Court No. - 90

Case :- CRIMINAL REVISION No. - 744 of 2021

Revisionist :- Smt.Aarti
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- A.K. Mishra,Sati Shanker Tripathi
Counsel for Opposite Party :- G.A.

Hon'ble Dinesh Pathak,J.

Heard learned counsel for the revisionist, learned A.G.A. for the State and Sri Sandeep Kumar, learned counsel for the opposite party no. 2.

The instant revision has been preferred to set-aside the impugned order dated 18.02.2021 passed by the Addl. Sessions Judge/FTC-1, Mathura in Sessions Trial No. 127 of 2019 (State Versus Sanjaydeep and Others) arising out of Case Crime No. 1587 of 2018 under Section 498A, 304B I.P.C., Police Station Highway, District - Mathura whereby the application filed by the opposite party no. 2 under Section 319 Cr.P.C. has been allowed.

Factual matrix of the case are that with respect to dowry death of the daughter of the first informant, first information report has been lodged wherein husband, father-in-law, mother-in-law, brother-in-law (Jeth) and sister-in-law (Jethani) were roped in for committing crime of cruelty and harassment with the victim for demand of dowry. It is averred in the first information report that marriage of the daughter of the first informant was solemnized with Sanjaydeep on 30.11.2016 in which about Rs.50 Lakhs were expended but subsequently, the victim was harassed for additional dowry amounting to Rs.20 Lakhs. It is further averred that although with respect to harassment and cruelty for demand of dowry earlier one incident took place, the same was amicably settled after intervention of the elders in the family. Thereafter, the daughter of the first informant went to her matrimonial home along with her in-laws on 18.10.2018. He got information that his daughter had been admitted in Nayati Hospital, Mathura where she, subsequently, succumbed to injuries on 19.10.2018.

After due investigation, the investigating officer has submitted charge-sheet dated 5.2.2019 in which husband, father-in-law and mother-in-law were arraigned as accused. The present revisionist Smt. Aarti was not arraigned as accused in the charge-sheet. Feeling aggrieved, informant has moved an application (paper no. 41Kha) under Section 319 Cr.P.C. to summon the present revisionist and her husband Jaideep Saraswat, who are Jethani and Jeth, to face the trial along with three other o-accused against whom the charge-sheet was submitted. After going through the record, the trial court vide impugned order dated 18.2.2021 has allowed the application (paper no. 41Kha) under Section 319 Cr.P.C. and summoned the present applicant to face the trial along with other co-accused under Section 498A, 304B I.P.C. and Section 3/4 of the Dowry Prohibition Act.

Learned counsel for the revisionist has submitted that on the date of incident, the

present revisionist was not present on the place of occurrence which is clearly evident from the report of CDR with respect to location of mobile numbers of Jaideep Saraswat and Smt. Aarti Saraswat which was considered by the Investigating Officer in submitting the chargesheet. He also submits that the statement of loco pilot, who was piloting the train, recorded under Section 161 Cr.P.C. has not been considered by the court below wherein he stated that on the date of incident he was piloting the train from Gangapur City to Tughlakabad and all of sudden one lady came on the mid of the truck and collided with the train. It is further submitted that on 17.10.2018 she left for her parental house and the said incident took place on 18.10.2019, therefore, the present appellant is not in a position to explain as to why and how such incident took place. It is submitted that the evidence which have been collected by the investigating officer during investigation have illegally been ignored by the trial court. There is no clinching and unimpeachable evidence on record to prove the complicity of the present appellants in the commission of crime, as mentioned in the FIR, beyond reasonable doubt. Learned counsel for the appellant has relied upon the judgement of the Hon'ble Supreme Court in the case of ***Brijendra Singh & others vs. State of Rajasthan, reported in 2017(7) SCC 706***.

