

Court No. - 79

Case :- CRIMINAL REVISION No. - 3909 of 2023

Revisionist :- Anand Singh And 3 Others

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

Counsel for Revisionist :- Upendra Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Vipin Chandra Dixit,J.

1. This criminal revision has been filed by the revisionists against the order dated 12.7.2023 passed by learned Additional District & Sessions Judge/Special Judge (Gangster Act), Court No.2, Etah in S.T. No.321 of 2017 (State Vs. Yogendra alias Banti and others), arising out of Case Crime No.249 of 2017, under Sections 147, 148, 149, 302 I.P.C., P.S. Jaithara, District Etah, by which the application filed by prosecution under Section 319 Cr.P.C. was allowed and the revisionists were summoned to face the trial.

2. Heard Sri Upendra Upadhyay, learned counsel for the revisionists, learned A.G.A. for the State/opposite party no.1 and perused the record. Despite service of notice, no one has put in appearance on behalf of opposite party no.2, who is informant.

3. The brief facts of the case is that the opposite party no.2 had lodged the F.I.R. on 25.3.2017 at 6:10 P.M. with the allegation that the revisionists and three other accused persons had assaulted his brother Javed with lathi, danda and fire arm, who died on account of injuries received by him. The case was registered at Case Crime No.249 of 2017, under Sections 147, 148, 149 and 302 I.P.C. in P.S. Jaithara, District Etah against seven named accused persons including the revisionists. The statements of informant and other witnesses were recorded during investigation, who supported the prosecution case. The Investigating Officer after completing investigation has submitted the charge-sheet against Yogendra @ Bunty, Devendra @ Anju, Hryadesh and revisionists

who were named in the F.I.R., were exonerated by the Investigating Officer on relying the statements of some alleged independent witnesses. During trial the informant/opposite party no.2 appeared as P.W.-1, who supported the averments of F.I.R. and it is specifically stated that all the seven named accused persons including the revisionists have committed murder of his brother. One eye witness namely Aurangjeb was also appeared before the trial court as P.W.-3 and supported the prosecution case. After the statement of P.W.-1, P.W.-2, P.W.-3 and P.W.-4, the prosecution has moved an application under Section 319 Cr.P.C. which was allowed by the learned trial court vide order dated 12.7.2023, which is impugned in the present criminal revision.

4. It is submitted by Sri Upendra Upadhyay, learned counsel for the revisionists that the revisionists are innocent and have been falsely implicated in this case by the informant on account of village enmity. It is further submitted that the statements of independent witnesses namely, Sukhbeer, Rajesh Singh, Banke Lal and Ram Charan were also recorded during investigation, who were not supported the prosecution case and stated that revisionists are doing job at Delhi. The witnesses further stated that revisionists went to Farrukhabad on the date of incident with Sanjeev Pradhan for his treatment and were not present at the place of incident and they have been falsely implicated in this case due to Pradhani election. The deceased had received only one fire arm injury and one lacerated wound and seven persons were implicated by the informant. No specific role has been assigned to the revisionists by the informant and other witnesses. The Investigating Officer after due investigation and after considering the statements of independent witnesses has found that the revisionists were not involved in this case and they have been falsely implicated on account of election of Village Pradhan. The Investigating Officer after conducting fair investigation has submitted the charge-sheet only against three named accused persons on 9.5.2017 and revisionists were exonerated. It is further submitted that there are severe

contradictions in the statements of informant and other witnesses and the Investigating Officer has rightly exonerated the revisionists as there was no cogent evidence against them. The trial court has committed gross illegality in allowing the application under Section 319 Cr.P.C. and summoned the revisionists to face the trial.

5. On the other hand, learned A.G.A. has submitted that both the witnesses PW-1 (informant) and PW-3 (eye witness) have supported the prosecution case and named all the seven accused persons including the revisionists that they have committed the murder of brother of informant. The trial court after considering the entire evidence and materials which are available on record as well as considering the statements of P.W.-1 and P.W.-3, who are eye witnesses of the occurrence has recorded satisfaction that prima-facie case is made out against the revisionists and has rightly summoned the revisionists to face the trial vide impugned order dated 12.7.2023. The order of learned trial court is based on evidence and materials which are available on record and there is no illegality or irregularity in any manner. No ground for interference is made out and criminal revision filed by revisionists is liable to be dismissed.

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 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."

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 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.

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 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 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. From the bare perusal of impugned order dated 12.7.2023, by which the application filed by prosecution under Section 319 Cr.P.C. was allowed, it is apparent that the learned trial court after considering the

averments of first information report, the statements of informant and other eye witnesses as well as the statement of PW-1 (informant) and PW-3, who are eye witnesses, had recorded its prima-facie satisfaction that there are sufficient material regarding involvement of revisionists for committing murder of Javed, brother of informant. The trial court after considering the entire evidence and materials which are available on record, had allowed the application under Section 319 Cr.P.C. and summoned the revisionists to face trial under Sections 147, 148, 149, 302 I.P.C. No ground for interference is made out. The criminal revision is devoid of merit and is liable to be dismissed.

12. The criminal revision is dismissed, accordingly.

13. Interim order, if any, stands discharged.

Order Date :- 19.10.2023

Kpy