

Court No. - 86

Case :- CRIMINAL REVISION No. - 3063 of 2025

Revisionist :- Shobhit And Another

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

Counsel for Revisionist :- Ajay Sengar

Counsel for Opposite Party :- Fakhruzzaman,G.A.

Hon'ble Nalin Kumar Srivastava,J.

1. Supplementary affidavit filed today is taken on record.
2. The present criminal revision is directed against the order dated 16.5.2025 passed by Additional District & Sessions Judge/ FTC, Jhansi in S.T. No. 1126 of 2023 (State Vs. Pratipal Gurjar and others) arising out of Case Crime No. 0075 of 2023 under sections 147, 148, 149, 307, 323, 325, 452, 506 IPC, Police Station Samthar, District Jhansi whereby the Application 52-B under section 319 Cr.P.C. moved by the prosecution was allowed and the revisionists were summoned under section 319 Cr.P.C. to face trial.
3. Heard Shri Saghir Ahmad, learned Senior Advocate assisted by Shri Ajay Sengar, learned counsel for the revisionists, Sri Fakhruzzaman, learned counsel for the opposite party no.2 and Shri Nitesh Kumar Srivastava, learned A.G.A. for the State.
4. It is submitted by learned counsel for the revisionists that although the present revisionists were named accused in Case Crime No.0075 of 2023 but the Investigating Officer of this case found absolutely no evidence regarding their involvement during investigation hence they were exonerated by the Investigating Officer and final report was submitted in their favour, however charge sheet was submitted against the accused persons Pratipal Singh Gurjar, Raghvendra Singh @ Raghav and Veer Vikram Singh @ Chhotu and the investigation was going on against the

present revisionists.

5. It is also submitted that PW-1 - Narendra Pal Singh (informant), PW-2 - Rachit Singh (injured) and PW-3- Head Moharrir Constable Vivek Kumar Singh were examined before the trial court and at that stage an application under Section 319 CrPC to summon the present revisionists to face trial for the offence under Sections 147, 148, 149, 307, 323, 325, 452, 506 IPC was moved by the informant. The trial court relied upon the statement of PW-1, the informant, who in his examination-in-chief has stated that Pratipal Singh, Rituraj Singh, Raghav Gurjar, Veer Vikram Singh @ Chhotu, Shobhit alongwith some unknown persons came by a Bolero Car and three motorcycles having danda, sariya, country made pistol, luhangi and all the aforesaid persons made an assault upon Rachit Singh with intention to kill him. PW-2 - injured also corroborating the evidence of PW-1 made a similar statement in his examination-in-chief and it was added by him that all the accused persons dragged him out of his gurjia, he tried for rescue but Shobhit, Ravendra, Sanju, Golu and Shyamji all together made an assault upon him with intention to kill by use of danda and iron pipes. The trial court finding a prima facie case against the revisionists allowed the application of the informant and both the revisionists were summoned to face trial for the offence Sections 147, 148, 149, 307, 323, 325, 452, 506 IPC vide impuged order.

6. Further argument is that the story set up by the prosecution is false and fabricated. The informant/PW-1 is not an eye witness of the occurrence and a clear contradiction is visible in his examination-in-chief and cross-examination which makes his deposition inconsistent and unreliable. It is further submitted that after investigation final report dated 24.4.2024, which reached before the Court concerned on 2.5.2025, was submitted by the

Investigating Officer against the present revisionists but no protest petition was filed by the informant rather he preferred to move an application U/S 319 CrPC. It is also submitted that it is explicitly clear from the record that the I.O. of this case found absolutely no evidence against the present revisionists and that was the reason a closure report was submitted by him in respect of the present revisionists.

7. Another limb of the argument is that charge sheet in this matter was filed by the I.O. directly in the Court and not through the Circle Officer. The PW-1 and PW-2 have made relevant improvements in their deposition recorded before the Court. The present revisionists are innocent and they were not present at the place of occurrence at the time of the incident and have been falsely implicated in this matter on account of old animosity.

8. It is also submitted that the trial court must have taken into account the statements recorded by the I.O. and materials collected by him during investigation. Hence, the trial court on the basis of shaky and inconsistent oral testimony of the witnesses, which is full of material contradictions, passed an arbitrary and illegal order to summon the revisionists to face trial under Sections 147, 148, 149, 307, 323, 325, 452, 506 IPC which suffers from infirmity and perversity warranting interference by this Court.

