

Court No. - 86

Case :- CRIMINAL REVISION No. - 4043 of 2023

Revisionist :- Smt. Madhu Singh

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

Counsel for Revisionist :- Vipin Kumar Singh

Counsel for Opposite Party :- Anand Kumar Singh,G.A.

Hon'ble Ram Manohar Narayan Mishra,J.

Supplementary affidavit filed by the learned counsel for the revisionist is taken on record.

Heard Sri Vipin Kumar Singh, learned counsel for the revisionist, Sri Anand Kumar Singh, learned counsel for the respondent No.2 and learned A.G.A. for the State-respondent.

Instant Criminal Revision has been preferred against the order dated 15.07.2023 passed by learned Additional District and Sessions Judge, Court No.07, Varanasi in Sessions Trial No.389 of 2023, (State Vs. Harishankar Singh and others) arising out of Case Crime No.785 of 2017, under Sections 323, 504, 506, 313, 498A IPC and Section 3/4 of D.P. Act, Police Station Shivpur, District Varanasi. By the impugned order learned trial court has summoned the revisionist under Section 319 Cr.P.C. as an additional accused.

The facts of the case in brief are that informant Smt. Rohini Singh lodged an FIR on the basis of written report bearing date 23.11.2017 which is addressed to SSP, Varanasi with averments that her marriage with accused Amit Kumar Singh was solemnized on 27.05.2015 according to Hindu rites and rituals at Shivpur District Varanasi. She was sent to matrimonial home after marriage and started living at the place of her husband and in-laws after marriage. Her marriage was solemnized on the basis of matrimonial advertisement published in daily news paper Dainik Jagran in January, 2015. The advertisement was published at the instance of accused side Amit Kumar Singh who was drawing salary in five digit and his father retired as Engineer from Electricity department. The father of the informant offered the

proposal of marriage to accused side and it was settled after accused side visited the informant and accepted her for marriage. After performance of baraksha and engagement, the marriage was solemnized on 27.05.2015, at the time of baraksha itself accused side demanded Rs.10 lakh cash and ornaments worth Rs. 4 lakh. However, the demand of dowry continued after marriage, and accused side demanded Rs.5 lakh cash and a car even after marriage, she was subjected to matrimonial cruelty by her husband, brother-in-law including Jeth (Dharmendra Kumar), Madhu Singh (Nanad), Vinod Kumar Singh (nandoi), mother-in-law (Gayatri Devi) and Harishankar Singh (father-in-law) due to non-fulfillment of additional demand of dowry. She was often abused and subjected matrimonial cruelty, they also threatened her to kill by setting her on fire. Her husband used to engage unnatural sexual acts with the informant after consuming liquor. She became pregnant in course of time, but her torture at the hand of accused persons continued and on 05.08.2015 she was beaten badly by her husband and nanad and she was kicked out from her matrimonial home after grabbing her stri dhan. She came to Varanasi any how and told her ordeal to her father and sister, as her mother died many years earlier to her marriage. Her father tried to persuade her to bear the sufferings, and things will get right in course of time. She again visited the place of her inlaw's on 28.08.2015 all-alone, but she was not permitted to get in, her nanad (sister-in-law) opened the door and she was taken inside, but she was again given beatings on her person as well as on her abdomen due to which she suffered acute pain, on next date on 29.08.2015, she asked her father to take her back to his place, when he came to visit her and she came back to her parental place, on 31.08.2015; she was taken to hospital where she was give treatment. On 10.09.2015 she was admitted in women hospital, Varanasi where her three months foetus was aborted. After she was discharged from hospital, she came back to her parental place; the accused persons her jeth, her maternal-uncle-in-law, her father-in-law and husband visited her and apologized to her, and on their persuasion she again went back to her matrimonial place, but again she was subjected to cruelty and was given beatings on several times and ultimately she was taken back to her parental place on 16.02.2017 by her father. On 15.10.2017 her husband, jeth, nanad, father-in-law and two, three

other persons came to her parental place at 02:30 PM, they abused and threatened her.

