

Vinod and Another Vs. State of U.P. and Others

Vinod and Another Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/1145197

Court : Allahabad

Decided On : Oct-14-2013

Judge : Dinesh Gupta

Appeal No. : Criminal Revision No. 3356 of 2003

Appellant : Vinod and Another

Respondent : State of U.P. and Others

Judgement :

Dinesh Gupta, J.

1. This Revision is preferred against the order dated 13.10.2003 passed by the learned Additional Sessions Judge, Court No. 15, Meerut, whereby revisionists were summoned under Section 319, Cr.P.C. in a case under Sections 498-A, 304-B, IPC and Sections 3/4, Dowry Prohibition Act. Sessions Trial No. 479 of 2003, State of U.P. v. Girish Mohan and Others.

2. The brief facts of this Revision are that one Ashok Kumar lodged an F.I.R. against Girish Mohan Garg and Deepak Mohan Garg at P.S. Brahmpuri, Meerut with the allegation that the accused have murdered his daughter by administering poison when their demand of dowry was not fulfilled.

3. After investigation, charge-sheet was submitted and case was committed to the Court of Session, thereafter the case was transferred to the Court of Additional

Sessions Judge, Court No. 15, Meerut for trial. During the pendency of the trial, an application under Section 319, Cr.P.C. was moved by Additional District Government Counsel with the allegation that the prosecution witnesses Ashok and Anandi Devi in their statement stated the name of revisionists Smt. Vinod and Kumari Lovely also involved in the crime. Both these names came in the light during the investigation. However, Investigating Officer has failed to include these two persons in the array of the accused. Hence, these two accused persons be summoned under Section 319, Cr.P.C. and they be tried for the offence under Sections 498-A and 304-B, IPC and Sections 3/4, Dowry Prohibition Act.

4. After perusal of the record and the statement of the witnesses, learned Additional Sessions Judge allowed the application and issued non-bailable warrant against Smt. Vinod and Kumari Lovely (revisionists).

5. Feeling aggrieved with the order, the revisionists preferred this Revision before this Court.

6. Heard learned Counsel for the revisionists and learned A.G.A. for the State.

7. Learned Counsel for the revisionists has argued that the order passed by the Additional Sessions Judge is illegal, arbitrary and based on surmises and conjectures.

The Additional Sessions Judge summoned the revisionists on the basis of only examination-in-chief of the witnesses without waiting for cross-examination of the witnesses. He further argued that the revisionists have neither been named in the F.I.R. nor their involvement has been found by the Investigating Officer during investigation and in the absence of any evidence or material against them, summoning order is without any justification. The Counsel further argued that revisionists were residing separately from the husband and the deceased having a separate residence and they have been wrongly summoned by the learned Court below. He further argued that according to the prosecution case, the incident occurred at the residence of the complainant and it has been specifically mentioned by the complainant that the deceased was subjected to poisonous substance by the only named accused persons, i.e. Girish Mohan and Deepak

Mohan. Both the revisionists were not at all present at the time of alleged incident and there was no question of any involvement of the revisionists in the alleged incident and the summoning order of the revisionists by the Additional Sessions Judge is without jurisdiction.

8. The learned A.G.A. for the State opposed the contention raised by the learned Counsel for the revisionists and replied that in the F.I.R., the name of the revisionists was mentioned and in the statement of the prosecution witnesses, Ashok and Anandi, the name and involvement of the revisionists was clearly mentioned and there is no illegality in the order of summoning of the revisionists.

9. I am unable to accept the contention raised by the learned Counsel for the revisionists. Section 319, Cr.P.C. clearly provides that:

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 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.

10. Bare reading of this section clearly shows that the Court has the power to summon those persons, who are not the accused in the case, but appears from the evidence that they may also commit the offence, then they can be tried along with the accused.

11. So far as the involvement of the revisionists in the alleged offence is concerned, it is noteworthy that the accused persons are facing trial under Sections 304-B and 498-A, IPC and Sections 3/4, Dowry Prohibition Act. Section 304-B, IPC provides that:

304B. Dowry Death”(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called dowry death and such husband or relative shall be deemed to have caused her death.

Explanation”For the purpose of this sub-section, dowry shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life, and Section 498A, IPC provides that:

498A. Husband or relative of husband of a woman subjecting her to cruelty”Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation”For the purpose of this section,cruelty means”

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman: or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

12. Both these ongoing sections clearly provide that the husband or the relative of the husband subjects such woman to cruelty shall be punished with imprisonment.

13. Admittedly the revisionists are mother-in-law and sister-in-law of the deceased. So far as the involvement in the alleged offence is concerned, in the F.I.R lodged by the complainant, it is clearly stated that after one month of marriage, there was demand of dowry by the revisionists and other relative of the deceased and during the trial in the statement of P.W. 1 Ashok Kumar, it is clearly stated that after one month of marriage, the accused and the revisionists demanded dowry and also assaulted complainant's daughter and also demanded a scooter in the dowry. In December, 2002, when the complainant went to the house of her in-laws there again, the revisionist along with other accused persons further demanded Rs. 20,000. Similarly, P.W. 2 Smt. Anandi Devi, wife of Ashok Kumar, the mother of the deceased also stated in her statement that dowry was demanded from her daughter by the revisionists along with other accused persons.

14. Both these witnesses clearly stated in their statement that the dowry was demanded by the revisionists and when their demands were not met, the deceased was harassed and assaulted by the revisionists and other accused persons. It is also important to mention here that the accused persons were given an opportunity to cross-examine these witnesses and they failed to cross-examine the witnesses. The learned Additional Sessions Judge was fully justified on the basis of the statement available before him to summon the revisionists to face trial under Section 304-B, 498-A, IPC and Sections 3/4, Dowry Prohibition Act. It is not at all necessary for the Sessions Judge to see at the time of summoning the accused persons that whether any conviction could be based on the evidence available at that time. If there is sufficient prima facie evidence available for him to summon the accused persons, then there was no illegality in summoning the revisionists.

15. I have gone through the orders passed by the learned Additional Sessions Judge and found no illegality in the order. The order is in accordance with law.

16. No other point raised before me.

17. The Revision is liable to be dismissed and is accordingly dismissed. Interim order dated 21.11.2003 stands vacated.

Revision dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com