SUPREME COURT OF INDIA

Harbhajan Singh

Vs.

State of Punjab

Crl.A.No.1351 of 2009

(S.B. Sinha and Cyriac Joseph JJ.)

29.07.2009

JUDGMENT

S.B. Sinha, J.

1. Leave granted.

2. Appellants are before us aggrieved by and dissatisfied with the judgment and order dated 19th March 2008 passed by a learned Single Judge of the High Court of Punjab Haryana at Chandigarh whereby and whereunder the revision application filed by them questioning the legality and/or validity of the order dated 11th September 2006 passed by the learned Addl. Sessions Judge, Jalandhar allowing an application under Section 319 of the *Code of Criminal Procedure* (for short, `the Code') filed by the complainant (respondent no.2 herein) summoning them as additional accused in connection with FIR No.45 dated 13th March 2005 under Sections 306/509/420/120-B/456 of the Indian Penal Code, was dismissed.

3. Appellants and one Sarabjit Singh used to live together. Sarabjit Singh is the brother of the appellant no. 2. He used to follow the deceased Rajni despite protests made by her. He gave a proposal of marriage to her which was not accepted. Appellants also asked her to marry Sarabjit, but she refused. She was threatened of being blackmailed stating that some obscene photographs of hers would be shown to others. On 12 th March 2005 Sarabjit Singh threw some obscene photographs of the deceased at her house as well as at the house of her paternal uncle - Kamaljeet. He telephoned the deceased that her father and uncle must have received the gift sent by him. She thereafter committed suicide by consuming `sulphos' tablets.

4. A First Information Report was lodged. However, the charge-sheet was submitted only against Sarabjit Singh. Witnesses were examined before the learned Addl. Sessions Judge. They categorically stated that not only Sarabjit Singh but also the appellants, when informed that the deceased did not want to marry Sarabjit, threatened that they would `defame' Rajni. According to the said witnesses, they had gone to the house of Harbhajan Singh - appellant no.1 a week prior to her death in that connection. It was categorically stated that the deceased

consumed `sulphos' tablets as Sarabjit and the appellants used to harass her. In cross-examination, the complainant - Subhash Chander furthermore stated that his sons had informed him that they had received a telephonic message from Sarabjit Singh as to whether they had received the gift sent by him to them.

5. The learned Addl. Sessions Judge passed the said order dated 11th September 2006 summoning the appellants as additional accused in the said case, stating:

> "I have heard the learned Addl. P.P. for the state as well as perused the documents in the file, as well as statement made by Subhash Chander father of Rajni before the police as well as his statement recorded in the Court and also the statement of Rajni deceased at the time of her death given to the police. Rajni as well as her father have named both Harbhajan Singh and Rajnit Kaur as active participants in the commission of the offence of abetting her suicide alongwith accused Sarbjit Singh @ Sabhi. All three of them have black mailed her by throwing her nude photographs before her house as well as in front of the house of her uncle in order to defame her and in order to pressurize her to marry Sarbjit Singh @ Sabhi. There is sufficient material to proceed against the accused. A lady at the time of her death will never tell a lie. The very fact that she has named all the three persons in the abetment of her suicide carries conviction. In view of the above said facts I allow the application and order that Harbharaj Singh son of Sarwan Singh and Ranjit Kaur w/o Harbhajan Singh both residents of E-104, Upkar Nagar (Jaimal Nagar), P.S. Division No.8, Jalandhar be summoned as accused to face trial alongwith accused Sarbjit Singh @ Sabhi as their summoning is essential in the interest of justice and for the just and proper decision of the case. They be summoned for 28.9.06."

6. The High Court, by reason of the impugned judgment, has dismissed the revision application filed by the appellants herein, stating: .... However, Subhash Chander has specifically stated that they had met the petitioners even one week before the death of the deceased. In all, Subhash Chander stated that they had met the petitioners three times. If the petitioners were reiterating their threat to defame the deceased, throwing of obscene photographs of the deceased at her house even by Sarabjit Singh alone, would not exonerate the petitioners at this stage because it was in continuation of the series of acts of the petitioners themselves as well. Here it would not be out of place to notice that even the deceased in her statement (dying declaration) specifically stated that the petitioners and Sarabjit Singh are responsible for her suicide. In view of the aforesaid, it cannot be said that there is no prima facie for proceeding against the petitioners. The impugned order does not suffer from any illegality or error of jurisdiction.

7. Mr. Satinder S. Gulati, the learned counsel appearing on behalf of the appellants would submit that the learned Addl. Sessions Judge as also the High Court committed a serious error insofar as they failed to take into consideration that the ingredients of Section 306 of the Indian Penal Code having not been fulfilled inasmuch as the immediate cause for committing suicide being throwing of nude photographs of the deceased having been attributed to Sarabjit Singh alone, the appellants could not have been summoned as

additional accused. The learned counsel, in this behalf, would strongly rely upon the decision of this Court in the case of *Anr.*[1]. Our attention has further been drawn to the fact that correctness of decision in the case of Mohd. Shafi (supra) insofar as it was held that order summoning the accused may be passed only upon cross-examining the witnesses, having been doubted, has been referred to a three-Judge Bench.

