

Court No. - 86

Case :- CRIMINAL REVISION No. - 1989 of 2024

Revisionist :- Bharat Singh

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

Counsel for Revisionist :- Chandra Pal Singh, Pankaj Kumar Gupta

Counsel for Opposite Party :- G.A.

Hon'ble Ram Manohar Narayan Mishra, J.

1. Instant Criminal Revision has been preferred against the impugned Judgment and order dated 17.01.2024 passed by learned Additional Session Judge, Court No.7, Moradabad in Session Trial No.02 of 2010, whereby revisionist has been summoned under Section 319 Cr.P.C. as well as subsequent order dated 29.01.2024 passed by the learned Additional District and Session Judge, Court No.7, Moradabad in Session Trial No.37 of 2010 arising out of Case Crime No.329 of 2009 under Section 302/34 IPC, Police Station Thakurdwara, District Moradabad.

2. Heard learned counsel for the revisionist and learned A.G.A. for the State-respondent and perused the material on record.

3. The brief facts of the case are that FIR was lodged on the basis of information received by village watchman Ram Prasad vide GD Report No.20 Time 17:25 hours dated 22.04.2009 at PS. Thakurdwara, District Moradabad to the effect that village watchman informed to the police station that dead body of unknown person is lying in the vacant wheat field of Jai Prakash son of Radhey Shyam of his village. The SHO concerned moved into action on this information; he visited the place of incident alongwith his colleagues, who are police personnel by his official jeep. The police investigated the case and dead body was identified as that of Suresh Chauhan, son of late Hira Singh alias Hari Singh, resident of village Darapur, Police Station Thakurdwara, District Moradabad. The inquest on dead body of the deceased was already done as unknown person 22.04.2009 between 15:25 to 17:13 hours.

3. In postmortem report of the deceased Suresh Chauhan four external injuries were found on his person which included an incised wound 12 x 4 cm on neck and one incised wound 23 x 7 cm upcoming to abdomen cavity, intestines had come out, one abrasion on forehead and skin peeled out on right shoulder to arm. In internal examination trachea and larynx were found cut, membrane of heart was found lacerated, membrane of abdomen was also found lacerated. In the opinion of doctor the cause of death was shock and haemorrhage due to ante-remote injuries. The postmortem was conducted on 23.04.2009, in which time of death was approximated as between 12:30 to 01:00 hours on 22.04.2009. Rigor mortis passed on from entire body. During investigation name of five accused persons surfaced as author of crime of murder of the deceased, who were subjected to trial for charge under Section 302/34 IPC, the case was converted into Crime No.329 of 2009 after post-mortem examination of the deceased. During investigation the name of five accused persons namely Jasram and four others surfaced as author of the crime of murder of the deceased. They were subjected to trial and the learned Additional Session Judge Court No.7, Moradabad by impugned judgment and order dated 17.01.2024 convicted four accused persons for charge under Section 302/34 IPC and sentenced them to imprisonment for life, and Rs.25,000/- fine was imposed on by each of them. One accused person Jasram Singh died during the trial and the trial in respect of deceased accused was abated.

4. In Judgment and order dated 17.01.2024, learned trial judge in paragraph No.50 has observed that on the basis of evidence of PW 2, 3 and 5 complicity of accused Bharat Singh is found, and there is cogent and strong evidence against accused Bharat Singh regarding his complicity in the offence and on the basis of the evidence adduced during trial there is full probability of his conviction, if the same remains unrebutted. With these observations the learned trial court had summoned the revisionist/Bharat Singh under Section 302/34 IPC to face trial for the murder of deceased.

5. Learned counsel for the revisionist submitted that learned trial judge has summoned the revisionist in exercise of powers under Section 319

Cr.P.C. in the impugned judgment, wherein all the accused persons who were facing trial were convicted and sentenced. He has not been directed to be summoned separately on conclusion of trial of co-accused person therefore joint trial of the revisionist alongwith other accused persons had become impossible.

