

Court No. - 13

Case :- APPLICATION U/S 482 No. - 8875 of 2024

Applicant :- Vipin Verma

Opposite Party :- State Of U.P. Thru. Its Prin. Secy. Home Deptt. Lko And 3 Others

Counsel for Applicant :- Vyas Narayan Shukla, Shailesh Kumari

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

Heard Sri Vyas Narayan Shukla, learned counsel for the applicant, Sri Vinay Kumar Sahi, learned AGA for the State of U.P. and perused the record.

By means of this application, the applicant has sought the following main relief(s):-

"WHEREFORE, it is most humbly and respectfully prayed that the Hon'ble Court may kindly be pleased to set-aside/quash the impugned order dated 22.05.2024 passed by the court of learned Additional Sessions Judge-First, Ambedkar Nagar in Session Trial No. 33/2022 (State of U.P. Versus Raj Kapoor and others) arising out of Case Crime No. 0159/2021, Under Sections-302, 201, 498-A I.P.C. & Section-3/4 D.P. Act pertaining to Police Station-Jahangirganj, District-Ambedkar Nagar by which the application under section-319 Cr. P.C. moved by the applicant/petitioner for summoning to the opposite parties Nos. 2 to 4 have illegally been rejected, as contained in Annexure No. 1 to this petition, in the interest of justice."

The subject matter of instant case relates to Sessions Trial (S.T.) No. 33 of 2022 (State vs. Raj Kapoor and others) arising out of Case Crime No. 0159 of 2021, under Sections- 302, 201, 498-A IPC and Section 3/4 D.P. Act, Police Station-Jahangirganj, District- Ambedkar Nagar.

Vide order under challenge dated 22.05.2024 passed in S.T. No. 33 of 2022, detailed above, the Additional Sessions Judge, First, Ambedkar Nagar (in short "trial court") rejected the application dated 05.06.2023 (paper No. 17Ba) preferred by the applicant/prosecution under Section 319 Cr.P.C. The relevant portion of the order under challenge dated 22.05.2024 on reproduction reads as under:-

"प्रार्थी/वादी एवं विद्वान सहायक शासकीय अधिवक्ता फौजदारी को सुना एवं पत्रावली का परिशीलन किया। पत्रावली के अवलोकन से विदित होता है कि वादी विपिन वर्मा द्वारा सम्बन्धित थाने में दी गयी लिखित तहरीर के आधार पर यह आपराधिक प्रकरण मूल रूप से अन्तर्गत धारा 147, 302, 201, 498 ए भा०द०सं० व धारा-3/4 डी०पी०एक्ट अभियुक्तगण राजकपूर, सत्ती देवी, शमीकपूर, भानमती व अमन के विरुद्ध पंजीकृत हुआ। विवेचना के पश्चात् अभियुक्त राजकपूर के विरुद्ध अन्तर्गत धारा-302,201,498 ए भा०द०सं० व धारा-3/4 डी०पी० एक्ट व अभियुक्त सत्ती देवी के विरुद्ध अन्तर्गत धारा 498 ए भा०द०सं० व धारा-3/4 डी०पी० एक्ट आरोप-पत्र प्रेषित किया गया तथा प्रथम सूचना रिपोर्ट में नामित शेष अभियुक्तगण के विरुद्ध विवेचक द्वारा आरोप-पत्र सम्बन्धित थाने द्वारा प्रस्तुत नहीं किया गया। विचारण के दौरान अभियोजन द्वारा पी०डब्ल्यू०-1 वादी मुकदमा विपिन वर्मा को परीक्षित कराया गया है तथा प्रार्थी/वादी द्वारा यह प्रार्थना-पत्र अभियुक्तगण शमीकपूर, भानमती तथा अमन को विचारण हेतु तलब किये जाने के लिए प्रस्तुत किया गया है।

धारा 319 द०प्र०सं० के उपबन्धों के परिशीलन से यह स्पष्ट है कि उसमें किसी भी व्यक्ति को विचारण का मुकाबला करने के लिए पूर्व में विचारण के अभियुक्तगण के साथ समन किये जाने की शक्ति में कोई अपवाद नहीं है। किसी भी विचारण के दौरान उक्त विचारण में लेखबद्ध किये गये साक्ष्य से किसी भी व्यक्ति के विरुद्ध ऐसा कोई अपराध किया है, जिसके लिए उसका विचारण के पूर्व में विचारण का मुकाबला करने वाले अभियुक्तगण के साथ किया जा सकता है, तब

