

Court No. - 86

Case :- CRIMINAL REVISION No. - 3591 of 2024

Revisionist :- Indra Bahadur Yadav

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

Counsel for Revisionist :- Manvendra Singh, Pravin Kumar
Srivastava

Counsel for Opposite Party :- G.A., Shivajee Srivastava, Sudhir
Kumar Srivastava

Hon'ble Ram Manohar Narayan Mishra, J.

1. Instant Criminal Revision has been preferred against the order dated 16.5.2024 passed by Additional Sessions Judge/Special Judge/(M.P./M.L.A.) Prayagraj in S.T. No. 548 of 2022 arising out of Case Crime No. 368 of 2020, under sections 323, 325, 308, 506 I.P.C., P.S. Karchhana, District Prayagraj by which learned trial court rejected the application under section 319 Cr.P.C. filed by revisionist/informant wherein a prayer has been made to summon Rajnish Yadav who is named in the F.I.R. as accused to face trial in said case along with other accused persons who are already facing trial.

2. Heard learned counsel for the revisionist, learned counsel for the respondent no. 2 and learned A.G.A. for the State-respondent.

3. Learned counsel for the revisionist submitted that respondent no. 2 Rajnish Yadav is named as accused in the F.I.R. along with other accused persons. In F.I.R. it is stated by the informant Indra Bahadur Yadav that on 6.8.2020 at around 7 AM, opposite party no. 2 along with three co-accused persons assaulted the revisionist, Kanhaiya Lal Yadav and Krishna Mohan Yadav with lathi, Danda, country made pistol, Katwasa (sharp edged weapon) etc. due to which they suffered serious injuries. An F.I.R. under sections 323 and 506 I.P.C. on 6.8.2020 at around 12:09 hour has been lodged by revisionist. During investigation, on the basis of X-ray, CT Scan report of injured persons, charges under section 325 and 308 I.P.C. were added in principal sections, however, investigating officer as per statement of some co-villagers who stated that

opposite party no. 2 was not present at the time of incident, has exonerated the name of opposite party no. 2 and submitted the charge sheet against Keshav Yadav, Rakesh and Ratnesh Yadav.

4. Learned counsel for the revisionist next submitted that the informant in F.I.R. as well as 161 Cr.P.C. and all other injured persons stated complicity of the respondent no. 2 in the alleged incident. The informant and injured persons in their statement recorded under section 161 Cr.P.C. have specifically stated that respondent no. 2 was armed with lathi nevertheless the trial court has dismissed the application of the revisionist under section 319 Cr.P.C. whereas on the basis of same evidence other accused persons are facing trial in alleged criminal case.

5. It is further submitted that learned trial court has observed that no specific role has been assigned to opposite party no. 2 in the incident. Finding of trial court is perverse since ample evidence has been given by injured person against the respondent no. 2. The injured persons have suffered head injuries and grievous hurt in the incident and the accused persons including respondent no. 2 had actively participated in the offence but the learned trial court has ignored their evidence and dismissed the application in illegal manner. The impugned order is liable to be quashed.

6. Learned AGA for the State as well as learned counsel for the respondent no. 2 submitted that neither the informant nor other injured persons have stated in their statement recorded under section 161 Cr.P.C. that the respondent no. 2 was armed with lathi. General allegation has been made in the F.I.R. as well as in the statement recorded under section 161 Cr.P.C. that all the accused persons including respondent no. 2 were armed with lathi danda and iron rod. No specific role has been assigned to the opposite party no. 2 in F.I.R. as well as in statement of the revisionist recorded under section 161 Cr.P.C. Although the witnesses have improved their statement from their earlier version under section 161 Cr.P.C. with regard to complicity of the respondent no. 2 yet they have not stated in their statement that respondent no. 2 has assaulted the injured persons.

7. Learned counsel for the respondent no. 2 also submitted that the medical examination of the injured persons are conducted on the same date within few hours of the incident wherein doctor has

examined that injuries of injured persons are one day old, therefore, injury report itself shrouded in doubt. There is no illegality, perversity or irregularity in the impugned order passed by the trial court.

8. In injury report of Kanhaiya Lal Yadav following injury are found on his person at the time of his examination on 6.8.2020 at 11:30 A.M.

i. Lacerated wound 3cm x 0.6 cm x muscle deep on the mid parietal region of skull reddish in colour 8 cm above the right eyebrow ad (NCC head).

ii. Abraded contrusion of above 4 cm x 3cm on the right wrist joint reddish in colour.

iii. Lacerated wound 1 cm x 0.4 cm on the right thumb.

iv. Contusion 4cm x 2 cm on the base of left thumb reddish in colour 1 cm below the left wrist joint.

9. In the opinion of doctor all injury are caused by hard and blunt object and simple in nature except injury no. 1 and 4 referred to Colvin Hospital.

10. Injury report of Krishn Mohan Yadav following injury were found on his person at the time of his examination on 6.8.2020 at 11:18 A.M.

i. Contusion 4cm x 2cm on the left side of scapula region reddish in clour 2 cm below with left angle of scapula.

ii. Contusion 4cm x 2cm the left arm reddish in colour 14 cm below the left shoulder joint.

iii. Contusion 8cm x 6cm on the dorsanl of left hand a reddish in colour (ad x-ray).

10. As per opinion of doctor all injuries caused by hard and bluntt object and simple in nature except injury no. 2 referred to Colvin Hospital.

