IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO._2120 OF 2009
(Arising out of S.L.P. (Crl.) No.2972 OF 2008)

Suman ...Appellant

Versus

State of Rajasthan and another ...Respondents

SUPREME COURT OF INDIA

J U D G M E N T

G.S. SINGHVI, J.

JUDGMENT

1. Leave granted.

2. Whether the appellant, who was named as one of the accused in the complaint lodged by respondent No.2, Smt. Anita alleging harassment and torture at the hands of her husband and in-laws but qua whom the police filed negative final report, could be summoned under Section 319 of the Code of Criminal Procedure (for short 'Cr.P.C.') and whether Judicial

Magistrate, First Class, Sri Ganganagar (hereinafter referred to as 'the Judicial Magistrate') was justified in taking cognizance against the appellant under Section 498A of the Indian Penal Code (for short 'IPC') are the questions which arise for determination in this appeal filed against order dated 10.3.2008 passed by the learned Single Judge of the Rajasthan High Court in S.B. Criminal Misc. Petition No.1366 of 2007.

3. The appellant's brother Pramod Kumar was married to respondent No.2 on 7.12.2000 at Sri Ganganagar. After one year and four months, respondent No.2 submitted a complaint to the Judicial Magistrate alleging that due to her failure to bring sufficient dowry and meet the demand of her in-laws, she was subjected to physical and mental cruelty and harassment in different ways. The learned Judicial Magistrate forwarded the complaint to the police under Section 156(3) Cr.P.C. for investigation. Thereupon, FIR No.150/2002 was registered at police station Jawahar Nagar, District Sri Ganganagar for offences under Sections 406, 498A, 354, 377 and 323 IPC. During investigation, the police recorded the statements of respondent No.2 – Smt. Anita, her father Shri Jaipal, mother Smt. Savitri Devi and four other persons, namely, Shri Premnath, Shri Hanuman Chautala, Shri Brijlal, Shri Kripal Singh and filed charge sheet on 4.1.2003 against Pramod Kumar – husband of respondent No.2, Rukmani

Devi – mother-in-law and Ram Kumar @ Rampratap – father-in-law. Insofar as the appellant is concerned, the Investigating Officer opined that she was innocent because she was living at Bikaner with her husband and had not caused harassment to respondent No.2 or made demand for dowry. By an order dated 5.8.2005, the learned Judicial Magistrate framed charges against three accused and adjourned the case for prosecution evidence. On 16.6.2006, the statement of respondent No.2 was recorded. Thereafter, an application was filed on behalf of respondent No.2 under Section 319 Cr.P.C. for issuing process against the appellant. The learned Judicial Magistrate adverted to the contents of the complaint filed by respondent No.2, the statements recorded under Section 161 Cr.P.C. as also the statement made by respondent No.2 before the court and held that prima facie case was made out for taking cognizance against the appellant for offence under Section 498-A IPC. He accordingly passed order dated 2.9.2006 and directed that the appellant be summoned through bailable warrant. The revision filed by the appellant against that order was allowed by Sessions Judge, Sri Ganganagar who held that in view of the bar contained in Section 468 Cr.P.C., the Judicial Magistrate was not entitled to take cognizance of the offence allegedly committed by the appellant under Section 498-A IPC. The revisional order was set aside by the learned Single Judge of the High

Court in S.B. Criminal Revision Petition No.25 of 2007 and the matter was remitted to the revisional court for fresh decision in the light of the observations made by him on the issue of limitation in the context of Section 473 Cr.P.C.

