The so called second wife of her husband was junior to her in the School. The said Bhargavi shown photos of their marriage and asked her to question the accused

for anything to be discussed. She took the photos from her and immediately came to Gadwal. The report given to the police was marked as Ex.P.1. She further stated that she had original papers with regard to transactions that took place between her and the accused and also photos of the second marriage of the accused. At that stage, her further chief examination was deferred.

4. Subsequently, the prosecution filed a petition under Section 319 Cr.P.C. that as per the facts and circumstances of the case and material filed by PW.1, a *prima facie* case was made out against the 2nd respondent (i.e. petitioner herein), that she knowingly performed second marriage with A1 even though she was aware of the first marriage of A1 with PW.1 and prayed to implead the 2nd respondent as A2 in the said case. A counter was filed by A1. The trial court on considering the petition filed by the Assistant Public Prosecutor and the counter filed by A1, basing on the judgment of the Hon'ble Apex Court in **Hardeep Singh v. State of Punjab and others**¹, allowed the petition adding the proposed 2nd respondent as A2 in the case and directed to issue summons to A2.

¹ AIR 2014 SC 140

5. Aggrieved by the said adding of the petitioner as A2 in the case, the petitioner filed this revision case contending that the court below erred in allowing the application for adding the petitioner as accused No.2 for the offence under Section 494 IPC though there was no material on record to connect the petitioner with the offence of bigamy. The court below did not issue notice to the petitioner i.e. the proposed accused No.2 and did not obtain her explanation before passing orders and not given an opportunity to hear the petitioner for adding her as accused. The court below erred in allowing the application for adding the petitioner as accused. The court below erred in appreciating the evidence of PW.1 who was highly inimical to wards the petitioner. The evidence of the petitioner in her chief examination was suffering with material omissions and the same was not appreciated by the court below while dealing with the petition under Section 319 Cr.P.C. The court below totally ignored the order passed by the High Court of A.P. in Crl.P. No.1446 of 2007, dated 04.02.2010 quashing the offence under Section 494 IPC against A2. The High Court, after appreciating the entire material placed by the Investigating Officer before the court i.e. copy of the charge sheet, statements of all the witnesses i.e. LWs.1 to 5, held that the offence of bigamy punishable under Section 494 IPC

could not be made against anybody and more particularly against A2 and quashed the proceedings against the petitioner-A2. PW.1 in her chief examination reiterated the facts stated in the report under Ex.P.1 and what all stated by her in her statement before the police. No other extra material was placed by the prosecution with regard to the offence under Section 494 IPC. Except the chief examination of PW.1, there was no material placed on record to prove the offence of bigamy. As the court below passed the order under revision contrary to the order passed by this Court in Crl.P. No.1446 of 2007 dated 04.02.2010, such order was not sustainable and liable to be set aside. The court below ignored the cardinal principle of criminal law that no innocent person should be punished and the real culprit should not be escaped. Adding of accused person without any material on record to connect her would cause much prejudice to the accused in facing the trial and prayed to allow the criminal revision case by setting aside the order dated 19.01.2016 in Crl.M.P. No.1742 of 2015 in CC No.137 of 2010 on the file of the Additional Judicial Magistrate of First Class at Gadwal, Mahabubnagar District.

6. Heard learned counsel for the petitioner and the learned Assistant Public Prosecutor for the respondent – State.

7. Section 319 Cr.P.C. reads as under:

“319. Power to proceed against other persons appearing to be guilty of offence. –

(1) 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.

.....

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.

8. By reading of Section 319 Cr.P.C., it is clear that the power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during trial to summon any person as an accused to face the trial if it appears from the evidence that such person has committed any offence for which such person could be tried together with the accused.

