

Reserved on 09.02.2024

Delivered on 07.03.2024

Court No. - 15

Case :- CRIMINAL REVISION No. - 449 of 2022

Revisionist :- Vinod Kumar Singh

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home, Lko. And Another

Counsel for Revisionist :- Meenakshi Singh Parihar, Abhiuday Pratap Singh, Ram Raj, Rishabh Raj

Counsel for Opposite Party :- G.A., Anand Kumar Yadav, Anuj Pandey

along with

Case :- CRIMINAL REVISION No. - 64 of 2024

Revisionist :- Kamla Devi

Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home, Lko. And Another

Counsel for Revisionist :- Rama Niwas Pathak, Ashok Kumar Shukla

Counsel for Opposite Party :- G.A., Anand Kumar Yadav, Anuj Pandey

Hon'ble Mohd. Faiz Alam Khan, J.

1. Above mentioned both criminal revisions are connected with the same crime number and have been filed against the impugned order of date 18.11.2021 and are being disposed of by this common order.
2. A consensus appears to have arrived between learned counsel for the parties to hear the matter on merits, moreover, having regard to the reasons given in the enclosed affidavits with the application moved under Section 5 of the Limitation Act, the delay occurred in filing the aforesaid Criminal Revisions is hereby condoned.
3. Above mentioned criminal revisions have been filed by accused revisionists challenging the order dated 18.11.2021 passed by the learned Additional District & Sessions Judge/Special Judge, E.C. Act, Court No.4, Faizabad in S.T. No.334 of 2014 (State Vs. Jainendra Sharma) arising out of Case Crime No.537 of 2014 under Sections 147, 148, 149, 307, 326, 504, 506, 120B IPC, P.S. Kotwali Nagar, District-Faizabad (Now Ayodhya), by means of which revisionists have been summoned to face trial under Section 319 Cr.P.C.
4. Heard Shri HGS Parihar, learned Senior Advocate assisted by Ms. Meenakshi Parihar, learned counsel for the revisionist- Vinod Kumar Singh in Criminal

Revision No.449 of 2022 as well as Shri Ashok Kumar Shukla, learned counsel for the revisionist- Kamla Devi in Criminal Revision No.64 of 2024 and Shri Anuj Pandey, learned counsel appearing for the opposite party No.2/ complainant/ informant in both the criminal revisions as well as Shri Rajesh Kumar Singh, learned AGA for the State and perused the record.

5. Shri HGS Parihar, learned Senior advocate while drawing the attention of this Court towards the impugned order of dated 18.11.2021 whereby both the revisionists have been summoned to face trial under Section 147 , 148, 149/307, 326, 504, 506 and 120-B I.P.C. submits that the Trial Court has passed the impugned judgment in utter disregard to the settled law propounded by the Hon'ble Supreme court in **Hardeep Singh Vs. State of Punjab and Others (2014) 3 SCC 92** as to summon the proposed accused person with the help of Section 319 Cr.P.C., a case which must be more than prima facie is required, while there was no prima facie case existing against the revisionist- Vinod Kumar Singh.
6. It is further submitted that the evidence which is required for summoning an accused person under Section 319 Cr.P.C. must be stronger than the evidence required for framing of charge or a little more than the prima case.
7. It is further submitted that Hon'ble Supreme Court in **Hardeep Singh (supra)** has carved out a difference pertaining to the degree of satisfaction required for summoning the original accused person at the time of taking cognizance vis-a-vis subsequent accused persons being summoned under Section 319 Cr.P.C., on account of the fact that trial has already commenced against the original accused and it is in the course of such trial, some material has been disclosed against the proposed accused persons and fresh summoning of accused will result in delay of trial. Therefore, the degree of satisfaction required by summoning the additional accused with the help of Section 319 Cr.P.C. is bound to be more than required at the stage of Section 204 Cr.P.C.
8. It is further submitted that after thorough investigation, finding no material, the charge sheet was not filed by the investigating Officer against the revisionist- Vinod Kumar Singh and the role of the applicant in the alleged crime has been alleged only of hatching a conspiracy and there is absolutely no evidence on the basis of which any conspiracy may be inferred.
9. Learned counsel for the applicant has drawn the attention of this Court towards the statement of witnesses Rajkumar Singh, Rishi Dev Mishra, injured Manoj Singh, injured Arvind Kumar Singh, witness Prabhat kumar Singh, whose statements have been recorded by the Investigating Officer under Section 161

Cr.P.C. in order to show that the name of the instant revisionist- Vinod Kumar Singh has been taken by these witnesses only on the ground that the revisionist is having political enmity with Yashbhadra Singh @ Monu and the name of the revisionist has been taken in a manner that it is apprehended that this incident might have been planned by the revisionist.

