

Court No.79**Case :-** CRIMINAL REVISION No. - 489 of 2023**Revisionist :-** Neeta Kapoor**Opposite Party :-** State of U.P. and Another**Counsel for Revisionist :-** Om Prakash Pandey, Nigamendra Shukla**Counsel for Opposite Party :-** G.A., Basu Dev**Hon'ble Vipin Chandra Dixit, J.**

1. This criminal revision has been filed by the revisionist against the order dated 5.1.2023 passed by Additional Sessions Judge/Special Judge (M.P./M.L.A.) Allahabad in Sessions Trial No.565 of 2018, by which application filed by revisionist under Section 319 Cr.P.C. was rejected.

2. Heard Sri Nigamendra Shukla, learned counsel for the revisionist, learned A.G.A. for the State and Sri Basu Dev, learned counsel for opposite party no.2 and perused the record.

3. The brief facts of the case are that the revisionist had lodged a F.I.R. on 9.3.2018 with the allegation that her daughter namely Varsha Makheeja @ Nikki was murdered by her husband and other family members of husband on account of demand of dowry. The F.I.R. was registered as Case Crime No.61 of 2018, under Sections 498A, 304B I.P.C. and Section 3/4 D.P. Act. It is alleged in the F.I.R. that the marriage of her daughter was solemnized with Raju Makheeja on 12.12.2016 and his daughter was tortured by her husband and other in-laws and was murdered on account of demand of dowry. The F.I.R. was lodged against husband namely Raju Makheeja, Ramesh Makheeja (father-in-law), Santosh Makheeja (brother-in-law) and Rekha Makheeja (sister-in-law). The Investigating Officer after completing the investigation had submitted the charge-sheet against Raju Makheeja, Ramesh Makheeja and Santosh Makheeja, who are husband, father-in-law and brother-in-law respectively and Rekha Makheeja, who is sister-in-law of the deceased was exonerated by the

Investigating Officer. During trial informant Neeta Kapoor, who is mother of deceased was appeared as P.W.-1, Reeta Kapoor, who is sister of deceased as P.W.-2 and Ankit Kapoor, who is brother-in-law (Jija) of deceased as P.W.-3. After the statements of P.W.-1, P.W.-2 and P.W.-3, the informant/revisionist had moved an application under Section 319 Cr.P.C. on 21.9.2022 with the averment that there are sufficient evidence regarding involvement of Rekha Makheeja and the Investigating Officer in her collusion has not submitted any charge-sheet against her. The request has been made to summon Rekha Makheeja to face trial. Learned trial court after considering the evidence and materials which are available on record had rejected the application filed under Section 319 Cr.P.C. (Paper No.15-Kha) vide order dated 5.1.2023 which is impugned in the present criminal revision.

4. It is submitted by learned counsel for revisionist/informant that the daughter of revisionist namely Varsha Makheeja @ Nikki was tortured by all the accused persons, who were named in the F.I.R. and there are specific allegations against the opposite party no.2 Rekha Makheeja, who is Nanad of deceased for demand of dowry and involvement in committing murder of her daughter. The Investigating Officer without conducting fair investigation has submitted charge-sheet only against husband, father-in-law and brother-in-law and opposite party no.2, who is sister-in-law of the deceased was exonerated by the Investigating Officer. From the evidence of P.W.-1, P.W.-2 and P.W.-3 the offence against opposite party no.2 was fully proved and she is also liable to be tried along with other co-accused persons. The trial court has committed illegality in rejecting the application filed by revisionist under Section 319 Cr.P.C. by the impugned order. Lastly, it is submitted that the entire evidence and materials which are available on record had not been properly considered by the trial court and the application filed by the

revisionist under Section 319 Cr.P.C. was rejected in a very casual manner.

5. On the other hand, learned counsel for opposite party no.2 has submitted that Investigating Officer after conducting fair investigation has not found any reliable and cogent evidence against opposite party no.2 and as such she was rightly exonerated by the Investigating Officer. The trial court after considering the evidence of P.W.-1, P.W.-2 and P.W.-3 had recorded the finding that the involvement of opposite party no.2 for committing offence is not proved. The trial court has recorded the finding after considering the evidence of prosecution witnesses that none of the witness has stated about the presence of opposite party no.2 at the place of occurrence. All the three witnesses have stated in their statements before the trial court that when they reached to the house of husband after receiving information, the husband namely Raju Makheeja, father-in-law Ramesh Makheeja, brother-in-law Santosh Makheeja, Seema Sindhi and Raju @ Sachin were present at the house of husband/place of incident. The trial court after prima-facie satisfaction that the involvement of opposite party no.2 is not established from the evidence of P.W.-1, P.W.-2 and P.W.-3 had rightly rejected the application under Section 319 Cr.P.C. filed by the revisionist. There are general allegations regarding demand of dowry against opposite party no.2 and there is no specific allegation against the opposite party no.2 for participation in the crime alleged to be committed by the other accused persons. It is further submitted that opposite party no.2 is married sister of husband and is residing at Shahjahanpur and had no concern in any manner with the family affairs of his brother but being real sister of husband, she has been falsely roped in this case by the informant.

