Maninder Kaur Vs. State and ors.

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Court : Delhi

Decided On : Mar-26-1999

Reported in : 1999IVAD(Delhi)153; 2000CriLJ3111; 79(1999)DLT727; II(1999)DMC199; 1999(50)DRJ31

Judge : S.N. Kapoor, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 319(1 and 4), 397, 468 and 469; Indian Penal Code (IPC), 1860 - Sections 406 and 498-A;

Appeal No. : Crl. M . (M) 814/97 and Crl. M. 842/98

Appellant : Maninder Kaur

Respondent : State and ors.

Advocate for Def. : Mr. Pawan Bahl and ; Mr. Ghanshyam Sharma, Advs.

Advocate for Pet/Ap. : Mr. Jagat Singh, Adv

Judgement :
ORDER

S.N. Kapoor, J.

1. By order dated 5th November, 1996 passed by learned Metropolitan Magistrate summoned respondents No.2 to 4, namely, Mohinder Singh (father-in-law),

Gurbachan Kaur (mother-in-law) and Jaswinder Kaur (sister-in-law) for offence under Section 498-A IPC and Mohinder Singh and Gurbachan Kaur for offence under Section 406 IPC. This order has been set aside by the impugned order. The complainant Maninder Kaur feeling aggrieved has filed this petition for reversing the impugned order and restoring the order of the learned Metropolitan Magistrate.

2.1. The brief facts giving rise to this revision petition are as under:

2.2. The petitioner was married to Surjeet Singh on 12th June, 1987. The husband along with his parents started harassing the petitioner for they were not satisfied with the dowry. One daughter Raminder Kaur was born on 5th June, 1989. The atrocities increased. The petitioner lodged an FIR. Her statement was recorded. In her statement the petitioner categorically alleged that she was being harassed by her husband, father-in-law, mother-in-law and sister-in-law and all of them conspired to deprive the petitioner of her 'Stri Dhan' articles. All of them were guilty of offence covered under Sections 498-A and 406 IPC. Despite the complaint, the police registered a case only against the husband Surjeet Singh. She filed a complaint against her father-in-law, mother-in-law and sister-in-law. After the statements of the petitioner and her father was recorded, an application under Section 319 of the Cr.P.C. was moved. The learned Metropolitan Magistrate allowed the application on finding sufficient material on record for summoning the aforesaid three respondents.

2.3. Feeling aggrieved, the respondents filed a revision petition. That revision petition was allowed by the learned Additional Sessions Judge holding that there was only vague allegations which did not make out any prima facie case against the present petitioners.

3. This petition is being opposed by respondents No.2 to 4, inter alias on the ground that the investigating agency did not find any cogent material to proceed against Mohinder Singh, Gurbachan Kaur and Jaswinder Kaur. Charge was framed only against Surjeet Singh on 20th October, 1994 for offence under Section 498-A and 406 IPC. On 25th March, 1994, according to the version of the respondents No.2 to 4, the complainant Smt.Maninder Kaur for the first time stated that the articles mentioned in the list were handed over to her husband, father-in-

law, mother-in-law and sister-in-law at the time of the marriage and the same articles were not returned to her. The allegations were of general and vague nature and related to period from 1987 to 1991 spreading over four years. She was living separately at Gautam Nagar, New Delhi with her husband with effect from 19th March, 1991 and onwards. It is claimed that all the dowry articles were seized from Gautam Nagar and received by her in Crime Against Women Cell, Nanak Pura, New Delhi. The allegations were vague and reckless. Consequently, no valid cognizance could be taken in the year 1987 after a lapse of more than four years. Revision petition by the private party in State case is otherwise not maintainable.

4. I have heard learned counsel for the parties and gone through the records.

5. In so far as the question relating to bar of entertaining revision petition filed by a complainant in a State case isconcerned, learned counsel for the respondents could not point out any prohibition or bar against entertaining any revision petition by an aggrieved complainant in a State case. The revision petition could not be equated with an appeal. It may be mentioned that under Section 378(4) even an appeal could be filed against an order of acquittal on the grant of special leave to appeal from the order of acquittal. thereforee, this submission has got no force.

6.1. As regards plea relating to limitation under Section 469, it may be mentioned that Section 319 is an exception to the provisions of Section 469, for Section 319(4) specifically provides that where the Court proceeds against any person under sub-section (1) of Section 319, then 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. Consequently, no bar of limitation shall arise in such a matter and probably for this reason the learned Additional Sessions Judge did not consider this aspect.

