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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: August 18, 2023***

+ **CRL.M.C. 4223/2019 & CRL.M.A. 34372/2019**

PRATIMA DEVI

..... Petitioner

Through: Ms. Phool Kumari, Advocate
with the petitioner in person.

versus

BISHAMBHAR LAL & ORS

..... Respondents

Through: Mr. A.K. Mishra and Mr. Robin
Jaswal, Advocate along with
the respondents in person.

CORAM:

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T (oral)

1. The present petition is filed under section 482 Cr.P.C. to impugn the order dated 27.02.2019 passed by the court of Sh. Sandeep Yadav, ASJ-02, South-East District, Saket Courts, New Delhi in Criminal Revision Petition bearing no.578/2017 titled as **Pratima Devi V Bishambhar Lal and Others** and order dated 24.11.2017 passed by the court of Ms. Manika, Metropolitan Magistrate-03, South-East District, Saket Courts, New Delhi.

2. The petitioner filed a complaint titled as **Pratima Devi V Bishambhar Lal and Others.** under section 156(3) Cr.P.C. for



initiation of criminal proceedings for the offences punishable under sections 34/120B/278/325/441/442/503 IPC against the proposed accused. The court of Ms. Poorva Sareen, MM, South-East District, Saket Courts, New Delhi vide order dated 05.07.2011 summoned the accused persons as named in the original complaint for the offences punishable under sections 448/323 IPC read with section 290 IPC for committing trespass upon the house of the petitioner/complainant and also for causing simple injuries to the petitioner/complainant and further for creating nuisance.

3. The petitioner being aggrieved by the order dated 05.07.2011, filed a Criminal Revision Petition bearing no.83/2011 titled as **Pratima Devi V Bishambhar Lal** which was decided by the court of Ms. Raj Rani Mitra, ASJ-05, South-East District, Saket Courts, New Delhi vide order dated 21.02.2012 whereby the respondents were also ordered to be summoned for the offence punishable under section 503 IPC for causing criminal intimidation to the petitioner. Thereafter, the court of Ms. Saumya Chauhan, MM-07, South-East District, Saket Courts, New Delhi vide order dated 28.03.2012, also summoned the respondents for the offence punishable under section 503 IPC.



4. The petitioner filed an application for summoning of additional accused, namely, Shunti @ Mahinder Singh Dhir, Navin @ Navin Khera and Sunder Lal, which was dismissed vide order dated 24.11.2017 passed by the court of Ms. Manika, Metropolitan Magistrate-03, South-East District, Saket Courts, New Delhi. The relevant portion of the said order reads as under:-

6. Perusal Of the record reveals that the three proposed accused Persons had not been named in the memo of parties as accused persons either in the Original complaint or even the amended complaint filed on Behalf Of the complainant. The plea taken to justify the same is that Particulars Of the proposed accused persons were not known to the Complainant at that time. Even If that was the case, the complainant could have at least named the accused persons in the memo of parties and mentioned alongside that their parentage and addresses were not known. In fact, no such plea as to want of knowledge of particulars of the proposed accused persons had been taken/raised by the complainant either in the-body of the complaint or in any application moved prior to the Application under consideration.

7. Vide the summoning order dated 05.07.2011, passed by the learned predecessor of this Court, all accused persons had been Summoned, without any exception. However, since the three proposed accused persons namely Shunty, Navin and Sunder Lal had not been named in the memo of parties as already stated above, there was no question of summoning the said persons. No plea with regard to the persons now proposed to be summoned as accused was raised by the complainant even at the stage of passing of order on summoning. In fact, the order on summoning dated 05.07.2011 was challenged in Criminal Revision NO.



83/2011, which was decided vide order dated 21.01.2012 passed by the court of Ms. Rajrani Mitra, Ld. ASJ, South-East, Saket court. However, in the said revision petition also the plea raised by the complainant was with regard to enhancement of sections and inclusion of appropriate sections of IPC in the impugned order 05.07.2011. No plea with regard in the above named three persons now proposed to be summoned was raised on behalf of the complainant even in the aforesaid revision petition.

8. The present case has been pending for more than 11 years, having been instituted on 28.07.2006. While the complainant had not raised any dispute with regard to the three proposed accused persons not having been summoned earlier, she chose to take the aforesaid plea by way of the application under consideration filled in December 2014, i.e. after about three and a half years of passing of the summoning order.

9. Further, perusal Of the evidence led by the complainant during pre-summoning evidence and pre-charge evidence reveals that there is no substantial difference between the evidence which has come on record in pre-charge evidence against the proposed accused persons and that which had surfaced at the pre-summoning stage.

