

(2010) 07 JH CK 0049**Jharkhand High Court****Case No:** None

Satish Mandal, Sunita Devi @
Sumitra Devi, Kashi Mandal and
Mithu Devi

APPELLANT**Vs**

State of Jharkhand and Pachu
Mandal

RESPONDENT**Date of Decision:** July 14, 2010**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 319
- Penal Code, 1860 (IPC) - Section 304B, 34

Hon'ble Judges: Jaya Roy, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Heard the counsel for the parties.

1. Since these two revision applications arise out of the common order, they have been heard together and are being disposed of by this order.
2. The petitioners of both the applications have challenged the order dated 14.10.2009 passed in S.T. No. 17/09 whereby the court below has allowed the application of the prosecution filed u/s 319 Cr.P.C.
3. It appears that the prosecution filed a petition u/s 319 Cr.P.C. stating therein that though the informant, Panchu Mandal has stated in the FIR that the deceased Kunti Devi had informed him about cruelty and harassment and also demand of dowry made by the petitioners but the police, after investigation has not submitted charge sheet against them. It has further been stated in the said petition that after framing of charge only against the husband, Ashok Mandal, the prosecution witnesses have been examined and also cross examined who all have stated before the court regarding demand of dowry and harassment by Satish Mandal (father in-law),

Sumitra Devi (mother-in- law) who are petitioners in Cr. Revision No. 960/09 and Kashi Mandal, brother in-law of the deceased and also Mithu Devi, wife of Kashi Mandal who, all are petitioners in Cr. Rev. No. 963/09. According to the prosecution, in view of all these facts, there are sufficient materials against these persons to constitute an offence u/s 304B IPC and also u/s 304B/34 IPC and, therefore, a case has been made out for summoning them u/s 319 Cr.P.C.

4. Mr. Nilesh Kumar, learned Counsel for the petitioners submits that after thorough investigation the I.O. did not submit charge sheet against the petitioners as , according to him, he did not find any material against them. Learned Counsel has further submitted that the alleged demand of motor cycle is not possible from a poor person like the informant. Therefore, the allegation of demand of such articles is quite improbable. Learned Counsel has further submitted that there is no specific allegation even in the evidence adduced by the witnesses. Further more, all the four witnesses who have been examined by the trial court , appear to be hearsay witnesses . Therefore, on the basis of their evidence the trial court should not have issued summons to the petitioners u/s 319 Cr.P.C. It is further argued that u/s 319 Cr.P.C. the trial court is required only to consider the evidence and decide whether in course of any inquiry or trial any material has come against any person(s) who have not been summoned or even charge sheeted earlier. In this context learned Counsel has pointed out that a protest petition had also been filed earlier by the prosecution to take cognizance against the present petitioners but the same was rejected by the court of Chief Judicial Magistrate, Jamtara According to him , from a bare perusal of the deposition of all the four witnesses, except suspicion or allegation which has been alleged initially in the FIR, no other material or evidence has come to light to implicate or even to suggest the guilt of the petitioners . In these circumstances the trial court has wholly erred in issuing summons against the present petitioners u/s 319 Cr.P.C. and, as such, the impugned order is fit to be set aside.

5. Mr. Mishra, learned Counsel appearing for opposite party No. 2, the informant, has pointed out that though there are allegations against these petitioners in the FIR but due to some ulterior motive the police has not made them as accused in this case and submitted final form against them After framing of charge four witnesses have been examined by the prosecution and also cross examined by the defence and after considering their evidences and also the written submissions, the trial court has come to such subjective finding for issuing summons against these petitioners to face trial. The evidences of the witnesses have been enclosed as annexure 2 series.

6. In the case of Mohd. Shafi Vs. Mohd. Rafiq and Another, the Honble Apex court has held as under:

12. ...It is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 Cr.P.C. it must arrive at the satisfaction that there exists a possibility

that the accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia, upon completion of the cross examination of the said witnesses. For the said purpose the court concerned may also like to consider other evidence . We are, therefore, of the view that the High Court has committed an error in passing the impugned judgment...

7. From perusal of the evidence adduced so far and all the materials available on record , in my view, the aforesaid witnesses, even after their cross examination by the defence, have clearly stated about the demand made by the petitioners and also the cruelty and harassment meted out by them to the deceased Thus, a case u/s 304B IPC is made out against them also. The death of a newly wedded wife who died just after a few years of marriage, was *prima facie*, an unnatural death. Further more, the present petitioners, who are father-in-law, mother in-law and brother in-law all are living in the same house.

8. No doubt the power of the court u/s 319 Cr.P.C. is extra ordinary and has to be exercised sparingly but the basic requirement for invoking Section 319 Cr.P.C. is that it should appear to the court from the evidences collected during trial or in the inquiry that some other persons other than the accused, have committed the offence for which those persons can be tried together with the accused already made in the case. No doubt, the court must have some reasonable satisfaction from the evidences already collected regarding two aspects (i) that the said persons have committed the offence (ii) that for such offence the said persons can be tried along with the person who has already been made accused against whom the trial is going on. But, since in the present case materials have come in the evidences of the witnesses, the trial court was rightly satisfied and issued summons to the petitioners to face trial.

9. On over all consideration of all the materials on record , the impugned order and also the submissions made by both the parties, in my opinion, there is no illegality in the impugned order warranting interference by this Court. I find no merit in these applications which are, accordingly, dismissed.