

Court No. - 92

Case :- APPLICATION U/S 482 No. - 35732 of 2023

Applicant :- Rajesh Yadav

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

Counsel for Applicant :- Amarjeet Yadav, Amit Daga

Counsel for Opposite Party :- G.A.

Hon'ble Anish Kumar Gupta, J.

1. Heard Sri Amit Daga, learned counsel for the applicant and Sri Kamlesh Kumar Tripathi, learned A.G.A. for the State.

2. The instant application under Section 482 Cr.P.C. has been filed seeking quashing of the order dated 21.08.2023 in Criminal Revision No. 09 of 2023 (CNR No. UPMA010001162023) (Rajesh Yadav vs. State of U.P. and Another) as well as order dated 12.12.2022 in Criminal Case No. 801658(1658) of 2011(State of U.P. vs. Pramod & Others), arising out of Case Crime No. 737 of 2011 u/S 323, 325, 504 & 506 I.P.C., P.S.- Muhammadabad Gohana, District-Mau.

3. The brief facts of the case are that for an incident dated 19.09.2010, an N.C.R. was registered on 21.09.2010. Subsequently, on an application u/S 155(2) Cr.P.C., the investigation was conducted by the Police and the applicant herein was exonerated in the charge-sheet on the basis of statements of some other witnesses. From the N.C.R. as well as the statement u/S 161 Cr.P.C., of the injured victim, the applicant was duly named in the N.C.R. and implicated in the case and specific role was assigned to the applicant herein. Subsequently, during the trial proceedings, the statement of PW-1 was recorded on 11.02.2020 wherein again the PW-1, the injured witness named the applicant herein as an accused and assigned the specific role in his deposition. Subsequently, after the statement of PW-1 was recorded, an application u/S 319 Cr.P.C., was moved on behalf of the prosecution, which was allowed by the trial court vide order dated 12.12.2022. Being aggrieved by the said order dated 12.12.2022, the applicant herein preferred a Criminal Revision No. 9 of 2023 before Sessions Judge, Mau, which was also dismissed vide impugned order dated 21.08.2022, against which the instant application has been filed by the applicant u/S 482 Cr.P.C.

4. Learned counsel for the applicant submits that though the applicant herein was named in the N.C.R. and in the statement u/S 161 Cr.P.C. of the injured witness, however, the Police has duly investigated the matter and various independent witnesses have suggested that the applicant was not present at the place and time of incident and rather he was present inside the village at the time of incident. On such material, he was exonerated by the Investigation Agency. Learned counsel for the applicant submits that the trial court while considering the application u/S 319 Cr.P.C. has not considered the material collected by the

Investigation Agency with regard to the fact that the applicant was not present at the place of incident at the time of the incident, which has been supported by various independent witnesses. The said material has not at all considered by the trial court.

5. Learned counsel for the applicant has further relied upon the judgement of the Apex Court in ***Brijendra Singh and Others vs. State of Rajasthan : (2017) 7 SCC 706***. Para '15' of the aforesaid judgement reads as under:

"15. This record was before the trial court. Notwithstanding the same, the trial court went by the depositions of the complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the "evidence" recorded during trial was nothing more than the statements which were already there under Section 161 CrPC recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where a plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty-bound to look into the same while forming prima facie opinion and to see as to whether much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the revision petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing the agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny."

6. Per contra, learned A.G.A. for the State submits that in the aforesaid judgement of the ***Brijendra Singh(supra)***, the Apex Court has relied upon the Judgement in ***Hardeep Singh vs. State of Punjab: (2014) 3 SCC 92***, wherein scope and ambit of Section 319 Cr.P.C., considered as follows:

*"95. 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 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas v. State of Rajasthan [(2014) 3 SCC 321 : (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.*

105. Power under Section 319 CrPC 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.

106. 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”*

7. Learned counsel for the State further submits that in Paragraph '15' of the aforesaid **Brijendra Singh (supra)**, the Apex Court has categorically recorded that no doubt the trial court would be competent to exercise this power even on the basis of such statements recorded as Examination-in-Chief. However, other findings given later in paragraph '15' are based on the facts of that case. In the instant case, the victim is an injured witness and he has categorically named the applicant herein in the N.C.R. as well as his statement u/S 161 Cr.P.C. and also in his deposition before the Court as PW-1. The test provided in a **Hardeep Singh(supra)** is that if such evidence goes un rebutted, would lead to the conviction of the accused persons. Therefore, from the evidence as has been recorded during the trial, if it is taken on its face value without being rebutted then certainly it would lead to the conviction of the applicant herein. Therefore, there is no error in the judgements passed by the Trial Court as well as the Revisional Court.

8. Having heard the rival submissions made by the learned counsels for the parties, this Court has carefully perused the record of the case and has found that the applicant herein was duly named in the N.C.R. as well as in the statement u/S 161 Cr.P.C. and he has been further implicated in the deposition before the Court by PW-1 during the trial and categorical and specific role has been assigned to the applicant. Even if as per the judgement of the Apex Court in **Brijendra Singh(supra)**, as highly relied upon by the learned counsel for the applicant, the Apex Court has categorically noted that no doubt the trial court would be competent to exercise its power even on the basis of such statements recorded before the Examination-in-Chief and it will go by the test laid by the Apex Court in **Hardeep Singh (Supra)** Case. If the evidence of such a nature goes un rebutted, would lead to conviction. From the prima facie opinion of this Court, the evidence against the applicant as has been recorded during the trial or during investigation is of such a nature if goes un rebutted then certainly lead to the conviction of the applicant. Therefore, in the considered opinion of this Court, there is no illegality in the orders passed by the trial court as well as the Revisional court.

9. Accordingly, the instant application is devoid of merits and is hereby **dismissed**.

Order Date :- 21.11.2023/Shubham Arya