

Court No. - 86

Case :- CRIMINAL REVISION No. - 5550 of 2023

Revisionist :- Kailash Singh

Opposite Party :- State Of U.P. And 2 Others

Counsel for Revisionist :- Amarnath Tripathi

Counsel for Opposite Party :- G.A., Rajesh Kumar

Hon'ble Ram Manohar Narayan Mishra,J.

1. Supplementary affidavit filed today is taken on record.
2. Instant criminal revision has been preferred against the impugned order dated 4.8.2023 passed by learned Additional District and Sessions Judge, Court No. 14/Special Judge (Gangster Act), Varanansi in S.T. No. 450 of 2021 arising out of Case Crime No. 145 of 2020, P.S. Jaitpura, District Varanasi. By the impugned order learned trial court has dismissed the application 34-kha under section 319 Cr.P.C. filed by the revisionist wherein prayer has been made to summon respondent nos. 2 and 3, who were named in the F.I.R. as conspirator, as additional accused to face trial together with the accused who are already facing trial in the aforesaid case.
3. Heard Sri Amarnath Tripathi, learned counsel for the revisionist, Sri Rajesh Kumar, learned counsel for the respondent no. 3, learned AGA for the State and perused the material available on record.
4. Learned counsel for the revisionist submitted that in the present case F.I.R. was lodged at the instance of Kailash Singh on 28.8.2020 at around 5:30 P.M. on the basis of incident dated 28.8.2020 at about 10:30 A.M. his nephew Abhishek Singh, who was an advocate by profession, was going to District Court Chandauli by riding a motor-bike bearing Registration No. UP55AC1701. He was accompanied by his friend Deepak Gond who was pillion rider. Some miscreants were chasing them near Chaukaghat Kali Temple and open 4-5 around fire at Abhishek which resulted in death of Abhishek and Balmiki Gond, a passerby and his companion Deepak Gond got seriously injured by fire arm injury. There was enmity with regard to land between Abhishek Singh and named accused Shardul Singh and Shiveshwar Rai. These people had lodged an F.I.R. also against Abhishek Singh which was under inquiry by P.S. Pandeypur Lalitpur. The named accused would often threaten Abhishek Singh and respondent nos.

2 and 3 hatched a conspiracy with hired killers to commit this offence who opened indiscriminate fire on Abhishek Singh @ Prince and his companion Deepak Gaud.

5. Learned counsel for the revisionist submitted that the revisionist is named in the F.I.R. along with one unknown person. Investigation officer submitted charge sheet twice in the case firstly against 11 accused persons on 13.12.2020 and subsequently against 15 accused persons on 18.12.2020 under sections 302, 307, 120-B, 145, 148, 149, 216-A/34 I.P.C. and sections 3,25, 27 of Arms Act, however, as many as 26 persons whose name surfaced during investigation have been charge sheeted. The investigating officer has exonerated the named accused persons who are respondent nos. 2 and 3 in present revision after investigation on the ground that their complicity in the offence was not found. The deceased Abhishek Singh was accused in Case No. 132 of 2013 under section 307, 394, 506 I.P.C. P.S. Ramnagar, District Varanasi in which he was sent to jail and he was released from jail in 2019.

6. He next submitted that during trial charge sheeted accused persons' evidence of P.W. 1 Kailash Singh, P.W. 2 Wife of the deceased Balmiki Gond and P.W. 3 injured Deepak Gaud has been recorded, however, P.W. 2, and P.W. 3 have not supported the prosecution version in their evidence and they declined to identify the charge sheeted accused persons who were present in the court at the time of their evidence. P.W. 1 Kailash Singh the informant has fully supported the F.I.R. version in his evidence and alleged the named accused Sharadul Singh and Shiveshwar Rai as chief conspirator in this case in which two persons were killed and one was seriously injured due to fire arm injuries caused by the charge sheeted accused persons.