The FIR was lodged under Sections 323, 504, 506, 498A, 313, 377 of IPC and Section 3/4 of D.P. Act. The Investigating Officer on conclusion of investigation did not find charge under Sections 313 and 377 IPC having been made out and the complicity of Madhu Singh (sister-in-law), Dharmendra Singh (jeth), Praveen Singh (nandoi) of the informant in the offence and their name was dropped in chargesheet. The Investigating Officer submitted chargesheet against accused Harishankar Singh (father-in-law), Gayatri Devi (mother-in-law), Amit Kumar Singh (husband of the informant) for charge under Section 323, 504, 506, 498 A IPC and Section 3/4 of DP Act. The learned Magistrate framed charges against three chargesheeted accused persons under Section 323, 504, 506, 498A IPC and Section 3/4 of DP Act on commencement of trial against them.

After examination in chief of PW1 an application was filed by the prosecution to the effect that on the basis of evidence on record the charge Section 313 I.P.C. is made out against husband and nanad of the victim namely Amit Kumar Singh and Madhu Singh, therefore the appropriate charge under section 313 I.P.C. being added in the charges framed against the accused persons. The said application is allowed by learned Magistrate vide order dated 30.04.2022 and he concluded that a case under Section 313 I.P.C. is made out against the accused persons, which is triable by court of session. Therefore the case is liable to be committed by court of session in exercise of powers under Section 223 Cr.P.C.. After committal of the case before the court of session, the case was transferred to court of Additional Session Judge, Court No.7, Varanasi. Before the court of Additional Session Judge, Varanasi an application was filed on 15.06.2023 under Section 319 Cr.P.C. by prosecution to summon Madhu Singh sister-in-law of the informant as well as her Jeth (Dharmendra Kumar Singh) and Nandoi (Praveen Kumar Singh) in S.T. No.389 of 2023, the said application was allowed by trial court by impugned order dated 15.07.2023.

The learned Additional Session Judge partly allowed the application 5A under section 319 Cr.P.C. and summoned Madhu

Singh to face trial for charge under Sections 323, 504, 506, 498A, 313, 377 of IPC and Section 3/4 of D.P. Act alongwith the accused persons who are already facing trial, but the prayer in respect of Dharmendra Kumar Singh and Praveen Kumar Singh has been rejected.

After summoning under Section 319 Cr.P.C. the revisionist Madhu Singh applied for anticipatory bail and she was granted anticipatory bail on 11.12.2023 by orders of this Court. Accused Amit Kumar Singh the husband and Gayatri Devi mother-in-law of the victim were also granted anticipatory bail by orders of this Court dated 04.04.2023 and 15.03.2023 for added section 313 Cr.P.C. The Revisionist Madhu Singh participated in trial after her enlargement on anticipatory bail and charges against her was also framed by learned trial court in ST No.829 of 2023 on 09.01.2024 under Section 323/34, 504, 506, 498A/34, 313/34 of IPC and Section 3/4 of D.P. Act. However, she had already preferred a criminal revision against the impugned order dated 15.07.2023 under Section 319 Cr.P.C. before this Court on 25.07.2023.

Learned counsel for the revisionist submits that the impugned order is vitiated by illegality and cannot be sustained. The learned Additional Session Judge did not frame fresh charges against the accused persons, who were committed by trial court under Section 323 Cr.P.C. and just after committal of the case before the court of session, an application 319 Cr.P.C. was filed by the prosecution, which was partly allowed and the revisionist has been summoned to face trial inter-alia under Section 313 I.P.C. without recording any fresh evidence.

He next submitted that the learned Additional Session Judge has placed reliance on a statement under Sections 161 and 164 Cr.P.C. recorded during investigation and evidence of PW1 the informant recorded by committing court, which is not in conformity with the dicta of constitution bench judgment of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others ARI 2014 SC 1400** and subsequent cases. He also submitted that in FIR no date of incident is shown. The revisionist has stated in a long FIR that she was kicked out from her matrimonial place on 05.08.2015 by the accused persons, but the FIR in the matter was lodged after two years and three months of said incident, which is highly belated

and product of after though opinion, which does not inspire confidence. He also submitted that the learned trial court has adopted a bizarre procedure while summoning the revisionist under Section 319 Cr.P.C. without framing of charges against co-accused persons and recording fresh evidence after committal of the case by trial court. The charges were framed against her after her summoning and enlargement on bail or anticipatory bail.