10. The authorities relied upon on behalf of the complainant, i.e. Harjit Singh and Another Vs. State of UP and Another, dated 17.08.2016 Passed by Hon'ble Allahabad High Court and Hardeep Singh Vs. Stale of Punjab and Others in Criminal Appeal No.1750/2008, dated 10.01.2014, passed by Hon'ble Supreme Court of India, do not aid the complainant in the present case.

11. In view of the aforesaid discussion, in the considered opinion of this Court, no ground is made out for summoning the proposed accused Namely Shunty @Mahinder Singh Dhir, Navin @Navin Khera and Sunder Lal in the present



case. The prayer made in that regard is accordingly declined.

5. The petitioner being aggrieved by the order dated 24.11.2017, filed a Criminal Revision Petition bearing no.578/2017 titled as **Pratima Devi V Bishambhar Lal and Ors.**, which was dismissed vide order dated 27.02.2019 by the court of Sh. Sandeep Yadav, ASJ-02, South-East District, Saket Courts, New Delhi. The relevant portion of the order dated 27.02.2019 reads as under:

3. Factual background is that petitioner has filed a criminal complaint against Bishambar Lal and others which is pending trial. Petitioner stated in the application that real names, addresses and other particulars of all persons who attacked the complainant and her family members were not known to petitioner at the time of filing of complaint.

4. Prayer of petitioner for summoning accused Shunti @ Mahender Singh Dhir, Naveen @ Naveen Khera and Sunder Lal as additional accused was declined by learned Metropolitan Magistrate on the ground that these persons were not mentioned in the memo of parties or in the amended memo of parties filed with the complaint nor any plea for summoning these persons was raised by petitioner in Criminal Revision No. 83/11 which was filed challenging summoning order dated 05.07.2011. As regards the third prayer, learned Metropolitan Magistrate held that no provision has been cited by petitioner justifying direction to respondents to provide particulars of proposed accused Sunder Lal.

5. Perusal of trial court record revealed that after filing of criminal complaint, summoning order was passed by trial court on 05.07.2011 whereunder all persons arrayed as



accused in the complaint were summoned. Needless to mention here that three persons who are sought to be summoned as additional accused were not mentioned in the memo of parties.

6. Ms. Phool Kumari, learned counsel for petitioner, during the course of arguments submitted that the application which was dismissed by learned Metropolitan Magistrate vide impugned order was filed under Section 319 Cr.PC. Section 319 (1) Cr.PC provides that where, in the course of any inquiry into, or trial of, an offence, it appears from evidence that any person not being accused has committed any offence for which such person should be tried together with accused, Court may proceed against such person for the offence which he appears to have committed.

7. Thus, for proceedings against a person under Section 319 Cr.PC, it is necessary that his involvement in the crime has cropped up in the evidence. Neither in the application nor during the course of arguments, Ms. Phool Kumar, learned counsel for petitioner, referred to any part of evidence led before trial court which indicated involvement of Shunti @ Mahender Singh Dhir, Naveen @ Naveen Khera and Sunder Lal in any crime.

8. The ground that at the time of filing of complaint, petitioner was not aware of names and addresses of proposed accused is not covered under Section 319 Cr.PC. Thus, it is concluded that prayer of petitioner for summoning Shunti @ Mahender Singh Dhir, Naveen @ Naveen Khera and Sunder Lal was rightly declined by learned Metropolitan Magistrate, *albeit* on different grounds.

6. The counsel for the petitioner argued that the courts below committed an error of law by dismissing the application on the



grounds that the 03 proposed accused have not been named in the memo of parties and the petitioner/complainant could have at least named these proposed accused in the memo of parties, and even their parentage and addresses were not known. The counsel for the petitioner further argued that there is sufficient incriminating material in pre-charge evidence against the proposed accused which is sufficient for their summoning as per section 319 of the Cr.P.C. The counsel for the petitioner during the course of arguments, cited the judgement titled as **Hardeep Singh V State of Punjab and Ors** (2014) 3 SCC 92. The relevant part of the said judgment as cited by the counsel for the petitioner is reproduced as under:-

37. Even the word course occurring in Section 319 Cr.P.C., clearly indicates that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial and the trial stage. The word course therefore, allows the court to invoke this power to proceed against any person from the initial stage of inquiry upto the stage of the conclusion of the trial. The court does not become functus officio even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused. The word course ordinarily conveys a meaning of a continuous progress from one point to the next in time and conveys the idea of a period of time; duration and not a fixed point of time. (See: Commissioner of Income-tax, New Delhi (Now Rajasthan) v. M/s. East West Import & Export (P)



Ltd. (Now known as Asian Distributors Ltd.) Jaipur, AIR 1989 SC 836).