Per contra, learned counsel for the opposite party no. 2 contended that with respect to cruelty and harassment for demand of dowry, earlier, one FIR was lodged by the opposite party no. 2 which was registered as case crime no. 1130 of 2019 under Section 498A, 323, 328, 506 I.P.C. and Section 3/4 of the Dowry Prohibition Act. In the aforesaid FIR, charge-sheet was submitted against all the accused as mentioned in the FIR namely, Sanjaydeep Saraswat (husband), Mohan Lal (father-in-law), Smt. Premwati (mother-in-law), Jaydeep Saraswat (Jet) and Smt. Aarti (Jethani), who is appellant herein. The aforesaid matter was amicably settled between the parties due to intervention of the elders in the family. After the settlement, when the victim went to her in-laws house she was again subjected to harassment and cruelty for demand of dowry which resulted in her dowry death and first information report has been lodged in this respect. It is further submitted that the husband and father-in-law both are the railway employees and they have manipulated the statement of loco pilot, which has been relied upon by learned counsel for the appellant. During the course of argument, he has produced the communication dated 17.9.2019 made by Deputy Superintendent of Police, Railway, G.R.P., Agra addressed to the first informant in reply under the Right to Information Act, stating therein that no such information with regard to the alleged incident has been received in the department from the Station Master concerned as enquired by the first informant. Copy of the aforesaid letter, which has been provided by learned counsel for the revisionist, is taken on record. It is further submitted that evidence collected by the investigating officer during investigation are not required to be considered by the court below at the time of summoning the accused under Section 319 Cr.P.C. In support of the contention, learned counsel has relied upon a judgement of the Hon'ble Supreme Court dated 15.3.2021 passed in Criminal Appeal Nos. 298-299 of 2021, **Sartaj Singh vs. State of Haryana & Another etc.**.

Sri Rupak Chaubey, learned A.G.A. contends that the statement of loco pilot

recorded under Section 161 Cr.P.C. has got no much relevance at the stage of summoning the accused under Section 319 Cr.P.C. for facing the trial along with other co-accused. He further contends that the trial court has summoned the present appellant after considering the deposition made by P.W. 1 & P.W. 2 which clearly makes out a case for summoning the present revisionist to face the trial. It has also been contended that the CDR simply states the location of the mobile and not the location of the person and therefore, on the basis of the CDR, it cannot be said that the present appellant, who has been summoned by the trial court for facing trial, was not present at the place of occurrence. He further submits that for making out a case under Section 304B I.P.C. personal presence of the accused at the place of occurrence is not required under law.

A perusal of the order reveals that the Trial Court has given its finding after taking into consideration the documents available on record. Present revisionist was made accused in the F.I.R. with an allegation that she had beaten up the victim.

Deposition made by PW-1 & PW-2 who have been cross-examined by the defence have prima-facie corroborated the complicity of the present revisionists in the commission of crime. Case law of ***Brijendra Singh (Supra)*** cited by counsel for the revisionist is not applicable in the present matter. In the cited case, summoning order under Section 319 Cr.P.C. has been concurrently decided by the trial court as well as High Court in favour of the first informant by which accused persons were summoned to face trial along with other co-accused. Accused/appellant has taken plea of alibi. Certain documents had been discussed by the investigating office for not arraigning them as an accused in the charge-sheet. After considering the facts and circumstances of the case and the law cited, Hon'ble Supreme Court has observed that the evidence, recorded during trial, was nothing more than the statement which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. It was also observed that the trial court would be competent to exercise its power even on the basis of such statement recorded before it in examination-in-chief. However, it was also observed that the in case like the present one, which was considered by the Hon'ble Supreme Court, several evidence were collected by the investigating officer during investigation which suggested otherwise.