8. The learned counsel appearing on behalf of the respondents, on the other hand, would support the impugned judgment.

9. In this case, the deceased made a dying declaration. In the said dying declaration not only Sarabjit Singh but also the appellants herein were named as the persons who were responsible for her death. Correctness of the said dying declaration at this stage is not and cannot be questioned. It may be true that the appellants were not charge-sheeted but it is now well settled, by reason of various decisions of this Court, that only because no charge-sheet has been submitted against certain persons, the same by itself, would not be a sufficient ground for the court at a later stage, namely, upon consideration of the evidence adduced before it by the prosecution to decline to exercise its jurisdiction to add other persons as accused for trying them for offences which appear to it to have been committed by them. The dying declaration together with statements made by the prosecution witnesses show commission of an offence. Appellants took side of Sarabjit Singh. They not only asked the deceased to marry him but even threatened her as also her parents that in case of refusal, she would be `defamed'.

> "It is not possible, keeping in view the nature of evidence which was made available before the learned Addl. Sessions Judge, to arrive at a conclusion that the said evidence, even if given face value and taken to be correct in its entirety; had not disclosed commission of an offence or on the basis thereof a judgment of conviction cannot be recorded at all. Appellants had raised certain defences. The same ultimately may or may not be accepted. But, indisputably, at this stage, the evidence adduced discloses some offence."

10. In the case of *Ors.*[2], it has been held as under :

19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondents 2 to 5 will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it.

[See also *Joginder Singh Anr. v. State of Punjab Anr.*[3]; *Anr.*[4]; *Anr.*[5]*;* *Anr.*[6] *and Sarabjit Singh Anr. v. State of Punjab Anr.*[7]].

11. In the case of Mohd. Shafi (supra), an application under Section 319 of the Code was filed by a witness. He was not the complainant. He had no locus standi to file the application. In that case, the trial Judge had refused to pass an order on the application filed by the complainant under Section 319 of the Code stating that the matter would be considered only after the cross-examination of the witnesses is over. The State was not aggrieved by that order and in that situation this Court refused to interfere with the inference that such an order by the High Court at that stage was not held to be correct.

12. Our attention, however, has been drawn to a decision of this Court in the case of *Hardeep Singh v. State of Punjab Ors.*[8] wherein the following questions have been referred for consideration by a larger Bench by an order dated 07th November 2008 : 79. We, therefore, refer the following two questions for the consideration of a Bench of three Hon'ble Judges:

> "(1) When the power under sub-section (1) of Section 319 of the Code of addition of accused can be exercised by a Court? Whether application under Section 319 is not maintainable unless the cross-examination of the witness is complete?
>
> (2) What is the test and what are the guidelines of exercising power under sub-section (1) of Section 319 of the Code? Whether such power can be exercised only if the Court is satisfied that the accused summoned in all likelihood would be convicted?"

13. We would assume that in all cases the court may not wait till cross- examination is over for the purpose of exercising its jurisdiction. In the aforementioned decision, the learned Judges had referred to a judgment of this Court in the case of *Rakesh Anr. v. State of Haryana*[9] wherein it was held that even without cross-examination on the basis of a prima facie material which would enable the Sessions Court to decide whether the power under Section 319 of the Code should be exercised or not stating that at that stage evidence as used in Section 319 of the Code would not mean evidence which is tested by cross-examination.

14. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in the case of Mohd. Shafi (supra) has been doubted by another bench, the same would not mean that we should wait for the decision of the larger bench, particularly when the same instead of assisting the appellants runs counter to their contention.

> "We may, however, incidentally place on record that in Mohd. Shafi (supra), the trial Court refused to exercise its discretion and postponed passing of an order till cross-examination was over. If at that stage, the Court was not satisfied about existence of

> any other material which would satisfy it to exercise the jurisdiction which as per the decision of this Court in the case of Ors. (supra) should be used very sparingly, this Court should not have passed a favourable order at that stage itself. It was merely held that the High Court should not have interfered with as the said provision conferred an extraordinary power. Each case must be decided on its own facts. If a judicious discretion exercised by the Court had led it to pass an order under Section 319 of the Code, the High Court exercising a revisional jurisdiction would interfere therewith, inter alia, in a case where legal principles laid down by this Court had not been satisfied. The decision of this Court in the case of Mohd. Shafi (supra), therefore, in our opinion, is not an authority for the proposition that in each and every case the Court must wait till the cross-examination is over."

15. Keeping in view the materials available on record as also the nature of the order passed by the learned Sessions Judge we are of the opinion that no interference with the impugned judgment is called for in the peculiar facts and circumstances of the case.

16. For the reasons aforementioned, the appeal is dismissed.

[1] *(2007) 4 SCR 1023 = 2007(5) SCALE 611*
[2] *(1983) 1 SCC 1*
[3] *(1979) 1 SCC 345*
[4] *(2006) 10 SCC 192*
[5] *(2002) 5 SCC 738*
[6] *2008(3) SCALE 338*
[7] *2009 (8) SCALE 175*
[8] *JT 2008(12) SC 7*
[9] *(2001) 6 SCC 248*