11. In injury report of Indrabahadur Yadav following injury were found on his person at the time of his examination on 6.8.2020 at 11:30 P.M.

i. Lacerated wound 9 cm x 0.5 cm x bone deep on the mid parietal

region of skull reddish in colour 5 cm above the right eye brow (ad NCC head).

ii. Contusion 6cm x 2cm on the right side of scapula reddish in colour 4 cm below the right shoulder joint.

iii. Contusion 6 cm x 2cm on the lower back reddish colour 6 cm below the right in front angle of scapula.

12. As per opinion of doctor, all injury caused by hard and blunt object and simple in nature and except injury no. 1 and 4 referred to Colvin Hospital for X-ray.

13. In C.T. scan report of Indra Bahadur Yadav no bony injury was seen however, scalp soft tissue hematoma in right high parietal region was seen.

14. In C.T. Scan report of Kahaiya Lal no bony injury was seen.

15. In X-ray report of injured Kanhaiya Lal Yadav, linear fracture at head of 1st metacarpal bone of left thumb base of left hand was found.

16. Similarly in X-ray report of Krishna Mohan Yadav fracture 3rd and 4th metacarpal bone of left hand was seen.

17. Injured Indra Bahadur Yadav was admitted in SRN Hospital on 6.8.2020 and was discharge on 7.8.2020 after he was managed properly by medicine and treatment. He last consciousness for some time having been injured. The presence of respondent no. 2 has been shown in F.I.R. as well as statement of injured witnesses under section 161 Cr.P.C. however, the name of respondent no. 2 was exonerated. During investigation independent witnesses, namely, Ghanshyam Gaur, Moolchandra, Parashnath have stated that Rajnish Yadav had not participated in the incident which took place on 6.8.2020 at around 7 AM. He is undergoing studies of B.tech in Naini, it was period of lock down and he was not present at his home. Similar statement was given by Rajnish Yadav also when he was examined by investigating officer.

18. I have gone through the evidence of injured witness who have modified their version from F.I.R. and their statement under section 161 Cr.P.C. wherein they have stated all the accused persons were armed with lathi danda Katwasa and iron rod. However, at the stage of trial before the court they have stated the

accused Rajnish Yadav was armed with lathi. Accused Keshav Yadav, Rakesh and Ratnesh Yadav belongs to same family. There is litigation between the injured Indra Bahadur Yadav and accused persons since 2004 to 2005 and due to enmity this incident occurred. Learned trial court has rightly observed that none of the witnesses have attributed any specific role in the offence to the respondent no. 2 in their testimony before the court. General statement has been made by the witnesses that Rajnish Yadav was also involved in the maar peet and he was having lathi in his hand. All the accused persons assaulted three injured persons in concerted manner. Accused Ratnesh had assaulted Indra Bahadur Yadav by Katwasa (a sharp edged weapon).

19. In Manjeet Singh vs. State of Haryana and others, Criminal Appeal No. 875 of 2021, Hon'ble Supreme Court had considered the ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under [Section 319 CrPC](#) which can be summarized as under:

- (i) That while exercising the powers under [Section 319 CrPC](#) and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;
- (ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;
- (iii) the law has been properly codified and modified by the legislature under the [CrPC](#) indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;
- (iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;
- (v) 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;
- (vi) [Section 319 CrPC](#) allows the court to proceed against any person who is not an accused in a case before it;
- (vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be

inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) [Section 319](#) CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under [Section 319\(1\)](#) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of [Sections 207/208](#) CrPC, committal, etc. which is only a pre-trial stage intended to put the process into motion;

(x) the court can exercise the power under [Section 319](#) CrPC only after the trial proceeds and commences with the recording of the evidence;

(xi) the word “evidence” in [Section 319](#) CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) 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;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under [Section 319](#) CrPC and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under [Section 319](#) CrPC can be exercised;

(xv) that power under [Section 319](#) CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to

summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, [in that case](#) also, the Court is still not powerless by virtue of [Section 319 CrPC](#) and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

xvii) while exercising the powers under [Section 319 CrPC](#) the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

20. Hon'ble Supreme Court in ***Hardeep Singh vs. State of Punjab, 2014 SC 1400*** has observed that *Section 319 CrPC 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.

Accordingly, the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove.

The word "evidence" in Section 319 CrPC 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 CrPC is to be exercised and not on the basis of material collected during the investigation.

6.1.6 While answering Question (iv), namely, what is the degree of satisfaction required for invoking the power under Section 319 CrPC, this Court after considering various earlier decisions

on this point, has observed and held as under:

105. Power under Section 319 CrPC 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.

106. 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.

6.1.7 While answering Question (v), namely, in what situations can the power under Section 319 CrPC be exercised: named in the FIR, but not charge-sheeted or has been discharged, this Court has observed and held as under:

112. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected

during investigation, the court had come to the conclusion that there is not even a *prima facie* case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged.

Therefore, there must exist compelling circumstances to exercise such power. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 CrPC without resorting to the provision of Section 319 CrPC directly.

21. Hon'ble Supreme Court also observed in Hardeep Singh (Supra) as under:-

105. Power under Section 319 CrPC 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.

22. With the forgoing discussion and dictum of Hon'ble Supreme Court in **Hardeep Singh (Supra)** case, I am of the considered opinion that learned trial court has dismissed the application under section 319 Cr.P.C. filed by the revisionist by assigning cogent reasons and speaking order. I find no illegality, irregularity and perversity in the order passed by learned trial court. The present revision is devoid of merits and is deserves to be dismissed.

23. The revision is, accordingly, **dismissed**.

Order Date :- 3.12.2024/SY