

Court No. - 37

Case :- CRIMINAL REVISION No. - 5458 of 2023

Revisionist :- Avanish @ Kallu

Opposite Party :- State Of U.P. And Another

Counsel for Revisionist :- Rajeev Kumar, Prashant Yadav

Counsel for Opposite Party :- G.A.

Hon'ble Manoj Bajaj, J.

1. Avanish @ Kallu-Petitioner has filed this criminal revision to challenge the order dated 20.7.2023 passed by Additional Sessions Judge, Court No.2, Kasganj, whereby he has been summoned as an additional accused under Section 319 Code of Criminal Procedure in Sessions Trial No. 316 of 2022, titled *State Vs. Dharmendra and others*, arising out of Case Crime No. 291 of 2021, under Sections 147, 148, 307/149, 302/34, 452, 504 I.P.C., Police Station Amapur, District Kasganj.

2. The above F.I.R. was registered on the basis of a written complaint given by complainant-Ramanpal Singh, wherein it is alleged that his son namely, Ram Kumar is the Sarpanch of Gram Panchayat, who had defeated Vinod S/o Revati in elections, and for this, the said candidate was nurturing a grudge against the complainant's son. Dharmendra S/o Munna had lodged a false case under Section 307 I.P.C., whereupon on 4.12.2021, the police had taken the complainant's son in custody. On the same day, the co-villagers of complainant, namely, Dharmendra, Satendra both sons of Munna, Kuldeep S/o Vinod, Pushpendra S/o Jugendra, Vinod S/o Revati, Avanish @ Kallu S/o Yuvraj residents of Gadedepur Sarset armed with fire-arm weapons entered his house and started abusing complainant and others. When Yashveer asked them not to do so, then Dharmendra, Kuldeep, Pushpendra, Vinod, Satendra

and Avanish @ Kallu started firing upon Yashveer with an intention to kill him and the gun shot fired by Dharmendra hit on the chest of Yashveer. When Pushpendra @ Kare S/o Rajendra Singh, Jaspal Singh S/o Chandrapal Singh came on the spot to rescue the complainant's son, then Dharmendra and others fired at them, who saved themselves by taking shelter behind a pillar, however, gun shot fired by Kuldeep hit Pushpendra. At the time of occurrence, the complainant was not at home and in respect of the incident the villagers had already given the information to the police. On these broad allegations, the above F.I.R. was registered against six accused persons, for the alleged commission of offences punishable under Sections 147, 148, 149, 452, 307, 302, 504 I.P.C.

3. After registration of the above F.I.R., the investigation was carried out and upon completion of the same, a final report under Section 173(2) Cr.P.C. was submitted before the concerned Magistrate and as per the said report, only five accused persons were sent to face trial, whereas accused Avanish @ Kallu was declared innocent.

4. After commencement of trial, the prosecution examined three witnesses namely, P.W.-1 Ramanpal Singh, P.W.-2 Pushpendra and P.W.-3 Jaspal and thereafter, the prosecution moved an application under Section 319 Cr.P.C. for summoning the petitioner as an additional accused.

5. The trial court after considering the evidence recorded during trial proceeded to accept the application vide order dated 20.7.2023 and summoned the petitioner as an additional accused. Hence, this criminal revision petition.

6. Learned counsel for the petitioner submits that the petitioner has

been erroneously summoned by the trial court, because the final report submitted by the Investigating Officer clearly establishes that the petitioner was not present at the spot. He further submits that the first version in respect of the occurrence was conveyed to the police telephonically at number 112, wherein, only four names i.e. Vinod, Fallu, Kuldeep and Dharmendra are mentioned and the petitioner is not named in the said information. He submits that trial court has exceeded its jurisdiction in exercising the powers under Section 319 Cr.P.C., therefore, interference is warranted by this Court in exercise of revisional jurisdiction.

