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2025:AHC:170506

HIGH COURT OF JUDICATURE AT ALLAHABAD

Case :- CRIMINAL REVISION No. - 4891 of 2019

Revisionist :-

Vinod

Versus

Opposite Party :-

State Of Uttar
Pradesh and another

Counsel for Revisionist :-

Pankaj Kumar Tyagi

**Counsel for Opposite
Party :-**

Pankaj Kumar Tripathi, A.G.A.
Tulsi Ram Yadav

Court No. - 88

Hon'ble Tej Pratap Tiwari,J.

1. The present criminal revision has been filed by the revisionist Vinod challenging the order dated 26th November, 2019 passed by the learned Additional Sessions Judge, Court No. 6, Saharanpur in Sessions Trial No. 535 of 2018, (State Vs. Neelam and Others) arising out of Case Crime No. 535 of 2018 under Sections 302/34, 201 IPC, Police Station Deoband, District Saharanpur by which the learned Additional Sessions Judge, has summoned the revisionist/applicant as accused under Section 319 Cr.P.C.

2. The facts of the case is that an FIR was lodged by the opposite party No. 2 namely Ram Pal Singh against the four persons namely Neelam, Ajay, Pankaj and Vinod. During investigation, the involvement of the revisionist was not found, therefore, the Final Report was submitted removing the name of the revisionist.

Thereafter, at trial during the examination of prosecution witnesses, PW-1 Ram Pal Singh/Complainant, PW-2 Surendra and PW-3 Rakesh Kumar, has stated that they had seen the revisionist taking away the deceased along with other accused persons. On this, the opposite party No. 2-Ram Pal Singh, filed an application under Section 319 Cr.P.C., before the learned lower Court, to summon the revisionist, to be tried, as an accused.

3. On the aforesaid application and after hearing the learned counsel for the complainant as well as the learned ADGC (Criminal), the Court below has passed the order dated 26th November, 2019 allowing the application filed by the complainant under Section 319 Cr.P.C., and had summoned the proposed accused-Vinod/Revisionist to be tried, under Section 302 read with Section 34 and 201 IPC, with other accused persons.

4. Feeling aggrieved by the aforesaid order dated 26.11.2019, the revisionist has filed the instant revision challenging the impugned order dated 26th November, 2019 passed by the Additional Sessions Judge, Court No. 6, Saharanpur in Sessions Trial No. 535 of 2018, under Sections 302/34, 201 IPC, Police Station Deoband, District Saharanpur, whereby the revisionist-applicant has been summoned as accused.

5. The revisionist has preferred the instant revision on the grounds that the first information report was lodged by the opposite party No. 2 against the four persons and during investigation, the involvement of the revisionist was not found, and so the final report was submitted against the revisionist. The trial Court did not give the finding regarding his satisfaction, which is necessary as per the judgments of the Apex Court. During the investigation, all evidence led shows that the applicant was not present on the spot and, therefore, the final report was submitted and at the time of summoning, the Trial Court did not consider the previous statement under Section 161 Cr.P.C. The trial Court did

not give finding regarding his satisfaction that the conviction would be led to the proposed accused/revisionist. The learned Court below summoned the revisionist under Section 319 Cr.P.C., in mechanical and routine manner without applying its judicial mind.

6. In the aforesaid criminal revision, counter affidavit has also been filed on behalf of opposite party No. 2, wherein it has been stated that on the basis of evidence of PW-1 namely Ram Pal Singh/Complainant, PW-2 Surendra and PW-3 Rakesh Kumar, the impugned order has been passed. The entire prosecution story can be testified on the FIR itself. Further, it has been submitted that the complainant has lodged the FIR against the revisionist and co-accused, which was registered as Case Crime No. 393 of 2018 under Section 302 and 201 IPC. Any how, the revisionist managed, which resulted into the submission of the final report in favour of the revisionist. The order passed by the Court below is absolutely correct and need no interference by this Court.

7. Thereafter by the order of this Court, rejoinder affidavit on behalf of the revisionist has also been filed which is on the record. In this rejoinder affidavit, the revisionist has reiterated the grounds taken in the revision and further denying all the averments made by the opposite party No.2 by way of counter affidavit, has prayed for setting aside the impugned order dated 26th November, 2019 passed by the learned lower Court and to allow the instant criminal revision.

8. Heard both the parties and perused the record.

9. During the course of arguments, the learned counsel for the revisionist has vehemently argued that on the basis of plea of alibi, the final report was submitted by the concerned Investigating Officer. All the evidence available before the Court below shows that the applicant/revisionist was not present on the spot. The trial Court has not considered the previous statement made under

Section 161 Cr.P.C., and has erroneously passed the impugned order dated 26th November, 2019, summoning the revisionist as an accused. The aforesaid order passed by the learned lower Court is against the law as held in the case of **Brijendra Singh Vs. State of Rajasthan (2017) 7 SCC 706**, in which the Hon'ble Supreme Court observed:-

"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 the aforesaid case, it has been further held:

"On the basis of material collected during investigation, which has been referred to by us above, the IO found that these appellants were in Jaipur city when the incident took place in Kanaur, at a distance of 175 kms. The complainant and others who supported the version in the FIR regarding alleged presence of the appellants at the place of incident had also made statements under Section 161 Cr.P.C. to the same effect. Notwithstanding the same, the police investigation revealed that the statements of these persons regarding the presence of the appellants at the place of occurrence was doubtful and did not inspire confidence, in view of the documentary and other evidence collected during the investigation, which depicted another story and clinchingly showed that appellants plea of alibi was correct. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny."