6. Learned trial court could not summon the revisionist in exercise of powers under Section 319 Cr.P.C. in the same breath, wherein other accused persons were convicted and sentenced and therefore the trial concluded. Learned counsel for the revisionist placed reliance on a judgment of Supreme Court in **Devendra Kumar Pal Vs. State of U.P. and another in SLP (Criminal) No.6960 of 2021**, wherein constitution Bench judgment of Supreme Court in **Sukhpal Singh Khaira Vs. The State of Punjab AIR 2023 SC 1** was discussed and reliance was placed thereon. After citing the twelve guidelines issued by the Constitution Bench, Hon'ble Court in paragraph No.13, 14 and 15 observed that if summoning order under Section 319 Cr.P.C. is passed, either after the order of acquittal or of imposing sentence in the conviction, the same may not be sustainable.

7. Learned counsel further submitted that Hon'ble Supreme Court in Constitution Bench Judgment in **Hardeep Singh Vs. State of Punjab and others 2014(2) SCR 1** in paragraph No.43 held that since after the filing of chargesheet, 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 chargesheet 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.

8. Learned counsel for the revisionist further submitted that in **Sukhpal Singh Khaira Vs. The State of Punjab** out of 11 accused persons, the trial in S.T. No.289 of 2009 proceeded against 10 accused persons who were convicted on conclusion of trial as one of the accused was not available.

Learned Session Judge pronounced the judgment on 31.10.2017, whereby one of the accused was acquitted while remaining nine accused persons were convicted and sentence was passed against them on 31.10.2017. The learned Session Judge also allowed the application filed under Section 319 Cr.P.C. dated 21.09.2017 on the same day i.e. 31.10.2017 and summoned the appellant to face trial. It is in this back drop the summoning order of the appellant was assailed by him, since according to him such order is not sustainable in law, as the same was not passed in a proceeding pending before the learned Session Judge as at the stage when the power to summon was exercised by learned Sessions Judge, the judgment of conviction and sentence had already been passed earlier on 31.10.2017. The said order was assailed in Criminal Revision Petition No.4070 and 4113 of 2017 but the same was dismissed by the High Court, which had led to the filing of SLP Criminal No.5933 of 2019, where Supreme Court framed three issues and referred the matter to Hon'ble the Chief Justice to constitute a Larger Bench to consider the questions raised. The Constitution Bench of the Hon'ble Supreme Court vide judgment dated 05.12.2022 addressed and decided the issues referred for its consideration and issued as many as 12 guidelines therein regarding stage of invoking powers under Section 319 Cr.P.C. by trial court.

9. He next submitted that after constitution bench judgment the matter was finally decided by a division bench of Hon'ble Supreme Court in **Sukhpal Singh Khaira (supra)** and the summoning order passed by learned trial court under Section 319 Cr.P.C. against the appellant Sukhpal Singh Khaira was quashed and set-aside with finding that in view of the law laid down by the Hon'ble Supreme Court in **Sukhpal Singh Khaira (supra)** these appeals are allowed.

10. The Hon'ble Court observed that once the learned trial judge passes an order on sentence, the Court becomes functus officio and it is not within its jurisdiction to pass an order under Section 319 Cr.P.C.

11. Learned counsel for the revisionist also placed reliance on **Devendra Kumar Pal (supra)** arising out of SLP (Cril.) No.6960 of 2021, wherein in

paragraph 14 it is observed that the Constitution Bench has clearly held that if such a summoning order is passed, either after the order of acquittal or imposing of sentence in the conviction, same may not be sustainable.

12. With above submissions, learned counsel concluded that as summoning of the revisionist and recording of conviction and awarding of sentence on other accused persons are part of same judgment and order, the joint trial of the revisionist alongwith other accused persons was not possible in view of the judgments cited above as the court had become functus officio on recording conviction of the accused persons who are already facing trial and awarding sentence against them. Thus in this backdrop the summoning of the revisionist was contrary to law and the impugned order deserves to be quashed and set-aside.

13. Per contra, learned A.G.A. for the State submitted that revisionist has been summoned in paragraph 50 of the impugned judgment and order, whereas the conviction and sentence has been awarded to the accused persons who are already facing trial in paragraph No.51 onwards. Therefore, it cannot be assumed that the summoning of the accused revisionist was done after conclusion of trial of co-accused persons. She also submitted that in paragraph No.50, learned trial court has observed that in evidence of PW2, PW3, PW4 and PW5 there is cogent evidence against the revisionist and for that reason he has been summoned to face trial under section 319 Cr.P.C.. There is no illegality, irregularity or perversity in the impugned order passed by the learned trial court.

14. The Hon'ble Court observed that at the outset, having noted the provisions of Section 319 Cr.P.C, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for

the offence which appears to have been committed by such persons summoned as additional accused.

