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Reserved on : 16.07.2025

Delivered on : 28.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 4408 of 2023

Revisionist :- Pradeep Kumar Singh And Another

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

Counsel for Revisionist :- Ritesh Singh, Sarvesh Kumar

Dubey, Suresh Singh, Umesh Kumar Singh

Counsel for Opposite Party :- G.A., Gulhuma, Shahzad Alam

Hon'ble Rajeev Misra, J.

1. Heard Mr. Sarvesh Kumar Dubey, the learned counsel for revisionists, the learned A.G.A. for State-opposite party-1 and Mr. Shahzad Alam, the learned counsel representing first informant/opposite party-2.

2. Perused the record.

3. This criminal revision is directed against the judgement and order dated 04.08.2023 passed by Additional Sessions Judge, Court No.1, Shahjahanpur in Sessions Trial No. 956 of 2022 (State Vs. Satyaveer and others) under Sections 302, 307, 504, 506 and 34 I.P.C., Police Station-Jaitipur, District-Shahjahanpur whereby the application dated 13.07.2023, under Section 319 Cr.P.C. (paper no. 25 ka) filed by the prosecution (first informant) 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 stand their trial in Sessions Trial No. 956 of 2022 (State Vs. Satyaveer and

others) under Sections 302, 307, 504, 506 and 34 I.P.C., Police Station-Jaitipur, District-Shahjahanpur

4. Record shows that in respect of an incident, which is alleged to have occurred on 22.12.2021, a prompt F.I.R. dated 22.12.2021 was lodged by first informant, opposite party-2, Amit Singh and was registered as Case Crime No. 0492 of 2021 under Sections 302, 307, 504, 506 and 34 I.P.C. Police Station-Jaitipur, District-Shahjahanpur. In the aforesaid F.I.R., four persons namely Ramveer Singh, Satyaveer Singh, Pradeep Singh and Ravindra Singh were nominated as named accused.

5. Gravamen of the allegations made in F.I.R. is to the effect that named accused with a common intention came to the house of first informant at 7.45 AM. Accused Ramveer Singh was armed with a country made pistol of 0.315 bore, whereas accused Pradeep Singh was armed with a double barrel gun belonging to his father. However, no weapon was shown in the hands of named accused Satyaveer Singh and Ravindra Singh i.e. the revisionists. The F.I.R. further states that after reaching the house of first informant, named accused made indiscriminate firing, on account of which, Kaushal Singh (brother-in-law of the first informant i.e. Bahnoi) sustained gun shot injury in his stomach and fell on the ground. The injured Kaushal Singh was taken to Siddhi Vinayak Hospital Bareilly but the Doctors refused to admit him. Thereafter, the injured was taken to District Hospital, Bareilly, where he was declared brought dead by the Doctor attending the emergency ward.

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. The inquest (Panchnama) of the body of deceased was conducted on 22.12.2021. In the opinion of

witnesses of inquest (Panch witnesses), the nature of death of deceased was categorized as homicidal and the cause of death of deceased was said to be fire arm injuries. Subsequent to above, post mortem of the body of deceased was conducted on 22.12.2021. The Autopsy Surgeon, who conducted autopsy on the body of deceased, opined that cause of death of deceased is Shock and Haemorrhage due to ante-mortem fire arm injury. As per the document occurring at page 41 of the paper book, the Autopsy Surgeon found following ante-mortem injury on the body of deceased:-

“Firearm Injury Sharp marging or and contuwold spot new sign of tatoring size 2.5 x 2 cm 8 cm chest to L nipple abdornal about .2 cm around.”

7. During course of investigation, Investigating Officer examined first informant and the following witnesses including independent witnesses under Section 161 Cr.P.C. i.e. -

- (i). Amit Singh, First informant/Eye witness (C.D. Parcha No. 2)
- (ii). Rishipal Singh, witness of recovery (C.D. Parcha No. 3)
- (iii). Vikram Singh, witness of recovery (C.D. Parcha No. 3)
- (iv). Satendra Pal (C.D. Parcha No. 4)
- (v) Veerpal (C.D. Parcha No. 4)
- (vi). Dharamveer, eye witness (C.D. Parcha No. 4)
- (vii). Ram Kishore (C.D. Parcha No. 4)
- (viii) Virendra (C.D. Parcha No. 6)
- (ix) Ramjeet (C.D. Parcha No. 6)
- (x) Jugendrapal (C.D. Parcha No. 6)
- (xi). Sanjay (C.D. Parcha No. 6)
- (xii). Mahipal (C.D. Parcha No. 7)