10. Learned Senior advocate has also drawn the attention of this Court towards the statements of four prosecution witnesses of fact, namely, P.W.1 Yashbhadra Singh @ Monu, P.W.2 Rishi Dev Mishra, P.W.6 Rajkumar Singh and P.W.7 Manoj Kumar Singh, who have been testified before the Trial Court in order to show that the name of the revisionist Vinod Kumar Singh has been stated by them as a conspirator and there is no evidence or material stated by them for believing such apprehension or suspicion. Thus, it is evident that the name of the revisionist- Vinod Kumar Singh was implicated in this case only on account of the political enmity and there is no material at all which may justify his summoning by the Trial Court with the help of Section 319 Cr.P.C. It is also highlighted that the Trial Court has failed to apply its judicial mind on the facts, circumstances and evidence of the case, as the Trial Court has not disclosed any evidence at all and simply mentioned what has been stated by the four witnesses of fact before the Trial Court, while the duty of the trial Court was to see the evidence/ material available on record which may be termed as more than prima facie.
11. Learned Senior Advocate has relied on the law laid down by Hon'ble Supreme Court in **Hardeep Singh (supra)**.
12. Shri Ashok Kumar Shukla, learned counsel for the revisionist- Kamla Devi in Criminal Revision No.64 of 2024 submits that the Trial Court has committed manifest illegality in summoning her to face trial under Section 319 Cr.P.C. while there is absolutely no evidence against her also and the satisfaction which was required to have been drawn by the trial Court of having sufficient grounds has not been drawn by the Trial Court before summoning the applicant.
13. It is also submitted that the impugned order has been passed by the trial Court without application of judicial mind and the Trial Court has not disclosed the evidence produced before it and by simply referring what has been stated by the four witnesses of fact and after noticing law propounded in Hardeep Singh (supra) has summoned the applicant to face trial, which is against the law laid down by Hon'ble Supreme Court in Hardeep Singh (supra)
14. It is further submitted that applicant is a lady and is not supposed to take active part in the incident of such kind and to summon a proposed accused person with the help of Section 319 Cr.P.C. a case more than prima facie is required to be

established which is not emerging in this case and therefore, the impugned order is liable to be set aside.

15. Shri Anuj Pandey, learned counsel appearing for the informant/ complainant/ opposite party No.2 vehemently submits that the father of the complainant was elected Member of Legislative Assembly, who was shot dead on 21.01.1999 as he had opposed the ill practices of so called late Sant Gyaneshwar.
16. It is also submitted that elder brother of the complainant, namely, Chandrbhadra Singh @ Sonu Singh is a former Member of State Legislative Assembly. The father of the complainant was murdered in a bomb attack on 21.1.1999 and one of the assailant, namely, Dinanath was apprehended at the spot and was convicted by the Trial court. Later on, the complainant became Block Pramukh from Dhanpatganj, Sultanpur and his elder brother contested election for State legislature and when the aforesaid Sant Gyaneshwar was murdered on 10.02.2006, without there being any material, the complainant and his elder brother Chandra Bhadra Singh were arrayed as accused persons in that case. However, they were subsequently acquitted. It was on 08.11.2006 when the complainant was in the Civil Court compound, Sultanpur to attend the Court hearing, some bombs were hurled on him, but he survived and some assailants were arrested, who confessed that they were engaged by the followers of late Sant Gyaneshwar to eliminate him and in this regard a Criminal case was registered.
17. It is also submitted that on other two occasions i.e. on 24.04.2008 and 25.12.2013, attempts were made to eliminate him pertaining to which the F.I.R.s have been lodged. However, on 09.07.2014 while the complainant was going to attend the Court proceeding in District and Sessions Judge, Faizabad a bomb attack was made on him within court premises in which the informant and 3- 4 other persons, namely, Rajkumar singh, Rishi Dev Singh, Manoj Kumar singh, sustained grievous injuries, One Gyanendra Mishra was arrested on the spot and this attack was planned by revisionist- Kamle Devi and Shri Vinod Kumar Sing and Kamla Devi was also present at the spot on 09.07.2014, exhorting accused persons.
18. It is further submitted that the husband of Kamla Devi was also murdered in a village Pradhani dispute and she is having enmity with the complainant/ informant on this score also. However, the eight persons named in that case were acquitted by the Trial Court.
19. While drawing the attention of this Court towards the statement of injured witnesses, it is submitted that they all have stated presence of the revisionist Kamla Devi on the spot.