15. Hon'ble Court placed reliance on its earlier Constitution Bench Judgment in *Hardeep Singh Vs. State of Punjab* (2014) 3 SCC 92, wherein it is held that Section 319 Cr.P.C. springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of [Section 319 CrPC](#). 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 CrPC. Even the word "course" occurring in Section 319 CrPC, clearly indicates that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial and the trial stage. The word "course" therefore, allows the court to invoke this power to proceed against any person from the initial stage of inquiry up to the stage of the conclusion of the trial.

16. The Hon'ble Supreme Court in *Sukhpal Singh Khaira (supra)* after giving thoughtful consideration of number of its judgements on ambit and scope of Section 319 Cr.P.C. cited as Sections 232, 235, 353, 319, 354 of Code of Criminal Procedure.

17. Hon'ble Court observed in paragraph No.26 that Hon'ble Court cited an earlier judgment delivered in *Yakub Abdul Razak Memon vs. State of Maharashtra* (2013) 13 SCC 1, wherein it is held that **"It is clear that a conviction order is not a "judgment" as contemplated under Section 315, 353 and that a judgment is pronounced only after the award of sentence."** It is also relevant to mention that Section 354 makes it clear that "judgment" shall contain the punishment awarded to the accused. It is therefore, complete only after the sentence is determined.

18. The Hon'ble Court further observed as under:

“27. Therefore, from a perusal of the provisions and decisions of this Court, it is clear that the conclusion of the trial in a criminal prosecution if it ends in conviction, a judgment is considered to be complete in all respects only when the sentence is imposed on the convict, if the convict is not given the benefit of [Section 360](#) of CrPC. Similarly, in a case where there are more than one accused and if one or more among them are acquitted and the others are convicted, the trial would stand concluded as against the accused who are acquitted and the trial will have to be concluded against the convicted accused with the imposition of sentence. When considered in the context of [Section 319](#) of CrPC, there would be no dichotomy as argued, since what becomes relevant here is only the decision to summon a new accused based on the evidence available on record which would not prejudice the existing accused since in any event they are convicted.

28. In that view of the matter, if the Court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under [Section 319](#) of CrPC can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion. While arriving at such conclusion what is also to be kept in view is the requirement of sub-section (4) to [Section 319](#) of CrPC. From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused. In a case where the learned Sessions Judge exercises the power under [Section 319](#) of CrPC after recording the evidence of the witnesses or after pronouncing the judgment of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of [Section 273](#) of CrPC. As against the accused who has been summoned subsequently a fresh trial is to be held. However while considering the application under [Section 319](#) of CrPC, if the decision by the learned Sessions Judge is to summon the additional accused before passing the judgment of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgment is required to be withheld and the application under [Section 319](#) of CrPC is required to be disposed of and only then the conclusion of the judgment, either to convict the other accused who were before the Court and to sentence them can be proceeded with. This is so since the power under [Section 319](#) of CrPC can be exercised only before the conclusion of the trial by passing the judgment of conviction and sentence.

29. Though [Section 319](#) of CrPC provides that such person summoned as per sub-section (1) thereto could be jointly tried together with the other accused, keeping in view the power available to the Court under [Section 223](#) of CrPC to hold a joint trial, it would also be open to the learned Sessions Judge at the point of considering the application under [Section 319](#) of CrPC and deciding to summon the additional accused, to also take a

decision as to whether a joint trial is to be held after summoning such accused by deferring the judgment being passed against the tried accused. If a conclusion is reached that the fresh trial to be conducted against the newly added accused could be separately tried, in such event it would be open for the learned Sessions Judge to order so and proceed to pass the judgment and conclude the trial insofar as the accused against whom it had originally proceeded and thereafter proceed in the case of the newly added accused. However, what is important is that the decision to summon an additional accused either suo-moto by the Court or on an application under [Section 319](#) of CrPC shall in all eventuality be considered and disposed of before the judgment of conviction and sentence is pronounced, as otherwise, the trial would get concluded and the Court will get divested of the power under [Section 319](#) of CrPC. Since a power is available to the Court to decide as to whether a joint trial is required to be held or not, this Court was justified in holding the phrase, “could be tried together with the accused” as contained in [Section 319\(1\)](#) of CrPC, to be directory as held in [Shashikant Singh](#) (supra) which in our opinion is the correct view.”