- (xiii). Kalicharan (C.D. Parcha No. 7)
- (xiv). Devendra Son of Biharilal (C.D. Parcha No. 7)
- (xv) Munna Lal son of Gokaran Lal (C.D. Parcha No. 7)
- (xvi). Dharamveer Son of Jugendra Pal (C.D. Parcha No. 7)
- (xvii). Durga Devi W/o Devendra (C.D. Parcha No. 8)
- (xviii) Pankaj Rana Son of Vishnu Dayal (C.D. Parcha No. 8)
- (xix) Vishnu Dayal Son of Collector (C.D. Parcha No. 8)
- (xx) Shashi Bala W/o Veerpal (C.D. Parcha No. 8)
- (xxi). Renu W/o Prempal (C.D. Parcha No. 8)
- (xxii). Asho Son of Amar Singh (C.D. Parcha No. 12)

Witnesses mentioned from serial No. iv to xxii are witnesses of heresay.

- (xxiii). Harveer Singh Son of Daan Singh (C.D. Parcha No. 12)
- (xxiv). Ajeet Son of Ravindra (C.D. Parcha No. 13)
- (xxv). Virendra Singh Son of Atiraj Singh (eye witness) (C.D. Parcha No. 13)
- (xxvi). Mukesh Son of Veerpal (C.D. Parcha No. 14)
- (xxvii). Raghuveer Son of Harpal (C.D. Parcha No. 14)
- (xxviii). Raju Singh Son of Budhpal (C.D. Parcha No. 14)
- (xxix). Rajesh Son of Rameshwar (C.D. Parcha No. 14)
- (xxx). Arun Kumar Son of Ram Sahai (C.D. Parcha No. 14)
- (xxxi). Ashok Kumar Son of Ram Autar (C.D. Parcha No. 16)
- (xxxii). Smt. Uma Devi W/o of Ram Singh (C.D. Parcha No. 16)
- (xxxiii). Sonpal Singh Son of Ram Singh (C.D. Parcha No. 16)

- (xxxiv). Smt. Vimla Devi W/o Sonpal Singh (C.D. Parcha No. 16)
- (xxxv). Devesh Kumar Son of Sonpal Singh (C.D. Parcha No. 16)
- (xxxvi). Ramesh Chandra Gupta Son of Laloo Ram (C.D. Parcha No. 17)
- (xxxvii). Smt. Poonam Gupta W/o Ramesh Chand Gupta (C.D. Parcha No. 17)
- (xxxviii). Visheshwar Singh Son of Haripal Singh (C.D. Parcha No. 17)
- (xxxix). Smt. Sharmila W/o Visheshwar Singh (C.D. Parcha No. 17)
- (xl). Prabhar Kumar Pandey Son of Gorakhnath Pandey (C.D. Parcha No. 17)
- (xli) Smt. Beena Pandey W/o Prabhat Kumar Pandey (C.D. Parcha No. 17)
- (xlii). Narendra Sharma Son of Nathulal (C.D. Parcha No. 18)
- (xliii). Vedram Singh Yadav Son of Jeevan Singh (C.D. Parcha No. 18)
- (xliv). Smt. Sudha Yadav W/o Vedram Singh Yadav (C.D. Parcha No. 18)
- (xlv). Radhey Shyam Yadav Son of Hosiyar Singh (C.D. Parcha No. 18)
- (xlvi). Smt. Ramwati Yadav W/o Radhe Shyam Yadav (C.D. Parcha No. 18)
- (xlvii). Yogesh Singh Son of Omkar Singh (C.D. Parcha No. 19)
- (xlviii). Smt. Sudha Singh W/o Yogesh Singh (C.D. Parcha No. 19)

Witnesses mentioned from serial no. xxxii to xlvi are the formal witnesses proving the plea of alibi of both the revisionists i.e. Pradeep Kumar Singh and Ravindra Singh @ Nanhe Singh.