7. Learned trial court has dismissed the application under section 319 Cr.P.C. filed by the revisionist /informant without considering the fact that respondent nos. 2 and 3 are named in the F.I.R. and was attributed with role of chief conspirator in the alleged offence and there has been long enmity between Abhishek Sing and respondent nos. 2 and 3 with regard to land in dispute.

8. Per contra, learned counsel for the respondent nos. 2 and 3 submitted that apart from bald allegations made in the F.I.R. against respondent nos. 2 and 3 and statement of P.W. 1, there is no plausible evidence regarding conspiracy against respondent no. 2 and 3 even P.W. 3 the injured has stated nothing in his evidence. The F.I.R. version has not been corroborated by any other evidence on record. The deceased Abhishek

Singh @ Prince himself has long criminal history and he developed enemies during course time. Respondent Nos. 2 and 3 has nothing to do with incident in present case. P.W. 4 Surya Dubey has been declared hostile and he has also stated nothing against the proposed accused Sharadal Singh and Shiveshwar Rai. Learned trial court has dismissed 319 Cr.P.C. after considering the detail fact and circumstance of the case and impugned order needs no interference in the present revision. The case is fixed for recording prosecution evidence. The role of respondent no. 2 and 3 was not found in this offence by investigating officer and he dropped their name in charge sheet. During investigation this fact emerged that Vivek Singh Katta who was harboring long enmity with deceased Abhishek Singh @ Prince hatched conspiracy with jailed accused Abhishek Singh @ Honey to eliminate Abhishek Singh @ Prince.

9. The ambit and scope of exercise of power under section 319 Cr.P.C. has been discussed by Hon'ble Supreme Court in Constitution Bench judgement ***Hardeep Singh vs. State of Punjab 2014 (3) SCC 92*** wherein paragraph nos. 98 and 99 Hon'ble Court observed as under:-

" 98. 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.

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."

10. The case of present revisionist/informant that proposed accused respondent nos. 2 and 3 were present on the spot where offence is committed by perpetuates of the crime whose name is surfaced during investigation. Respondent nos. 2 and 3 undoubtedly named in the F.I.R. but on the basis of suspension due to their previous enmity with the deceased Abhishek @ Prince and the informant has stated in FIR that some miscreants open 4-5 round fire on his nephew Abhishek Singh @ Prince which is resulted in death. Abhishek Singh @ Prince and one passerby namely Balmiki Gond the companion of Abhishek Singh, namely, Deepak Gond at the time of incident who was also travelling along with Abhishek Singh @ Prince on motor bike suffers series of injuries in the incident. The allegation against respondent nos. 2 and 3 in FIR is that these people were harbouring enmity with Abhishek @ Prince and they had lodged FIR against him also and which was investigated by police at P.S Pandeypur District Jhansi.

11. The similar statement was given by the informant in his statement recorded under section 161 Cr.P.C. before police in respect of respondent nos. 2 and 3 in which he has stated therein that he had named Sharadul Singh and Shiveshwar Rai in FIR and these people would have got his nephew killed. He also stated therein that one Vivek Singh Katta had also enmity with deceased Abhishek @ Prince but he had shot fire at one Arif Ansari, a sand merchant at Bihar in mistaken identity of Abhishek @ Prince and in that murder case Abhishek was subsequently made accused by the father of the deceased.

12. Informant Kailash Singh has stated in his sworn testimony before the Court during trial of other accused persons that miscreants chased his nephew Abhishek @ Prince who was an Advocate by profession near Kali Temple Chauka Ghat Varanasi and opened fire at him when he was moving on motorcycle along with his companion Deepak Gond, the pillion rider. One passerby Balmiki Gond also suffered fire arm injury in the incident. Sharadul Singh and Shiveshwar Rai were keeping evil eye on his land and on account of that land, they had filed an application against Abhishek @ Prince which was being inquired by Pandeypur Police. These persons worked as builder and on their incitement this incident was caused upon his nephew. These people are main accused in the case. In cross examination of co-accused persons wherein it is stated that whatever that in his statement 161 Cr.P.C. only that portion is stated by him which is finds place in written report exhibit Ka and he shown other materials therein. P.W.s 2, 3 and 4 have stated nothing about respondent nos. 2 and 3.