उस परिस्थिति में उस व्यक्ति को अन्य अभियुक्तगण के साथ अभियुक्त के रूप में विचारण हेतु समन किया जा सकता है। धारा 319 द०प्र०स में दो महत्वपूर्ण तथ्य हैं-

प्रथमतः, यह कि ऐसे व्यक्ति के विरुद्ध जो विचारण का सामना नहीं कर रहा है, कुछ साक्ष्य होनी चाहिए कि उसने अपराध किया है, जिसके लिए उसका विचारण पूर्व में विचारण का मुकाबला करने वाले अभियुक्त के साथ किया जा सकता था।

द्वितीय, सम्बन्धित व्यक्ति जिसे उस विचारण में सामना किये जाने की अपेक्षा की गयी है वह विचारण का मुकाबला नहीं कर रहा है।

इस स्तर पर सर्वप्रथम प्रथम सूचना रिपोर्ट का अवलोकन किया जाना नितांत आवश्यक है। वादी विपिन कुमार द्वारा प्रथम सूचना रिपोर्ट इस आशय की संबंधित थाने पर पंजीकृत करायी गई है कि, दिनांक 28.07.2021 को ग्राम श्यामपुर अलऊपुर थाना-जहांगीरगंज जनपद-अम्बेडकर नगर में एक महिला, उम्र लगभग 35 वर्ष की लाश मिली थी, जिसका पोस्टमार्टम पुलिस द्वारा कराकर अंतिम संस्कार कर दिया गया। बाद में सूचना के माध्यम से प्रार्थी जहांगीरगंज थाने में जाकर मृतका का फोटो, कपड़ा देखकर पहचान किया तो ज्ञात हुआ कि मृतका प्रार्थी की बहन सीमा है जिसका विवाह ग्राम श्यामपुर अलऊपुर, थाना-जहांगीरगंज में राजकपूर वर्मा पुत्र रामजीत के साथ हुआ था। प्रार्थी के बहन के गायब होने की जानकारी प्रार्थी को दिनांक 30.07.2021 को तब हुई, जब प्रार्थी के मृतक पिता के ब्रह्मभोज कार्यक्रम दिनांक 30.07.2021 को प्रार्थी की बहन सीमा प्रार्थी के घर नहीं पहुँची। मृतका के परिवार वाले पति राजकपूर पुत्र रामजीत, सास सती देवी पत्नी रामजीत, जेठ शमीकपूर पुत्र रामजीत, जेठानी भानमती पत्नी शमीकपूर व अमन पुत्र शमीकपूर निवासी उपरोक्त ने प्रार्थी की बहन सीमा की हत्या करके लाश छिपाने के लिये उसे नाले में फेंक दिया। आरोपीगण हमेशा प्रार्थी की बहन को मारते-पीटते और दहेज की मांग करते थे। जब प्रार्थी की बहन मायके आकर बताती थी तो उसे समझा बुझाकर भेज दिया जाता था। अंत में प्रताड़ित करते-करते आरोपियों ने प्रार्थी की बहन की हत्या कर दिया। प्रार्थी की बहन मृतका सीमा की दो नाबालिग पुत्रियां अनाथ हो गई हैं। इस प्रकार प्रथम सूचना रिपोर्ट के अवलोकन से प्रथमदृष्ट्या यह विदित है कि वादी मुकदमा घटना का प्रत्यक्षदर्शी साक्षी नहीं है तथा वादी मुकदमा द्वारा दहेज की मांग को लेकर हुई कथित घटना के बावत विपक्षीगण के विरुद्ध यह अभियोग पंजीकृत करायी है। पत्रावली के परिशीलन से स्पष्ट है कि, प्रस्तुत प्रकरण में अभियोजन की ओर से मात्र एक साक्षी वादी मुकदमा को पी०डब्ल्यू 1 के रूप में परीक्षित करायी गया है तथा अभियोजन साक्ष्य शेष है। ऐसी स्थिति में इस स्तर पर पी०डब्ल्यू 1 के अभियोजन साक्ष्य एवं विवेचक द्वारा केस डायरी में अंकित साक्षियों के साक्ष्य का विश्लेषण किया जाना समीचीन प्रतीत होता है।