(xlix). Awadhesh Singh @ Vipendra Singh Son of Lalla Singh (Panch witness) (C.D. Parcha No. 20)

(l). Ramprakash Singh Son of Kulraj Singh (Panch witness) (C.D. Parcha No. 20)

(li) Sushil Kumar Siongh @ Shailu Son of Manoj Singh (Panch witness) (C.D. Parcha No. 20)

(lii). Roshan Singh Son of Milap Singh (Panch witness) (C.D. Parcha No. 20)

(liii) Rajesh Pal Singh Son of Veerpal Singh (Panch witness) (C.D. Parcha No. 20)

(liv) Devendra Singh Son of Chandrapal Singh (C.D. Parcha No. 26)

(lv). Raj Kumar Son of Dhara Singh (C.D. Parcha No. 26)

(lvi). Rajeev Kumar Misra Son of Ram Niwas (C.D. Parcha No. 26)

(lvii). Sukhpal Son of Baychu (C.D. Parcha No. 26)

(lviii). Balram Son of Ajudhu (C.D. Parcha No. 26)

(lix) Anil Kumar Son of Sonpal (C.D. Parcha No. 27)

(lx). Lala Ram So of Sumair Lal (C.D. Parcha No. 27)

(lxi). Vikram Singh Son of Hakim Singh (C.D. Parcha No. 27)

(lxii). Suresh Chand Son of Harpal (C.D. Parcha No. 27)

(lxiii). Surajpal Son of Parbat (C.D. Parcha No. 27)

(lxiv). Krishnapal Son of Sewaram (C.D. Parcha No. 27)

(lxv). Dr. M.P. Singh (C.D. Parcha No. 24)

(lxvi) Priyanka W/o of Late Kaushal (eye witness/wife of deceased) (C.D. Parcha No. 22)

(lxvii). Jaiveer Son of Narsingh (Owner of double barrel gun (father of Pradeep Kumar Singh, accused exculpated) (C.D. Parcha No. 28)

8. On the basis of above and other material collected by Investigating Officer during course of investigation, he came to the conclusion that complicity of only two of the named accused i.e. Ramveer Singh and Satyaveer Singh is established in the crime in question. Accordingly, Investigating Officer submitted the charge sheet/police report dated 11.02.2022 in terms of Section 173(2) Cr.P.C., whereby named accused Ramveer Singh and Satyaveer Singh were charge-sheeted under Sections 302, 307, 504, 506 and 34 I.P.C. whereas the other two named accused i.e. revisionist herein namely Pradeep Kumar Singh and Ravindra Singh were exculpated on the grounds i.e. (a) accused Ramveer Singh and Satyaveer Singh upon their arrest confessed about their involvement alone in the crime in question, (b) as per the CDR Reports of the mobiles phones of prospective accused i.e. the revisionists herein, their locations were found at different place i.e. at Katra, where they have constructed a house and are residing there, which is far away from the place of occurrence and (c) the independent witnesses examined during course of investigation have only mentioned about the complicity of the charge sheeted accused i.e. Ramveer Singh and Satyaveer Singh in the crime in question and (d) no recovery was made from the revisionsits.

9. After submission of aforementioned charge sheet, cognizance was taken upon same by the Jurisdictional Magistrate in exercise of jurisdiction under Section 190(1)(b) Cr.P.C. However, as offence complained of is triable exclusively by the Court of Sessions,

therefore, the Jurisdictional Magistrate after completing the formality contemplated in Section 207 Cr.P.C. i.e. supply of documents to accused and in compliance of Section 209 Cr.P.C. committed the case to the Court of Sessions. Resultantly, Sessions Trial No. 956 of 2022 (State Vs. Remveer and others) under Sections 302, 307, 504, 506 and 34 I.P.C., Police Station-Jaitipur, District-Shahjahanpur came to be registered in the Court of Additional District and Sessions Judge, Court No.1, Shajahanpur.

10. Concerned Sessions Judge proceeded with the trial. He, accordingly framed charges against charge-sheeted accused in exercise of jurisdiction under Section 228 Cr.P.C., who denied the same,pleaded innocence and demanded trial. Consequently, the trial procedure commenced.

