Balbir Singh Vs. State

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Court : Delhi

Decided On : Dec-18-2015

Judge : Ashutosh Kumar

Appeal No. : CRL.REV.P. No. 766 of 2015

Appellant : Balbir Singh

Respondent : State

Judgement :

Crl.M.A No.17278/2015

Exemption granted subject to all just exceptions.

Application stands disposed of.

CRL.REV.P.766/2015

1. By the present petition, Balbir Singh, petitioner has challenged the order dated 13.05.2015 passed by the learned Addl. Sessions Judge-Rohini Courts, Delhi in connection with FIR No.325/2014 whereby he has been summoned under Section 193 of the Code of Criminal Procedure to face trial along with his son Ajay Singh for the death of his daughter-in-law, within 7 years of her marriage.

2. The primal ground of challenge is that after some of the witnesses were examined in the trial against the son of the petitioner, the petitioner could have

only been summoned under Section 319 of the Code of Criminal Procedure and not under Section 193 of the Code of Criminal Procedure.

3. In order to appreciate the contention of the petitioner, it is necessary to note the stages through which the case against the petitioner has crossed.

4. Ajay Singh, son of the petitioner was married to Ms.Anu on 11.08.2012. Anu is alleged to have committed suicide by hanging herself on 02.05.2014 in her matrimonial home. The death was otherwise than in normal circumstances and within seven years of marriage. As a result thereof, FIR No.325/2014 (P.S.Jahangir Puri) was registered against Ajay Singh, son of the petitioner for offences under Sections 498A and 304B IPC.

5. Dhropdi, mother of the deceased, had given her statement that soon after the marriage of her daughter, Ajay Singh and the petitioner had made demand of Rs.2 lakhs but had also offered to pay interest for the same. About a week before lodging of the FIR when aforesaid Dhropdi had spoken to her daughter, she informed about her having been assaulted by her husband Ajay Singh. No specific demand of dowry was stated to have been made by the in-laws of her daughter. The mother of the deceased therefore, stated before the police that she believed that only Ajay Singh had killed his daughter and that she wished that Ajay Singh be prosecuted and punished as per law for killing her daughter.

6. After investigation, charge sheet was submitted in which Ajay Singh was named in Column 11 and was sent up for trial. The name of the petitioner was kept in 11(2), the column for the accused persons who are not chargesheeted.

7. The chargesheet reveals that during investigation it was found that the petitioner was living separately in the staff quarters of Kirori Mal College, Delhi University as he was working as Chowkidar. The chargesheet further refers to the fact that there was an oral allegation against the petitioner in the statement of witnesses which would constitute sufficient material for chargesheeting the petitioner under Section 498A/304B and 302 IPC. The petitioner was not arrested as he was residing separately from the deceased and her husband at the time of her death. Thus charge sheet was prepared against the petitioner but his name and address was

mentioned in Column 11 (2) of the charge sheet. The statements made in the chargesheet are obfuscating and muddled up. If the wordings in the report, simplicitor, is to be seen, the petitioner also has been chargesheeted. However, since his name was listed in Column 11 (2) of the chargesheet which is the column for persons who are not chargesheeted, it was understood as if Balbir Singh was not sent up for trial.

8. The impugned order suggests that the learned Metropolitan Magistrate committed the case to the Sessions Court without considering the fact whether there were sufficient grounds to proceed against Balbir Singh (petitioner) also.

9. This obviously means that the case of Ajay Singh only was committed to the Court of Sessions. The trial proceeded as if only Ajay Singh was an accused facing trial. Charges were framed only against Ajay Singh.

10. During the trial, Vikas (brother of the deceased); Ashok Kumar (formal witness); Smt.Darhana (a neighbour of the accused) and Rahul (another neighbour of the accused) were examined as PWs.1, 2, 3 and 4 respectively.

11. Thereafter an application was filed under Section 193 of the Code of Criminal Procedure by the prosecution for summoning the petitioner Balbir Singh to face trial. The question which arises for consideration in the present petition is whether the petitioner could have been summoned to face trial under Section 193 of the Code of Criminal Procedure after some of the witnesses had already been examined at the trial of co-accused Ajay Singh.

