

In Chamber

Case :- CRIMINAL REVISION No. - 2453 of 2000

Revisionist :- Smt. Raj Kumari

Opposite Party :- State of U.P.

Counsel for Revisionist :- Sudhir Kumar Agarwal, Pankaj
Sharma, Prashant Sharma

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard learned counsel for the revisionists, learned AGA for the State and perused the material placed on record.
2. Instant criminal revision has been preferred against the order dated 2.11.2000, passed by learned Additional Session Judge, Aligarh, in S.T. No.152 of 1998, (State vs. Bal Kishan and others), Police Station Sasni Gate, District Aligarh, whereby the revisionist has been summoned to face trial for charge under Sections 147, 452, 302, 323/149 IPC, on application under Section 319 Cr.P.C. moved by the informant Dinesh Chand, who was examined as PW-1 in said Sessions case.
3. The factual matrix of the case in brief, as revealed from first information report version, are that the accused persons Bal Kishan, Rajesh, Praveen, Rajkumari, Yamuna Prasad and Shantiswaroop came to the house of informant. They were armed with baton stick and knife. They broke the door of the house, which was under construction. His son Jagdish was sitting on a cot in the courtyard of the house. The informant was also sitting there. Accused persons, after breaking the door came into the house and gave beating to him by sticks and drag him outside the house near the house of Praveen and others. The daughter-in-law of informant followed them to save her husband but the accused also gave

beating to her. The villagers assembled there and saw the occurrence. His son died on the spot due to injuries caused by the accused persons. All the accused had beaten his son by sticks. Prior to the incident, some altercation took place between her deceased son and accused persons. However, police investigated the case and filed chargesheet against named accused persons barring revisionist Rajkumari, as her complicity in the offence was not found during investigation. During trial of chargesheeted accused persons, the statement of PW-1, in which he supported his FIR version after statement of PW-1, an application under Section 319 Cr.P.C. was moved by the informant on 11.10.2000, wherein he stated that he named accused Rajkumari also in FIR and the witnesses Dinesh Chandra, Suresh Chandra and Smt. Baby in their statements under Section 161 Cr.P.C. deposed against Rajkumari that she had participated in the offence alongwith accused persons, who are already facing trial. She was involved in the maar-peet alongwith other accused persons with the deceased. However, police deleted her name from chargesheet in collusion with the accused persons. Learned court below by impugned order, summoned named accused Smt. Rajkumari to face trial on application under Section 319 Cr.P.C. moved by PW-1 Dinesh Chandra, together with the accused persons, who are already facing trial. An objection was also filed by proposed accused Smt. Rajkumari, in which she stated that on the date of incident, she was present at the place of her son Rakesh Kumar in District Bharatpur, Rajasthan. Learned court below after hearing submissions of both sides, observed that the proposed accused Smt. Rajkumari is named in the FIR, however, during investigation, The investigating Officer placed reliance on affidavit filed by some localites of Bharatpur, which was addressed to S.P., Aligarh and filed before him on 7.7.1997 to the effect that she was present at Bharatpur till 5.6.1997 to the date of filing of affidavit i.e. 7.7.1997. However, the informant and his other witnesses have stated about her complicity in the offence in their statements

recorded under Section 161 Cr.P.C. The Investigating Officer also recorded statement of deponent Bharatpur and did not file chargesheet against her and filed a report before court concerned that in case the court deems her as guilty, action may be taken against her.

4. Learned court below further observed that proposed accused Rajkumari is named in the FIR and the witnesses of informant's side have given clear statement regarding her complicity in the offence during investigation. PW-1 Dinesh Chand has also testified regarding her complicity in the statement before the court. The version of accused that she was present on the date and time of incident at some other place is not supported with any documentary or conclusive evidence and the affidavits of witnesses of locality cannot be treated as conclusive evidence in support of this fact and affidavit is not admissible in proof of such facts.

5. Learned counsel for the revisionist submitted that the revisionist is an old and infirm lady, who is more than 80 years of age. She was around 66 year of age at the time of incident, which occurred in the year 1997. The name of present revisionist, who was an old woman, was added in array of the accused persons by the informant on account of enmity. Learned court below has summoned the revisionist to face trial on the basis of statement in Chief of PW-1 without waiting for his cross-examination. There is ample material available on record that the revisionist was at Bharatpur, State of Rajasthan on the date and time of the incident. The impugned order of court below is mainly based on statement of witnesses examined by the Investigating Officer during investigation instead of evidence led during trial. Learned court below has failed to appreciate the evidence on record while summoning the accused-revisionist to face trial in exercise of power conferred under Section 319 Cr.P.C. Learned court below mainly criticizing the Investigating Officer while deleting the name of revisionist in chargesheet instead of examining

the material on record, in proper perspective, the impugned order is vitiated by non exercise of mind and the same is liable to be set aside.