He also submitted that only due to the fact that she was enlarged on anticipatory bail and participated in trial after summoning by trial court for right to challenge the impugned order under Section 319 Cr.P.C. did not extinguish, inasmuch as she had challenged the impugned order as early on 24.07.2023. He also submitted that the revisionist is married sister-in-law of the informant and her marriage took place nine years earlier to the marriage of the informant. She resides with her husband and family in district Jaunpur, whereas the accused side resides in district Azamgarh and she has nothing to do with any demand of dowry allegedly made by the husband and his family members of the informant. She in no manner can be said to be beneficiary of any demand of dowry. In medical opinion also the cause of abortion is shown as anemia and excessive bleeding and on this score it cannot be held that informant was subjected to mechanical violence which resulted in miscarriage and was subjected to forced abortion for that count.

He lastly submitted that the informant had made omnibus allegations against accused persons including the revisionist in a lengthy FIR and has not assigned any specific role therein to the effect that it is the Revisionist as well husband of the informant who assaulted the informant by stick on her abdomen, which resulted in miscarriage. However, in statement before the court during trial by Magistrate stated that the husband of the informant and revisionist forced a stick into her abdomen, which resulted in serious injuries to the foetus that resulted in miscarriage and subsequent abortion. This statement has been made only with a view to implicate the revisionist for a serious charge under Section 313 Cr.P.C.

Learned counsel for the revisionist placed reliance on paragraph No.43 of the judgment of **Hon'ble Supreme Court in Hardeep Singh (supra)** which is quoted herein below:-

"...43. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under [Section 319\(1\)](#) Cr.P.C. can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of [Section 207/208](#) Cr.P.C., committal etc., which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind."

Counsel for the revisionist placed reliance on a judgment of Supreme Court in **Kahkashan Kausar @ Sonam and others Vs. State of Bihar and others** AIR 2022 SC 820, paragraph Nos. 12,18 and 19, which reads as under:-

"...12. Before we delve into greater detail on the nature and content of allegations made, it becomes pertinent to mention that incorporation of [section 498A](#) of IPC was aimed at preventing cruelty committed upon a woman by her husband and her in-laws, by facilitating rapid state intervention. However, it is equally true, that in recent times, matrimonial litigation in the country has also increased significantly and there is a greater disaffection and friction surrounding the institution of marriage, now, more than ever. This has resulted in an increased tendency to employ provisions such as 498A [IPC](#) as instruments to settle personal scores against the husband and his relatives.

18. The above-mentioned decisions clearly demonstrate that this court has at numerous instances expressed concern over the misuse of [section 498A](#) IPC and the increased tendency of implicating relatives of the husband in matrimonial disputes, without analysing the long term ramifications of a trial on the complainant as well as the accused. It is further manifest from the said judgments that false implication by way of general omnibus allegations made in the course of matrimonial dispute, if left unchecked would result in misuse of the process of law. Therefore, this court by way of its judgments has warned the courts from proceeding against the relatives and in-laws of the husband when no prima facie case is made out against them.

19. Coming to the facts of this case, upon a perusal of the contents

of the FIR dated 01.04.19, it is revealed that general allegations are levelled against the Appellants. The complainant alleged that 'all accused harassed her mentally and threatened her of terminating her pregnancy'. Furthermore, no specific and distinct allegations have been made against either of the Appellants herein, i.e., none of the Appellants have been attributed any specific role in furtherance of the general allegations made against them. This simply leads to a situation wherein one fails to ascertain the role played by each accused in furtherance of the offence. The allegations are therefore general and omnibus and can at best be said to have been made out on account of small skirmishes. Insofar as husband is concerned, since he has not appealed against the order of the High court, we have not examined the veracity of allegations made against him. However, as far as the Appellants are concerned, the allegations made against them being general and omnibus, do not warrant prosecution."

Learned counsel for the revisionist also relied upon a judgment in **Shivendra Pratap Singh Thakur @ Banti Vs. State of Chhattisgarh and others SLP (Criminal) No.1400 of 2024**, which is on delayed recording of the FIR.