12. The learned Trial Court, relying upon the judgment delivered in Dharam Pal and Ors vs. State of Haryana and Ors, (2004) 13 SCC 9 and Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92 held that the petitioner could be summoned at any stage after the case was committed to the Court of Sessions and, therefore, by the impugned order summoned the petitioner to face trial along with Ajay Singh.

13. In Dharam Pal and Anr (Supra), six questions were framed for the consideration of the Constitution Bench. Those questions were:-

(i) Does the Committing Magistrate have any other role to play after committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session?

(ii) If the Magistrate disagrees with the police report and is convinced that a case had also been made out for trial against the persons who had been placed in column 2 of the report, does he have the jurisdiction to issue summons against them also in order to include their names, along with Nafe Singh, to stand trial in connection with the case made out in the police report?

(iii) Having decided to issue summons against the Appellants, was the Magistrate required to follow the procedure of a complaint case and to take evidence before committing them to the Court of Session to stand trial or whether he was justified in issuing summons against them without following such procedure?

(iv) Can the Session Judge issue summons under Section 193 Cr.P.C. as a Court of original jurisdiction?

(v) Upon the case being committed to the Court of Session, could the Session Judge issue summons separately under Section 193 of the Code or would he have to wait till the stage under Section 319 of the Code was reached in order to take recourse thereto?

(vi) Was Ranjit Singh's case (supra), which set aside the decision in Kishun Singh's case(supra), rightly decided or not? ?

14. The Constitution Bench was required to answer the aforesaid questions in view of conflicting opinion of the decision of a two Judge bench in case of Kishori Singh and Others vs. State of Bihar and Others [(2004) 13 SCC 11]; Rajender Prasad vs. Bashir and Others [(2001) 8 SCC 522] and SWIL Limited vs. State of Delhi and Others [(2001) 6 SCC 670]. Later conflicting opinions were rendered in Kishun Singh vs. State of Bihar [(1993) 2 SCC 16] and Ranjit Singh vs. State of Punjab [(1998) 7 SCC 149].

15. In Kishun Singh vs. State of Bihar [(1993) 2 SCC 16] it was held that the Sessions Court had the powers under Section 193 of the Cr.P.C, 1973 to take

cognizance of an offence and summon other persons whose complicity in the commission of the crime could prima facie be gathered from the materials available on record.

16. The Supreme Court in Ranjit Singh (Supra) held that from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 of the Code, the Court could deal only with the accused referred to in Section 209 of the Code and there was no intermediary stage till then enabling the Sessions Court to add any other person to the array of the accused. It was thus held in Ranjit Singh vs. State of Punjab (Supra) by a three Judge Bench that the accused named in Column 2 of the chargesheet and not put up for trial could not be tried by exercise of power by the Sessions Court under Section 193 read with Section 228 of the Code. Thus what was held in Ranjeet Singh (Supra) was that even at the time of framing of the charge if the Sessions Court was of the opinion that materials available on record made out a case for trying the person not sent up for trial, it had no power to proceed against him and had to wait till the stage under Section 319 of the Code was reached for summoning such persons to face trial.

17. In view of the above conflicting findings, the aforesaid six questions were framed for consideration of Supreme Court in Dharam Pal and Anr (Supra). The answer to question No.4 namely Can the Session Judge issue summons under Section 193 Cr.P.C. as a Court of original jurisdiction ?, the answer of the Constitution bench was in the affirmative, namely, that the Sessions Judge was entitled to issue summons under Section 193 of Cr.P.C upon the case being committed to him by the learned Magistrate.

18. Section 193 of the Cr.P.C reads as hereunder:-

193. Cognizance of offences by Courts of Session. Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code. ?

19. It was held in Dharam Pal (Supra) that the key words in Section 193 are that no Court of Session shall take cognizance of any offence as a Court of original

jurisdiction unless the case has been committed to it by a Magistrate under this Code. "The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction." (Emphasis Provided)

20. Thus the views expressed in Kishun Singh (Supra) that the Sessions Court has jurisdiction, on committal of a case to it, to take cognizance of the offence of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. The impact of the decision, therefore, is that even without recording any evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in Column 2 of the police report to stand trial along with those already named therein.

