

Neutral Citation No. - 2025:AHC:129149

Reserved on: 24.07.2025

Delivered on: 01.08.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 3635 of 2023

Revisionist :- Anand And 3 Others

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

Counsel for Revisionist :- Pramod Kumar, Sanjay Kumar Rajbhar

Counsel for Opposite Party :- G.A., Yogendra Pal Singh

Hon'ble Rajeev Misra, J.

1. This criminal revision has been filed challenging the order dated 07.06.2023 passed by Additional District and Sessions Judge-1 Hapur in Sessions Trial No. 505 of 2014 (State Vs. Jagpal and others) under Sections 307, 452 and 506 I.P.C. Police Station-Hafizpur, District-Hapur whereby the application dated 01.04.2022 under Section 319 Cr.P.C filed by Kuldeep @ Babbal Chaudhari the first informant/opposite party-2, has been allowed. Consequently, the revisionists (who are prospective accused i.e. named in the F.I.R. but exculpated) have now been summoned by court below to face trial in aforementioned Sessions Trial.

2. Perused the record.

3. Record shows that in respect of an incident, which is alleged to have occurred on 05.06.2012, one person namely Sandeep @ Pintu sustained injury. As per his Medico Legal Report dated 05.06.2012, copy of which is on record at page 49 of the paper book, the injured is said to have sustained a gun shot injury on his head. In the opinion of Doctor, who had examined the injured, the injury was fresh and grievous in nature.

4. Subsequently, in respect of aforesaid occurrence, a delayed F.I.R. dated 06.06.2012, was lodged by first informant/opposite party-2, Kuldeep @ Babbal Chaudhari and was registered as Case Crime No. 260 of 2012 under Sections 452, 307, 506 I.P.C., Police Station-Hafizpur, District-

Hapur. In the aforesaid F. I.R., four persons namely Anand, Kulbhushan @ Mintoo, Bachan and Pawan were nominated as named accused.

5. Gravamen of the allegations made in F.I.R. is to the effect that all four named accused entered the house of first informant/opposite party-2 and thereafter fired indiscriminate shots with an intention to cause death of first informant on account of which one person namely Sandeep @ Pintoo sustained gun shot injury on his head. The F.I.R. further records that shots were fired by all the named accused.

6. After aforementioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned case crime number in terms of Chapter XII Cr.P.C. He visited the place of occurrence and prepared a spot memo dated 6.6.2012. He also recovered a blank cartridge of 0.12 bore from the spot.

7. Investigating Officer thereafter recorded the statements of first informant and following witnesses under section 161 Cr.P.C:

- i. Kuldeep
- ii. Bachan
- iii. Sachin
- iv. Sandeep @ Pintu
- v. Sachin @ Kakkan
- vi. Ashu
- vii. Jagpal
- viii. Dr. Zamal Ahmad Khan
- ix. Jagat
- x. Mahipal, Narendra
- xi. Narendra
- xii. Omveer
- xiii. Amit
- xiv. Ashish

8. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that it is not the complicity of named accused which is established in the crime in question but that of not named accused Babbal @ Kuldeep, which is established. Accordingly, Investigating Officer submitted the charge sheet/ police report dated 30.09.2012 in terms of Section 173 (2) Cr.P.C. whereby not named accused Babbal @ Kuldeep was charge sheeted under Sections 307, 452, 506 I.P.C. As per aforesaid police report, the following have been nominated as prosecution witnesses:

1. Kuldeep @ Babbal Chaudhary
- ii. Sandeep @ Pintu
- iii. Rinku
- iv. Lovely
- v. Vinod
- vi. Monindra
- vii. Praveen Sharma
- viii. Dr. Zamal Ahmad Khan
- ix. Constable Ashish Kumar
- x. Harendra Singh

As such the named accused stood exculpated in aforementioned charge sheet/police report.