अभियोजन पी०डब्ल्यू 1, वादी मुकदमा द्वारा अपने मुख्यपृच्छा साक्ष्य में अभियोजन कथानक का समर्थन किया गया है किन्तु जिरह में कथन किया है कि शमीकपूर के पास कितना खेत है मुझे जानकारी नहीं है। शमी कपूर क्या करते थे मुझे जानकारी नहीं है। शमी कपूर दिल्ली में 15 साल से या 20 साल से प्राइवेट काम करते थे, इसकी जानकारी मुझे नहीं है। इस प्रकार शमीकपूर के संबंध में साक्षी के जिरह के कथनों से यह स्पष्ट हो रहा है कि साक्षी ने शमीकपूर व उसके परिवार के विषय में जानकारी होने से अनभिज्ञता प्रकट की है।

अब विवेचक द्वारा जो साक्ष्य पत्रावली पर अंकित की गई है उसका सूक्ष्मा से विश्लेषण किया जाना है। पत्रावली पर संलग्न केस डायरी के सी०डी० 8 पर स्वतंत्र साक्षी श्री राजेश यादव पुत्र हरिराम याद निवासी ग्राम श्यामपुर अलऊपुर थाना-जहांगीरगंज जनपद अम्बेडकर नगर का बयान विवेचक द्वारा अंकित किया गया है। विवेचक द्वारा यह पूछने पर कि घटना में शमीकपूर पुत्र रामजीत, भानमती पत्नी शमीकपूर, अमन पुत्र शमी कपूर समस्त निवासी ग्राम श्यामपुर अलऊपुर थाना-जहांगीरगंज जनपद अम्बेडकर नगर घटना में शामिल थे तब साक्षी द्वारा बताया गया कि, शमीकपूर काफी दिनों से अलग रहते हैं तथा मेहनत मजदूरी दिल्ली में रहकर करते हैं। घटना के काफी पूर्व से ही सपरिवार दिल्ली में रहकर मेहनत मजदूरी कर रहे हैं। इन लोगों का इस घटना से कोई वास्ता व सरोकार नहीं है। केवल परिवार नाते इन लोगों के नाम से भी एफ०आइ०आर० दर्ज करा दिया गया है। इस बात की जानकारी पूरे गांव को है। आप किसी से भी पूछ सकते हैं, जो सही बात है मैं आपको बता रहा है। इसी प्रकार स्वतंत्र साक्षी गुरुदुर्गा वर्मा पुत्र लौदु वर्मा निवासी उपरोक्त का बयान अंकित किया है जिनके द्वारा भी शमीकपूर, भानमती व अमन के घटना में शामिल होने के बावत विवेचक के पूछने पर यह बताया गया कि वह घटना के काफी दिन पूर्व से दिल्ली में रहकर मेहनत मजदूरी करते हैं और अलग रहते हैं तथा इनका घटना से कोई वास्ता व सरोकार नहीं है। इसी प्रकार का कथन स्वतंत्र साक्षी संजीव कुमार पुत्र जय प्रकाश व वासदेव पुत्र स्व० कान्हू निवासी उपरोक्त द्वारा भी अपने बयानों में किया गया है। इस प्रकार उपरोक्त साक्षीगण के साक्ष्य के अतिरिक्त विवेचक द्वारा अंकित मृतका की दोनों पुत्रियों कु० सपना वर्मा व कु० कंचन के बयानों का भी परिशीलन किया गया जिनके बयान से भी किसी प्रकार से शमीकपूर, भानमती व अमन की कथित घटना में संलिप्तता दर्शित नहीं हो रही है। प्रार्थी वादी मुकदमा अथवा अभियोजन द्वारा इस स्तर पर ऐसा कोई अभिलेखीय साक्ष्य भी प्रस्तुत नहीं किया गया है जिससे यह दर्शित हो कि कथित घटना के समय शमीकपूर, भानमती व अमन मौके पर मौजूद थे यह विवेचक द्वारा स्वतंत्र साक्षियों के लिये गये बयान के अनुसार कि शमीकपूर भानमती व अमन घटना के काफी पूर्व से दिल्ली में थे, उसको खण्डित करते हो। अतः प्रस्तुत मामले के सम्पूर्ण तथ्य एवं पत्रावली पर उपलब्ध साक्ष्य को दृष्टिगत रखते हुए वर्तमान अपराध में अभियुक्तगण शमीकपूर, भानमती व अमन के सम्मिलित होने के सम्बन्ध में प्रथमदृष्ट्या कोई साक्ष्य उपलब्ध नहीं है। इस स्तर पर बिना अन्य कोई अग्रतर टिप्पणी किये हुए शमीकपूर, भानमती व अमन को अभियुक्त के रूप में विचारण हेतु तलब किये जाने का प्रथमदृष्ट्या समुचित आधार पत्रावली पर उपलब्ध नहीं है। तदनुसार प्रार्थना-पत्र 17 व स्वीकार किये जाने योग्य नहीं है, बल्कि निरस्त किये जाने योग्य है।