21. In Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92 the Constitution bench, while dealing with the issue as to the stage when an accused could be summoned to face trial under Section 319 of the Cr. P. C., held as thus:-

52. In Dharam Pal (CB) [Dharam Pal v. State of Haryana, (2014) 3 SCC 306: AIR 2013 SC 3018] , the Constitution Bench approved the decision in Kishun Singh[Kishun Singh v. State of Bihar, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] that the Sessions Judge has original power to summon the accused holding that: (SCC p. 319, paras 37 and 38)

37. the Sessions Judge was entitled to issue summons under Section 193 Cr PC upon the case being committed to him by the learned Magistrate.

38. The key words in [Section 193] are that no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code'. The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but

of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section ?

53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 Cr PC cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in Dharam Pal (CB) [Dharam Pal v. State of Haryana, (2014) 3 SCC 306: AIR 2013 SC 3018] . The dispute therein was resolved visualising a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 Cr PC is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193 Cr PC confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 Cr PC.

55. Accordingly, we hold that the court can exercise the power under Section 319 Cr PC only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove. ?

22. For answering the present dispute we need not go to the issue as to whether the word evidence used in Section 319(1) Cr PC has been used in a comprehensive sense and whether it includes the evidence collected during investigation or is limited to the evidence recorded during trial. However, in para 111 of the judgment, the Supreme Court in Hardeep Singh (Supra) has held as hereunder:-

111. Even the Constitution Bench in Dharam Pal (CB) [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : AIR 2013 SC 3018] has held that the Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the charge-sheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 Cr PC can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled. (Emphasis Provided)

23. Thus there is no cavil on the proposition that a Sessions Court can act as a Court of original jurisdiction and can summon an accused to face trial prior to the commencement of the trial and deposition of witnesses under Section 193 of the Cr.P.C. The Sessions Court could summon an accused under Section 319 after the commencement of trial and deposition of witnesses.

24. The slender ground raised by the petitioner in the present revision petition is that even there being no dispute with regard to the powers of the Sessions Court to summon an accused, not charge sheeted to face trial, but once some witnesses were examined at the trial, the learned Sessions Court ought to have considered such statements and should have proceeded for summoning the petitioner under Section 319 of the Code of Criminal Procedure.

25. This Court is of the view that after some of the witnesses have been examined, the Sessions Court ought to have exercised his powers of summoning the petitioner under Section 319 of the Code of Criminal Procedure.

26. When charges were not framed against the petitioner, it predicates that the case of the petitioner was not committed to the Court of Sessions. While framing charge, the petitioner was not summoned. The petitioner could have been summoned even at the stage of framing of the charge if the Trial Court, on perusal of the records, was of the view that for proper determination of the case, the petitioner also should be tried. But when such order was not passed, the petitioner could have been only summoned under Section 319 of the Code of Criminal Procedure.

27. Factually and contextually, there now remains no difference as to at what stage a person is summoned to face trial in a sessions triable case after the committal of the case to the Court of Sessions. The powers under Section 193 of the Cr.P.C could be invoked for summoning an accused to face trial even before the commencement of the deposition of the witnesses. After the deposition of witnesses also, if the Sessions Court were of the opinion that a person needs to be summoned, such orders could be passed under Section 319 of the Cr.P.C.

28. Tested from any angle, the summoning of the petitioner as an accused cannot be challenged. Thus whether the petitioner was summoned under Section 193 of the Cr.P.C or ought to have been summoned under Section 319 of the Cr.P.C makes no difference at all. Keeping this in mind, as also the fact that it would serve no purpose to remit the case to the Trial Court for clarification whether the petitioner was summoned under Sections 193 or 319 of the Cr.P.C., the order impugned is not interfered with. This Court has taken note of the fact that now the materials have come before the Trial Court to justify the trial of the petitioner also along with his son Ajay Singh. The petitioner may not have been sent up for trial by the police but the report clearly spelt out a case against the petitioner as well. The question whether the petitioner has been summoned under Section 193 of the Code of Criminal Procedure or he ought to have been summoned under Section 319 of the Code of Criminal Procedure now only remains academic.

29. For the aforestated reasons, the impugned order is sustained and the revision petition is dismissed.

Crl.M.A No.17279/2015

1. In view of the main petition having been dismissed, this application has become infructuous.

2. Application is disposed of accordingly.