Allahabad High Court
Smt. Salma vs State Of U.P. Through Principal ... on 11 July, 2022
Bench: Rahul Chaturvedi

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 67

Case :- CRIMINAL REVISION No. - 2213 of 2022

Revisionist :- Smt. Salma

Opposite Party :- State Of U.P. Through Principal Secretary (Home) And 3 Others

Counsel for Revisionist :- Atul Kumar

Counsel for Opposite Party :- G.A.,Pankaj Bharti

Hon'ble Rahul Chaturvedi,J.

Heard Sri Atul Kumar, learned counsel for the revisionist, Sri Panka Bharti, learned counsel for the informant as well as learned A.G.A.

After getting the consent from both the parties, the Court is proceeded to decide the case.

This revision is being filed against the order impugned dated 06.04.2022 whereby learned Sessions Judge/Special Judge(POCSO Act), Court No.1, Muzaffar Nagar in exercise of power has summoned the non-accused Ms. Salma as an accused of Special Sessions Trial No.105/9 of 2019, State Vs. Riyaz vide order dated 06.04.2022. The genesis of the case starts from lodging of the FIR by the victim herself on 18.05.2019 around 15:48 for the incident said to have taken place under section 452, 376, 506, 120-B IPC and Section 3/4 of D.P. Act district Kotwali Nagar, District-Muzaffar Nagar against Riyaz and Ms. Salma with the allegation that when the informant was minor girl, Ms. Salma expressed her innocent desire to make the informant as her daughter-in-law in her childhood.

It is alleged, that it is quite natural for any mother to express her wish after seeing a young pretty girl. It does not mean that she is instigating her son to commit offence of rape upon that girl. Thereafter, Riyaz and victim developed relationship and crossed all sorts of limits and decorum and established physical relationship with each other. However, it is clear while committing this offence, the revisionist has got no say or approval. This relationship lasted for about 4-5 years without any resistance, objection or hitch and lately, Riyaz declined to get marry with her. On this factual matrix of the case, this FIR is being registered by the victim herself.

In the 164 Cr.P.C. statement too, he has reiterated the same version and after thrashing the entire material on record collected during investigation, has dropped the name of Ms. Salma from the report under section 173(2) of Cr.P.C. and submitted the charge sheet only against Riyaz and he is facing trial in S.S.T. no.105/9 of 2019 State Vs. Riyaz. After recording the testimony of the informant, Miss 'X' on 04.02.2020 soon thereafter, moved an application under section 319 Cr.P.C. on 18.02.2022 which was eventually allowed in favour of the informant by passing the impugned order.

Learned counsel for the revisionist submits that on this factual premises, it has been submitted that there are two prone arguments advanced by learned counsel for the revisionist ;(i) in the entire order impugned, there is no satisfaction of the learned trial Court that the material is sufficient to summon the non-accused Ms.Salma to summon her and compel to face the trial ;(ii) learned counsel for the revisionist has relied upon the judgment of Hon'ble the Apex Court in the case of Brijendra Singh and others Vs. State of Rajasthan decided on 27.04.2017 in Crl. Appeal No. 763 of 2017, in which the Hon'ble Apex Court has held that:-

"Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material."

It is contended by the counsel that the learned trial judge has blissfully ignored all the relevant factors while forming the prima facie satisfaction to summon the revisionist in exercise of power under Section 319 Cr.P.C.

I have perused the order impugned and compared the same with the observation of Hon'ble Apex Court in the case of Brijendra Singh (Supra) and the Court too is in favour that all the material on record has to b taken into account while forming the prima facie opinion of the court concerned. Surprisingly the learned trial court has literally translated the story as narrated in the FIR and branded it as its satisfaction. This proposition is not at all acceptable.

Learned counsel for the revisionists in this regard has relied upon the latest judgement of Hon'ble Apex Court passed in the case of Sugreev Kumar Vs. State of Punjab and others MANU/SC/0389/2019 passed in Crl. Appeal No. 509 of 2018 arising out of SLP No. 9687 of 2018 with regard to the degree to satisfaction required to be invoked while exercising the power under section 319 Cr.P.C. :

"95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in Vikas v. State of Rajasthan, held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner."

Learned counsel for the revisionist has further drawn the attention of the Court to para-12 of the above judgement:

"12. Provision contained in section 319 Cr.P.C. sanction the summoning of any person on the basis of any relevant evidence as available on record. However, it being a discretionary power and an extraordinary one, is to be exercised sparingly and only when cogent evidence is available. The prime facie opinion which is to be formed for exercise of his power requires stronger evidence than mere probability of complicity of a person. The test to be applied is the one which is more than a prime facie case as examined at the time of framing charge but not of satisfaction to be extent that the evidence, if goes uncontroverted, would lead to be conviction of the accused."

Learned counsel for the revisionists has further submitted that the revisionists even not named in the F.I.R. and after thorough investigation the police too has not included the name of the revisionists in the chargesheet, even then the learned trial court has summoned the revisionists exercising his power u/s 319 Cr.P.C. in a cavalier fashion and without having any cogent evidence against them. Learned counsel for the revisionists in this regard has further relied upon the judgement of Hon'ble Supreme Court in the case of Periyasami and others Vs. S. Nallasamy, MANU/SC/0375/2019 decided on 14.3.2019 in Criminal Appeal No. 456 of 2019 arising out of SLP. No. 208 of 2019, in which it has been held that :

"The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused."

I have perused the order impugned and I am of the considered opinion that the same is dehors of the law laid down by Hon'ble the Apex Court in the aforesaid judgment.

Thus, perusing the impugned order, I have got no hesitation to say that the impugned order is well short of the standard set up by Hon'ble Apex Court (as mentioned above), therefore, impugned order dated 06.04.2022 passed by learned Sessions Judge/Special Judge(POCSO Act), Court No.1, Muzaffar Nagar is hereby set aside and the matter is remanded back to learned trial Judge with a direction to re-consider and re-visit the entire matter once again and decide the same in the light of the ratio laid down in the case of Hardeep Singh Vs. State of Punjab, 2014(3) SCC92; Brijendra Singh and others Vs. State of Rajasthan, (2017) SC 2839; Labhuji Bhai Amratji Thakor & others Vs. State of Gujrat, AIR 2019 SC 734; Periyasami and others Vs. S. Nallasamy, MANU/SC/0375/2019 and Sugreev Kumar Vs. State of Punjab and others MANU/SC/0389/2019 by passing a well reasoned order within a period of eight weeks positively from the date of production of certified copy of this order.

With the aforesaid observations, the present revision stands disposed off.

Order Date :- 11.7.2022 Sumit S