IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 05th OF FEBRUARY, 2024

MISC. CRIMINAL CASE No. 25409 of 2023

BETWEEN:-

1. **PRADEEP BAFNA S/O SHRI KOMAL BAFNA, AGED ABOUT 55 YEARS, OCCUPATION: BUSINESS R/O BADAVADA TEHSIL JAORA DISTT. RATLAM (MADHYA PRADESH)**
2. **SHALU BAFNA W/O SHRI PRADEEP BAFNA, AGED ABOUT 50 YEARS, OCCUPATION: HOUSEWIFE R/O BADAVADA, TEHSIL JAORA, DISTRICT RATLAM (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI JAGDISH BAHETI - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH STATION HOUSE OFFICER POLICE STATION JAORA, DISTRICT RATLAM (MADHYA PRADESH)**
2. **PROSECUTRIX X (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI AJAY RAJ GUPTA – PANEL LAWYER)

Reserved on : 09.11.2023

Pronounced on : 05.02.2024

.....

This application coming on for admission this day, the court

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passed the following:

O R D E R

01] This petition has been filed by the petitioners under Section 482 of Cr.P.C. against the order dated 11.03.2023, passed in S.T. No.52/2021 by First Additional Sessions Judge, Jaora District Ratlam (M.P) wherein the two persons are facing trial under Sections 376(2) (n), 450, 385, 506, 328, 411, 420, 120-B, 354 (G), 201, 176 of IPC and Section 66-E of the Information & Technology Act, 2000.

02] The allegations against the petitioners are that they happen to be the mother and father of the main accused Nishit @ Mayur and they were proceeded under Section 319 of the Cr.P.C. as the application was filed by the respondent/prosecution under Section 319 of the Cr.P.C. that the petitioners be also prosecuted in the said offence. The application was filed on 11.03.2023, when the matter was already fixed for cross-examination of the prosecution witnesses, and on the same day, it was allowed and the charges were also framed, and the petitioners were asked to cross-examine the accused persons. Against the petitioners, charges under Sections 385, 506-II r/w Section 120-B of the IPC has been framed. Thus, the main allegation is of extortion.

03] Counsel for the petitioners have submitted that the aforesaid mode adopted by the trial Court runs contrary to the criminal jurisprudence as it was necessary for the trial Court to furnish the copy of the charge-sheet to the petitioners. It is also submitted that even assuming the statements of the witnesses to be correct, there is

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almost no chance that the prosecution would be able to prove the involvement of the present petitioners in the case as their names has not been mentioned by the prosecutrix in the FIR and also in her statement recorded under Section 161 of the Cr.P.C.

04] Counsel for the petitioners further submitted that prosecutrix's statement under Section 161 of the Cr.P.C. was recorded on 24.08.2021 and thereafter supplementary statement was recorded under Section 164 of the Cr.P.C. dated on 01.11.2022 but she has not stated that the present petitioners were involved in any manner. In support of his contention, Shri Baheti has also relied upon the decision of Supreme Court in the case of ***Michael Machado And Another vs. Central Bureau of Investigation and Another,*** reported in ***2000 (2) Crimes 23 (SC).***

05] On the other hand, counsel for the respondent/State has opposed the prayer and submitted that no case for interference is made out as the prosecutrix has clearly stated in her statement recorded under Section 164 of the Cr.P.C. on 01.11.2022, that the present petitioners who are the parents of the main accused were also involved in the crime as they also knew about the prosecutrix was being raped and blackmailed by the main accused but they kept mum. It is also submitted that the prosecutrix, in her court deposition dated 01.11.2022, has also stated that the parents of the main accused were also involved in the crime. Thus, it is submitted that the trial Court has rightly invoked the provisions of Section 319 of the Cr.P.C. In support of his contention, learned counsel for the respondents has also

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placed reliance upon the judgment passed by the Apex Court in the case of ***Yashodhan Singh vs. The State Of Uttar Pradesh (Criminal Appeal No.2186/2023 (@ Special Leave Petition (Crl.) NO.6262/2023) decided on 18.07.2023 reported as (2023)9SCC108.***

06] Heard. From the perusal of the record, this Court finds it rather shocking that not only the entire procedure as prescribed under Section 319 of the Cr.P.C. was conducted on 11.3.2023, but even the petitioners were directed to appear on the same day, their bail applications were allowed on the same day, and charges were framed on the same day i.e. on 11.3.2023, and they were also directed to cross examine the witnesses present. Although an option was given by the learned Judge of the trial court to re-call the witnesses already examined as their examination in chief was already conducted, hence, counsel for the petitioners has given the consent to re-examine them on the same day.

07] Be that as it may, this Court is also required to examine whether prima-facie, any case is made out against the petitioners or not?

08] At this juncture, it would be apt to refer to the decision relied upon by Shri Baheti in the case of ***Michael Machado v. CBI*****, (2000),** the relevant paras of the same read as under:-

> **"10.** Powers under Section 319 of the Code can be invoked in appropriate situations. This section is extracted below:
>
> "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

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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.