Per contra learned A.G.A. as well as learned counsel appearing for the respondent No.2 submitted that there is specific allegation of causing hurt by stick to the informant on her abdomen, resulting in miscarriage and subsequent abortion of the foetus carried by the informant against the revisionist and the husband of the informant.

Learned trial court while passing the impugned order has placed reliance on statement recorded during investigation and the evidence of PW1 recorded by learned magistrate before committal of the case under Section 323 Cr.P.C. There is no legal impediment in reading that evidence while exercising power under Section 319 Cr.P.C.. He next submitted that co-accused persons had filed a criminal revision against committal of case by learned Magistrate after adding section 313 I.P.C. in penal section vide order dated 30.04.2022 before this Court which was Criminal Revision No.2805 of 2022 and said revision was dismissed, and their prayer of quashing the committal order was refused after granting some interim protection for a period of fifteen days with regard to bail.

Learned counsel also placed reliance on a judgment of **Manjeet Singh Vs. States of Haryana in Criminal Appeal No.875 of 2021**, wherein Hon'ble Supreme Court observed in paragraph No.13 that it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under [Section 319](#) CrPC is to be exercised and not on the basis of material collected during the investigation.

He next submitted that co-accused persons Harishankar Singh and two others had filed an application under Section 482 Cr.P.C. as Application No.1283 of 2022, wherein they challenged the summoning order passed by learned ACJM, under Section 323, 504, 506, 498A of IPC and Section 3/4 of D.P. Act and this Court while dismissing the application under Section 482 Cr.P.C. observed as under:-

"I have perused the impugned order as well as the material, medical and the application and as per medical report, it indicates that the lady was anemic and she has sustained four injuries over her a person, resulted into her forced abortion for which husband Amit Kumar Singh and his sister Madhu Singh are prima facie liable for the same." .

Thus this court also observed in said order dated 30.08.2022 that revisionist is prima facie liable for causing the injuries on abdomen of the informant which resulted into her forced abortion. This application under Section 482 Cr.P.C. was filed by the chargesheeted accused persons."

Learned A.G.A. also submitted that there is strong prima facie case against the revisionist for summoning her in exercise of powers under Section 319 Cr.P.C. to face trial for charge under Section 313 Cr.P.C. together with co-accused and there is no illegality or irregularity in the impugned order passed by learned trial court.

He also submitted that the delay in lodging the FIR is duly explained as there are a number of incidents of causing physical and mental cruelty to the informant by the accused persons including the present revisionist. The trial court considered S.T. No.829 of 2023, pertaining to Madhu Singh with S.T. No.389 of 2023 vide order dated 24.01.2024 as both cases have arisen of the same offence. The revisionist has stated her address at same place

as that of co-accused persons.

In the present case the victim and defacto complainant Smt. Rohini Singh has given a graphic account on the sequence of events right from her marriage with accused Amit Singh on 27.05.2015 till 15.10.2017, in her FIR lodged at Police Station concerned on 23.11.2017. The averments in FIR contain a number of events, which appears to be self-explanatory of delay in lodging of FIR. The victim has corroborated her FIR version in the statement under Section 161 Cr.P.C. recorded by a lady constable at the instance of the investigating officer.

As her medico legal examination was done on 23.11.2017 long after the incidence shown in the FIR, it is natural that no internal or external injury would be found on her person. In her medico legal examination report dated 23.11.2017 the doctor has stated that victim is residing at her parental place since 17.02.2017. In her injury report dated 31.08.2015 three visible injuries were found on her person including complaint of pain in lower part of abdomen.

Regarding injury No.4, the same was kept in the observation and referred to a gynecologist, duration of injuries was about three days which corresponds with 28.08.2015, on which the victim is stated to have been assaulted by her husband and in-laws and as per the prosecution version she had to undergo ordeal of abortion to save her. She was admitted on 10.09.2015 in District Women Hospital, Varanasi and discharged after abortion on 12.09.2015.

Another report dated 16.02.2017 is also available on record in which one abrasion was found on dorsal aspect of right fore arm. She made complaint of pain on left thigh and whole leg.