9. On the other hand, learned A.G.A. and learned counsel for the opposite party no.2 / informant vehemently opposed the prayer and it has been submitted that the present revisionists were named in the F.I.R. of this case and role of assault has also been attributed to them. However, some witnesses were won over by them during investigation. Two witnesses of fact have been examined before the trial court and both of them have proved the active participation of the present revisionists in the commission of the

alleged crime. It is further submitted that even if it is presumed that PW-1 was not present on the place of occurrence at the time of incident but the F.I.R. version has been firmly corroborated by the injured witness - PW-2 and he has assigned specific role of assault to both the revisionists alongwith other co-accused persons. It is also submitted that while deciding the application under Section 319 CrPC the Court must take into consideration the entire testimony of the witnesses recorded before the Court. The trial court relying upon the evidence of PW-1 and PW-2, which corroborates the F.I.R. version and on being satisfied that there is sufficient evidence to summon the present revisionists to face trial for the relevant offences, summoned them to face trial for the said offences. There is no material contradiction in the statements of PW-1 and PW-2 in respect of complicity of the present revisionists in the incident. It is further submitted that PW-2 is the injured and the evidence of an injured witness stands upon a different footing and in respect of the incident his deposition finds a significant place and normally it is not natural to implicate some innocent person in place of actual culprits by an injured. It is also submitted that the medical evidence fully corroborates the prosecution version and the injured has sustained several injuries and the nature of the injuries are capable to show that the weapons used in the occurrence are the same which have been disclosed in the F.I.R. and in the deposition of PW-1 and PW-2 as well. The trial court has not committed any irregularity, illegality or impropriety in passing the impugned order.

10. I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record including the impugned order carefully.

11. The law prevailing over the subject has been well explained by

the Constitution Bench of Hon'ble Apex Court in the case of ***Hardeep Singh Vs. State of Punjab and others, 2014 (85) ACC 313***, wherein it was held that under Section 319 Cr.P.C. a person against whom it appears from the evidence that he, though not an accused in the case so far, could be tried together with the accused already facing the trial and in such event by virtue of Section 319 (4) Cr.P.C. the proceedings against such person shall be commenced afresh and it shall be presumed as if he had been an accused when the court took cognizance of the offence upon which the trial was commenced and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by the cross-examination. The degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. is in fact much stronger evidence than mere probability of his complicity. Thus, 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. The difference in the degree of satisfaction for summoning the original accused and the subsequent accused is on account of the fact that the trial may have already been commenced against the original accused and it is in the course of such trial that materials are discussed against the newly summoned accused, fresh summoning of the accused will result in delay of the trial, therefore, the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

12. Further, the Court while invoking its power under Section 319 Cr.P.C. with regard to the accused, who is not named in the F.I.R. or if named, no charge-sheet was submitted against him or even he has been discharged by the Court is recognized under Section 319

Cr.P.C. At the stage of inquiry when the Court uses its power for the aforesaid purpose, it may take into consideration all the materials collected by the Investigating Officer during investigation or even the statement recorded under sections 200 and 202 Cr.P.C., as the case may be, and it acts at a pre-congnizance stage of the matter before filing the charge-sheet by the police. However, after submission of the charge-sheet and after framing of charges when the trial commences and evidence of witnesses are recorded, the trial court may pass an order under Section 319 CrPC to summon a person as co-accused alongwith the accused persons who are already facing trial and at this stage no extraneous material are to be looked into or considered by the trial court except the deposition of the witnesses recorded before the Court. At this point, a decision of Hon'ble Supreme Court in **Brijendra Singh & Others Vs. State of Rajasthan, 2017 (7) SCC 706** particularly, paragraph 15 of the said pronouncement is relevant to quote here, which is extracted as below.

"15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so- called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. 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.'

13. However, in the authority judgment of the Full Bench in **Hardeep Singh** case (supra), the Hon'ble Supreme Court held that-

"117.2. Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet.

"117.3. In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial."

14. It is pertinent to mention here that the Constitution Bench of Hon'ble Supreme Court in the case of **Hardeep Singh** (supra) dealt with the issue which was framed as question no.3 like this -

"Q.III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held

that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused."

15. The dictum of law promulgated by the Hon'ble Supreme Court in the judicial pronouncement may be summarized as mentioned hereinafter and it can be safely held that the Court during trial is justified to look into the materials collected during investigation by the Investigating Officer but however such materials and evidence can be used only for corroboration of the evidence recorded in the Court after the trial commences for the exercise of power under section 319 Cr.P.C.

16. So far as the case in hand is concerned, a perusal of the impugned order draws the attention of this Court to the effect that revisionists Shobit and Rituraj Singh were named in the F.I.R. but however their names were exonerated during investigation and no charge-sheet was submitted against them and a closure report was submitted in their favour but no protest petition was filed by the informant against the said closure report rather an application under Section 319 CrPC was moved. It is pertinent to mention here that the impugned order under Section 319 Cr.P.C. was passed after recording of the evidence of P.W.1 - informant and P.W.2 - injured.