20. It is further submitted that after lodging of the F.I.R. in view of the inaction of the police, he had approached this Court by filing a writ petition 3880 of 2015 and various directions were given by this Court pertaining to fair investigation and as the revisionist- Kamla Devi was having connection with high political personalities, the investigation at her behest was transferred. However, there was a clear attempt on the part of the police authorities to protect the revisionist and despite sufficient evidence available the revisionists were not charge sheeted.
21. It is further submitted that all the prosecution witnesses who have been presented before the Investigating Officer as well as before the Trial Court has taken the name of the revisionist- Kamla Devi as the person who was present at the spot and has given exhortation and also that the attack has been made in pursuance of a conspiracy hatched by the another revisionist- Vinod Kumar Singh. Thus, there is no infirmity or illegality in the impugned order.
22. Learned AGA on the other hand opposes the submissions made by learned counsel for the revisionist on the ground that there is no illegality or to say any irregularity in the impugned order and the same has been passed in pursuance of the law laid down by Hon'ble Supreme Court in Hardeep Singh (supra).
23. Having heard learned counsel for the parties and having perused the record, it is evident that the complainant and his family members as well as the revisionists are political rivals. The complainant of this case was an accused in the murder of the husband of the revisionist- Kamla Devi and it is shown that he has been acquitted in that case. Thus, in short, the parties are highly inimical towards each other.
24. The First information report of this case has been lodged by complainant/ informant Yashbhadra Singh @ Monu at Kotwali Nagar Faizabad on 09.07.2014 with the allegations that when the informant after attending a date at District & Sessions Judge, Faizabad, was returning at about 12.30 PM, when he was within the premises of District Court, revisionist- Kamla Devi had exhorted other accused persons to eliminate him and in pursuance of her call, the other accused persons assaulted him with bombs and firearms and in the incident, he (complainant), Rishi Dev Mishra Advocate, Manoj Singh, Rajkumar Singh, Shrawan Kumar Gupta @ Tillu Gupta and Arvind Singh sustained life threatening injuries and one assailant Gyanendra Sharma was apprehended from the spot and another was seriously injured. As stated earlier, after investigation, the charge sheet was not filed against both the revisionists and on moving an application under Section 319 Cr.P.C., the Trial Court by passing impugned order of dated 18.11.2021 summoned the revisionists to face trial.

25. It is also worthwhile to recall that the instant application under Section 319 Cr.P.C. was moved before the Trial Court, when four witnesses of fact, namely, P.W.1, 2, 6, and 7 have been testified. The law with regard to the manner in which the power under Section 319 Cr.P.C. may be used by the Trial Court has now no more res-integra and the same set has been at rest by the hon'ble Supreme Court in its celebrated judgment passed in **Hardeep Singh (supra)** . The relevant part of the said judgment is reproduced as under for convenience:-

"105. Power Under Section 319 Code of Criminal Procedure 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 laid 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 laid before the court, not necessarily tested on the anvil of cross-examination, it requires much strong evidence that near 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 Code of Criminal Procedure."

The aforesaid position was reiterated by Supreme Court in **Sagar v. State of Uttar Pradesh & Anr., (2022) 6 SCC 389** wherein it was opined that:

"9. The Constitution Bench has given a caution that power Under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as notice above 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..."