4. In compliance of the direction given by the High Court, the learned Sessions Judge reconsidered the revision filed by the appellant, adverted to the facts narrated in the complaint filed by respondent No.2, the provisions of Sections 468 and 473 Cr.P.C. and held that the order passed by the learned Judicial Magistrate cannot be treated as barred by limitation. The learned Sessions Judge then noted that while deciding the application filed under Section 319 Cr.P.C., the learned Judicial Magistrate had taken cognizance of the contents of the complaint filed by respondent No.2, which were supported by the statements recorded by the police under Section 161 Cr.P.C. as also the statement made by respondent No.2 before the court under Section 164 Cr.P.C. specifically alleging that the appellant was one of the persons involved in committing the crime and approved the order passed by the learned Judicial Magistrate. The relevant portion of order dated 16.8.2007 passed by the learned Sessions Judge is reproduced below:-

> "Now, it is to be seen as to whether, the cognizance order taken against the revision petitioner by the subordinate court, is pure, valid and appropriate. At the state of the revision, the revisional court has to see as to whether prima facie any sufficient grounds are available on the file, by which proceedings could be initiated against the revision petitioner. It is perceived from perusal of the order passed by the subordinate court that at the time of passing of order upon the application of 319 Cr.P.C., while critically appreciating the first information report, statements of the witnesses recorded under Section 161 Cr.P.C., and the statement of the complainant recorded before the court, cognizance has been taken about the offence under Section 498-A of the Code of Criminal Procedure. I have also perused the file. The complainant has got indicated the name of her sister-in-law (Nanad) Suman in her complaint about admonishing her on dowry demands; and during the course of investigations also, in the statement under section 161 Cr.P.C. of the complainant; witnesses Jaipal, Savitri Devi, Prem Nath, Hanuman, Brijlal, Kripal Singh, name of the revision petitioner Suman has been got clearly indicated having included amongst the persons involved in committing of the offence. The statement of the complainant which have been recorded on oath before the court, therein also, evidence has been adduced against Suman. Apart from these, in the letters written by the complainant to her parents, instigating her parents by Suman over the telephone against the complainant, and upon her having return conduct cruel behaviour with her have been disclosed. On the basis of all of these facts and the available evidences, prima facie grounds are available for initiating proceedings under Section 498-A of the Indian Penal Code."

5. The learned Sessions Judge also considered the argument made on behalf of the appellant that cognizance ought not to have been taken against her because she was married much before the marriage of the

complainant and was living with her in-laws at Bikaner, but declined to quash the order of the learned Judicial Magistrate by observing that prima facie there was sufficient ground for taking cognizance against the appellant and that she will have full opportunity to cross-examine the witnesses.

6. The appellant challenged the revisional order before the High Court by filing a petition under Section 482 Cr.P.C. but could not convince the learned Single Judge to interfere with the order passed under Section 319 Cr.P.C.

7. Shri S.K. Keshote, learned senior counsel appearing for the appellant argued that after having accepted the negative final report submitted by the police qua the appellant, the learned Judicial Magistrate was not entitled to take cognizance against her on the basis of material collected by the police during investigation. Learned senior counsel emphasized that when the Investigating Officer did not find any valid ground to implicate the appellant as an accused and the final report was accepted by the competent court, the self-same statement made by respondent No.2 under Section 164 Cr.P.C. could not be made basis for entertaining the application filed under Section 319 Cr.P.C. He submitted that issue of

summons against the appellant is nothing but an abuse of the process of the court and the High Court committed serious error by refusing to exercise power under Section 482 Cr.P.C.

8. Learned counsel for the respondents supported the impugned order and argued that the High Court did not commit any error by refusing to exercise power under Section 482 Cr.P.C. because the learned Judicial Magistrate and the learned Sessions Judge concurrently found that prima facie there was sufficient material for taking cognizance against the appellant.

9. We have considered the respective submissions. Section 319 Cr.P.C. reads as under:-

> 319. **Power to proceed against other persons appearing to be guilty of offence.**—(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused had committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.
>
> (2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
>
> (3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the

> purpose of the inquiry into, or trial of, the offence which he appears to have committed.
>
> (4) Where the Court proceeds against any person under sub-section (1) then—
>
> (*a*) the proceedings in respect of such person shall be commenced afresh, and witnesses reheard;
>
> (*b*) subject to the provisions of clause (*a*), 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.