The victim has stated that she conceived just after 15 days of her marriage, but foetus had to be aborted due to severe assault made by her husband and sister-in-law Mathu on his abdomen on 28.08.2015. In her evidence before the court as PW-1 she has also supported the FIR version in her statement recorded under Section 164 Cr.P.C. recorded by Magistrate on 08.03.2016, wherein she had made specific allegations against the accused persons including the present revisionists who is her sister-in-law.

From perusal of record, it also appears that although the revisionist

is married sister-in-law of the victim, yet in present revision as well as in other judicial proceedings her address is same as that of other accused persons who are her father, brother and relatives of parental side. The victim has taken a specific case that her sister-in-law Madhu and her husband Praveen Kumar Singh also resided in her matrimonial home, which is a large house. No case of separate living is established by the revisionist from co-accused persons.

On 09.01.2024, after her summoning by trial court under Section 319 Cr.P.C. by the impugned order, the other accused persons were separately charged for added offence under Section 313 IPC. After committal of the case on 03.11.2023 as they have already charged for other offence by Magistrate on 21.03.2022.

From perusal of record it is crystal clear that chargesheeted accused Harishankar Singh, Smt. Gayatri Devi and Amit Kumar Singh were charged for the offences under Section 498-A, 323, 504 and 506 IPC and Section 3/4 of D.P. Act by learned Magistrate on 21.03.2022, as offence was initially treated as warrant trial by the Magistrate having jurisdiction and during the course of trial of chargesheeted accused persons, an application under Section 323 Cr.P.C. moved by the complainant, wherein a prayer has been made that as charge under Section 313 Cr.P.C. is also made out against accused persons which is exclusively triable by a court of session, the case ought to have committed under Section 313 Cr.P.C.

Learned Magistrate on the witness of PW-1 the informant recorded during trial and considering the evidence collected during investigation allowed the application under Section 313 Cr.P.C. with finding that the case under Section 313 IPC is also made out. The committal order dated 30.04.2022 has been assailed by the accused persons before this Court by filing a criminal revision No.2805 of 2022, which was dismissed vide order dated 02.08.2022. This Court observed in the said order that the case has to be committed under Section 323 Cr.P.C. and charge under Section 313 I.P.C. has to be added and thereafter the revisionists were required to surrender before the court concerned.

I find no force in submissions of learned counsel for the revisionists that after committal of the case under Section 323

Cr.P.C. no charge has been framed and without recording any evidence he learned Additional Session Judge has summoned the accused in exercise of power under Section 319 Cr.P.C.. This need not be reiterated that initially three co-accused persons were chargesheeted for offence which are triable by Magistrate. The accused were charged and evidence of PW-1 the defacto complainant was recorded and thereafter the case was committed under Section 323 Cr.P.C. after the learned Magistrate passed an order on application under Section 323 Cr.P.C. was filed by the complainant, with a finding that a prima facie under Section 313 IPC "causing miscarriage without woman's consent" is made out on the basis of evidence on record.

After committal of the case, learned trial court framed additional charge under Section 313 IPC against the accused persons whose case was committed by learned Magistrate as charge under Section 313 I.P.C. was exclusively triable by court of session. As evidence of PW-1 the informant was also recorded by learned Magistrate during warrant trial of the case prior to committal. There is no illegality the course adopted by the learned trial court while summoning the revisionist as accused who is named in the FIR, but exonerated by the investigating officer in chargesheet. The impugned order appears to be correct legally and factually both.

In the light of law laid down by the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab** (supra), wherein constitution Bench of Hon'ble Apex Court observed as under:-

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an Accused, the court is not powerless in calling the said Accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Code of Criminal Procedure?

53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power Under Section 319 Code of Criminal Procedure cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in Dharam Pal (CB) (Dharam Pal v. State of Haryana, MANU/SC/0720/2013: (2014) 3 SCC 306 AIR 2013 SC 3018). The dispute there was resolved visualising a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 Code of Criminal Procedure is reached to direct a person, facing trial, to appear and face trial as an Accused. We are in full agreement with the Interpretation given by the Constitution Bench that Section 193 Code of Criminal Procedure

confers power of original jurisdiction upon the Sessions Court to add an Accused once the case has been committed to it.

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage of evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage *prima facie* can apply its mind to find out as to whether a person, who can be an Accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the Investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 Code of Criminal Procedure.

