

Court No. - 73

Case :- APPLICATION U/S 482 No. - 107 of 2020

Applicant :- Rahees Ali @ Bade And 2 Ors

Opposite Party :- State Of U.P. And Anr

Counsel for Applicant :- Brij Raj Singh

Counsel for Opposite Party :- G.A.

Hon'ble Raj Beer Singh, J.

1. Heard learned counsel for applicants and the learned A.G.A. for the State.
2. This application u/s 482 Cr.P.C. has been filed for quashing of the the order dated 10.08.2017, passed by Additional Sessions Judge / Fast Track Court No.1, Mainpuri in S.T. No. 105 of 2012 (State Vs. Anees and Others), Case Crime No. 751 of 2011, under Sections 498A, 304B, 302/34 I.P.C. and Section 3/4 of Dowry Prohibition Act, Police Station Bewar, District Mainpuri, whereby applicants were summoned under Section 319 Cr.P.C.
3. It is submitted by learned counsel for the applicants that marriage of brother of applicant no. 1, namely Anees has taken place with daughter of complainant on 11.05.2010. On 13.09.2021, the daughter of complainant died due to burn injury and after that complainant has lodged first information report against the applicants and co-accused persons. During investigation, no role of applicant was found and thus, they were exonerated and charge-sheet was filed against Anees Ali (husband) and Munni Begum (mother-in-law of deceased). It was submitted that during trial of said co-accused persons, when the prosecution evidence was likely to be concluded, applicants were summoned under Section 319 Cr.P.C. vide impugned order dated 10.08.2017. The applicant no. 1

is brother-in-law (Jeth), applicant no. 2 is sister-in-law and applicant no. 3 is brother-in-law (Devar) of deceased and no specific role was assigned to them. It is further submitted that trial against co-accused Anees Ali and Munni Begum, who were charge-sheeted after investigation, has already been concluded by the Trial Court and they have been acquitted vide judgment and order dated 02.11.2017. Learned counsel for the applicants submitted that no case of summoning of applicants under Section 319 Cr.P.C. is made out and even otherwise when the trial against co-accused Anees Ali and Munni Begum has already been concluded and they have been acquitted thus, in view of these facts and circumstances, the impugned order is not sustainable and thus, liable to be set aside..

4. Learned A.G.A. has opposed the application, however, aforesaid factual position could not be disputed by him.

5. I have considered the rival submissions and perused the record.

6. By the impugned order, the applicants have been summoned under Section 319 Cr.P.C. Before considering the matter on merits, it would be apt to refer the provisions of Section 319 Cr.P.C. which read as under:-

"319. 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.

.....

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, 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."By reading of Section 319 Cr.P.C., it is clear that the power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during trial to summon any person as an accused to face the trial if it appears from the evidence that such person has committed any offence for which such person could be tried together with the accused."

7. In case of **Shiv Prakash Mishra Vs. State of Uttar Pradesh and another**, (2019) 7 SCC 806, the Hon'ble Apex Court has considered several earlier judgements and it was held as under:-

"9. The standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C. is higher than the standard of proof employed for framing a charge against the accused person. The power under Section 319 Cr.P.C. should be exercised sparingly. As held in *Kailash v. State of Rajasthan* and another (2008) 14 SCC 51, "the power of summoning an additional accused under Section 319 Cr.P.C. should be exercised sparingly. The key words in Section are "it appears from the evidence "....." any person "....." has committed any offence". It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Cr.P.C. would be used by the court."

10. As held by the Constitution Bench in para (105) in *Hardeep Singh*, the power under Section 319 Cr.P.C. is discretionary and is to be exercised sparingly which reads 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."

11. The above view was followed in *Brijendra Singh* as under:-

"13. In order to answer the question, some of the principles enunciated in *Hardeep Singh* case (2014) 3 SCC 92 may be recapitulated: However, since it is a discretionary power given to the court under Section 319 CrPC and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."

8. In the instant matter, it is apparent from record that the applicants are brother-in-law and sister-in-law of deceased and no specific role was assigned to them. Often, it is seen that in such matters the family members / relatives of husband are implicated in order to settle scores in the matrimonial cases. The applicants being brother-in-law and sister-in-law of deceased were not going to be benefited by fulfillment of any demand of dowry. Only general and vague allegations have been made against them. Considering material on record and aforesaid position of law, no case for summoning of applicant under Section 319 Cr.P.C. is made out. It appears that the Trial Court has not considered evidence and position of law in correct perspective while passing the impugned order under Section 319 Cr.P.C. Further, as co-accused Anees Ali and Munni Begum have already been acquitted by the Trial Court, thus at this stage, it would not be expedient to put the applicants on trial, who have been summoned under Section 319 Cr.P.C., as the trial of co-accused has already been decided. In view of the aforesaid, the impugned order dated

10.08.2017 is not sustainable.

9. In view of the aforesaid, the impugned order dated 10.08.2017 is hereby quashed and the application U/S 482 Cr.P.C. is liable to be allowed.

10. The application U/S 482 Cr.P.C. is hereby allowed in above terms.

Order Date :- 22.1.2025

SK Srivastava