11. Prosecution in discharge of it's burden to bring home the charges so framed against charge sheeted accused adduced the following witnesses, upto this stage:

I. P.W.-1, Amit Singh (first informant)

ii. P.W.-2, Viredra Singh

iii. P.W.-3, Kuldeep Singh

iv. P.W.-5, Dharmveer Singh

12. After the statement-in-chief/examination-in-chief of aforementioned prosecution witnesses was recorded, prosecution (first informant/opposite party-2) filed an application dated 13.07.2023 under Section 319 Cr.P.C. alleging therein that since as per the depositions of prosecution witnesses examined upto this stage i.e. P.W.-1, P.W.-2, P.W.-3 and P.W.-5, the complicity of named but not charge sheeted accused i.e. Pradeep Kumar Singh and Ravindra

Singh @ Nanhe Singh the revisionist himself has also emerged in the crime in question, therefore, they be also summoned to face their trial in aforementioned Sessions Trial.

13. This application filed by prosecution (first informant) was opposed by charge sheeted accused, who filed their objections dated 21.07.2023/28.07.2023 to the same.

14. Court below upon evaluation and examination of the averments made in aforementioned application under Section 319 Cr.P.C. in the light of depositions of witnesses examined upto this stage, the objections to the same filed by charge sheeted accused came to the conclusion that since complicity of named but not charge-sheeted accused Pradeep Kumar Singh and Ravindra Singh @ Nanhe Singh i.e. revisionists herein has also emerged in the crime in question, as per the depositions of the witnesses examined up to this stage, therefore, they are also liable to be summoned to face trial. At this stage, it would be apt to refer the relevant recital occurring in the impugned order:-

"उपरोक्त विधि व्यवस्था के प्रकाश में जबकि वादी द्वारा प्रथम सूचना रिपोर्ट से लेकर और उसके साक्षियों द्वारा 161 दं० प्र० सं० के बयान में भी इन दोनों प्रस्तावित अभियुक्तगण का घटना में सम्मिलित होने का समर्थन किया गया है तथा न्यायालय के समक्ष भी अपने कथनों का समर्थन किया गया है।"

15. On the above finding, the application under section 319 Cr.P.C. filed by prosecution (first informant) came to be allowed by court below vide order dated 4.8.2023. As a result, revisionists, who are prospective accused i.e. named in the FIR but not charge sheeted, have now been summoned by court below to stand their trial in aforementioned Sessions Trial.

16. Thus feeling aggrieved by the above order dated 04.08.2023, passed by the Additional Sessions Judge, Court No.-1, Shahjahapur, the prospective accused i.e. the revisionists herein have now approached this Court by means of present criminal revision.

17. Mr. Sarvesh Kumar Dubey, the learned counsel for revisionists contended that the order impugned in present criminal revision is manifestly illegal and in excess of jurisdiction. Consequently, the same is liable to be set aside by this Court.

18. According to the learned counsel, the revisionists i.e. Pradeep Kumar Singh and Ravindra Singh @ Nanhe Singh were nominated as named accused in the F.I.R. However, Investigating Officer during course of investigation did not come across any such material on the basis of which, the complicity of present revisionists could be said to be even prima-facie apparent in the crime in question. As such, revisionists were exculpated by the Investigating Officer in the charge sheet/police report dated 11.02.2022.

19. In the submission of learned counsel for revisionists, Court below while passing the order impugned has failed to consider the aforesaid aspect of the matter nor has it considered the material collected by the Investigating Officer during course of investigation, which is a relevant material, while deciding an application under Section 319 Cr.P.C. filed by the prosecution (first informant). Since Court below has failed to consider the said material objectively, thus, it could not evaluate the grounds on the basis of which, the revisionists were exculpated by the Investigating Officer.

20. It was next contended by the learned counsel for revisionist that application under Section 319 Cr.P.C. was not filed by the prosecution i.e. D.G.C. Criminal but by the first informant directly.

Consequently, the said application could not have been considered by court below. Referring to the provisions contained in Section 301 Cr.P.C., the learned counsel for revisionists submitted that the first informant cannot participate in the proceedings of trial but can only submit written arguments upon the conclusion of trial. As such, the application under Section 319 Cr.P.C. filed directly by first informant/opposite party-2 before Court below was not maintainable. Court below has thus committed an illegality/jurisdictional error in considering the said application and allowing the same.