9. Subsequently, Investigating Officer submitted a supplementary charge sheet/police report also in terms of Section 173 (2) Cr.P.C. whereby not named accused Chinu @ Vikas was charge sheeted under Sections 307, 452 and 506 I.P.C. As per aforesaid supplementary charge sheet/police report, the following were nominated as prosecution witnesses:

1. Kuldeep @ Babbal Chaudhary
- ii. Sandeep @ Pintu

- iii. Rinku
- iv. Lovely
- v. Vinod
- vi. Monindra
- vii. Praveen Sharma
- viii. Dr. Zamal Ahmad Khan
- ix. Constable Ashish Kumar
- x. Harendra Singh

10. Upon submission of aforementioned police report (charge-sheet) cognizance was taken upon same by the Jurisdictional Magistrate in exercise of jurisdiction under Section 190 (1) (b) Cr.P.C. Consequently, the charge sheeted accused were summoned.

11. However as offence complained of is triable exclusively by the Court of Sessions, therefore, the Jurisdictional Magistrate after complying with the formality contemplated under Section 207 Cr.P.C. and further in line with Section 209 Cr.P.C. committed the case to the Court of Sessions. Resultantly, Sessions Trial No. 505 of 2014 (State Vs. Jagpal and others) under Sections 307, 452 and 506 I.P.C. Police Station-Hafizpur, District-Hapur came to be registered and is now said to be pending in the Court of Additional District and Sessions Judge-1, Hapur.

12. Concerned Sessions Judge proceeded with the trial. He framed separate and distinct charges against charge sheeted accused in exercise of jurisdiction under Section 228 Cr.P.C.

13. Charge-sheeted accused denied the charges so framed against them. They pleaded innocence and demanded trial. Consequently, the trial procedure commenced.

14. Prosecution in discharge of its burden to bring home the charges so framed against charge sheeted accused, adduced three prosecution

witnesses i.e. P.W.-1 Kuldeep (first informant), P.W.-2 Sandeep and P.W.-3 Ashu upto this stage.

15. After the statement-in-chief/examination-in-chief of aforementioned witnesses was recorded before court below, first informant/opposite party-2 Kuldeep @ Babbal Chaudhary filed an application dated 01.04.2022 under Section 319 Cr.P.C. alleging therein that since as per depositions of aforementioned witnesses, complicity of named but not charge sheeted accused i.e. the revisionists herein has also emerged in the crime in question, therefore, they also be summoned to face trial in above mentioned Sessions Trial.

16. Aforesaid application filed by prosecution was not opposed by the charge sheeted accused.

17. Ultimately, Court below examined and evaluated the prayer made in aforesaid application under Section 319 Cr.P.C. filed by the first informant/opposite party-2/prosecution in the light of depositions of P.W.-1, P.W.-2 and P.W.-3. Having done so, court below came to the conclusion that since complicity of named but not charge sheeted accused i.e. the revisionists herein has emerged in the crime in question as per the depositions of aforementioned three prosecution witnesses who have deposed upto this stage and the police report submitted by the Investigating Officer in terms of Section 173(2) Cr.P.C., being not in consonance with the F.I.R., therefore, the application under Section 319 Cr.P.C. filed by prosecution is liable to be allowed. Accordingly, court below, vide order dated 07.06.2022 allowed the application under Section 319 Cr.P.C. filed by prosecution.

18. As a consequence of above, revisionists who are prospective accused i.e named in the F.I.R. but not charge sheeted, have now been summoned by court below to stand their trial in aforementioned Sessions Trial.

19. Thus feeling aggrieved by the above order dated 07.06.2022 passed by Additional District and Sessions Judge-1, Hapur, in Sessions Trial No.

505 of 2014 (State Vs. Jagpal and Others) under sections 307, 452 and 502 IPC, Police Station-Hafizpur, District-Hapur, revisionists have now approached this Court by means of present criminal revision.

20. I have heard Mr. Pramod Kumar, the learned counsel for revisionists, the learned A.G.A. for State-opposite party-1 and Mr. Yogendra Pal Singh, the learned counsel representing first informant-opposite party-2.

21. Mr. Pramod Kumar, the learned counsel for revisionists in challenge to the impugned order submits that the order impugned in present criminal revision is manifestly illegal and in excess of jurisdiction. Consequently, the same cannot be sustained either in law or on facts. As such, the same is liable to be set aside by this Court.