26. Perusal of the record in the light of the law mentioned above would reveal that during the course of investigation, the Investigating Officer has recorded the statements of Rajkumar Singh, Rishi Dev Mishra, Manoj Singh, Arvind Kymar Singh, Prabhat Kumar Singh as also of the informant/ complainant. All of them have stated that at the relevant point of time, the revisionist Kamla Devi was present on the spot and she had given exhortation to the other accused persons to eliminate the informant/ complainant. In these statements, the reference of the revisionist- Vinod Kumar Singh has been given only in terms that he is a political opponent of informant. In the statements of witnesses recorded before the Trial Court, they have all stated that accused/ revisionist Kamla Devi was present at the spot and has given an exhortation to other co-accused persons to eliminate injured informant and it is on his call, the firing was done and bombs were hurled.

27. Having perused the statement of these four witnesses of fact examined before the Trial Court, it would be evident that P.W.1 Yashbhadra Singh @ Monu has stated that the assault was made on him on the instigation of revisionist Vinod Kumar Singh. Similarly PW2 has also stated that the revisionist Vinod Kumar Singh was having political enmity with informant while PW.6 Rajkumar Singh has stated that a conspiracy was hatched by the revisionist Vinod Kumar Singh with the followers of Sant Gyaneshwar and also that a political enmity is/was existing between the Vinod Kumar Singh and Yashbhadra Singh @ Monu (informant). P.W. 7 Manoj Kumar Singh has also stated that the conspiracy to eliminate the informant was hatched by revisionist Vinod Kumar Singh and Kamla Devi as well as by Rajendra Mishra.
28. Thus, the aforesaid referred material, which was available before the Trial Court would fully demonstrate that though all the witnesses of fact examined before the Trial court in their statements, given to the investigating Officer as well as before the Trial Court has stated about the presence of the revisionist Kamla Devi on the spot at the time of the happening of the occurrence, while only apprehension on the basis of the political enmity has been alleged against the revisionist Vinod Kumar Singh and in the statement of the four witnesses of fact recorded before the Trial Court also they have stated about the presence of the revisionist Kamla Devi on the spot and also that she has given exhortation to the other accused persons while the name of the revisionist Vinod kumar Singh has been taken by them of hatching a conspiracy as he was a political opponent of the informant.
29. Marshalling and sifting the aforesaid evidence/ material within permissible limitation which was available before the Trial Court at the time of passing the impugned order would sufficiently demonstrate that there was no prima facie case or to say any case more than prima facie against revisionist Vinod Kumar Singh and his involvement in the case, only on account of political enmity, may not be ruled out. It is to be highlighted that none of the prosecution witness including the injured one has stated about there being any basis for their suspicion that the revisionist Vinod Kumar Singh might have hatched a conspiracy, while the motive to hatch such conspiracy was also available only to the revisionist Kamla Devi, as the informant was an accused in the murder case of her husband and has also been acquitted by the Trial Court.
30. This Court is conscious of the fact that sometimes it is very difficult or even impossible to get the direct evidence pertaining to hatching of any conspiracy but if someone is being made accused of hatching a conspiracy, there has to be some basis or foundation for that suspicion and only on account of mere suspicion or

apprehension without there being any evidence or material a person who has also been exonerated by the investigating agency may not be summoned to face trial under Section 319 Cr.P.C. in view of the law laid down by Hon'ble Supreme Court in Hardeep Singh (supra).

31. Thus, for the reasons mentioned above, so far as the revisionist Vinod Kumar Singh is concerned, the Trial Court appears to have committed material illegality in summoning him to face trial, while so far as the revisionist Kamla Devi is concerned, there is sufficient evidence which may be termed as more than prima facie, sufficient enough to summon her to face trial.
32. Thus, for the reasons aforesaid, the Criminal Revision No.64 of 2024 preferred by the Revisionist/ accused Kamla Devi is hereby **dismissed** and the impugned order passed by the Trial Court of date 18.11.2021 is affirmed so far as the revisionist Kamla Devi is concerned.
33. The Criminal Revision No. 449 of 2022 preferred by the Revisionist/ accused Vinod Kumar Singh is hereby **allowed** and the impugned order passed by the Trial Court of date 18.11.2021 is set aside, so far as the same relates to the summoning of Revisionist- Vinod Kumar Singh.
34. A copy of this order be immediately sent to the trial court for compliance.
35. The trial Court shall proceed with the trial with regard to other accused persons (other than revisionist- Vinod Kumar Singh) and make all out efforts to conclude the same at the earliest.

Order Date :- 7.3.2024
Gurpreet Singh