

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1024 OF 2017
(Arising out of SLP (Criminal) No. 6907 of 2015)

DR. KALPANA ... Appellant

VERSUS

STATE OF UTTAR PRADESH & ORS. ... Respondents

O R D E R

Leave granted.

We have heard learned counsel appearing for the appellant, learned senior counsel appearing for the State and the counsel for the complainant.

The brief facts involved in the case are that the marriage between Sonam Soharawat *alias* Pooja and Gaurav was solemnised on 20.10.2010 at Gurgaon. At that time Gaurav was living with other family members. However, after the marriage, he shifted to Noida with his wife Sonam. On 07.09.2011, information was received that Sonam is admitted in Vinayak Hospital in an injured condition and succumbed to those injuries at about 3 p.m. on the said day. Ashok Kumar, father of Sonam, lodged written complaint with Police Station Sector-58, Gautam Budh Nagar, Noida, on the said day, alleging that Sonam's in-laws have murdered her. In that complaint, he implicated Sonam's husband Gaurav as well as his father, mother and sister Kalpana (the appellant

herein) and also brother Anurag. On the basis of the said complaint FIR No. 922 of 2011 has been registered for offences punishable under Sections 498A/304B of the Indian Penal Code(IPC) and also under Sections 3/4 of the Dowry Prohibition Act. After the investigation, challan was filed in the Court of Additional District and Sessions Judge, Gautam Budh Nagar in Sessions Trial No. 882 of 2011, arising out of the said FIR. On the basis of the said chargesheet in which the police had implicated only Gaurav, husband of the deceased, the learned Additional Sessions Judge passed orders dated 10.07.2015 summoning all the accused persons. On receiving these summons, the appellant challenged the said order by filing Criminal Revision Petition in the High Court along with his brother Anurag. This petition has been dismissed by the High Court. After the statements of the complainant-Ashok Kumar as PW-1 and of Vinod Kumar as PW-2 were recorded, the complainant filed an application under Section 319 of the Cr.P.C. for summoning the appellant as well as her father, mother and brother. This application was dismissed vide order dated 04.06.2013. Aggrieved by that order, the complainant filed Criminal Revision Petition in the High Court of Judicature at Allahabad. In the said revision petition, ex-parte orders dated 23.03.2015 were passed. Along with the revision petition of the complainant, the High Court set aside the order of the Trial Court and remitted the case to the Trial Court for fresh

consideration of the application under Section 319 Cr.P.C after keeping in mind the principles laid down by this Court in the Constitution Bench judgment in the case of '*Hardeep Singh v. State of Punjab*' [2014 (3) SCC 92].

As per the appellant, inadvertently the counsel for the appellant could not appear on the date fixed. Be that as it may, after deriving the knowledge of the aforesaid *ex-parte* order, the appellant moved application for recall of the order.

While this application was still pending, the Trial Court passed fresh orders dated 10.07.2015 thereby allowing the application under Section 319 Cr.P.C. Thereafter recall application moved by the appellant was also dismissed by the High Court on 20.07.2015. Challenging the order of the Trial Court whereby the appellant is summoned under Section 319 Cr.P.C., the appellant as well as her brother Anurag filed revision petition which has been dismissed by the High Court vide impugned judgment dated 06.08.2015.

The case set up by the appellant while opposing the application filed under Section 319 Cr.P.C. was that she is a doctor by profession having M.B.B.S., M.D. (Dermatologist) to her credit. She has been working with prestigious hospital in the State of U.P. for several years. She was appointed as Assistant Professor, Dermatologist at Smt. Kashibai Navle Medical College and General Hospital, Pune, Maharashtra on 20.11.2010. At the time of incident she was

working in the Department of Dermatologist at Smt. Kashibai Navle Medical College and General Hospital, Pune, Maharashtra. It is also stated in the petition that she is married to Dr. Saurabh- an Eye Surgeon. They have a child of about 2 years. They are living separately and distantly in another State. They have no business or need to interfere with the day to day life and marital life of Gaurav and Pooja. Now they have owned and running Luthra Hospital and Research Centre at Bilaspur, Chhattisgarh. However, the petitioner is falsely and maliciously being implicated by the complainant along with other family members with ulterior motive and mala fide intention.

We have heard the learned counsel for the parties at length. No doubt, in the complaint filed by the complainant, he had named the appellant. However, during the investigation, nothing was found against the appellant and, therefore, she was not arraigned as accused in the chargesheet filed. No doubt, inspite thereof, undoubtedly, any such person can still be summoned under Section 319 Cr.P.C., if some evidence has surfaced against him/her during trial. Law on this point is authoritatively laid down in *Hardeep Singh's* case (supra). However, in the present case, we find that there is not even an iota of evidence and, in fact, even in the statement which was given by the complainant, nothing was mentioned against the appellant. Learned counsel for the appellant took us through the

deposition of the complainant (PW-1) who has stated that Gaurav and deceased lived in a rented house in Noida. He has also categorically mentioned that he had not seen Gaurav's sister Kalpana (the appellant) with them in their house in Noida and that he had heard that Kalpana is a Doctor in Pune and had settled there.

Having regard to the aforesaid statement of the complainant himself, we find that there is no justifiable ground to summon the appellant and to stand trial in the aforesaid case. This appeal is, accordingly, allowed and the order passed under Section 319 Cr.P.C. *qua* the appellant stands set aside.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
July 05, 2017.

ITEM NO.1

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 6907/2015
(Arising out of impugned final judgment and order dated 06-08-2015
in CRLR No. 2773/2015 passed by the High Court of Judicature at
Allahabad)

DR. KALPANA

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH & ORS.

Respondent(s)

(With appln(s) for exemption from filing c/c of the impugned order,
permission to file annexures and exemption from filing O.T.)

Date : 05-07-2017 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s) Mr. R. Basant, Sr. Adv.
Mr. Satyajit A. Desai, Adv.
Ms. Anagha S. Desai, AOR
Mr. Neelmani Pant, Adv.
Mr. Arun Poomulli, Adv.

For Respondent(s) Mr. Ratnakar Dash, Sr. Adv.
Mr. Ardhendumauli Kumar Prasad, Adv.

Mr. Dinesh Kumar Garg, AOR
Mr. Abhishek Garg, Adv.
Mr. Dhananjay Garg, Adv.
Mr. Deepak Mishra, Adv.

Mr. Abhishth Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed order is placed on the file.]