22. Elaborating his submission it was contended by the learned counsel for revisionists that revisionists are named in the FIR but they were exculpated by the Investigating Officer. None of the accused nominated in the FIR have been charge sheeted. To the contrary, two other persons, whose complicity in the crime in question emerged during course of investigation were charge sheeted. What is thus sought to be urged is that the prosecution story as unfolded in the FIR is itself unworthy of credit qua the named accused.

23. It was then contended by the learned counsel for revisionists that the statements of three prosecutions witnesses i.e. PW-1 Kuldeep (first informant), PW-2 Sandeep and PW-3 Ashu, who have deposed before Court below up to this stage were also recorded under Section 161 Cr.P.C. Drawing a parallel in between their previous statements recorded under Section 161 Cr.P.C. and their subsequent depositions before Court below, it was urged by the learned counsel for revisionsits that nothing new has emerged in the statements of the aforesaid witnesses then what was earlier stated by them in their previous statements under Sections 161 Cr.P.C. As such, nothing new has emerged on record of above-mentioned Sessions Trial, on the basis of which, it could be conclusively concluded that

complicity of present revisionists in the crime in question stands established. In the submission of the learned counsel for revisionists, a very paradoxical position has emerged as on the same set and nature of evidence, the revisionists were exculpated by the Investigating Officer but have now been summoned by Court below to face trial in aforementioned Sessions Trial. In the aforesaid backdrop, the learned counsel for revisionists then contended that even though the law relating to the summoning of a prospective accused in exercise of jurisdiction under Section 319 Cr.P.C. yet two different Division Benches of the Apex Court in the case of **Brijendra Singh and Others Vs. State of Rajasthan, (2017) 7 SCC 706** and **S Mohammed Ispahani Vs. Yogendra Chandak and Others, (2017) 16 SCC 226**, have reformulated the law regarding summoning of a prospective accused but in favour of prospective accused. According to the learned counsel for revisionists on a conjoint reading of aforesaid judgments, the following principles can be culled out;-

- (A) a prospective accused can be summoned on the statement-in-chief of one prosecution witness.
- (B) irrespective of above, the Court dealing with an application under Section 319 Cr.P.C. must consider the plethora of evidence, which has emerged during the course of investigation as it is an important material to conclude the complicity/innocence of a prospective accused.
- (C) The Court should draw a parallel in between the statement of the prosecution witness examined up to that stage as recorded under Section 161 Cr.P.C. as well as his deposition before Court below to find out whether something new has emerged in the deposition of a prosecution witness from what was stated by him in his statement under Section 161 Cr.P.C.
- (D) a prospective accused cannot be summoned merely on the basis of his complicity in the crime in question, only if an inference of guilt of the prospective accused can be inferred as per the evidence up to this stage.

(E) the power under Section 319 Cr.P.C. is an extra-ordinary power which must be exercised sparingly. Furthermore, Court should exercise its jurisdiction under Section 319 Cr.P.C. diligently and not in a "casual and cavalier" fashion.

(F) only when some strong and cogent evidence has emerged against a prospective accused rather than his mere complicity in the crime in question can a prospective accused be summoned and

(G) Court can summon a prospective accused only when on the basis of material on record, it can record the same degree of satisfaction as observed in paragraph 106 of the judgment in **Hardeep Singh (Supra)**.

24. He has contended that when aforesaid principles are applied to the facts of the present case, wherein none of the named accused have been charge sheeted, therefore, neither it is the complicity of the revisionists, which has emerged in the crime in question nor strong and cogent evidence has emerged against revisionists, which is much more than their mere complicity in the crime in question. As such, not even a prima-facie case was made out to summon the revisionists. It was thus urged by the learned counsel for revisionists that the order impugned cannot be sustained and therefore, liable to be set aside by this Court.

