

Court No. - 86

Case :- CRIMINAL REVISION No. - 2993 of 2024

Revisionist :- Kallu @ Omvesh And Another

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

Counsel for Revisionist :- Anjali Singh Tomer

Counsel for Opposite Party :- G.A., Sindhuja Rathi Bhargava

Hon'ble Ram Manohar Narayan Mishra, J.

1. Heard Sri Rahul Gaud, Advocate, holding brief of Ms. Anjali Singh Tomer, learned counsel for the revisionists, Mrs. Sindhuja Rathi Bhargava, learned counsel for the opposite party No.2, learned A.G.A. for the State-respondent and perused the material available on record.

2. Instant criminal revision has been preferred by the revisionists against the impugned order dated 3.5.2024, passed by Additional Session Judge, Court No.5, Baghpat in Session Trial No.142 of 2023, State vs. Mohan, by which the application filed under Section 319 Cr.P.C. was allowed and the revisionists Kallu @ Omvesh and Rasihd are summoned as additional accused to face trial for charge under Sections 147, 148, 149, 307 IPC.

3. Learned counsel for the revisionists submits that the revisionists have been summoned under Section 319 Cr.P.C. by impugned order dated 3.5.2024 passed by learned trial court without considering the nature of the evidence appearing against them, which is not of nature that it could form satisfaction of the court that there is stronger evidence than mere probability of their complicity. He further submitted that the revisionists are not named in the FIR and only one person namely, Mohan is named in the FIR. It is stated by the informant that Mohan accompanied by some companions assaulted his nephew Sunil Kumar by lathi, danda and belt, due to which he suffered serious injuries and FIR was lodged under Section 307 IPC at the instance of informant Jaiveer Singh (PW-1). He next submitted that the injuries found on the person of present injured Sunil Kumar are not likely to be caused by lathi-danda as stated in FIR. He lastly submitted that even the

informant has not implicated the revisionists in his first statement recorded under Section 161 Cr.P.C. The statement of injured was recorded twice; firstly on 23.3.2024 and thereafter on 16.6.2024. No specific role has been assigned in the offence against the revisionists. Even in statement of the injured before the court, he has made omnibus allegations against all the accused persons with regard to offence in question. The revisionists were not having any motive to commit the offence. Independent witnesses have not implicated the revisionists in their statement under Section 161 Cr.P.C. and for that reason Investigating Officer has dropped their name in the chargesheet.

4. He next submitted that the informant is not an eyewitness. He got the FIR scribed by Sunil Kumar an eyewitness. In injury report of Sumit Kumar the injured, it is mentioned by doctor that the injured was assaulted by unknown persons on 22.03.2024 at 08:00 am he was brought to hospital at 08:30 am by Sumit Kumar (the scribe of written report) and Jaiveer Singh (the informant). The name of the accused persons including the revisionists surfaced in statement of injured Sunil Kumar recorded under Section 161 Cr.P.C. Only one accused Mohan is named in FIR. Eyewitness Sumit Kumar has stated in his statement under Section 161 Cr.P.C. that revisionists and co-accused had assaulted the injured by lathi and dandas. Motive is only assigned to chargesheeted accused. Rashid's plea of alibi is supported by his Bhabi (sister-in-law) in her statement recorded during investigation.

5. Per contra, learned counsel for the respondent No.2 submitted that there is ample evidence on record against the revisionists and learned trial court after recording satisfaction of

prima facie case appearing against the revisionists on the basis of evidence of PW-1, Pw-2 recorded during trial has exercised its jurisdiction under Section 319 Cr.P.C. and summoned the revisionists to face trial alongwith other accused who are already facing trial. She further submitted that the revisionists are participating in the trial, which is progressing before trial court. There is no illegality, irregularity or perversity in the impugned order, which is based on record and no interference is called for in present revision.

6. Learned counsel for the respondent No.2 submitted that although revisionists are not named in the FIR, yet this fact is noticeable that in FIR the informant Jaiveer Singh has stated that his co-villager Mohan attacked his nephew Sunil Kumar with intention to kill him alongwith his unknown companions who were armed with lathi, danda and belt. His nephew suffered serious injuries in the incident and after admitting him in Apex Hospital Baraut he has come to lodged a report. During investigation the Investigating Officer recorded statements of informant Jaiveer Singh who is retired Sub Inspector in U.P. Police supported his FIR version in the statement under Section 161 Cr.P.C.. The name of assailants surfaced in statement of injured Sunil Kumar as Mohit, Rashid, Sagar, Kallu @ Omvesh, Hanu and Mohan and thus complicity of six persons surfaced in the offence including present revisionist Omveer and Rashid. The injured imputed motive to named accused Mohan in his statement under Section 161 Cr.P.C., he stated that he remained hospitalized for a week; the informant is his uncle. In his supplementary statement under Section 161 Cr.P.C. informant Jaiaveer Singh stated that injured Sunil Kumar had disclosed the name of assailants in the hospital who told him that he could identify only

two persons Kallu @ Omvesh and Mohan. The injured asked him to not mention name of Kallu @ Omvesh as he is local miscreants and he may eliminate him, if he is named in the FIR. The informant in his supplementary statement stated complicity of Mohan, Kallu @ Omvesh and Mohit and some other persons in the offence as per information received. Some witnesses stated in their statements that Rashid was not present on the spot, he works in Modern Rice Mill Fabricators P.S. Gangor District Saharanpur alongwith his brother Kalim and on 21.03.2022 was sent to the place of Ayub for laying tin shed at village Bawri, P.S. Badaut.