आदेश

प्रार्थी/वादी द्वारा प्रस्तुत प्रार्थना पत्र 17 व अन्तर्गत धारा-319 द०प्र०सं० निरस्त किया जाता है।

पत्रावली वास्ते अभियोजन साक्ष्य दिनांक 27.05.2024 को पेश हो। साक्षीगण को सम्मन जारी हों।”

The aforesaid application dated 05.06.2023 was moved by the prosecution based upon the statements of applicant (Vipin Verma/PW-1, whose examination-in-chief was started on 31.10.2022 and cross-examination was concluded on 16.01.2023). This application was preferred for summoning opposite party Nos. 2 to 4 namely Shami Kapoor (Jeth of deceased), Bhanmati (Jethani of deceased) and Aman (nephew of deceased) to face the trial.

Brief facts of the case in hand are to the effect that an FIR was lodged on 04.08.2021 by the applicant/Vipin Verma s/o late Parjlit Verma. As per the FIR, Rajkapoor (husband of deceased), Satti Devi (mother-in-law of deceased), Shami Kapoor (Jeth of deceased), Bhanmati (Jethani of deceased) and Aman (nephew of deceased) committed crime. The allegations in the FIR against these accused are to the effect that on account of non-fulfillment of demand of dowry, the deceased was subjected to cruelty by these persons and ultimately she was murdered and her body was thrown in the drain situated in the vicinity. This FIR further indicates that the body of deceased was recovered on 28.07.2021 and without informing the family of informant, the cremation was carried out. The FIR in issue being relevant is extracted hereunder:-

"नकल तहरीर हिन्दी वादी टाइप शुदा सेवा में, श्रीमान थानाध्यक्ष महोदय, जहांगीरगंज अम्बेडकरनगर महोदय, सादर निवेदन है कि प्रार्थी विपिन वर्मा पुत्र स्व० परजलित वर्मा नि० ग्राम परसनपुर, थाना राजेसुल्तानपुर जनपद अम्बेडकरनगर का स्थाई निवासी है। दिनांक 28.07.2021 को ग्राम श्यामपुर अलऊपुर थाना जहांगीरगंज जनपद अम्बेडकरनगर में एक महिला उम्र लगभग 35 वर्ष की लाश मिली थी, जिसका पोस्ट मार्टम पुलिस द्वारा कराकर अंतिम संस्कार कर दिया गया। बाद में सूचना के माध्यम से प्रार्थी जहांगीरगंज थाने में जाकर मृतका का फोटो कपड़ा देखकर पहचान किया तो ज्ञात हुआ कि मृतका प्रार्थी की बहन सीमा है जिसका विवाह ग्राम श्यामपुर अलऊपुर थाना जहांगीरगंज में राज कपूर वर्मा पुत्र रामजीत के साथ हुआ था। प्रार्थी के बहन के गायब होने की जानकारी प्रार्थी को दिनांक 30.07.2021 को तब हुई जब प्रार्थी के मृतक पिता के ब्रम्हभोज कार्यक्रम दिनांक 30.07.2021 को प्रार्थी की बहन सीमा प्रार्थी के घर नहीं पहुँची। मृतका के परिवार वाले पति राजकपूर पुत्र रामजीत, सास सती देवी पत्नी रामजीत, जेठ शमी कपूर पुत्र रामजीत, जेठानी भानमती पत्नी शमी कपूर व अमन पुत्र शमी कपूर नि० ग्राम श्यामपुर अलऊपुर थाना जहांगीरगंज जनपद अम्बेडकरनगर ने प्रार्थी की बहन सीमा की हत्या करके लाश छिपाने के लिए उसे नाले में फेंक दिया। आरोपीगण हमेशा प्रार्थी की बहन को मारते पीटते और दहेज की मांग करते थे। जब प्रार्थी की बहन मायके आकर बताती थी तो उसे समझा बुझाकर भेज दिया जाता था। अंत में प्रताड़ित करते करते आरोपियों ने प्रार्थी की बहन की हत्या कर दिया। प्रार्थी की बहन मृतका सीमा की दो नाबालिग पुत्रियाँ अनाथ हो गयी हैं। श्रीमान जी से निवेदन है कि उक्त प्रकरण में आरोपीगण के विरुद्ध सुसंगत धाराओं में अपराध पंजीकृत करने की कृपा करें। ह० विपिन वर्मा हिन्दी पठनीय प्रार्थी विपिन वर्मा पुत्र स्व० परजलित वर्मा ग्राम व पो० परसनपुर थाना राजेसुल्तानपुर जन-अम्बेडकरनगर मो० 8318487672 88088808645 दिनांक 04.08.21 HM/CM उचित धाराओं में अभियोग पंजीकृत करें। हस्ताक्षर थानाध्यक्ष थाना जहांगीरगंज अंग्रेजी अपठनीय 4/8/2021 (नकल तहरीर मुझ का 0 मो० उमेश कुमार यादव द्वारा बोल बोल कर कम्प्यूटर पर शब्दशः टाइप करायी गयी।)"