25. Learned counsel for revisionists then referred to the depositions of the prosecution witnesses i.e. PW-1, PW-2 and PW-3 and thereafter made a comparison of the same with their previous statements and pointed out the various contradictions that have emerged. On the above conspectus, the learned counsel for revisionists thus contended that no cast iron case for summoning the present revisionists was made out. As such, the order impugned in present criminal revision is not only illegal but also arbitrary. He would thus submit that the order impugned be quashed and the revision be allowed.

26. Per contra, the learned A.G.A. representing State-opposite party-1 vehemently opposed the present criminal revision. Learned A.G.A.

submitted that the order impugned in present criminal revision is perfectly just and legal and therefore, not liable to be interfered with by this Court. Court below has summoned the revisionists, who are prospective accused i.e. named in the FIR but exculpated to stand their trial in aforementioned Sessions Trial, only after it came to the conclusion that complicity of revisionists in the crime in question is prima-facie apparent as per the depositions of the prosecution witnesses i.e. PW-1 Kuldeep (first informant), PW-2 Sandeep and PW-3 Ashu, who have deposed before Court below up to this stage. As such, no procedural irregularity was committed by Court below in passing the order impugned. The order impugned is in conformity with the law laid down by Apex Court in the Five Judges Bench judgment in **Hardeep Singh Vs. State of Punjab and Others, (2014) 3 SCC 92**. In view of the fact that the three prosecution witnesses, who have deposed before court below up to this stage have clearly implicated the present revisionists also in the crime in question, therefore, a prima-facie case for summoning of the revisionists was clearly made out. On the above conspectus, the learned A.G.A. would thus contend that the submissions urged by the learned counsel for revisionists in support of present criminal revision are merely fanciful and attractive but they do not create a dent in the impugned order. As such, no good ground has emerged on the basis of which, it could be concluded that the order impugned is illegal or arbitrary or Court below has committed a jurisdictional error in passing the order impugned and therefore, liable to be set aside. As such, no interference is warranted by this Court in present criminal revision.

27. Mr. Yogendra Pal Singh, the learned counsel representing first informant-opposite party-2 has also opposed the present criminal revision. However, he has not added anything new then what was urged by the learned A.G.A. in opposition to this Criminal Revision. However, he fairly adopted the submissions urged by the learned A.G.A.

28. Having heard the learned counsel for revisionists, the learned A.G.A. for State-opposite party-1, Mr. Yogendra Pal Singh, the learned counsel representing first informant-opposite party 2 and upon perusal of record, this Court finds that the primary issue, which arises for determination in present revision is: whether the revisionists could have been summoned by Court below on the basis of depositions of PW-1, PW-2 and PW-3 or whether this Court can conduct a mini trial to flush out the innocence of prospective accused i.e. the revisionists, irrespective of the depositions of the three prosecution witnesses, who have deposed upto this stage and clearly implicated the revisionists in the crime in question.

29. Admittedly, P.W.1 Kuldeep (first informant), P.W.2 Sandeep and P.W.3 Ashu were also examined by the Investigating Officer under section 161 Cr.P.C. Their statements under Sections 161 Cr.P.C. are on record at pages 31,44 and 53 of the paper book, respectively. Aforementioned witnesses in their deposition before Court below have narrated the same story as stated in their previous statement recorded under section 161 Cr.P.C. However, in the light of attending circumstances i.e. the statements of independent witnesses, Investigating Officer exculpated the named accused.

30. When a parallel is drawn in between the statements of aforementioned witnesses recorded under section 161 Cr.P.C. and their depositions before Court below, this Court finds that various contradictions have emerged in their depositions before Court below. In their statements under section 161 Cr.P.C., aforementioned witnesses have stated that they were having their dinner outside the house whereas in their depositions before Court below, they have stated that they were having their dinner inside the house. While in their statements under section 161 Cr.P.C. they have stated that the named accused were identified in moon light but in their depositions before Court below, they have stated that there was source of light.