21. According to the learned counsel, the revisionists were exculpated by the Investigating Officer in the police report dated 11.02.2022 (charge-sheet). He therefore contends that in view of above, the proper course for Court below was to defer the disposal of the application under Section 319 Cr.P.C. filed by prosecution (first informant) till the statement of Investigating Officer, who had investigated the concerned case crime number and also submitted the charge sheet/police report was not recorded. Only after the deposition of Investigating Officer was recorded could the court below come to know/gather the circumstances/grounds on which the revisionists who are named accused in the F.I.R. were exculpated. He thus contended that Court below has pre-empted the disposal of application under Section 319 Cr.P.C.

22. In continuation of his challenge to the order impugned, the learned counsel for revisionists further submitted that the statements of P.W.-1, P.W.-2, P.W.-3 and P.W.-5 were also recorded under Section 161 Cr.P.C.. For the sake of convenience, the same are tabulated herein under:

i. Statement of P.W.-1, Amit Singh (first informant) recorded under Section 161 Cr.P.C. is at page 44 to 45 of the paper book.

ii. Statement of P.W.-2, Viredra Singh recorded under 161 Cr.P.C. is at page 57 of the paper book.

iii. Statement of P.W.-3, Kuldeep Singh recorded under Section 161 Cr.P.C. is at page 79 of the paper book.

iv. Statement of P.W.-5, Dharmveer Singh recorded under Section 161 Cr.P.C. is at page 53 of the paper book.

23. Drawing a parallel in between the statements of aforementioned witnesses recorded under Section 161 Cr.P.C and their depositions before court below, it was urged by the learned counsel for revisionists that aforementioned witnesses have not stated anything new in their depositions before court below than what was stated by them in their previous statements under Section 161 Cr.P.C. As such, nothing new has emerged in the deposition of aforementioned witnesses. He thus submitted that a paradoxical position has emerged inasmuch as on the same evidence, the revisionists, who are named in the FIR, were exculpated by the Investigating Officer but have now been summoned by court below to face trial. At this juncture, the learned counsel for revisionists invited the attention of Court to the judgement of Supreme Court in **Brijendra Singh and others Vs. State of Rajasthan, (2017) 7SCC, 706** wherein court has held that even after the statement of prosecution witness has been recorded, which forms the basis for summoning prospective accused yet the court while exercising jurisdiction under Section 319 Cr.P.C. must consider the material that was collected by the Investigating Officer during course of investigation as it is a relevant material and further find out as to whether something new has emerged in the deposition of the prosecution witnesses, who has deposed before Court than what was stated in the previous statement under Section 161 Cr.P.C. and further whether something more than mere complicity of the

prospective accused has emerged in the crime in question. According to the learned counsel for revisionists, court below has failed to undertake any such exercise in the light of observations made by the Apex Court in aforementioned judgment as noted above, as no finding has been rendered by Court below in the order impugned regarding the new material that emerged against revisionists in the deposition of the witnesses examined up to this stage. It was thus urged by the learned counsel for applicant that the same has vitiated the order impugned and therefore, the same is liable to be quashed by this Court.

24. Learned counsel for revisionists further submitted that even as per the prosecution story as unfolded in the F.I.R., the other two named accused are said to be armed with country made pistol of 0.315 bore and a double barrel gun. There is no description in the F.I.R. regarding the weapons in the hands of the present revisionists. However, a departure was made from the prosecution story as unfolded in the FIR in the statement of PW-1, who has stated that the revisionists were also armed with country made guns. On the above premise, it was thus sought to be contended by the learned counsel for revisionists that as per the prosecution story as unfolded in the FIR it was only the complicity of the revisionists in the crime in question, which was mentioned but subsequently, an improvement has been made in the prosecution case by alleging that the present revisionists were also armed with country made guns. In view of above, there is clear embellishment in the deposition of PW-1, therefore, the same is not worthy of credit and reliance. As such except for the mere complicity of the revisionists in the crime in question nothing more has emerged.

