

(2010) 09 P&H CK 0428

High Court Of Punjab And Haryana At Chandigarh

Case No: CRM-M No. 25380 of 2010 (O and M)

Vikram Singh

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision: Sept. 27, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 319, 319(1), 468
- Penal Code, 1860 (IPC) - Section 498A

Hon'ble Judges: Sabina, J**Bench:** Single Bench

Judgement

Sabina, J.

This petition has been filed u/s 482 of the Code of Criminal Procedure ("CrPC" for short) for quashing of the order dated 22.5.2009 passed by the Additional Chief Judicial Magistrate, Narnaul, whereby the application filed by the prosecution u/s 319 Cr.P.C. was allowed and the order dated 3.12.2009 passed by the Additional Sessions Judge, Narnaul, whereby the revision filed by the petitioner against order dated 22.5.2009 summoning the petitioner has been ordered to be dismissed.

2. After hearing learned Counsel for the petitioner, I am of the opinion that this petition deserves dismissal.

3. It has been held by the Apex Court in case [Suman Vs. State of Rajasthan and Another](#), as under:

A reading of the plain language of Section 319(1) CrPC makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of Section 319(1) CrPC from which it can be inferred that a person who is named in the FIR or complaint but against whom charge sheet is not filed by the police, cannot be proceeded against even though in the course of any

inquiry into or trial of any offence the court finds that such person has committed any offence for which he could be tried together with the other accused.

The process issued against the appellant u/s 319 CrPC cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her. A person who is named in the FIR or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against u/s 319 CrPC if from the evidence collected/produced in the course of any inquiry into or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused.

The Magistrate had objectively considered the entire matter and judiciously exercised discretion u/s 319 CrPC for taking cognizance against the appellant. The issue of summons against the appellant was not an abuse of the process of the court. While deciding the application filed u/s 319 CrPC, the Magistrate noticed the allegations made by respondent No. 2 in the complaint that her mother-in-law and sister-in-law had castigated her for insufficient dowry and subjected her to physical and mental harassment and that the sister-in-law had instigated the complainant's husband to inflict physical torture upon her, which was supported by the statements recorded by the police u/s 161 CrPC and by the Magistrate u/s 164 CrPC. In her complaint Respondent No. 2 alleged that after one week of the marriage, her mother-in-law and sister-in-law (the appellant) told her that in the marriage, items like scooter, fridge, air conditioner, etc. was not given and the marriage party was not served well and that on the instigation's of the mother-in-law and the appellant sister-in-law, the husband gave beating with the belan, and the appellant forcibly removed the rings.

The complainant clearly spelt out the role played by the appellant and made a specific mention about this in the letters written to her parents and the Magistrate opined that a prima facie case was made out for issuing process against the appellant. The father and mother of respondent No. 2 and four other persons, whose statements were recorded u/s 161 CrPC, clearly spelt out the role played by the appellant in harassing Respondent No. 2 and instigating the complainant's husband to inflict torture upon her. Despite this, the police did not file charge-sheet against the appellant thinking that she had no occasion to make demand of dowry or harass Respondent No. 2 because the appellant was living with her husband. Therefore, the trial of the appellant should proceed and should be decided expeditiously.

The High Court broadly referred to the factual matrix of the case and held that the orders passed by the Magistrate and Sessions Judge did not suffer from any illegality or perversity warranting interference u/s 482 CrPC. The approach adopted by the High Court is in consonance with the settled law. Although at one stage, the

Sessions Judge allowed the Misc. filed by the appellant and declared that in view of the bar of limitation contained in Section 468 CrPC, the Magistrate could not have taken cognizance against the appellant, the said order was set aside by the High Court and the matter was remitted for fresh disposal of the Misc. petition. In the post remand order passed by him, the Sessions Judge independently examined the entire record and held that prima facie case was made out for initiating proceedings against the appellant herein u/s 498-A IPC.

Section 319 reads as under:

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.

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. 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.

3) 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.

4. Thus, as per Section 319 CrPC, whenever during the course of trial, it appears from the evidence that any person not being accused had committed the offence for which he could be tried together with the accused facing the trial, the Court may proceed to summon such person to face the trial.

5. A perusal of the impugned order dated 3.12.2009, reveals that complainant Pawan Kumar, while appearing in the witness box, has categorically deposed that the petitioner had given a fist blow on his left wrist. PW-4 Raj Kumar has corroborated the statement of the complainant. Thus from the testimony of the complainant, it is evident that the petitioner had also participated at the time of the alleged occurrence. Although the petitioner was declared innocent during investigation by the police but now during trial, evidence has come that the petitioner had also participated at the time of the alleged occurrence. In these circumstances, the learned trial Court has rightly summoned the petitioner to face the trial u/s 319 Cr.P.C. No ground for interference by this Court is made out.

6. Dismissed.