The aforesaid cited case was arising out of criminal proceedings under Section 147, 148, 149, 323, 448 and 302/149 I.P.C. as well as Section 3, 3(ii)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, whereas in the present matter at hand is arising out of criminal proceedings under Section 304B and 498A I.P.C. wherein the burden of proof is dealt with in different manner. In several judgements, it has been held by Hon'ble Supreme Court that Section 304B I.P.C. is a stringent penal provisions which has been implemented for dealing with and punishing offence against married women. A conjoint reading of Section 304B I.P.C. and presumptive provisions of Section 113B of the Evidence Act, one of the essential ingredients, amongst others, is that the woman must have been soon before her death subjected to cruelty and harassment for demand of dowry. On the proof of essentials as mentioned in the aforesaid Section, it becomes obligatory on the court to raise a presumption that

the accused caused the dowry death. It is clear that in case of dowry death, initial burden lies upon the prosecution to prove the ingredients of Section 304B I.P.C. by preponderance of probability. Prosecution is not required to prove ingredients beyond reasonable doubt, otherwise, it will defeat the purpose of Section 304B I.P.C. Once prosecution has discharged its initial burden, presumption of innocence of an accused would get replaced by deemed presumption of guilt of an accused. In these circumstances, burden would then be shifted upon the accused to rebut deemed presumption of guilt by proving his innocence beyond reasonable doubt.In the light of the conspectus discussed above with respect to scope of Section 304B I.P.C., I am of the view that case law of ***Brijendra Singh (Supra)***, which has been cited by learned counsel for the applicant, is not applicable in the present matter.

Law expounded by Hon'ble Supreme Court enunciating the scope of Section 319 Cr.P.C. in detail in the case of **Hardeep Singh Vs. State of Punjab and others, 2014 (3) SCC 92**, is still an important landmark judgement on this point. In the case of **Hardeep Singh(Supra)** Hon'ble Supreme Court has examined the following five questions:

"(i) What is the stage at which power under Section 319 Cr.P.C. can be exercised?

(ii) Whether the word "evidence" used in Section 319 (1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

(iii) Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

(iv) What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

(v) Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?"

The aforesaid questions have been answered in para 117 of judgement as under:

Question Nos. (i) and (iii)

A. In Dharam Pal and Ors. v. State of Haryana and Anr. 2004 (13) SCC 9, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused.
Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power

under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. (ii)

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. (iv)

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. (v)

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh".

I have very carefully examined the submissions advanced by the learned counsel for the parties and gone through the record. After examining the materials available on record, I find that no case is made out for interference by this Court, while exercising revisional jurisdiction.

Counsel for the revisionist has not been able to point out any such illegality or impropriety or incorrectness in the impugned order which may persuade this Court to interfere in the same. There is also no abuse of court's process perceptible in the same which appears to have been passed after due application of judicial mind. All the facts and circumstances of the case have been appreciated in right perspective and even the law point on the issue has been duly discussed. It is true that summoning of an accused under Section 319 Cr.P.C. cannot be resorted to in a cavalier or casual manner. The standard of sufficiency of evidence which may justify the summoning of an additional accused under Section 319 Cr.P.C. is on much higher footing than the sufficiency of evidence which may persuade the court to summon an accused under Section 204 of Cr.P.C. but it does not go to mean that the standard of sufficiency of evidence in order to justify the summoning of an additional

accused under Section 319 Cr.P.C. should be of the same level which is required to be applied at the time of final adjudication on the point of guilt and innocence of an accused. The ratio and obiter as laid down by the Constitution Bench of Hon'ble Apex Court in the case of **Hardeep Singh v. State of Punjab and others, (2014) 3 SCC 92**, does not appear to have been ignored in this case.

The aforesaid judgment in fact lay down very clearly that power under Section 319 Cr.P.C. can be exercised by Court against a person not named in First Information Report or no charge sheet is filed by police against him and the accused can be summoned only on the basis of examination-in-chief of witness and need not wait for cross-examination etc. With regard to degree of satisfaction of Court for summoning the accused under Section 319 Cr.P.C., Court has said that test are same as applicable for framing charge.

In view of the above conspectus, I find no merits in the instant revision. There is no illegality or perversity in the impugned order in question which is hereby affirmed and the instant revision is dismissed.

Order Date :- 19.3.2021

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