10. A somewhat similar provision was contained in Section 351(1) of the Code of Criminal Procedure, 1898 [for short, 1898 Code] under which it was provided that any person attending a criminal court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as if he had been arrested or summoned. Sub-section (2) of Section 351 provided that in such a situation the evidence shall be re-heard in the presence of the newly added accused. In its 41st Report, the Law Commission noted that the power conferred upon a criminal court under Section 351 of the 1898 Code could be exercised only if such person happen to be attending the court and he could then be detained and proceeded against, but there was no express provision for summoning such a

person if he was not present in the court. The Law Commission recommended that a comprehensive provision be enacted so that whole case against all known suspects could be proceeded expeditiously and that cognizance against the newly added accused should be taken in the same manner as against the other accused. The recommendations made by the Law Commission led to incorporation of Section 319 in its present form in Chapter XXIV of Cr.P.C. which contains general provisions as to inquiries and trials.

11. Section 319 Cr.P.C. applies to all the Courts including the Sessions Court. It empowers the Court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. If such person is not attending the Court, he can be arrested or summoned. If he is attending the Court, although not under arrest or upon a summons, he can be detained by such Court for the purpose of inquiry into, or trial of the offence which he appears to have committed. Sub-section (4) lays down that where the Court proceeds against any person under sub-section (1), the proceedings in respect of such person shall be commenced afresh and witnesses are reheard. A reading of the plain language of sub-section (1) of Section

319 Cr.P.C. makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of this sub-section from which it can be inferred that a person who is named in the FIR or complaint but against whom charge-sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the Court finds that such person has committed any offence for which he could be tried together with the other accused.

12. The question whether a Sessions Court can take cognizance against a person qua whom there is no committal order was considered and answered in affirmative in **Joginder Singh and another v. State of Punjab and another** (1979) 1 SCC 345. The facts of that case were that on a complaint made by one Mohinder Singh, a criminal case was registered at Police Station Dakha against Joginder Singh, Ram Singh (the two appellants), Bhan Singh, Darshan Singh and Ranjit Singh. During investigation police found Joginder Singh and Ram Singh to be innocent and, therefore, charge-sheet was submitted only against the remaining accused. The learned magistrate committed the three accused to the

Sessions Court. The learned Additional Sessions Judge, Ludhiana framed charges against the three accused for offences under Sections 452, 308 and 323 IPC read with Section 34 IPC. In their evidence, Mohinder Singh and Ajaib Singh implicated both the appellants. Thereupon, the Public Prosecutor filed an application for summoning the appellants. On behalf of the appellants, it was argued that the learned Additional Sessions Judge had no jurisdiction or power to summon the appellants and array them as accused because they had neither been charge-sheeted nor committed to stand trial. The learned Additional Sessions Judge negatived the contention of the appellants and directed that they be impleaded as accused. The High Court dismissed the revision filed by the appellants. This Court noticed the provisions of Sections 193, 207-A and 209 Cr.P.C. and observed:

> It is true that there cannot be a committal of the case without there being an accused person before the Court, but this only means that before a case in respect of an offence is committed there must be some accused suspected to be involved in the crime before the Court but once the case in respect of the offence qua those accused who are before the Court is committed then the cognizance of the offence can be said to have been taken properly by the Sessions Court and the bar of Section 193 would be out of the way and summoning of additional persons who appear to be involved in the crime from the evidence led during the trial and directing them to stand their trial along with those who had already been committed must be regarded as incidental to

such cognizance and a part of the normal process that follows it; otherwise the conferral of the power under Section 319(1) upon the Sessions Court would be rendered nugatory. Further Section 319(4)(*b*) enacts a deeming provision in that behalf dispensing with the formal committal order against the newly added accused. Under that provision it is provided that where the Court proceeds against any person under sub-section (1) 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; in other words, such person must be deemed to be an accused at the time of commitment because it is at that point of time the Sessions Court in law takes cognizance of the offence.