51. There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 Cr.P.C. i.e. provisions of Sections 200, 201, 202, etc. Cr.P.C. applicable in the case of Complaint Cases. As has been discussed herein, evidence means evidence adduced before the court. Complaint Cases is a distinct category of criminal trial where some sort of evidence in the strict legal sense of Section 3 of the Evidence Act 1872, (hereinafter referred to as the Evidence Act) comes before the court. There does not seem to be any restriction in the provisions of Section 319 Cr.P.C. so as to preclude such evidence as coming before the court in Complaint Cases even before charges have been framed or the process has been issued. But at that stage as there is no accused before the Court, such evidence can be used only to corroborate the evidence recorded during the trial for the purpose of Section 319 Cr.P.C., if so required.

The proposition laid down in **Hardeep Singh V State of Punjab and Ors** (2014) 3 SCC 92 was reaffirmed by the Supreme Court in **Sukhpal Singh Khaira V The State of Punjab** in Criminal appeal bearing no. 885/2019 dated 05.12.2022.

7. The counsel for the petitioner also argued that the application which was dismissed by the courts below was in fact filed under section 319 Cr.P.C., which can be filed at any stage of the trial even before framing of the charges.

8. The counsel for the respondents argued to the contrary and stated that once the summoning order has already been passed by the



Trial Court, there is no provision for passing the additional summoning order. The best remedy available to the petitioner is to file an application under section 319 Cr.P.C., if any incriminating evidence is surfaced during the trial against the respondents. The present petition is liable to be dismissed.

9. The perusal of order dated 24.11.2017 reflects that the trial court dismissed the application for summoning the additional accused on the ground that their names were not mentioned in the memo of parties. The Revisional Court in order dated 27.02.2019, observed that to initiate proceedings against a person under section 319 Cr.P.C., it is necessary that his involvement in the crime should have cropped up in the evidence.

10. Section 319 Cr.P.C. gives power to proceed against other persons appearing to be guilty of offence. It 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.



11. In the present case, the petitioner has led the pre-summoning evidence before the summoning of the respondents. Thereafter, the petitioner stated to have led pre-charge evidence but the charges have not been framed. The petitioner in pre-charge evidence examined herself as PW-1 and Raj Kumar Jha as CW-2. The petitioner as PW-1 has made the allegations mainly against the respondents. The petitioner as PW-1 in pre-charge evidence deposed that on 09.09.2005 the additional accused Sunder Lal was also there who is stated to be the cousin of the respondent no. 3 Yashpal @ Titu and also deposed that the additional accused Sunder Lal was also one of the accused involved in the incident. The petitioner as PW-1 in pre-charge evidence also referred that the additional accused Shunti @ Mahender Singh Dhir, Navin @ Navin Khera also started to throw stones on her. The petitioner as PW-1 in pre-chare evidence during cross examination also deposed that she had filed complaint against Shunti @ Mahender Singh Dhir pertaining to the incident dated 20.10.2005. CW-2 Raj Kumar in pre summoning evidence also deposed that the additional accused Sunder Lal besides other accused and their associates including additional accused Navin @ Navin Khera, Shunti



@ Mahender Singh Dhir were having ill-feelings towards the petitioner and her family. CW-2 also referred the additional accused Sunder Lal in relation to one or two incidents in his pre-charge testimony. The careful perusal of the respective testimony of the petitioner as PW-1 and Raj Kumar as CW-2 in pre-charge evidence only reflects that only passing references of the additional accused were made and no specific details have been given regarding their involvement in commission of the alleged offences which are not sufficient to summon these additional accused namely Shunti @ Mahinder Singh Dhir, Navin @ Navin Khera and Sunder Lal on the basis of pre-charge evidence. The additional accused can only be summoned as per the mandate of section 319 Cr.P.C., if their involvement in the commission of offence is surfaced during the evidence i.e. during the inquiry or trial. The additional accused cannot be summoned on the basis of pre-charge evidence. The present petition cannot be allowed and is dismissed along with pending applications, if any. However, the petitioner shall be at liberty to file an appropriate application under section 319 Cr.P.C. for summoning of the additional accused, namely, Shunti @ Mahinder Singh Dhir,



Navin @ Navin Khera and Sunder Lal in case their involvement is surfaced during the further evidence or post-charge evidence before the trial court.

12. The present petition, along with pending applications, if any, is dismissed.

(DR. SUDHIR KUMAR JAIN)
JUDGE

AUGUST 18, 2023

sk/sm