6. Learned counsel for opposite party no.2 has further submitted that the powers given under Section 319 of Cr.P.C. are discretionary

powers of the court and are to be exercised sparingly and the trial court after having thoroughly examined the record found no substance in the application filed under Section 319 Cr.P.C. and has rightly rejected the same.

7. Before considering the merits of the contention of rival parties it is necessary to refer to Section 319 Cr.P.C. which 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 has 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 the witnesses re- heard;

(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.”

8. By bare reading of Section 319 Cr.P.C. it is clear that the power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during trial to summon any person as an accused to face the trial if it appears from the evidence that such person has committed any offence for which such person could be tried together with other accused.

9. The provisions of Section 319 Cr.P.C. have been enacted in the Code of Criminal Procedure with a view to achieve objective that the real culprit should not get away unpunished and the court is empowered to proceed against any person not shown as an accused if

it appears from the evidence that such person has committed any offence then he may be summoned to face the trial along with other co-accused.

10. The Full Bench of Hon'ble Apex Court in the case of ***Hardeep Singh Vs. State of Punjab and others*** reported in ***2014 (1) JIC 539 (SC)*** has laid down the principles in respect of summoning the persons who are not charge-sheeted during investigation but from the evidence they were found guilty for committing such an offence. The relevant paragraphs 96, 97, 107, 108 are quoted hereunder:-

*“96. 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 Cr.P.C., though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two- Judges Bench of this Court in *Vikas v. State of Rajasthan*, 2013 (11) SCALE 23, 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.*

*97. In *Rajendra Singh* (Supra), the Court observed:*

“Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion not to proceed, since the expression used is “may” and not “shall”. The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression “appears” indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not.”

107. Power under Section 319 Cr.P.C. 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.

108. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the

time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.

11. The power of trial court under Section 319 Cr.P.C. in respect to arraign any person as an accused during the course of enquiry or trial is also dealt with by Hon'ble the Apex Court in the case of ***Babubhai Bhimabhai Bokhiria and another Vs. State of Gujarat and others***, reported in **(2014) 5 SCC 568**, the relevant paragraph 8 is quoted hereunder:-

"8. Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking power under Section 319 of the Code, this Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Code is much higher."

12. The same view has been taken by Hon'ble Apex Court in **(2019) 7 SCC 806 Shiv Prakash Mishra Vs. State of Uttar Pradesh and another**. The relevant paragraph 10 is quoted herein below:-

"10. The standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C. is higher than the standard of proof employed for framing a charge against the accused person. The power under Section 319 Cr.P.C. should be exercised sparingly. As held in Kailash v. State of Rajasthan: (SCC p. 55, para 9)

"9. the power of summoning an additional accused under Section 319 Cr.P.C. should be exercised sparingly. The key words in Section are "it appears from the evidence".... "any person".... "has committed any offence". It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Cr.P.C. would be used by the court."

13. It has been repeatedly held by the Hon'ble Apex Court in series of cases that the power to summon an accused is an extra-ordinary power conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against other persons against whom action has not been taken. The powers conferred to the trial court under Section 319 Cr.P.C. are discretionary and it should not be applied mechanically.

14. The revisional power of High Court is very limited as held by Hon'ble Apex Court in the case of ***Ashish Chadha Vs. Asha Kumari and another*** reported in ***(2012) 1 SCC 680***. The relevant paragraph 21 is referred as under:-

"21. In this connection, we may usefully refer to the observations of this court in Munna Devi vs. State of Rajasthan & another (SCC p.632, para 3).

"3. We find substance in the submission made on behalf of the appellant. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged."

15. The High Court while exercising the revisional jurisdiction has no authority to appreciate the evidence in the manner as the trial court and the appellate court are required to do. The revisional powers under the Code of Criminal Procedure cannot be exercised in a routine and casual manner and it could be exercised only when it is shown that there is legal bar against the continuance of the criminal proceedings.

16. After considering the rival submissions of learned counsels for the parties as well as material brought on record, the impugned order does not suffer from any illegality or irregularity and the learned trial court has not committed any error in rejecting the application filed by

revisionist under Section 319 Cr.P.C. In the present case the trial court has not committed any illegality or infirmity in rejecting the application after prima-facie satisfaction that the evidence adduced by the prosecution did not establish the involvement of opposite party no.2 in the crime. The evidence brought on record during trial does not prima facie show the complicity of opposite parties no.2 in the occurrence and the trial court has rightly refused to summon her as an accused. The revisionist has failed to point out any infirmity or illegality in the order. The present criminal revision lacks merits and deserves to be dismissed.

17. Accordingly, the criminal revision is dismissed.

18. Interim order, if any, stands discharge.

Order Date :-01.11.2023

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