55. Accordingly, we hold that the court can exercise the power Under Section 319 Code of Criminal Procedure only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove.

56. There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 Code of Criminal Procedure i.e. provisions of Sections 200, 201, 202, etc. Code of Criminal Procedure applicable in the case of complaint cases. As has been discussed herein, evidence means evidence adduced before the court. Complaint case is a distinct category of criminal trial where some sort of evidence in the strict legal sense of Section 3 of the Evidence Act 1872 (hereinafter referred to as "the Evidence Act") comes before the court. There does not seem to be any restriction in the provisions of Section 319 Code of Criminal Procedure so as to preclude such evidence as coming before the court in complaint cases even before charges have been framed or the process has been issued. But at that stage as there is no Accused before the court, such evidence can be used only to corroborate the evidence recorded during the trial (sic or) for the purpose of Section 319 Code of Criminal Procedure, if so required. What is essential for the purpose of the Section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 Code of Criminal Procedure acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 Code of Criminal Procedure is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 Code of Criminal Procedure at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses are being recorded.

58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers Under Section 319 Code of Criminal Procedure, the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such

powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that come up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 Code of Criminal Procedure indicate that the material has to be "where..... it appears from the evidence" before the court.

59. Before we answer this issue, let us examine the meaning of the word "evidence". According to Section 3 of the Evidence Act, "evidence" means and includes:

(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under Inquiry;

such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the court;

such documents are called documentary evidence.

78. It is, therefore, clear that the word "evidence" in Section 319 Code of Criminal Procedure means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power Under Section 319 Code of Criminal Procedure is to be exercised and not on the basis of material collected during the Investigation.

83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the Accused. This would harmonise such material with the word "evidence" as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.

84. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used Under Section 319 Code of Criminal Procedure. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to Invoke such powers cautiously on such material after evidence has been led during trial.

85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded

during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power Under Section 319 Code of Criminal Procedure. The "evidence" is thus, limited to the evidence recorded during trial.

86. The second question referred to herein is in relation to the word "evidence" as used Under Section 319 Code of Criminal Procedure, which leaves no room for doubt that the evidence as understood Under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In *Rakesh* [MANU/SC/0390/2001: (2001) 6 SCC 248 2001 SCC (CH) 1090: AIR 2001 SC 2521], it was held that: (SCC p. 252, para 10)

10.... It is true that finally at the time of trial the Accused is to be given an opportunity to cross-examine the witness to test its truthfulness. But that stage would not arise while exercising the court's power Under Section 319 Code of Criminal Procedure. Once the deposition is recorded, no doubt there being no cross-examination, it would be a *prima facie* material which would enable the Sessions Court to decide whether powers Under Section 319 should be exercised or not.

In the instant case, learned trial court while summoning the revisionist in exercise of powers under Section 319 Cr.P.C. placing reliance on evidence of PW-1 Rohini Singh the victim and corroborates material like FIR and her statement under Section 164 Cr.P.C. by the impugned order dated 15.07.2023. There is no impediment before the court of session while placing reliance on evidence of witnesses recorded during warrant trial by learned Magistrate, while exercising power under Section 319 Cr.P.C. The powers under Section 319 Cr.P.C. can be exercised in the course of any inquiry into, or trial of any offence, where, it appears from the evidence that any persons not being the accused has committed any offence for which such person could be tried together with the accused who is already facing the trial.

Learned Additional Session Judge before summoning the revisionist under Section 319 Cr.P.C. framed charge in added section 313 IPC against other accused persons who are facing trial and there was no need to frame fresh charges against those accused persons who are already charged by learned Magistrate in warrant trial for the same offence. So far the revisionist is concerned she has been separately charged by trial court in all penal sections including 313 IPC after appearance of the revisionist pursuant to

impugned order. It need not be said that a de novo but joint trial under Section 319 (4) Cr.P.C. will be conducted in respect of present revisionist as she has been added as an accused after committal of the case and recording of evidence of PW-1 by trial court i.e. courts of Magistrate.

For reasons shown and judicial precedent cited as above, I find no illegality, irregularity or perversity in the impugned order passed by learned trial court.

The revision is devoid of merit and deserves to be **dismissed**.

Order Date :- 2.12.2024

Ashish/-