17. The evidence of P.W.1, if taken into consideration in toto, certainly there are some contradictory and unnatural statement which makes the presence of PW-1 - informant on the spot

improbable and unnatural and in his cross-examination he has made some inconsistent statement which makes his presence on the spot doubtful, but however PW-2 - injured witness has been consistent during his testimony. In ***State of Haryana vs. Krishan, AIR 2017 SC 3125*** it has been so held by the Hon'ble Apex Court that the deposition of an injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of contradictions and discrepancies for the reason that his presence on the scene has been established in the case and it is proved that he suffered injuries during the incident.

18. It is a trite law, particularly after the pronouncement of the judgment of the Hon'ble Supreme Court in the case of **Hardeep Singh** (supra) that an effective order under Section 319 Cr.P.C. may very well be passed by the trial court relying only on the statement made by a witness in his examination-in-chief and there is no need to wait for the cross-examination of such witness which makes the prosecution easy to move an application under Section 319 Cr.P.C. and to force the court to rely upon it.

19. The matter is different in the circumstances of the instant case. At the time of passing the impugned order for summoning the revisionists as co-accused in this matter, reliable evidence was available before the trial court. It is clarified by the Hon'ble Supreme Court in **Hardeep Singh** (supra) case that the evidence collected and found during investigation or inquiry under section 200 and 202 Cr.P.C. may be seen at the stage of passing the order under Section 319 Cr.P.C. but however such materials and evidence can be used only for the corroboration of the evidence recorded in the court after commencement of trial to invoke its power under Section 319 Cr.P.C. The Investigating Officer has

recorded the statement of several witnesses in the instant case wherein a denial to the prosecution story regarding the complicity of the revisionists may be easily found but this is the case where the material witnesses e.g. the informant and the injured supported the prosecution story when they were interrogated by the I.O.. There was reliable material on record before the trial court to pass an order under Section 319 Cr.P.C. on the basis of statement of P.W.1 and P.W.2 and the said statements fully corroborate the prosecution story qua the revisionists also.

20. Now it is trite law particularly after the judgment of Hon'ble Supreme Court passed in **Hardeep Singh** (supra) case that since the Court exercises discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at a satisfaction for the role played by the proposed accused and 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 Cr.P.C.

21. On the basis of aforesaid discussion, in the peculiar facts and circumstances of the case, this Court is of the view that the impugned order is sustainable. The evidence on record which was recorded before the trial court definitely makes out a prima facie case against the proposed accused persons which is more than a prima facie case as exercised at the time of framing of charge but less than such a satisfaction that the evidence, if goes un rebutted, would lead to conviction. The injured has sustained a number of injuries upon his body and the nature of injuries which reveals from the perusal of the injury report also show that the injuries

were inflicted by the use of such weapons as mentioned in the F.I.R. and narrated by the PW-2-injured himself.

22. Though it is true that the final report submitted by the I.O. against the revisionists was not objected to by filing a protest petition by the informant but this fact cannot be lost sight that in the meanwhile an application under Section 319 CrPC was moved in connection with the same accused persons who were enjoying the final report and the said application was allowed by the trial court and in this factual scenario there was no need for the informant to file a protest petition against the final report which was filed in favour of the present revisionists.

23. Learned counsel for the revisionists relied upon the decisions of the Hon'ble Apex Court in **Jamin & Another vs. State of Uttar Pradesh and another, Criminal Appeal No. 1184 of 2025 (arising out of SLP (Cri.) No. 6320 of 2024**, decided on 6.3.2025 and **Popular Muthiah vs. State represented by Inspector of Police, Appeal (Cri.) No. 107 of 2003**, decided on 4.7.2006 but in the facts and circumstances of the present case they do not go to make any help to the revisionists.

24. In view of the above discussion, in my view, there is no infirmity, illegality, perversity or lack of judicial mind in the impugned order dated 16.5.2025 and the said order is liable to be affirmed and the criminal revision deserves to be dismissed.

25. The criminal revision is accordingly **dismissed**. The impugned order dated 16.5.2025 passed by Additional District & Sessions Judge/ FTC, Jhansi in S.T. No. 1126 of 2023 (State Vs. Pratipal Gurjar and others) arising out of Case Crime No. 0075 of 2023 under sections 147, 148, 149, 307, 323, 325, 452, 506 IPC, Police

Station Samthar, District Jhansi is affirmed.

26. Copy of this order be sent to the court concerned for compliance and necessary action.

Order Date :- 12.8.2025

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