6. Learned counsel for the revisionist further submitted that deceased Jagdish was a man of criminal antecedents and he was having a criminal history of four cases ranging from year 1982 to 1995 including a case under Section 302 Cr.P.C. and the other is under Section 307 IPC. He might have been eliminated by his enemies in retaliation. Out of six named persons, naming of revisionist Rajkumari was found false during investigation and for that reasons, she was not chargesheeted. After summoning of revisionist under Section 319 Cr.P.C. by impugned order passed by learned court below, cross-examination of PW-1 was recorded in which he stated that on 28.5.2000 that he is around 70 years old. His health is poor and his vision has become weak and he fails to see in the night. There was no light at the time of incident. He could not identify any of the assailants. Deceased Jagdish was involved in many cases. After statement, he was declared hostile by orders of trial court and in cross-examination by the prosecution side, he clarified that whatever is stated in Examination-in-Chief was due to mental imbalance. He was very sick at that time. He also stated that he had not given any statement to Investigating Officer. He got the written report scribed by son of Motu and signed the same without reading or hearing its contents. On 28.5.2001, statement of PW-2 Amit was recorded, who was also declared hostile. On 28.5.2001, the statement of PW-3, Baby, wife of deceased was recorded, who was also declared hostile and thereafter the case of present revisionist was separated by order dated 19.2.2002, as the proceeding with regard to present revisionist was lying stayed by orders of this Court inasmuch as vide order dated 27.4.2002, all the chargesheeted accused persons were acquitted and a copy of judgement of acquittal has been filed for perusal of this Court. The accused persons also examined Constable as D.W.-1, who worked in police station Sasni Gate, District

Aligarh, who stated about the registration of four cases against deceased at police station concerned.

7. Learned counsel for the revisionist also filed a copy of certified copy of judgment dated 27.4.2002, in S.T. No.152 of 1998, passed by learned IVth Additional Session Judge, Aligarh in respect of his above contention. The judgment reveals that the accused persons in the case, who were facing trial, are acquitted from all the charges framed against them under Sections 147, 148, 452, 302/149, 323/149 IPC.

8. Per contra, learned AGA submitted that there is no illegality, infirmity or irregularity in the impugned order passed by learned court below, which is based on material placed on record and this is well settled law that trial court can summon a person as an accused in exercise of powers conferred under Section 319 Cr.P.C. on the basis of evidence of witness(s) recorded during trial as Examination-in-Chief without waiting for the cross-examination of the witnesses.

9. From perusal of said judgment, it appears that PW-1 in his cross-examination as well as other witnesses of fact in their sworn testimony before the court have not deposed against any of the accused persons, who are facing trial including present revisionist, who has been summoned to face trial under Section 319 Cr.P.C. Learned trial court has failed to give its satisfaction regarding existence of prima facie case against the revisionist, which should be of higher degree of prima facie case envisaged for framing of charge, as held by Hon'ble Apex Court in a Constitutional Bench Judgement **Hardeep Singh and others vs. State of Punjab and others; 2014 (3) SCC, 92-** wherein all the issues relating to scope and object of summoning the accused under Section 319 Cr.P.C. has been well considered and settled by Constitutional Bench consisting of five Judges of Apex Court.

10. Following five questions were before the Apex Court in the case of Hardeep Singh (Supra):-

(i) What is the stage at which power under Section 319 Cr.P.C. can be exercised?

(ii) Whether the word "evidence" used in Section 319 (1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

(iii) Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial"

(iv) What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign and accused? Whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood convicted?

(v) Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?

11. The aforesaid question No. iv has been discussed in Para 93 to 99 and answered in Para- 98 and 99 of the said judgment, which are reproduced herein below:-

"98. 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.

99. 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 un rebutted, 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".

12. The aforesaid principles laid down by the Apex Court in the case of Hardeep Singh (supra) has been reiterated further in case of **Brijendra Singh and others vs. State of Rajasthan; 2017(7) SCC 706** as well as in the case **S Ahmad Ispahni vs. Yogendra Chandak and others; 2017 (16) SCC 226** observing that power under Section 319 Cr.P.C. can be exercised only where strong and cogent evidence are found against a person and not in a casual and cavalier manner. The decree of satisfaction before summoning the offence under Section 319 Cr.P.C. must be more than prima facie, which is warranted at the time of framing of charges against the accused.

13. Considering the fact that all the chargesheeted accused persons, who are attributed active role in the commission of the offence resulting death of deceased Jagdish are already acquitted of all the charges framed

against them and the case of present revisionist could not be taken up by the learned trial court while deciding the said case due to fact that the proceeding were lying stayed by interim orders of this Court passed in present revision vide order dated 16.11.2000, the trial of present revisionist could be a futile exercise in the changed circumstances as the main trial has already been concluded and resulted in acquittal of all the accused persons, who were facing trial. Therefore, no useful purpose of law appears to be served by putting the revisionist on trial in said case, pursuant to impugned summoning order.

14. The impugned order passed by learned court below is not sustainable under law as while passing the said order, learned court below failed to exercise its jurisdiction in proper perspective without recording its satisfaction regarding existence of a prima facie case required for exercising powers under Section 319 Cr.P.C. and summoned the accused revisionist, who was also an elderly lady at that time in cursory manner, placing reliance on bald statement of PW-1.

15. In view of aforesaid, present criminal revision stands **allowed** and the impugned order dated 2.11.2000 passed by learned court below is set aside.

14. Let a certified copy of this judgment be forwarded to court concerned for information/ necessary action.

Order Date :- 17.11.2023

Kamarjahan