In the above context it will be useful to refer to a decision of this Court in *Raghubans Dubey* v. *State of Bihar* where this Court has explained what is meant by taking cognizance of an offence. The appellant was one of the 15 persons mentioned as the assailants in the first information report. During the investigation the police accepted the appellant's plea of alibi and filed a charge-sheet against the others for offences under Sections 302, 201 and 149 IPC, before the Sub-Divisional Magistrate. The Sub-Divisional Magistrate recorded that the appellant was discharged and transferred the case for inquiry to another Magistrate, who, after examining two witnesses, ordered the issue of a non-bailable warrant against the appellant, for proceeding against him along with the other accused under Section 207-A of the old Code. The order was confirmed by the Sessions Court and the High Court and in further appeal to this Court it was held first, that there could be no discharge of the appellant as he was not included in the charge-sheet submitted before the Magistrate by the police and, second that the appellant could be proceeded against along with other accused under Section 207-A Cr PC and this Court confirmed the order of the Magistrate. One of the contentions urged before this Court was that the Magistrate had taken cognizance of the offence so far as the other accused were concerned but not as regards the appellant and with regard to this contention Sikri, J. (as he then was) observed as follows:

> In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence. As pointed out by this Court in *Pravin Chandra Mody* v. *State of Andhra Pradesh* the term 'complaint' would include allegations made against persons unknown. If a Magistrate takes cognizance under Section 190(l)(*a*) on the basis of a complaint of facts he would take cognizance and a proceeding would be instituted even though persons who had committed the offence were not known at that time. The same position prevails, in our view, under Section 190(l)(*b*).
>
> It will thus appear clear that under Section 193 read with Section 209 of the Code when a case is committed to the Court of Sessions in respect of an offence the Court of Sessions takes cognizance of the offence and not of the accused and once the Sessions Court is properly seized of the case as a result of the committal order against some accused the power under Section 319(1) can come into play and such Court can add any person, not an accused before it, as an accused and direct him to be tried along with the other accused for the offence which such added accused appears to have committed from the evidence recorded at the trial. Looking at the provision from this angle there would be no question of reading Section 319(1) subject or subordinate to Section 193.

The argument that Section 319 Cr.P.C. excludes from its operation an accused who has been released by the police under Section 169 Cr.P.C. was rejected by the Court by making the following observations:

> The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court are included in the said expression.

13. The scope of Section 319 Cr.P.C. was considered in **Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others** (1983) 1 SCC 1, in the backdrop of the fact that the High Court had, in exercise of its power under Section 482 Cr.P.C., quashed the proceedings taken against respondent Nos.1 to 5 of whom respondent No.1 – Ram Kishan Rohtagi was the Manager of the company engaged in manufacturing Modern Toffees and respondent Nos.2 to 5 were its Directors. This Court reversed the order of the High Court insofar as respondent No.1 was concerned, but upheld the same in respect of other accused and proceeded to observe:

> "Although we uphold the order of the High Court we would like to state that there are ample provisions in the Code of Criminal Procedure, 1973 in which the Court can take cognizance against persons who have not been made accused and try them in the same manner along with the other accused. In the old Code, Section 351 contained a lacuna in the mode of taking cognizance if a new person was to be added as an accused. The Law Commission in its 41st Report (para 24.81) adverted to this aspect of the law and Section 319 of the present Code gave full effect to the recommendation of the Law Commission by removing the

> lacuna which was found to exist in Section 351 of the old Code."

The Court then referred to the judgment in **Joginder Singh and another v. State of Punjab and another** (supra) and held:

> "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."

14. In **Lok Ram v. Nihal Singh and another** (2006) 10 SCC 192, the Court examined the correctness of the direction given by the High Court for impelading the appellant as an accused in terms of Section 319 Cr.P.C. The facts of that case were that two daughters of Nihal Singh (the complainant) were married to two sons of the appellant – Lok Ram. One of the daughters of Nihal Singh, namely, Saroj died on 14.9.2001. Soon thereafter, Nihal Singh filed complaint at Police Station Fatehabad (Haryana) alleging commission of offence under Section 406 read with Section 34 IPC. During investigation, the appellant claimed that he was serving in a school at the time of the death of Saroj. His plea was

accepted by the Investigating Officer and he was not charge-sheeted. During trial, the complainant filed an application under Section 319 Cr.P.C. By an order dated 6.9.2002, the learned Sessions Judge rejected the application. That order was reversed by the High Court and a direction was given to the trial court to proceed against the appellant by summoning him. Before this Court, it was argued that the appellant could not be summoned under Section 319 Cr.P.C. because even though he was named in the FIR as an accused, the police did not find any evidence against him and was not charge-sheeted. While rejecting the argument, the Court referred to the judgments in **Joginder Singh and another v. State of Punjab and another** (supra), **Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others** (supra), **Michael Machado and another v. Central Bureau of Investigation and another** (2000) 3 SCC 262, and observed:

> "On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with the other accused persons, if the court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. <u>It is further evident that such person, even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis</u>

> of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence. Of course, as evident from the decision in *Sohan Lal* v. *State of Rajasthan*, the position of an accused who has been discharged stands on a different footing."
>
> Power under Section 319 of the Code can be exercised by the court suo motu or on an application by someone including the accused already before it. If it is satisfied that any person other than the accused has committed an offence he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates the evidence of witnesses given in court. Under sub-section (4)(*b*) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of sub-section (4)(*b*) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned."
>
> (emphasis supplied)

15. In view of the settled legal position as above, we hold that a person who is named in the first information report or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or files charge-sheet or drops the case, can be proceeded against under Section 319 Cr.P.C. if

from the evidence collected/produced in the course of any inquiry into or trial of an offence, the Court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused. As a corollary, we hold that the process issued against the appellant under Section 319 Cr.P.C. cannot be quashed only on the ground that even though she was named in the complaint, the police did not file charge-sheet against her.

16. Before proceeding further, we deem it proper to observe that in some of the decisions, this Court has emphasized that discretion under Section 319 Cr.P.C. should be exercised cautiously and not as a matter of routine – **Michael Machado v. Central Bureau of Investigation** (supra), **Anil Singh and another v. State of Bihar and another** (2006) 13 SCC 421 and **Mohd. Shafi v. Mohd. Rafiq and another** (2007) 14 SCC 544. In **Michael Machado's** case, the Court was called upon to consider whether the Metropolitan Magistrate was justified in summoning the appellants under Section 319 Cr.P.C. at the penultimate stage of the trial. The first appellant in that case was the Chief Manager of Malad Branch of Corporation Bank at Mumbai and the second appellant was Chief Manager of Wadala Branch (Mumbai). On a complaint lodged by Deputy Manager of the bank with the allegation that the bank has been

defrauded by certain persons resulting in financial loss to the tune of Rs.50 lacs, a first information report was registered by the police. After investigation two charge sheets were filed before Metropolitan Magistrate against 4 persons. After perusing the charge sheets, the Metropolitan Magistrate felt that the CBI, which had conducted the investigation, was shielding the appellants. He, therefore, sought explanation from the CBI. After considering the explanation, the Metropolitan Magistrate opined that the Investigating Officer had committed an offence under Section 219 IPC and issued notice to him. Simultaneously, the learned Metropolitan Magistrate decided to implead the appellants as additional accused. That order was challenged by the concerned Investigating Officer. The High Court quashed the order but left it open to the Metropolitan Magistrate to take necessary action under Section 319 Cr.P.C. at an appropriate stage. Thereafter, the trial commenced against the four accused and as many as 49 witnesses were examined by the prosecution. Till that stage, learned Metropolitan Magistrate did not consider it necessary to implead the appellants as accused. However, when statements of the remaining three witnesses were recorded, he passed a brief order summoning the appellants. The High Court upheld the order of the Metropolitan Magistrate. This Court quashed the summoning order by observing that though evidence of last 3 witnesses may create some suspicion against the

appellants but that was not sufficient for convicting the appellants for the offence of conspiracy. The Court also felt that there was no warrant for wasting the massive evidence collected by the trial Court against the 4 accused. In the course of judgment, the Court made the following observation:

> "The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.
>
> But even then, what is conferred on the court is only a discretion as could be discerned from the words "the court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that other person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons."