9. The learned counsel for the revision petitioner submitted that the test to be applied for invoking the power under Section 319 Cr.P.C. was more than *prima facie* case that was applied at the time of framing of charge and relied upon the judgments of the Hon'ble Apex Court in **Ajay Kumar v. State of Uttarakhand**², **Ramesh Chandra v. State of U.P. and another**³, **Shiv Prakash Mishra v. State of Uttar Pradesh**⁴ and **Thulsya Naik & 4 others v. The State of A.P.**⁵

10. The record would disclose that though the charge sheet was initially filed against A1 and A2 for the offences under Sections 498-A and 494 IPC, this Court quashed the proceedings against the petitioner – A2, in unnumbered charge sheet in the above Crime No.122 of 2006 on the file of Judicial Magistrate of First Class, Gadwal in Crl.P. No.1446 of 2007, on considering the allegations in the FIR and the statements of the witnesses recorded by the police under Section 161 Cr.P.C., for the offence under Section 494 IPC. Hence, this Court once again need not go into the same to consider whether any offence was made out under Section 494 IPC. Subsequently, during the course of trial, the prosecution examined PW.1 in chief on 08.06.2015.

² (2021) 4 SCC 301

³ 2021 (4) RCR (Criminal) 219

⁴ AIR 2019 SC 3477

⁵ Crl.R.C. No.1438 of 2010 dt.23.08.2010

Whatever stated by PW.1 in chief was also extracted above. If it was the same, as stated by her in her complaint as well as in the 161 Cr.P.C. statement, the same was already considered by this Court in Crl.P No.1446 of 2007. If the same was more than what was stated by her in the complaint, as well as in the 161 Cr.P.C. statement given by her to the police, it would amount to a material omission and the effect of the material omission in impleading a person as an accused need to be considered by the trial court. Though PW.1 stated that she was in possession of the marriage photos of the revision petitioner-A2 with A1 and that she was in possession of the original papers with regard to the transactions that took place between her and A1, wherein he admitted about his relationship with A2, the same were not marked by the Court as exhibits before allowing the petition in Crl.M.P. No.1742 of 2015 dated 19.01.2016, so as to consider them in the petition.

11. The trial court had committed a grave error in allowing the petition even without issuing notice to the proposed accused No.2 i.e. the petitioner herein. Without giving an opportunity to the petitioner to hear her, adding her as an accused would cause grave prejudice to her.

12. When once the proceedings against the petitioner-A2 were quashed by this Court in Crl.P. No.1446 of 2007, adding her subsequently should disclose the strong considerations that were weighed by the court while allowing the petition.

13. This Court in **Thulsya Naik & 4 others v. The State of A.P.** (5 supra) observed that:

“The Supreme Court, after surveying the case law on the subject starting from **MUNICIPAL COROPORATION OF DELHI (MCD) VS. RAM KISHAN ROHTAGI [(1983) 1 SCC 1]**, finally held in **RAM SINGH VS. RAM NIVAS [2009-TLPRE-0-705]** as follows:

“The High Court, in our opinion, however, has committed a serious error in proceeding on the premise that mere existence of a prima facie case would be sufficient to exercise the court’s jurisdiction under Section 319 of the Code. We have noticed hereinbefore the importance of the word ‘appears’. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, would lead to conviction of the persons sought to be added as accused in the case.”

4. Thus, even prima facie case is not the criterion to implead new persons as accused in a given case. In that view of the matter, mere suspicion expressed by P.Ws.1 to 3, both in F.I.R. as well as in their evidence before the trial Court will not clothe the lower Court to implead A2 to A6 in this case for being tried along with A1. It is incumbent for the trial Court to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted would lead to conviction of the persons sought to be added as accused in the case, before ordering impleading of new accused persons to the case. Mere suspicion does not lead the trial Court anywhere. Suspicion cannot take place of proof in a case. Thus, this Court is of the opinion that the impugned order passed by the lower Court does not stand to legal scrutiny.”

