

Reserved

Court No. - 79

Case :- CRIMINAL REVISION No. - 3290 of 2023

Revisionist :- Israr And Another

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

Counsel for Revisionist :- Mukhtar Alam, Keshari Nath Tripathi

Counsel for Opposite Party :- G.A., Firoz Haider, Sanjay Kumar Pal

Hon'ble Vipin Chandra Dixit, J.

This criminal revision has been filed by revisionists against the order dated 31.5.2023 passed by Additional District & Session Judge, Court No. 9, Moradabad in Sessions Trial No. 565 of 2018(State vs. Irshad and others), by which application filed by prosecution under Section 319 Cr.P.C. was allowed and revisionists were summoned to face trial.

Heard Sri Mukhtar Alam, learned counsel for revisionists, learned AGA for the State and Sri S.A. Imam, Advocate, holding brief of Sri Firoz Haider, learned counsel for opposite party no.2.

Brief facts of the case is that opposite party No.2 had lodged an FIR against 12 accused persons including revisionists which was registered as Case Crime No. 0165 of 2016 under Sections 147, 148, 149, 302, 307, 504, 506 IPC at police station Bhagatpur, District Moradabad. In the said incident, four persons have received grievous injuries and Wahid, brother of informant died due to injuries received by him.

The Investigating Officer has recorded statement of informant and other witnesses under Section 161 Cr.P.C. and after completion of investigation submitted charge sheet against ten named accused persons and exonerated revisionists who were named in the FIR. During trial, the statements of informant who appeared as P.W.-1 and one injured Kayam Ali who appeared as P.W.-2 were recorded in which both the prosecution witnesses have fully supported the prosecution case and made allegations against the revisionists that they were also accompanied with other accused persons and had participated in crime which resulted in murder of Wahid. After the statement of P.W.-1 and P.W.-2, the informant had moved an application under Section 319 Cr.P.C. through Public Prosecutor for summoning revisionists with the averments that revisionists were also accompanied with other named accused persons and had participated in committing the crime. The Investigating Officer

has submitted charge-sheet only against ten named accused persons and revisionists were exonerated in connivance with revisionists and they may be summoned to face trial. The trial court after considering statement of P.W.-1, P.W.-2 and other materials which are available on record found that there are specific allegation against the revisionists for participation in the crime had summoned the revisionists vide order dated 31.5.2023 which is impugned in the present criminal revision.

It is submitted by learned counsel for revisionists that revisionists are innocent and have been falsely implicated in this case on account of village enmity. The independent witnesses have not supported the prosecution case and the Investigating Officer after conducting fair investigation has not found any credible evidence against the revisionists regarding their participation in the crime and has rightly exonerated the revisionists. There are severe contradictions in the statement of prosecution witnesses. The involvement of revisionists has not been proved and the trial court has committed gross illegality in allowing the application filed under Section 319 Cr.P.C.

On the other hand, learned counsel appearing on behalf of opposite party no.2 has submitted that the informant as well as eye-witness and injured witnesses have named the revisionists in their statements recorded under Section 161 Cr.P.C. and have supported the prosecution case. The injured witness Kayam Ali as well as informant who was also eye-witness, have supported the prosecution case before the trial court in their statement specifically stated that both the revisionists were also present at the place of incident and have participated in committing murder of Wahid. The trial court after considering statement of informant and injured witnesses had found that there are sufficient evidence and materials against revisionists and their participation is established by the prosecution witnesses, and has rightly summoned the revisionists to face trial.

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 a fresh, 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."

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.

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.

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 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."

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."

Considering the rival submissions of learned counsel for the

parties and on perusal of record, it is apparent that both the witnesses P.W.-1 (informant) and P.W.-2 (injured) had levelled allegations against the revisionists regarding their participation in committing the crime. The learned trial court after considering the entire evidence and material which are available on record and after recording its satisfaction had summoned the revisionists.

There is no illegality or infirmity in the order impugned allowing the application under Section 319 Cr.P.C. No ground for interference is made out. The criminal revision is devoid of merits and is liable to be dismissed.

Accordingly, the criminal revision is **dismissed**.

Order Date :- 8.11.2023

P.P.