17. In the light of the above, we shall now consider whether the learned Judicial Magistrate was justified in taking cognizance against the appellant under Section 498-A IPC or the satisfaction recorded by him for issuing process against the appellant under Section 319 Cr.P.C. is vitiated by any legal infirmity and the learned Sessions Judge and High Court committed an error by refusing to quash the order passed by him. In the complaint filed by her, respondent No.2 alleged that after one week of the marriage, her mother-in-law – Rukmani Devi and nanad – Suman (the appellant herein) told her that in the marriage, items like scooter, fridge, air-conditioner etc. have not been given and the marriage party was not served well; that mother-in-law – Rukmani Devi and nanad – Suman forcibly took the complainant to a lady doctor and got implanted Copper-T so that she may not give birth to any child; that nanad – Suman started instigating the husband of the complainant either on phone or otherwise and thereupon, he not only used to assault, but also humiliate and torture the complainant; that on 7.4.2002 the husband gave beating with the belan and nanad – Suman snatched her hair and forcibly removed the rings. In her statement made before the police under Section 161 Cr.P.C., respondent No.2 reiterated all the allegations. The father and mother of respondent No.2 and 4 other persons, whose statements were recorded under Section 161 Cr.P.C., clearly spelt out the role played by the

appellant in harassing respondent No.2 and instigating her husband to inflict torture upon her. Despite this, the police did not file charge-sheet against the appellant thinking that she had no occasion to make demand for dowry or harass respondent No.2 because she was living with her husband, Mahendra Pal at Bikaner. In her statement recorded under Section 164 Cr.P.C., respondent No.2 again made specific allegations against the appellant. While deciding the application filed under Section 319 Cr.P.C., the learned Judicial Magistrate noticed the allegations made by respondent No.2 in the complaint that her mother-in-law, Smt. Rukmani Devi and sister-in-law, Suman had castigated her for insufficient dowry and subjected her to physical and mental harassment and that the sister-in-law had instigated her husband to inflict physical torture, which were supported by the statements recorded by the police under Section 161 Cr.P.C. The learned Judicial Magistrate further noted that in her statement under Section 164 Cr.P.C., the complainant has clearly spelt out the role played by the appellant in the matter of demand of dowry, physical and mental harassment and the fact that the complainant had made a specific mention about this in the letters written to her parents and opined that prima facie case was made out for issuing process against the appellant. Therefore, it must be held that the learned Judicial Magistrate had objectively considered the entire matter and judiciously exercised

discretion under Section 319 Cr.P.C. for taking cognizance against the appellant. Although at one stage, the learned Sessions Judge allowed the revision filed by the appellant and declared that in view of the bar of limitation contained in Section 468 Cr.P.C., the learned Judicial Magistrate could not have taken cognizance against the appellant, the said order was set aside by the High Court and the matter was remitted for fresh disposal of the revision petition. In the post remand order passed by him, the learned Sessions Judge independently examined the entire record and held that prima facie case was made out for initiating proceedings against the appellant herein under Section 498-A IPC. Therefore, it is not possible to agree with the learned senior counsel for the appellant that issue of summons against the appellant amounts to abuse of the process of the Court.

18. In the impugned order, the High Court has broadly referred to the factual matrix of the case and held that the orders passed by the learned Judicial Magistrate and Sessions Judge do not suffer from any illegality or perversity warranting interference under Section 482 Cr.P.C. The approach adopted by the High Court is in consonance with the law laid down by this Court in **State of Haryana v. Bhajan Lal** (1992) Suppl.(1) SCC 335, **C.B.I. v. Ravi Shankar Srivastava** (2006) 7 SCC 188, **R.**

Kalyani v. Janak C. Mehta (2009) 1 SCC 516 and **Mahesh Choudhary v. State of Rajasthan** (2009) 4 SCC 439.

19. In the result, the appeal is dismissed.

20. It is needless to say that if the trial Court has not proceeded with the case on account of pendency of the petition filed by the appellant in this Court, the concerned Court shall now proceed with the trial and decide the matter expeditiously.

.....J.
[R.V. RAVEENDRAN]

.....J.
[G.S. SINGHVI]

New Delhi
November 13, 2009