25. On the bedrock of aforesaid, it was thus contended by the learned counsel for revisionists that a prospective accused cannot be summoned merely on the basis of his complicity in the crime in question but only when strong and cogent evidence has emerged against prospective accused, which is much more than his mere complicity in the crime in question. In support of above, reference was made to the judgment of Surpeme Court in **S Mohammed Ispahani Vs. Yogendra Chandak and Others, (2017) 16 SCC 22**

26. According to the learned counsel for revisionists, though F.I.R. is not the encyclopedia of the prosecution case but it does disclose the basic prosecution case. In this regard, he has referred to the judgments of Supreme Court in (i). **Manoj and Others Vs. State of Maharashtra, (1999) 4 SCC 268**, (ii). **Subhash Kumar Vs. State of Uttarakhand, (2009) 6 SCC 641** and (iii). **Achhar Singh Vs. State of M.P. (2021) 5 SCC 543**. He thus submitted that when the F.I.R. giving rise to present criminal proceedings is examined in the light of above, it is apparent that right from the inception, the revisionists who are named in the F.I.R. and alleged to be involved in the crime in question have not been shown to be armed with any weapons/ particular firearm. The prosecution witnesses who have deposed upto this stage, in their depositions before court below have improved upon the prosecution story as unfolded in the F.I.R. As such, their statements are unworthy of reliance qua the present accused as the same suffer from the vice of embellishment and exaggeration. As such, no cast iron case can be said to be made out for summoning the present revisionists to stand their trial in above-mentoned Sessions Trial.

27. It was lastly contended by the learned counsel for applicants that neither the charge sheeted accused have been charge sheeted under

Section 34 IPC nor the revisionists have been summoned under Section 34 IPC. The revisionists do not belong to the family of charge sheeted accused. Therefore, prosecution was under burden to establish the motive against revisionists for committing the crime in question. Since the motive behind the occurrence does not stand established against revisionists in the depositions of the witnesses examined up to this stage, therefore, no case for summoning the revisionists can be said to be made out against revisionists. To lend legal support to this submission, the learned counsel for revisionists has relied upon the judgment of Supreme Court in **Gandahar Chandra Vs. State of West Bengal (2022) 6 SCC 576**. Paragraph 14 of the report is relevant for the controversy involved in present criminal revision and accordingly the same is reproduced herein under:

“14. As consistently held by this Court, common intention contemplated by Section 34 IPC pre-supposes prior concert. It requires meeting of minds. It requires a prearranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In a given case, the plan can be formed suddenly. In the present case, the non-examination of two crucial eyewitnesses makes the prosecution case about the existence of a prior concert and prearranged plan extremely doubtful.”

28. On the edifice of aforementioned submissions, the learned counsel for revisionists thus contended that the order impugned in present criminal revision is wholly illegal. The same is unsustainable in law and fact. Consequently, the same is liable to be set aside by this Court.

29. Per contra, the learned A.G.A. for State-opposite party-1 has vehemently opposed the present criminal revision. According to learned A.G.A., the order impugned in present criminal revision is perfectly just and legal. Court below has exercised its jurisdiction judiciously, as well as

diligently and not with material irregularity. As such, the order impugned is not liable to be interfered with by this Court.

30. With reference to the order impugned, it was then contended by the learned A.G.A. that Court below has summoned the revisionist in aforementioned Sessions Trial on the basis of statement-in-chief/examination-in-chief of the four prosecution witnesses, who have deposed upto this stage. Since the statement-in chief/examination-in-chief) of aforesaid witnesses have already been recorded before Court below, therefore, their depositions fall in the category of legal evidence. As such, no reliance can be placed upon their previous statements recorded under Section 161 Cr.P.C. Revisionists will have adequate opportunity before Court below to contradict the prosecution witnesses examined up to this stage with their previous statements.

31. It was also contended by the learned A.G.A. that the order impugned cannot be faulted on the ground that Court below has pre-empted the disposal of the application under section 319 Cr.P.C. inasmuch as the Investigating Officer who had conducted the investigation of concerned case crime number and had also submitted the charge sheet/police report has not been examined as yet.

32. According to the learned A.G.A., in view of the law laid down by the Five Judges Bench of the Apex Court in **Hardeep Singh Vs. State of Punjab reported in 2009 (1) JIC 362 (SC)**, a prospective accused can be summoned on the basis of statement-in-chief of one prosecution witness, therefore, it was not necessary for Court below to defer the disposal of application under section 319 Cr.P.C. till the examination of the Investigating Officer was conducted before Court below. As such, no illegality was committed by Court below in passing the impugned order even though the Investigating Officer has not yet been examined.