7. This fact was corroborated by Kalim one of the co-owners of said Rice Mill in his statement before police. The Investigating Officer dropped the name of Kallu @ Omvesh, Rashid and Rambir in the chargesheet on placing reliance on statements of some unconcerned witnesses and ignoring the statement of injured Sunil Kumar who suffered serious injuries in the incident.

8. Learned counsel for the respondent No.2 further submitted that PW-1 Jaiveer Singh, the informant and PW-2 injured Sunil Kumar has testified in their statement before the court regarding complicity of the revisionist. The injured as stated that six accused persons were hiding in a sugarcane field and as soon as he passed there from they emerged there armed with lathi, danda and belt and began assaulting him by the respective weapons, in which he suffered many fractures on different parts of the body. His motorcycle was left on the place of incident, his motorcycle fell down on the spot, on that day he had gone to his field by Motorcycle as he had to go outside the village on that day. He remained hospitalized for a week, he remained unconscious for around 24 hours, he serves in Harchand Mal Inter College Tikri.

9. Learned counsel for the respondent No.2 next submitted that if injured Sunil Kumar has stated complicity of all the six accused persons including present revisionists in his statement under Section 164 Cr.P.C. also recorded before Magistrate during investigation. He suffered as many as 12 injuries on his person, which is quite natural to be caused by six persons. Learned court below has summoned the revisionists as accused placing reliance on evidence adduced during trial of co-accused persons, as strong prima- facie case is made out against revisionists to summon them in exercise of powers under Section 319.

10. I have given a thoughtful consideration on submissions made by learned counsel for contesting parties, the evidence and material available on record, evidence of PW-1 informant Jaiveer Singh and PW-2 injured Sunil Kumar and have also gone through the impugned order and statements recorded during investigation. The law on ambit and scope of exercise of powers by trial court under Section 319 Cr.P.C. has been elaborately discussed by a Constitution Bench Judgment of Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others AIR 2014 SC 1400**, wherein Hon'ble Court observed as under:-

11. Section 319 Cr.P.C. as it exists today, is quoted hereunder:

“319 Cr.P.C. -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.”

*12. 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 Cr.P.C.*

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 Cr.P.C.](#)?

The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of [Cr.P.C.](#) and the judgments that have been relied on for the said purpose. The controversy centers around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.

.....15. [Section 319 Cr.P.C.](#) allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such

powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the chargesheet filed under [Section 173](#) Cr.P.C. or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

.....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.

.....71. It is, therefore, clear that the word “evidence” in [Section 319](#) Cr.P.C. 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 power under [Section 319](#) Cr.P.C. is to be exercised and not on the basis of material collected during investigation.

....98. Power under [Section 319](#) Cr.P.C. is a discretionary and an extra- ordinary 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.

Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?

11. In supplementary report of injures Sunil Kumar the doctor has stated that injured was assailed by unknown persons on 22.03.2021 at around 08:00 AM. he was brought by uncle Jaiveer Singh, X-ray of right leg and left ankle was taken, in his opinion injuries are grievous in nature, patient was operated on 22.03.2022 and 25.03.2023 and discharged on 29.03.2022. It is natural that at the time of filing of written report the informant was not aware about the name of all the assailants, he is not an eyewitness and motive has been attributed to accused Mohan for commission of the offence. The informant has named Mohan and some unknown persons in the FIR. The injured in his statement under Section 161 Cr.P.C. and 164 Cr.P.C. as well as in his evidence before the court during trial has consistently implicated the revisionists as assailants together with other accused persons. No finding regarding plea of alibi taken by accused Rashid can be given at this stage and he will have opportunity to lead evidence in this regard at the stage of defence evidence. No document has been filed on his behalf in support of his plea of alibi.

12. Learned court below has summoned accused persons by a speaking order, in which the sequence of events, and evidence of PW1 and PW-2 were recorded during trial has been properly discussed and considered. The learned court below has placed reliance on judgment of **Hardeep Singh Vs. State of Punjab and others (supra) Hardevi Vs. State of U.P. 2006 (2) JIC 283** in the impugned order even in cross-examination of PW-1 and PW-2 there is nothing which could exculpate the revisionists at that stage.

13. There is no illegality, irregularity or perversity in the impugned order passed by the learned court below a strong prima facie case is made out against the revisionists on the basis of evidence appearing on record for their summoning in exercise of powers under Section 319 Cr.P.C. for alleged offence. Revision is devoid of merit and deserved to be dismissed.

14. The revision is **dismissed**.

Order Date :- 12.12.2024

Kamarjahan/Ashish/-