After lodging of aforesaid FIR, the Investigating Officer (in short "IO") carried out the investigation and recorded the statements of witnesses including the minor daughters of the deceased namely Km. Sapna Verma and Km. Kanchan and independent witnesses and based upon the statements, the charge sheet was filed only against Rajkapoor (husband of deceased), under Sections 302, 201, 498-A IPC & Section 3/4 D.P. Act and Satti Devi (mother-in-law of deceased) under Sections 498-A IPC & Section 3/4 D.P. Act.

The names of co-accused namely Shami Kapoor (Jeth of deceased), Bhanmati (Jethani of deceased) and Aman (nephew of deceased) were dropped by the IO based upon the statements of minor daughters of deceased and other independent witness(s), according to which, the IO inferred that Shami Kapoor (Jeth of deceased) and his entire family was living at Delhi.

After submission of charge sheet, cognizance was taken by the Magistrate

concerned and thereafter, the matter was committed to court of sessions where the trial was registered as Sessions Trial No. 33/2022 and thereafter charges were framed by the trial court and upon denial, the prosecution, to establish its case, examined the applicant/Vipin Verma/PW-1, who before the trial court in regard to Shami Kapoor (Jeth of deceased) specifically stated that he does not know that what he was doing for livelihood and as to whether he was living at Delhi for the last 15-20 years. According to PW-1, the family of Shami Kapoor was living with the deceased. The relevant portion of the statement of PW-1 in this regard is extracted hereunder:-

"शमी कपूर क्या करते थे मुझे जानकारी नहीं है। शमी कपूर दिल्ली में 15 साल से या 20 साल से प्राइवेट काम करते थे इसकी जानकारी मुझे नहीं है। शमी कपूर का परिवार घर पर ही रहता है। मैंने थाने पर तहरीर 04.08.21 को दिया था। मैंने 03.08.21 को थाने पर तहरीर नहीं दिया था। तहरीर मैंने किससे लिखाई थी नाम याद नहीं आ रहा है। मैंने थाने पर तहरीर कितने बजे दी थी उस समय समय याद नहीं है।"

As regards demand of dowry, PW-1 before the trial court as also in the FIR levelled general allegations against all persons named in the application under Section 319 Cr.P.C., which can be deduced from the contents of FIR, quoted above, as also the following portion of his statement.

"मेरी बहन सीमा वर्मा घटना के कुछ दिन पहले हम लोगो से यह बताई थी कि राजकपूर सच्ची देवी, शमी कपूर, भानुमती व अमन मुझे दहेज व अन्य बातों को लेकर काफी मारते पीटते हैं।"

Impeaching the orders impugned dated 22.05.2024, learned counsel for the applicant says that the trial court while rejecting the application of the applicant has not considered the law settled by the Hon'ble Apex Court on the issue in various pronouncements, as such, indulgence of this Court is required in the matter.