7. Sri Yogendra Singh, learned A.G.A. for the State has argued that the trial court has examined the material on record carefully and the evidence of eye witnesses has clearly suggested the involvement of petitioner in the alleged occurrence. According to him, the impugned order is based upon proper appreciation of material on record, therefore, he prays that the revision petition be dismissed.

8. Learned counsel for the parties have been heard and with their assistance case file has been perused.

9. Before advertng to the merits of the case, this Court deems it appropriate to analyze Section 319 Cr.P.C. and the same 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.

10. A careful reading of the above shows that an extraordinary power has been vested with the trial court to summon any person as an additional accused, during the pendency of the trial, if the evidence on record suggests the involvement of such person, who was not sent to face the trial. The above provision has been analyzed on number of occasions by Hon'ble Apex Court, and here it will be useful to refer to the decision of **"Hardeep Singh Vs. State of Punjab and others" 2014 (1) R.C.R. (Criminal) 623,** wherein the following observations were made:-

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."

11. The above said judgment was again followed in **"Labhuji Amratji Thakor and others Vs. State of Gujarat and another, (2019) 12 SCC 644,"** wherein following observations were made:-

"The High Court does not even record any satisfaction that the evidence on record as revealed by the statement of victim and her mother even makes out a prima facie case of offence against the appellants. The mere fact that Court has power under Section 319 Cr.P.C to proceed against any person who is not

named in the FIR or in the charge sheet does not mean that whenever in a statement recorded before the Court, name of any person is taken, the Court has to mechanically issue process under Section 319 Cr.P.C. The Court has to consider substance of the evidence, which has come before it and as laid down by the Constitution Bench in Hardeep Singh (supra) has to apply the test, i.e. "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."

12. Now, while reverting to the facts of the case in hand and considering the material on record, this Court finds that the alleged occurrence took place in the house of complainant-Ramanpal Singh, wherein, his son Yashveer died of gun shot injury and Pushpendra was injured, and the case of the prosecution is based upon the evidence of eye witnesses. While examining the first argument raised by learned counsel for petitioner that in the initial information delivered to police telephonically on number 112 only four names i.e. Vinod, Fallu, Kuldeep, Dharmendra were mentioned, wherein the name of the petitioner is missing, therefore, it would clearly show that the petitioner was not involved in the alleged occurrence, is without any merit. According to the F.I.R., six accused persons were involved in the crime and a perusal of it shows that the name of the petitioner is specifically mentioned by the complainant. Further, during the course of hearing, it is also not disputed by learned counsel for the petitioner that in the statement of injured Pushpendra recorded under Section 161 Cr.P.C., the petitioner's name is also mentioned. Concededly, neither there is any accused by the name of "*Fallu*" nor any such person was associated during investigation. Admittedly, petitioner is also known as "*Kallu*" and his name sounds phonetically similar, therefore, the said telephonic information cannot be taken as a convincing material to hold that the petitioner was not involved in the crime. According to the complainant, the petitioner being armed with fire arm weapon, also participated in the alleged crime.

13. Besides, during the trial proceedings, the material witnesses stand examined before the court, who have been cross-examined at length also, and a perusal of their depositions *prima facie* indicates the involvement of the petitioner in the alleged occurrence. Apart from this, the stand of the petitioner that he was not present at the place of occurrence is based upon the call details records, but the same may not be enough to extend clean chit to the petitioner, because to prove the plea of '*alibi*', the onus would lie upon the accused. Therefore, the second argument raised by learned counsel for the petitioner is also without any merit.

14. Resultantly, in view of above discussion, this Court has no hesitation in holding that the evidence recorded during trial strongly suggests the involvement of petitioner in the alleged commission of offences, and the trial court has also carefully examined the material on record while passing the impugned order. The impugned order does not suffer from any illegality or impropriety, therefore, no interference is warranted in the revisional jurisdiction.

15. The criminal revision is dismissed.

(Manoj Bajaj, J.)

Order Date :- 1.11.2023

P.S.Parihar