

RESERVED

Court No. - 79

Case :- CRIMINAL REVISION No. - 3051 of 2023

Revisionist :- Ankit

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- M.P.S. Chauhan

Counsel for Opposite Party :- G.A.,Jitendra Pal Singh Jadaun

Hon'ble Vipin Chandra Dixit,J.

1. Heard Sri M.P.S. Chauhan, learned counsel for the revisionist, learned A.G.A. for the State and Sri Jitendra Pal Singh Jadaun, learned counsel for the opposite party no.2 and perused the record.

2. This criminal revision has been filed by the revisionist against the order dated 16.05.2023 passed by Additional District and Sessions Judge, Fast Track Court, Court No.-2, Aligarh in Session Trial No.- 1553 of 2021 (State Vs. Prem Pal Singh and others) arising out of Case Crime No.- 0319 of 2020 under Sections 147, 148, 149, 307, 506 I.P.C., Police Station- Gaunda, District- Aligarh, by which the application filed by informant under Section 319 Cr.P.C. was allowed and revisionist was summoned to face trial.

3. The brief fact of the case is that the opposite party no.2 had lodged a first information report against six accused persons including the revisionist with the allegation that the accused persons armed with rifle and country made pistol had opened fire upon brother of informant, namely, Ram Pratap @ Pintu, who had received gun shot injury. The F.I.R. was registered as Case Crime No.- 0319 of 2020. The statement of informant as well as injured were recorded under Section 161 Cr.P.C. in which they have supported the prosecution case. They have stated in their statements recorded under Section 161 Cr.P.C. that the accused persons including revisionist with the common intention had opened fire upon the injured who have received gun shot injury. The name of revisionist was disclosed by the informant as well as injured in their statement before the Investigating Officer. The Investigating Officer, after completing the investigation has submitted charge sheet against the other five accused persons who were named in the first information report and has exonerated the revisionist. During trial the statement of informant who appeared as PW1 and injured witness, namely, Ram Pratap @ Pintu who appeared a PW2 were recorded in which they have fully supported the prosecution case. The informant as well as injured have specifically named revisionist in their statement recorded before the trial court. After the statements of PW1 and PW2, the informant had moved an application under Section 319 Cr.P.C. for summoning revisionist with the averment that the revisionist was also accompanying with other co-accused persons and he was armed with country made pistol at the time of

incident and all the accused persons including revisionist with common intention have opened fire upon the injured but the Investigating Officer with the collusion of revisionist has submitted charge sheet only against other five accused persons and revisionist was exonerated. The trial court after considering the statement of PW-1, PW-2 and other materials which are available on record had found that there are sufficient material against the revisionist for his involvement in the crime, had summoned the revisionist to face trial vide order dated 16.05.2023.

4. It is submitted by learned counsel for the revisionist that the revisionist is innocent and has been falsely implicated in this case. There are sever contradiction in the statement of informant as well as injured witnesses before the trial court and involvement of revisionist in committing crime was not proved. It is further submitted that the revisionist being son of Prem Pal Singh co-accused and brother of other co-accused has been falsely implicated in this case. Lastly, it is submitted that the revisionist was not present at the place of incident and the Investigating Officer after due investigation had found that the revisionist was 25 k.m. away from the place of incident and as such was exonerated. No offence under Section 307 is made out against the revisionist.

5. On the other hand, learned counsel appearing on behalf of opposite party no.2/informant has submitted that the revisionist was named in the first information report. The informant and injured have also named the revisionist in their statements recorded by the Investigating Officer under Section 161 Cr.P.C. They also appeared before the trial court as PW-1 and PW-2 and both the witnesses of prosecution have stated that the revisionist was also accompanying with the other co-accused and also participating in crime. The involvement of revisionist in committing crime was fully established before the trial court. Lastly, it is submitted that the Investigating Officer without conducting fair investigation and with the collusion of revisionist has exonerated him. The learned trial court after considering the statement of informant as well as injured has found that there are sufficient evidence against the revisionist regarding his participation in the offence and as such has rightly summoned the revisionist to face trial.

6. Before considering the merits of the contention of rival parties it is necessary to refer 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."

7. 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 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.

8. 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.

9. 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 were 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 extra- ordinary 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 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."

10. 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."

11. Considering the rival submissions of learned counsel or the parties and on perusal of record, it is apparent that both the witnesses PW-1(informant) and PW-2(injured witness) named the revisionist in their statements and to prove his presence at the place of incident. The Investigating Officer has committed wrong to exonerate the revisionist accepting the location of revisionist 25 k.m. away from the place of incident as per C.D.R., whereas C.D.R. being electronic record and was not proved in terms of Section 65-B of Indian Evidence Act. The statement of informant as well as injured witness was also considered by the trial court while allowing the application. The trial court after considering the entire evidence and materials which are available on record has recorded its satisfaction regarding involvement of revisionist and has rightly summoned the revisionist to face trial.

12. No ground for interference is made out.

13. The criminal revision is devoid of merits and deserves to be dismissed.

14. The criminal revision is ***dismissed***, accordingly.

Order Date :- 1.12.2023

Virendra