14. The Hon'ble Apex Court in **Ajay Kumar v. State of Uttarakhand** (2 supra) while considering the Constitutional Bench judgment of the Hon'ble Apex Court in **Hardeep Singh v. State of Punjab and others** (1 supra) held that:

“The principles for exercise of power under Section 319 Cr.P.C. by Criminal Court are well settled. The Constitution Bench of this Court in *Hardeep Singh versus State of Punjab and others*, (2014) 3 SCC 92, has elaborately considered all contours of Section 319 Cr.P.C. This Court has held that Power under Section 319 Cr.P.C. is a discretionary and extra-ordinary power which has to be exercised sparingly. This Court further held that 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 paragraph 105 and 106, following has been laid down: -

“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.”

15. In **Ramesh Chandra v. State of U.P. and another** (3 supra).

The Hon’ble Apex Court held that:

“The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges.

It will all depend upon the evidence which is tendered in a given case as to whether there is a strong ground within the meaning of paragraph 105.”

16. In **Shiv Prakash Mishra v. State of Uttar Pradesh** (4 supra),

the Hon’ble Apex Court after considering the Constitutional Bench judgment in **Hardeep Singh v. State of Panjab and others** (1 supra) also stated that:

“11. The above view was followed in **Brijendra Singh v. State of Rajasthan [(2017) 7 SCC 706]** as under:

13. In order to answer the question, some of the principles enunciated in Hardeep Singh case (2014) 3 SCC 92 may be

recapitulated: However, since it is a discretionary power given to the court under Section 319 CrPC and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

17. Thus, as seen from the above judgments, the discretionary power given to the court under Section 319 Cr.P.C. is an extraordinary power and has to be exercised sparingly and only in those cases where the circumstances on the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge was of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence exists against a person, that such power should be exercised and not in a casual and cavalier manner and it requires much stronger evidence than mere probability of his complicity.

18. The trial court only stated that:

“On a perusal of Ex.P1, it would reveal that PW.1 specifically mentioned that the accused No.1 has a concubine, by name, Bhargavi, who is none other than the proposed Accused No.2 herein; it also revealed during the chief examination of PW.1 that the same fact was also deposed by her. It is settled principle of

law that if any allegation is made against any person, it does not deem to have proved the fact. However, it was the right of the proposed accused No.2 and also Accused No.1 to defend their case during the cross-examination of the prosecution witnesses.

19. When the contents of Ex.P.1 complaint were already considered by this Court while quashing the proceedings against the petitioner-A2 in Crl.P. No.1446 of 2007 and when the same facts were deposed by PW.1 in her chief examination as observed by the trial court, the same cannot be a ground to add the petitioner herein as accused No.2. The trial court though stated that it relied upon the judgment of the Hon'ble Apex Court in **Hardeep Singh's** case (1 supra), had not stated on what reasons it relied upon the said judgment and how the said judgment was taken as a recourse for adding the proposed Accused No.2. The trial court in para-12 of its order stated that:

“12. For the reasons stated above and following the aforesaid authoritative pronouncement of Hon'ble Supreme Court of India, the petitioner established a prima facie case made out against the proposed accused No.2 for the offence punishable U/s. 494 of IPC. The material available on record and considering the facts and circumstances of the case and to come to just conclusion and to meet the ends of the justice, this court is inclined to allow the petition.”

20. The Hon'ble Apex Court in the above case held that it was not the *prima facie* case which was sufficient to add a person as accused No.2, but it required much stronger evidence than mere probability of

his / her complicity and only where strong and cogent evidence existed against a person from the evidence led before the court, that such power should be exercised. The same was not considered by the trial court.

21. In view of the above discussion, it is considered fit to allow the revision case by setting aside the impugned order.

22. In the result, the Criminal Revision Case is allowed by setting aside the order dated 19.01.2016 passed in Crl.M.P. No.1742 of 2015 in CC No.137 of 2010 on the file of the Additional Judicial Magistrate in adding the petitioner as accused No.2 in the above case.

Miscellaneous Petitions pending, if any, shall stand closed.

Dr. G. RADHA RANI, J

October 17, 2022
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