(2) Where such person is not attending the court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the court, although not under arrest or upon a summons, may be detained by such court for the purpose of the inquiry into, or trial of, 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 afresh, and 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."

11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words "the court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that other person also with the offence. 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

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evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons.

13. In *Municipal Corpn. of Delhi* v. *Ram Kishan Rohtagi* [(1983) 1 SCC 1:1983 SCC (Cri) 115] this Court has struck a note of caution, while considering whether the prosecution can produce evidence to satisfy the court that the other accused against whom proceedings have been quashed or those who have not been arrayed as accused, have also committed an offence in order to enable the court to take cognisance against them and try them along with the other accused. This was how learned Judges then cautioned: (SCC p. 8, para 19)

> "But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognisance against the other person against whom action has not been taken."

14. The court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub-section (4), that proceedings in respect of newly-added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be recommenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite large in number the court must seriously consider whether the objects sought to be achieved by such exercise are worth wasting the whole labour already undertaken. Unless the court is hopeful that there is a reasonable prospect of the case as against the newly-brought accused ending in being convicted of the offence concerned we would say that the court should refrain from adopting such a course of action."

(***emphasis supplied***)

09] On perusal of the charge sheet, it is found that in the FIR, which was lodged by the prosecutrix on 29.7.2021, in respect of the incident, which took place between 01.03.2019 to 15.7.2021, only Nishit @ Mayur Bafna has been named as an accused along with one unknown

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person. The aforesaid FIR was lodged on a written complaint made by the prosecutrix herself, and neither in the written complaint nor in the FIR, there is any reference of the present petitioners as the persons who have also threatened the prosecutrix and connived at the offence committed by their son. Although it is mentioned in the written complaint that Nishit @ Mayur Bafna and the other person are responsible for the offence however, there is no reason for this Court to believe that the complainant/prosecutrix would miss the names of the present petitioners while lodging the FIR, especially when they are the father and mother of the main accused Nishit @ Mayur Bafna. Thus, the FIR was lodged on 29.7.2021, but the names of the present petitioners came into light for the first time on 30.07.2021, in the statement recorded by the prosecutrix under Section 164 of the Cr.P.C., and in her court deposition dated 01.11.2022 she has also stated that the present petitioners demanded money and jewelry from her. It is also found prior to that, in her statement under Section 161 of the Cr.P.C**.** were recorded on 29.7.2021 and thereafter her supplementary statement was recorded 24.8.2021**,** and the prosecurtix has not named the present petitioners in both her 161 statements, and in the supplementary statement, in which she has only stated that the main accused Nishit's friends and family members used to come to take jewelry.

10] A perusal of the charge sheet also reveals that admittedly, no incriminating material has been seized from the present petitioners. In such facts and circumstances of the case, the petitioners appear to

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have been arraigned as accused only because they happen to be the father and mother of the main accused.

11] In the considered opinion of this Court, merely because the complainant/prosecutrix has named the petitioners in her statement under Section 164 of the Cr.P.C. dated 01.11.2022, as also in the trial court in her deposition dated 24.8.2021, in the absence of their names being disclosed in the FIR dated 29.7.2021, which was lodged on the basis of a written complaint submitted by the prosecutrix on the same day, which was already delayed by around 2 and half years, and in her statement recorded under Section 161 of the Cr.P.C. dated 29.07.2021 and supplementary statement dated 24.8.2021, the prosecutrix has also not named of the petitioners, it is difficult to assume that the petitioners were also involved in the present case.

12] This Court is cognizant of the fact that it is a trite law that the FIR is not an encyclopedia, however, considering the fact that there is a general tendency of a victim of crime to implicate all the family members of the main accused in order to settle the personal score, this Court is also required to look into the matter from the perspective of a reasonable man, as to how he would have behaved or acted in the given circumstances, and thus, seen from the said perspective, it is difficult for this court to assume that when the crime is said to have committed during the period of around two and a half years, while lodging the written complaint, the proseutrix would miss the names of the petitioners who are none other than the parents of the main accused, and from whom no recovery has also been made. In such

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circumstances, in the considered opinion of this court, it is difficult to arrive at a satisfaction that the petitioners have committed the offence.

13] Resultantly, **the impugned order dated 11.3.2023 cannot be sustained in the eyes of law and is hereby quashed**. The consequential proceedings so far as they relate to the present petitioners in Sessions Trial No.52/2021 before the First Additional Sessions Judge, Jaora, District-Ratlam (M.P.) are also hereby quashed and the petitioners are discharged from the aforementioned offences.

14] So far as the case of ***Yashodhan Singh (supra)*** is concerned, the same is distinguishable on facts as in that case, the challenge was made on the ground that the accused was not heard before the cognizance u/s.319 of Cr.P.C. was taken by the trial court, and the Supreme Court held that there is no necessity to give any notice to the accused.

15] So far as the other accused persons are concerned, the trial court shall proceed against them in accordance with law.

With the aforesaid, the present petition stands ***allowed***.

(SUBODH ABHYANKAR)
J U D G E

vs/moni

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