It is also stated that the evidence before the trial court ought to have been considered for the purposes of rejecting or allowing the application under Section 319 Cr.P.C. and in the instant case, the trial court while rejecting the application preferred by the applicant under Section 319 Cr.P.C. has not considered the statement of the applicant recorded before it in its true spirit, as appears from the order dated 22.05.2024. As such, indulgence of this Court is required in the matter.

Considered the aforesaid and perused the record.

The law on the issue is well settled. In view of the observations made by the Hon'ble Apex Court in the judgment passed in the case of **Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92, Brijendra Singh and Others Vs. State of Rajasthan, (2017) 7 SCC 706, Rajesh and Others Vs. State of Haryana, (2019) 6 SCC 368, Manjeet Singh Vs. State of Haryana & Ors., (2021) 18 SCC 321, Sukhpal Singh Khaira Vs. State of Punjab, (2023) 1 SCC 289, Yashodhan Singh and Others Vs. State of U. P. and Others, (2023) LiveLaw (SC) 576 : 2023 INSC 652**, the trial Court while exercising the power under Section 319 Cr.P.C. is under obligation to consider the evidence recorded before it during trial as also the evidence received by it after cognizance is taken and before commencement of trial.

The Hon'ble Apex Court in the case of **Hardeep Singh (supra)** in para 78 observed that "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". and thereafter in para 85 it has been observed that "in view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The "evidence" is thus, limited to the evidence recorded during trial." and subsequently, in the case of **Rajesh and Others (supra)** in para 6.8 held that "Considering the law laid down by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC, provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial." and thereafter, in the case of **Manjeet Singh (supra)** observed as under:

"15. The ratio of the aforesaid decisions on the scope and ambit of the powers of the court under Section 319CrPC can be summarised as under:

15.1. That while exercising the powers under Section 319CrPC 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.

15.2. For the empowerment of the courts to ensure that the criminal administration of justice works properly.

15.3. The law has been properly codified and modified by the legislature under 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.

15.4. To discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished.

15.5. 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.

15.6. Section 319CrPC allows the court to proceed against any person who is not an accused in a case before it.

15.7. 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.

15.8. Section 319CrPC 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.

15.9. 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 207/208CrPC, committal, etc. which is only a pre-trial stage intended to put the process into motion.

15.10. The court can exercise the power under Section 319CrPC only after the trial proceeds and commences with the recording of the evidence.

15.11. The word "evidence" in Section 319CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents.

15.12. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319CrPC is to be exercised and not on the basis of material collected during the investigation.

15.13. If the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319CrPC and can proceed against such other person(s).

15.14. That if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319CrPC can be exercised.

15.15. That power under Section 319CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not to wait till the said evidence is tested on cross-examination.

15.16. 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 319CrPC 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).

15.17. While exercising the powers under Section 319CrPC 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.

16. Applying the law laid down in the aforesaid decisions to the facts of the case on hand we are of the opinion that the learned trial court as well as the High Court have materially erred in dismissing the application under Section 319CrPC and refusing to summon the private respondents herein to face the trial in exercising the powers under Section 319CrPC. It is required to be noted that in FIR No. 477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, Mahindra XUV bearing no. HR 40A 4352 was standing on the road which belongs to Sartaj Singh and Sukhpal. Tejpal, Parab Saran Singh, Preet Samrat and Sartaj were standing. Parab Sharan was having lathi in his hand, Tejpal was having a gandasi, Sukhpal was having a danda, Sartaj was having a revolver and Preet Singh was sitting in the jeep. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the Mahindra XUV HR 40A 4352 in a manner which blocks the entire road and they were armed with the weapons.

17. Despite the above specific allegations, when the charge-sheet/final report came to be filed only two persons came to be charge-sheeted and the private respondents herein, though named in the FIR, were put/kept in Column 2. It is the case on behalf of the private respondents herein that four different DSPs inquired into the matter and thereafter when no evidence was found against them the private respondents herein were put in Column 2 and therefore the same is to be given much weightage rather than considering/believing the examination-in-chief of the appellant herein.

Heavy reliance is placed on Brijendra Singh [Brijendra Singh v. State of Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] .

18. However none of DSPs and/or their reports, if any, are part of the charge-sheet. None of the DSPs are shown as witnesses. None of the DSPs are investigating officer. Even on considering the final report/charge-sheet as a whole there does not appear to be any consideration on the specific allegations qua the accused, the private respondents herein, who are kept in Column 2. Entire discussion in the charge-sheet/final report is against Sartaj Singh only.