31. Apart from above, another glaring fact which has emerged in the present case is that no blood was found by the Investigating Officer at the place of occurrence, even when it is the basic prosecution case that on account of indiscriminate firing by named accused, one person namely, Sandeep @ Pintu sustained gun shot injury. Similarly, no bullet marks were found at the place of occurrence. Aforesaid adverse circumstances are clearly evident from the spot memo report prepared by the Investigating Officer, copy of which is on record at pages 35-38 of the paper book. None of the witness, who have deposed before the court below, has identified the weapon held by each of the accused. Even though the charge-sheet has been submitted, no attempt has been made by any of the witness to explain the complicity of charge-sheeted accused, who are admittedly not named in the FIR.

32. The prosecution witnesses of fact i.e. P.W.1, P.W.2 and P.W.3 in their depositions before Court below have rejoined their statements under section 161 Cr.P.C. but with material alterations as noted above. As such, no new material has emerged in their previous depositions before Court below then what was basically stated by them in their statements under section 161 Cr.P.C. The embellishment, contradiction and exaggeration that have emerged in their depositions as pointed out in the preceding paragraphs remain unexplained upto this stage, inasmuch as the independent witnesses examined by the Investigating Officer have not implicated the named accused in the crime in question.

33. In view of aforementioned facts and circumstances, it cannot be said that something more than mere complicity of revisionists has emerged in the depositions of the three prosecution witnesses examined up to this stage. There is nothing on record to show that strong and cogent evidence has emerged against revisionist in the depositions of the three prosecution witnesses i.e. P.W.1, P.W.2 and P.W.3 who have deposed upto this stage, which is much more than mere complicity of revisionists in the crime in question.

34. The law regarding summoning of a prospective accused that stands crystallized by the Five Judges Bench judgment of the Supreme Court in **Hardeep Singh (Supra)**, has been further diluted/explained in **Brijendra Singh (Supra)** and **S Mohammad Ishpahani (Supra)**.

35. When the principles, which can be deduced upon a conjoint reading of aforementioned judgments of the Supreme Court, as already noted herein above, are applied to the facts of the present case, this Court finds that though revisionists are named accused but they were exculpated by the Investigating Officer in the charge sheet/police reports dated 30.09.2012 and the supplementary charge sheet. According to the prosecution story, all the named accused are alleged to have fired on account of which, one person namely Sandeep @ Pintu is alleged to have sustained injuries. In the FIR, there is no categorical averment regarding the weapon held by each of the named accused nor the same has been explained in the statements of the witnesses, who have deposed before Court below up to this stage. The contradictions that have emerged in the deposition of the prosecution witness (as pointed out earlier) examined upto this stage remains unexplained. Similarly the absence of any blood at the place of occurrence and the fact that no bullet marks were found at the place of occurrence by the Investigating Officer even when it is the basic prosecution case that indiscriminate firing was made by the named accused also remains a mystery upto this stage. The independent witnesses who were examined by the Investigating Officer during the course of investigation have not implicated the named accused i.e. the revisionist in the crime in question either. The Investigating Officer, on the basis of the material collected by him during the course of investigation, has charge sheeted; (1) Babbal @ Kuldeep, who is not named in the FIR. (2). Chinu @ Vikas, who are not named in the FIR.

It is thus apparent that no such strong and cogent evidence has emerged against the revisionist so as to establish something more than their mere complicity in the crime in question. Court below has allowed

the application under section 319 Cr.P.C. filed by the prosecution only on two grounds i.e. (a) the complicity of the prospective accused i.e. the revisionist in the crime in question has emerged as per the depositions of three prosecution witnesses examined upto this stage and (b) the charge sheet/police report submitted by the Investigating Officer is not in consonance with the F.I.R. Both the findings returned by Court below are by themselves insufficient to allow an application under section 319 Cr.P.C. as Court below has failed to evaluate the material that was collected by Investigating Officer during course of investigation. Moreover, the charge sheet/police report was submitted by the Investigating Officer against two not named accused. The deposition of the three prosecution witnesses, who have appeared before Court below up to this stage have clearly not explained the above. The charge sheet/police report clearly falsifies the eye witnesses account. Furthermore, a prospective accused cannot be summoned simply on the basis of mere complicity in the crime in question. The Court is under an obligation to find out as to what cogent and strong evidence has emerged against a prospective accused and only thereafter summon such a prospective accused. When a parallel is drawn in between the previous statements of prosecution witnesses who have deposed before Court below and their depositions before Court below, this Court finds that nothing new has emerged in the depositions of prosecution witnesses who have deposed before Court below upto this stage. No exercise was undertaken by Court below in the light of above.