10. Per contra, learned AGA has opposed the arguments made by the learned counsel for the revisionist & has argued that the learned lower Court has passed the impugned order dated 26th November, 2019 as per law. So far as the question of plea of alibi

is concerned it has to be considered during the trial by the trial Court. Therefore, the revision lacks merit and is liable to be dismissed.

11. Before going into the arguments made by both the side, it would be appropriate to reproduce the provision of law laid down in Section 319 Cr.P.C., which is as under :

“Section 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.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, 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 afresh, 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.”

12. Now, at the first instance, it seems relevant to take note of the impugned order dated 26th November, 2019 passed by the learned Court below, on an application filed by the opposite party No. 2 during the course of trial under Section 319 Cr.P.C. In its order, the learned lower Court has observed that a bare perusal of the FIR shows that none of the witnesses had seen any specific person who has caused death of deceased Vicky, but the revisionist along with other accused Neelam, Ajay and Pankaj were seen with accused while they had forcefully taking away the deceased Vicky with them. It is also not available in the case diary, as statement made under Section 161 Cr.P.C., that all the above four accused have taken the deceased with them but later

during the investigation the name of the revisionist-accused was left out. The case diary further reveals, that on 2nd May, 2018, during the whole day, the revisionist was engaged in the work of filling soil in the land of Vipin at Zabreda and on this basis, the Investigating Officer has removed the name of the present revisionist namely Vinod. During trial, the witness of fact PW-1 Ram Pal Singh, PW-2 Surendra and PW-3 Rakesh have consistently stated about the presence of Vinod with them and had also stated about the active involvement of the revisionist in committing the crime. All the aforesaid witnesses have been cross-examined at length, but nothing adverse has come out, on the basis of which, the statement made on oath by the aforesaid witnesses can be disbelieved, at this stage. The case of the revisionist Vinod has solely based on the plea of alibi, that at the time of occurrence, he was present somewhere else. The learned lower Court had further observed that it is the subject matter to be considered at the stage of evaluation of the evidence led by both the sides, where it will be seen that whether the revisionist Vinod was present at the time and place of occurrence or not, but at this stage, *prima facie*, Vinod's active involvement is nonetheless same as other accused. On this basis, the learned lower Court found it in the interest of justice, to summon the proposed accused/revisionist namely Vinod to be tried with other accused in the trial in question.

13. In this context, reference may be made to the observations made by the Hon'ble Supreme Court in ***Harjinder Singh Vs. The State of Punjab & Anr., 2025 SCC OnLine SC 1029***, wherein it has been observed as follows:

"Having regard to the purpose of Section 319 CrPC, we see no infirmity in the order of the Trial Court. On the contrary, non-summoning of respondent no. 2 would have risked a truncated trial and a possible failure of justice. The High Court, by elevating unproved defence documents above sworn testimony, adopted an approach that was neither consistent with the text of Section 319 CrPC nor consonant with the realities of a case involving a vulnerable victim. The Court's intervention, in effect, foreclosed the prosecution

from testing the alibi and deprived the Trial Court of jurisdiction expressly conferred upon it. For the reasons recorded above, the appeal succeeds and is allowed."

14. In the case of **Sarojben Ashwin Kumar Shah Vs. State of Gujarat 2011 (74) ACC 951(SC)**, the Hon'ble Supreme Court has drawn the following guidelines for exercising jurisdiction by Court under Section 319 Cr.P.C :-

i)

ii)

iii) *The phrase "any person not being the accused" occurring in Section 319 Cr.P.C., does not exclude from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the charge-sheet. In other words, the said expression covers any person who is not being tried already by the court and would include person or persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the court.*

15. Likewise, in the case of **Bholu Ram Vs. State of Punjab and Anr. JT 2008 (9) SC 504**, it has been held that the person named in the FIR but not charge-sheeted, can still be summoned under Section 319 Cr.P.C. In the case of **Y. Saraba Reddy Vs. Puthur Rami Reddy & Anr. 2007 (4) SCC 773**, it has been held that satisfaction of the Investigating Officer not to be allowed to frustrate the purpose of Section 319 Cr.P.C. and materials in case diary or charge-sheet not to be considered at the stage of Section 319 Cr.P.C.

16. Finally, in the Constitution Bench decision on Section 319 Cr.P.C., as reported in **Hardeep Singh vs State of Punjab & Ors., (2014) 3 SCC 92 (five Judge Bench)**, it has been held that a person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial.

17. Therefore, in the light of discussion made hereinabove, as well as the observations made by the Courts in the cases mentioned above, it would be just and proper to let the trial to proceed further, as the sole ground of plea of alibi taken by the learned counsel for the revisionist loses its importance at this stage.

18. Thus, in my considered opinion, the impugned order dated 26th November, 2019 passed by the learned Additional Sessions Judge, Court No. 6, Saharanpur in Sessions Trial No. 535 of 2018, (State Vs. Neelam and Others) arising out of Case Crime No. 535 of 2018 under Sections 302/34, 201 IPC, Police Station Deoband, District Saharanpur seems to be lawful and in consonance with the law laid down, as mentioned above.

19. In view of the discussion made above, the impugned order dated 26th November, 2019 passed by the learned Additional Sessions Judge, Court No. 6, Saharanpur in Sessions Trial No. 535 of 2018, (State Vs. Neelam and Others) arising out of Case Crime No. 535 of 2018 under Sections 302/34, 201 IPC, Police Station Deoband, District Saharanpur is hereby **confirmed**. The revision, therefore, lacks merit and is, accordingly, **dismissed**.

20. Let the records of the lower Court, if any, be remitted to the Court below. It is further clarified that the observations made hereinabove shall not be taken into account by the learned trial Court while deciding the trial after the evidence is led by both the side and arguments made by them.

(Tej Pratap Tiwari,J.)

Order Date :-19.9.2025

NSC