13. So far as charge of criminal conspiracy is concerned, the same is defined in section 120A I.P.C. which may be reproduced as Under:-

"120A. Definition of criminal conspiracy

When two or more persons agree to do, or cause to be done,-

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."

14. Section 120B IPC provides punishment of criminal conspiracy which reads as under:-

"120B. Punishment of criminal conspiracy

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 51[imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.]"

15. Thus, conspiracy is a separate offence which is based on principle of vicarious liability if conspirator is not perpetrator of the crime.

16. A three Judge bench judgement of Hon'ble Supreme Court in ***Bhagwan Swaroop vs. State of Maharashtra AIR 1965 SC 682*** has analyzed the ingredients of section 10 of Evidence Act which provides that things said or done by conspirator in reference to common design will be relevant fact for charge of criminal conspiracy.

The ingredients are as follows:-

"1. There shall be a prima facie, evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy;

2. if the said condition is fulfilled, anything said, done are written by any of them in reference to their common intention will be evidence against the other;

3. anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them;

4. It would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and

5. it can only be used against a co-conspirator and not in his favour."

17. The High Court of **Madras in Siva @ Jeeva @ Mottai Khadar @...vs State by Inspector of Police** in Criminal Appeal No.1049 of 2006 dated 16.4.2019 held in paragraph no. 25 and 27 as under:-

"25.It is settled law that to prove a criminal conspiracy, there must be evidence, direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds, resulting in ultimate decision taken by the conspirators, regarding the commission of offence and where the factum of conspiracy is sought to be inferred from circumstances, the Prosecution has to show that those circumstances give rise to a conclusive or irresistible inference of an agreement between two or more persons to commit an offence.

27.Merely levelling a charge of conspiracy, without proper and believable evidence, is not sufficient to mulct criminal liability on the Respondents. The purpose or circumstances, warranting an inference of existence of a conspiracy, should be proved so as to bring the Respondents to face the trial in criminal court."

18. If we analyse the facts stated and evidence adduced in the case in hand there is nothing in the statement of P.W. 1 or in evidence of any other witness to show that there was meeting of minds amongst respondent nos. 2 and 3 and other accused persons who are facing trial in the case to commit the offence. In so far as the FIR version which has been recorded by P.W. 1 in his sworn testimony before the court which has been formed basis of moving an application under section 319 Cr.P.C. against respondent nos. 2 and 3 there is only allegation against respondent nos. 2 and 3 that they were inimical to the deceased Abhishek @ Prince and they have lodged a false case against him at police station concerned which were being inquired into at the time of incident.

19. The allegations/ acquisitions made in the FIR or evidence of witness cannot form an evidence of conspiracy unless there is some evidence of

conspiracy which comes under purview of section 10 of Evidence Act to connect the proposed accused with the other accused persons who are projected as perpetuates of crime in the case. Allegation cannot form basis of prove and learned trial court has rightly declined to issue process against respondent nos. 2 and 3 in this case for want of requisite evidence against them as additional accused in exercise of power under section 319 Cr.P.C.

20. In fact only allegation against them in FIR as well as in statement of P.W. 1 there is no material whatsoever at record to connect respondent nos. 2 and 3 with the offence which is being tried.

21. Consequently, I find no illegality irregularity or perversity in the impugned order passed by learned trial court while dismissing the application under section 319 Cr.P.C. filed by the informant/revisionist to summon the respondent nos. 2 and 3 under section 319 Cr.P.C. The revision is devoid of merit and deserves to be dismissed.

22. The revision is hereby *dismissed*.

Order Date :- 11.12.2024

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