19. So far as the private respondents are concerned only thing which is stated is: "During the investigation of the present case, Shri Baljinder Singh, HPS, DSP Assandh and Shri Kushalpal, HPS, DSP Indri found accused Tejpal Singh, Sukhpal Singh, sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of Mohan Sarup Singh caste Jat Sikh, residents of Bandrala innocent and accordingly Sections 148, 149 and 341IPC were deleted in the case and they were kept in Column 2, whereas challan against accused Sartaj has been presented in the Court."

20. Now thereafter when in the examination-in-chief the appellant herein — victim — injured eyewitness has specifically named the private respondents herein with specific role attributed to them, the learned trial court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eyewitness. As observed by this Court in State of M.P. v. Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390] (para 9); Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] ; State of U.P. v. Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] , the evidence of an injured eyewitness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under Section 319CrPC the court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under Section 319CrPC.

21. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the learned trial court dismissing the application under Section 319CrPC is concerned, the High Court itself has observed that PW 1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received firearm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except that they were armed with weapons and the injuries concerned are attributed only to Sartaj Singh, even for the sake of arguments if someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all.

22. At the stage of exercising the powers under Section 319CrPC, the court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The learned trial court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under Section 319CrPC.

23. Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] at that stage the appellant herein did not prefer appeal against the impugned judgment and order passed by the High Court in Manjeet Singh v. State of Haryana [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] and therefore this Court may not exercise the powers under Article 136 of the Constitution is concerned the aforesaid has no substance. Once it is found that the learned trial court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] cannot be a ground not to direct to summon the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be summoned

to face the trial.

24. Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in Column 2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in *Rajesh* [*Rajesh v. State of Haryana*, (2019) 6 SCC 368 : (2019) 2 SCC (Cri) 801] . This Court in the aforesaid decision has specifically observed that 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 as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC.

25. Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and order passed by the High Court there is much progress in the trial and therefore at this stage power under Section 319CrPC may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled proposition of law and as observed by this Court in *Hardeep Singh* [*Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , the powers under Section 319CrPC can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under Section 319CrPC was given only one witness was examined and examination-in-chief of PW 1 was recorded and while the cross-examination of PW 1 was going on, application under Section 319CrPC was given which came to be rejected by the learned trial court. The order passed by the learned trial court is held to be unsustainable. If the learned trial court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may, as observed herein powers under Section 319CrPC can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

26. In view of the above and for the reasons stated above, the impugned judgment and order [*Manjeet Singh v. State of Haryana*, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] passed by the High Court and that of the learned trial court dismissing the application under Section 319CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the learned trial court is directed to summon the private respondents herein to face the trial arising out of FIR No. 477 dated 27-7-2016 in Sessions Case No. 362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149IPC."

Considering the aforesaid as also the submissions advanced by the learned counsel for the applicant, learned AGA for the State of U.P. and also settled proposition of law on the issue, this Court finds no force in the instant application. It is for the following reasons:-

(i) According to the observations made by the Hon'ble Apex Court in the case of ***Geeta Mehrotra and others vs. State of U.P. and others*** reported in (2012) 10 SCC 741, ***Kahkashan Kausar v. State of Bihar*** reported in (2022) 6 SCC 599 and ***Achin Gupta vs. State of Haryana and another*** reported in 2024 SCC OnLine SC 759, practice of implicating entire family in matrimonial cases has been deprecated. In the instant case, based upon the bald and vague allegations regarding demand of dowry and committing cruelty on account of non-fulfillment of demand of dowry, entire family has been implicated.

(ii) The law says that for summoning of witnesses in exercise of power under Section 319 Cr.P.C., the trial court or any other court dealing with the matter, for summoning a person to face the trial, should come to the satisfaction to an extent that the evidence, if unrebutted, would lead conviction. [see: ***Paragraph 106 of Hardeep Singh vs. State of Punjab*** reported in (2014) 3 SCC 92.]

(iii) In the instant case, vague and bald allegations have been levelled in the FIR

as also before the trial court against opposite party Nos. 2 to 4 namely Shami Kapoor (Jeth of deceased), Bhanmati (Jethani of deceased) and Aman (nephew of deceased). As such, the evidence of PW-1, if goes unrebutted, would not lead conviction.

Having observed above, the instant application is ***dismissed***.

Order Date :- 1.10.2024

Arun/-