6.2. It may also be mentioned that the Punjab and Haryana High Court, the High Court of Orissa and the High Court of Calcutta have taken the view that if in course of trial in which the Court has already taken cognizance of the offence within period of limitation and some other persons are summoned to stand trial as accused, no bar of limitation shall arise by such inclusion. Provision of Section 468

will not be attracted in view of Section 319(4)(b) and added accused will also be deemed to be persons against whom cognizance had been taken at the initial stage when the Court had summoned the accused for trial. Thus, Section 319 of the Code is one of the exceptions for applicability of bar of limitation prescribed under Section 468 of the Code (See Gokul Mohan Tripathy v. Satyabhama Panigrahi and Anr. 1981 Cri.L.J. 211, Basudeo Mondal and Ors. Vs . Dud Kr. Pramanick and Anr.). thereforee, the plea regarding bar of limitation of the respondent cannot be accepted.

7.1. Now, coming to the main question, the learned Additional Sessions Judge took the view that there was no specific allegation and the allegations were vague. It is submitted by the learned counsel that in her statement Smt.Maninder Kaur specifically pointed out that a sum of Rs.25,000/- was demanded at the time of Sagan. It is also stated that her in-laws presented her eight bangles, two gold chains, tops, payal, clothes. Her parents-in-law were not satisfied with the dowry given by her parents. Her mother-in-law, father-in-law, husband and sister-in-law used to tell her that they will re-marry (her husband) and they used to give severe beating as a result of which she had remained in nursing home from 15th December to 16th December, 1988. On 5th June, 1989 she gave birth to a female child and thereafter the atrocities increased.They used to give beatings and did not give sufficient food to her. She was compelled to work even if her child was weeping. She was compelled to telephone her parents and abuse them on phone. On 24th August, 1989 she was thrown out of the house after giving severe beatings. A compromise took place on 10th September, 1991. Prior to 24dth August, 1989 a sum of Rs.50,000/- was demanded to construct first floor. It is also submitted that though they started living separately, but her mother-in-law continued to be source of inciting her husband, who used to beat her.

7.2. A photocopy of the statement of the complainant Smt. Maninder Kaur indicates that the allegations were specific.The complainant specifically stated that at the time of marriage dowry articles were entrusted to her father-in-law, mother-in-law and sister-in-law. In usual course these are the persons who receive the dowry articles and thereforee, in such circumstances, if the learned Metropolitan Magistrate thought that these accused had also committed the aforesaid offences

for which such persons should be tried together along with the accused, the learned Metropolitan Magistrate had not committed any error in so far as the prima facie case is concerned.

7.3. What is required for summoning an accused under Section 319(1) is that it should appear to the Court from the evidence that the person not brought before the Court has committed an offence meaning thereby that existence of prima facie case is an essential requirement for exercise of powers under Section 319. The Courts are of the consistent view that at that stage Court is not to consider the details and weigh the same.

7.4. There is another aspect. The police has taken the view that there was insufficient evidence to proceed against the respondents No.2 to 4. No protest petition has been filed for summoning the three accused. Instead a complaint has been filed and that was pending at the time of passing of the order. The Supreme court in Sohan Lal Vs . State of Rajasthan, : 1990 CriLJ2302 took the view in para 33 as under:

'33. ...The provision of Sec. 319 had to be read in consonance with the provisions of S. n398 of the Code. Once a person is found to have been accused in case he goes out of the reach of S. 319. Whether he can be dealt with under any other provisions of the Code is a different question...'

In the case in hand, the accused has not been discharged in the complaint case pending for the same offence. In Sohan Lal (supra), the term accused came to be considered in para 19 with reference to Section 167 Cr.P.C. as under:

'19. Thus the words 'the accused' have been used only in respect of a case where there are grounds for believing that the accusation or information is well founded. 'Information' and 'accusation' are synonymously used.'

The Supreme Court in para 20 of that judgment in relation to complaints to Magistrate under Chapter XV with reference to Sections 200 and 202 made the following observations:

'20. ...Thus, we find that the expression 'the accused' has been used in relation to a complaint case under this section even before issue of process. It also appears that in the Code the expression 'the accused' is used after cognizance is taken by the Magistrate.'

In view of the observations made in para 33, it appears that since the complaint had already been filed and the respondents No.2 to 4 were already accused before the Court though in complaint case, however, they were not discharged so far, and stage under Section 398 Cr.P.C. had not reached.