33. It was also contended by the learned A.G.A. that since first informant is the brother-in-law of the deceased, therefore, he shall fall in the category of victim. In view of the law laid down by the Apex Court that the victim is not a mere spectator but he has right to participate in the trial, therefore, the order impugned can not be said to be illegal being in derogation of Section 301 Cr.P.C. Reference in this regard was made to the judgment of Supreme Court in **Rekha Murarka Vs. State of West Bengal and Another, (2020) 2 SCC 474.**

34. Learned A.G.A. has then submitted that once the complicity of the revisionists in the crime in question has emerged as per the depositions of the prosecution witnesses examined upto this stage, no further exercise could be undertaken by Court below to find out the innocence of the prospective accused/revisionists, as court while dealing with an application under section 319 Cr.P.C. is not required to conduct a mini trial (to fetch out the innocence of the accused) as held by the Apex Court in **Yashodhan Singh and Another Vs. State of U.P., (2023) 9 SCC 108.**

35. On the above conspectus, learned A.G.A. contended that since the order impugned does not suffer from an error of law or fact, much less a jurisdictional error, therefore, no interference is warranted by this Court in present criminal revision. As such, the present criminal revision is liable to be dismissed.

36. Mr. Shahzad Alam, the learned counsel representing first informant/opposite party-2 has also opposed the present criminal revision. He did not add anything new but has adopted the submissions made by the learned A.G.A. in opposition to the present criminal revision.

37. Having heard the learned counsel for revisionists, the learned A.G.A. for State-opposite party-1, Mr. Shahzad Alam, the learned counsel representing first informant/opposite party-2 and upon perusal of record, this Court finds that the issue, which arises for

determination in present revision is: whether this Court while examining the veracity of the summoning order passed by court below can ignore the deposition of the witnesses examined upto this stage and endeavour to find out the innocence of the revisionists

38. Having formulated the issue involved in this revision, the Court is now required to consider whether on the basis of deposition of P.W.-1 Amit Singh (first informant), P.W.-2, Virendra Singh, P.W.-3 Kuldeep Singh and P.W.-5 Dharmveer Singh, the revisionists could have been summoned by court below. As an ancillary issue, Court will also have to consider as to whether court below has exercised its jurisdiction “diligently” or as termed by Apex Court in a “casual and cavalier fashion.”.

39. Upon perusal of record, this Court finds that revisionists have been nominated as named accused in the FIR. However, they were exculpated by the Investigating Officer in the charge sheet/police report dated 11.02.2022, primarily on the grounds that named and charge sheeted accused Ramveer Singh and Satyaveer Singh upon their arrest confessed about their involvement alone in the crime in question, as per the CDR reports of the mobile phones of the revisionists, their locations were found at different place i.e. Katra, where they have constructed a house and are residing therein, the independent witnesses examined during course of investigation have only mentioned about the complicity of the charge sheeted accused i.e. Ramveer Singh and Satyaveer Singh in the crime in question and no recovery was made from the revisionists either. Apart from above, this Court further finds that no weapon of assault has been shown in the hands of the present revisionists in the FIR. An improvement to that effect was made in the statement-in-chief of PW-1, wherein he has stated that the present revisionists were also armed with country made guns. It is true that FIR is not the encyclopedia of the prosecution case but it does disclose the basic prosecution case. No reason for the said departure has come forward from PW-1. Furthermore, the revisionists do

not belong to the family of charge sheeted accused. Neither the charge sheeted accused have been charge sheeted under Section 34 IPC nor the present revisionists have been summoned under Section 34 IPC. Therefore, prosecution is under burden to establish the motive against revisionists for committing the crime in question. On the above conspectus, this Court is required to consider whether on the basis of above, the order impugned can be set aside or still it can be sustained in view of the deposition of the prosecution witnesses, who have deposed upto this stage, wherein the complicity of present revisionists in the crime in question is clearly apparent..

40. PW-1 Amit Singh (first informant), PW-2 Virendra Singh, PW-3 Kuldeep Singh and PW-4 Dharamveer are eye witnesses of the occurrence. PW-3 and PW-4 are brothers of first informant but they have not been nominated as prosecution witnesses in the charge sheet. All the prosecution witnesses in their depositions before Court below have implicated the present revisionists in the crime in question.

41. 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.”

42. 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

deciding 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.”

43. When the order impugned is examined in the light of aforesaid caution given by the Supreme 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 create a dent in the same so as to set aside the order impugned passed by Court below.

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

45. It is, accordingly, **dismissed**.

Order Date :- 28.07.2025

Vinay