36. Therefore, what follows from above is whether in view of above and irrespective of the depositions of eye witnesses of the occurrence before Court below, the order impugned could be set aside on the grounds as noted above.

37. The answer to the aforesaid questions is not shrouded in obscurity and stands concluded by the judgment of Supreme Court in **Akhilesh Vs.**

State of Uttar Pradesh and Others, 2025 SCC OnLine SC 727, wherein following has been observed in paragraph 11 of the report;-

“11. In the present case, respondent nos. 2 and 3 were named in the FIR but they were not named in the chargesheet as accused. After recording the depositions of PW-1 and PW-2 which inspired the confidence of the Trial Court, these respondents were summoned to face trial under Section 319 CrPC. The learned counsel for respondent nos. 2 and 3 would argue that credibility of PW-1 is in doubt since PW-1 was not present at the spot at all and thus, was not an eyewitness to the Incident. Further, doubts have been raised on the credibility of PW-2 stating that he is a close relative of the deceased. However, we are of the view that this Court, at this stage, cannot go into these details as these are the issues that would be determined during the trial.”

38. Similarly, the Apex Court in the case of **Shiv Baran Vs. State of U.P. and Another 2025 SCC Online SC 1457**, has again observed that the Court while considering the veracity of an order passed in exercise of jurisdiction under section 319 Cr.P.C. is not required to record the satisfaction which is short of the standard necessary for passing a judgement after trial. Paragraphs 22, 23, 24 and 25 of the aforesaid report are relevant for the controversy in hand. Accordingly the same are reproduced herein below:

“22. The evidence from all three alleged eyewitnesses, although prima facie, suggests the complicity of Rajendra (Respondent No. 2); a specific role being assigned to him, indicating that he was present at the scene of the occurrence, armed with a stick. The High Court tried to apply the same standard in deciding this application as is ordinarily used at the end of the trial in determining the conviction or otherwise of the accused. Whereas it ought to have considered that the standard of satisfaction required is short of the standard necessary for passing a final judgment after trial.

23. Rajendra, although not charge sheeted, was named in the FIR, and the evidence thus far, leads, prima facie, to reveal his role. Therefore, at this stage, there is sufficient material to put him on trial; whether he will ultimately be convicted or not is left to be determined by a full-fledged inquiry at the end of the trial. It would be premature to comment anything on his conviction. The first informant categorically mentioned him as the one who came along with the others, with a common intent, abusing and

beating, causing the death of his brother, apart from causing serious injuries to the others.

24. In our considered view, the High Court proceeded to conduct a mini trial solely relying upon the affidavits submitted before the Superintendent of Police qua the innocence of Respondent No. 2. It erred in giving a categorical finding on the merits of PW1, the injured eyewitness not to have named Respondent No. 2, which we find is based on erroneous assumption and contrary to the factual position emerging from the record. The High Court erred in observing that witnesses have stated nothing about the motive of the crime; that the depositions are silent on the aspect of common intention; absence of the manner or sequence of occurrence of the incident; or that it cannot be inferred who is the aggressor. All these questions, amongst others, are relevant or not is a matter to be considered at the stage of final adjudication.

25. It is a settled law that the power under Section 319 CrPC must be exercised sparingly. However, where the evidence reveals the complicity of the prospective accused, it becomes obligatory for the authority to exercise the power provided under the said Section.”

39. Thus when the order impugned is examined in the light of aforesaid observations made by the Apex Court, it is apparent that none of the grounds urged by the learned counsel for revisionists in support of present criminal revision are cogent enough to set aside the order impugned in present criminal revision.

40. As a result, the present criminal revision fails and is liable to be dismissed.

41. It is, accordingly, **dismissed**.

Order Date :- 01.08.2025

Vinay