7.5.1. Now, the question is whether the filing of complaint is sufficient to put restriction on the powers under Sec 319 Cr.P.C. It is apparent that in Sohan Lal (supra), the Supreme Court was dealing with a case where the accused had already been discharged. It is also apparent that the term 'accused' had different connotations under different Sections. In so far as the question of not filing the charge-sheet by the police is concerned, Joginder Singh and anr. Vs . State of Punjab and anr., : 1979 CriLJ333 is an authority on the proposition that the expression 'any person not being the accused' clearly covers any person who is not being tried already by the Court. In Sohan Lal (supra) the said authority was referred to and in para 24, following observations were made:

'24...In their appeal in this Court it was inter alias submitted that Section 319, Cr.P.C. was inapplicable to the facts of this case because the phrase 'any person not being the accused' occurring in the section excluded from its operation an accused who had been released by the police. This Court rejected the contention holding that the said expression clearly covered any person who has not been tried already by the Court and the very purpose of enacting such a provision like section 319 clearly showed that even a person who had been dropped by the police during investigation but against him evidence showing his involvement in the offence came before the criminal Court were included in the said expression.'

7.5.2. Municipal Corporation of Delhi Vs . Ram Kishan Rohtagi, : 1983 CriLJ159 was also referred to in Sohan Lal (supra). In Municipal Corporation of Delhi v. Ram Kishan Rohtagi (supra), the proceedings against respondents No.2 to 5 were quashed by the High Court. Subsequently, the Metropolitan Magistrate took

cognizance of the offence under Section 319 Cr.P.C.

7.5.3. In Dr. S.S. Khanna Vs . Chief Secretary, Patna, : [1983]2SCR724 , the Supreme Court came to consider whether a person against whom a complaint was filed along with some other persons and who after an inquiry under Section 202 was not proceeded against by the Court could be summoned at a later stage under Section 319 Cr.P.C. to stand trial for the same or a connected offence or offences along with other persons against whom process had already been issued earlier by the Court. The Supreme Court took the view that even when an order of the Magistrate declining to issue process under Section 202 was confirmed by the higher Court, the jurisdiction of the Magistrate under Section 319 Cr.P.C. remained unaffected if other conditions were satisfied. An autrefois principle adumbrated under Section 300 of the Code could not, however, apply to such a case. This case also came to be considered in Sohan Lal (supra).

7.5.4. In Sohan Lal (supra), the Supreme Court considered the question whether the necessity of making further inquiry as envisaged in Section 398 could be obviated or circumvented by taking resort to Section 319 and thereafter the Supreme Court in para 30 made following relevant observations:

'30. As has already been held by this court, there is need for caution in resorting to S. 319. Once a person was an accused in the case he would be out of reach of this section. The word 'discharge' in S. 398 means discharge of an offence relating to the charge within the meaning of Ss. 227, 239, 245 and 249. Refusing to proceed further after issue of process is discharged. The discharge has to be in substance and effect though there is no formal order. The language of the section does not indicate that the word 'discharge' should be given a restricted meaning in the sense of absolute discharge where the accused is set at liberty after examination of the whole case.'

7.5.5. The Supreme Court in para 33 of Sohan Lal (supra) observed that provisions of Section 319 had to be read in consonance with the provisions of Section 398 of the Code. It may be seen that the Supreme Court did not reverse the judgment in Municipal Corporation of Delhi v. Ram Kishan Rohtagi (supra), while observing that once a person is found to be accused in the case he goes out

of reach of Section 319. Thus, it appears that the only limitation imposed on the powers of the Court is the provision of Section 398. Consequently, simple pendency of the complaint may not be a bar to invoke the provisions of Section 398, for the accused has neither been tried in the light of the judgment in Joginder Singh and anr. v. State of Punjab and anr. (supra) nor discharged within the meaning of Section 398. If the accused has either been discharged or has been tried and acquitted then the powers of Section 319 could not be invoked.

7.5.6. Since the petitioners have neither been discharged nor tried and acquitted, the powers of Section 319 Cr.P.C. could be invoked by the learned Metropolitan Magistrate.

8. As has already been mentioned earlier that there is sufficient material on record for raising strong suspicion, there is good prima facie case justifying exercise of powers under Section 319. The allegations are not purely vague as observed by the learned Additional Sessions Judge. Consequently, the impugned order has to be set aside and the order of the learned Metropolitan Magistrate has to be restored.

9. The petition is allowed accordingly.