19. Hon’ble Court answered the questions referred for determination in paragraph No.33 of the judgment which is reproduced as under:-

33. For all the reasons stated above, we answer the questions referred as hereunder:-

“I. Whether the trial court has the power under [Section 319](#) of CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under [Section 319](#) of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced.

Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

II. Whether the trial court has the power under [Section 319](#) of the CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated)

trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

III. What are the guidelines that the competent court must follow while exercising power under [Section 319](#) CrPC?”

(i) If the competent court finds evidence or if application under [Section 319](#) of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under [Section 319](#) of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under [Section 319](#) of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under [Section 319](#) of CrPC, the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

20. In the present case, the learned trial court has summoned the revisionist in impugned judgment dated 17.01.2024 on finding his complicity in the offence alongwith co-accused persons on the basis of evidence appearing on record. The revisionists is named in the FIR and similar role has assigned to him in the offence of murder together with other accused persons, who were tried, convicted and sentenced by trial court in impugned judgment and order dated 17.01.2024.

21. After giving a thoughtful and respectable consideration to judgments cited above, I am of the considered opinion that the summoning of revisionist by trial court in suo motu exercise of powers under Section 319 Cr.P.C. is not contrary to law and is based on evidence on record. The impugned order is not hit by judgment of Hon'ble Supreme Court in **Devendra Kumar Pal Vs. State of U.P. and another in SLP (Crl.) No.6960 of 2021 and Criminal Appeal No.885 of 2019 and Criminal Appeal No.886 of 2019 in Sukhpal Singh Khaira Vs. The State of Punjab** as the facts of those cases were slightly different from the facts of the present case. In those cases summoning of additional accused was done after recording of conviction and passing of sentences to accuses persons who were already facing trial. Whereas in the present case the revisionist has been summoned under Section 319 Cr.P.C. in judgment dated 17.01.2024, prior to recording of conviction of chargesheeted accused persons. In paragraph No.50 of

impugned judgment, wherein the court below has observed that on the basis of evidence of PW-2 Hariom, PW-3 Brij Mohan and PW-5 Manoj Singh complicity of Bharat Singh is also established alongwith other accused persons, they have also filed affidavit in support of this version during the course of investigation which is part of case diary. There are cogent and strong evidence on record regarding complicity of accused Bharat Singh in the offence, which if remains unrebutted his conviction may be fully probable, therefore cognizance has been taken for charge under Section 302/34 I.P.C. against accused Bharat Singh and he is being summoned under Section 319 Cr.P.C. for trial.

22. After summoning of revisionist in paragraph 50 of the judgment, the learned trial court has recorded finding of conviction in respect of accused Ghanshyam, Sauran, Satpal and Rishi Pal for charge under Section 302/34 IPC and after hearing them on question of sentence, the sentence was passed against them in paragraph Nos. 54 and 55 of the judgment. In paragraph No.61 of the judgment some directions have been issued to office that in the light of facts mentioned in paragraph No.50 of this judgment, a separate case filed be prepared in respect of accused Bharat Singh for his trial for charge under Section 302/34 IPC, wherein certified copies of relevant prosecution documents will be placed, thereafter summoned be issued to him in concerned file.

23. Hon'ble Supreme Court in Sukhpal Singh Khaira (supra) held that if the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

24. The Hon'ble Court also held that the power under Section 319 Cr.P.C. can be exercised before the pronouncement of order on sentence, where there is a judgment of conviction of the accused. In the case of acquittal the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each

case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

25. Therefore, the answer to the legal issue involved in the present case is found in above dictum of Hon'ble Court. As in the present case as the summoning order was passed prior to recording of conviction and imposition of sentence on other accused persons, although in the same judgment, the procedure adopted by learned court below cannot be faulted with and Hon'ble Supreme Court itself provided a space for separate trial of the accused who has been summoned under Section 319 Cr.P.C.. If trial of other accused persons has concluded and it is not feasible to carry on joint trial of the newly added accused with other accused persons, who are already facing trial, separate trial of newly summoned accused is not barred under law.

26. Consequently, I find no illegality or irregularity or perversity in the impugned judgment passed by learned trial court. The revision is devoid of merit and it deserves to be dismissed.

27. The revision is **dismissed**.

Order Date :- 4.12.2024

Ashish/-