



2025:AHC:168755

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 4534 of 2025

Awadhesh Kumar

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Prakash Chandra Srivastava,
Ravesh Kumar Singh
Counsel for Opposite Party(s): G.A., S.P.S. Chauhan

Court No. - 86

HON'BLE NALIN KUMAR SRIVASTAVA, J.

1. Heard S/Sri P.C. Srivastava and Ravesh Kumar Singh, learned counsel for the revisionist, Sri S.P.S. Chauhan, learned counsel for the opposite party no.2 as well as Sri Akhilesh Kumar Mishra, learned A.G.A. for the State and perused the record.

2. This criminal revision is directed against the impugned order dated 18.07.2025 passed by the Additional Session Judge / F.T.C.-Ist, Etah in Session Trial No.295 of 2022 (State Vs. Satnesh alias Swadesh alias Satta and others) arising out of Case Crime No.249 of 2020, Police Station Kotwali Dehat, District Etah whereby the learned trial court allowed the application 28-अ of the informant / opposite party no.2 moved under section 319 Cr.P.C. and the revisionist Awadhesh Kumar was summoned to face trial under Sections 452, 323, 307 I.P.C. in the aforesaid session trial.

3. The prosecution story, in brief, is that the informant Surendra Singh lodged the F.I.R. against six named accused persons including the present revisionist with the allegation that both the parties were having some land dispute and due to that on 4.7.2020 at about 3:00 p.m. when the informant alongwith his cousin Dharmendra, Yadvendra Singh and his son Praful Pratap and brother Satendra Singh was doing some work on the said abadi land, the accused persons namely, Awadhesh, Satnesh, Sovendra, Maanpal, Roop Kishore and Shishupal, having lathi, danda, iron rod and country made pistol in their hands, came over there and attacked them which caused serious injuries to the informant and his family members and

when in order to save themselves they tried to run away into the house, accused Awadhesh, a policeman posted in the State of Chattisgarh, who had come to the village on leave, opened fire upon them with intention to kill and when the wife of the informant Smt. Nirlesh and sister-in-law Renu tried to mitigate, they were also assaulted, who sustained grievous injuries and injured Renu was referred for higher medical centre to Saifai. F.I.R. was lodged against the accused persons who were having long criminal history and after investigation, the Investigating Officer submitted the charge-sheet in this matter wherein complicity of accused Awadhesh and Shishupal was found false and other four accused persons were charge-sheeted and the name of accused Awadhesh and Shishupal were exonerated by the Investigating Officer, as he got no evidence at all against both of them.

4. After submission of the charge-sheet, cognizance was taken and the matter was committed to the Court of Session.

5. Charges were framed by the Sessions Court and the prosecution recorded the oral evidence of P.W.1 Surendra Singh and P.W.2 Nirlesh. However, after the evidence of both the witnesses, an application under section 319 Cr.P.C. was moved by the informant Surendra Singh to summon the accused Awadhesh and Shishupal to face trial in this case alongwith other co-accused persons who were already facing the trial.

6. The Court of Additional District & Session Judge, Court No.5, Etah wherein the trial was pending, passed an order to summon the present revisionist Awadhesh to face trial under sections 452, 323, 307 IPC and accused Shishupal under sections 452, 323, 307, 308 IPC and summons were issued.

7. The ground taken in the impugned order by the Sessions Court was the oral testimony of P.W.1, Surendra Singh, the informant / injured and P.W.2 Smt. Nirlesh, the wife of the informant and injured of the case. The learned trial court referred several decisions of the Hon'ble Supreme Court and the provisions of section 319 Cr.P.C. It was observed in the impugned order that active participation in the commission of the crime on the part of accused / revisionist Awadhesh and accused Shishupal is explicitly clear from the deposition of P.W.1 and P.W.2. Specific role in the commission of crime and weapon were attributed to both the accused persons. The

learned trial court also opined that although the Investigating Officer exonerated the name of accused / revisionist Awadhesh and accused Shishupal on the basis of material collected during investigation and found no role of the aforesaid two persons in the alleged crime but on the basis of oral evidence rendered before the trial court, the revisionist alongwith co-accused Shishupal was summoned to face trial vide impugned order dated 18.7.2025.

8. It is submitted by the learned counsel for the revisionist that the impugned order is wholly perverse and against the established legal principles. It is also submitted that from the perusal of the FIR as well as entire evidence on record it transpires that no offence is made out against the revisionist under Sections 452, 323, 307 I.P.C. Even the investigating officer of the case during entire investigation could not find any evidence against the revisionist and that was the reason no charge sheet was submitted against him.

9. It is further urged by the learned counsel for the revisionist that it is a case of false implication of the revisionist in the alleged crime. During investigation, there was no independent witness to support the prosecution story and no such statement was given by any of the witnesses, who were interrogated by the Investigating Officer under section 161 Cr.P.C. It is further submitted that no weapon allegedly used in the commission of the crime was recovered from or on the pointing out of the present revisionist. It is further submitted that the Investigating Officer was under legal obligation to peruse the statement of the witnesses collected by him during investigation. It is further urged that by way of supplementary affidavit, the copies of the injury report, discharge slip and supplementary medical report have been appended with the affidavit. It is also submitted that the injured Smt. Nirlesh has sustained only two minor injuries, which were found simple in nature by the medical officer. Further, the same position is found in case of Surendra Singh, the informant / injured who has also sustained only two minor injuries and both were found simple in nature by the doctor. So far as the main injured Renu is concerned, although she was admitted into the hospital in the Department of Neurosurgery but she was discharged from the hospital just after three days only on 7.7.2020. In the supplementary report as well, no serious injury was found upon her person. It is also submitted that in view of that, no serious injury was caused to any of the injured person and from the perusal of the testimony of P.W.1 and P.W.2 it is

explicitly clear that even if the present revisionist was found as one of the assailants, he had no intention to kill the injured persons and that is why the injuries sustained by them are simple in nature. It is further submitted that no tickli or pellets were found on the spot by the Investigating Officer and the informant P.W.1 himself admitted during the course of his cross-examination that fire was opened by the revisionist Awadhesh but it did not hit anyone and on the spot no pellets or tickli were found at the wall of the house. In the same manner, P.W.2 although in her examination-in-chief assigns the role of firing to the revisionist but she has fairly conceded that no firearm injury was caused to her husband. She also states that she had not seen the pellets or tickli on the wall of the house. She has made a categorical statement that no person from the neighbourhood came on spot on their shrieks. However, she admits that the gun which was used for opening fire upon Maanpal was recovered by the police from the possession of her husband. It is also submitted that the aforesaid statement of P.W.2 is very significant where at one place it is said that no gun or country made pistol was recovered from the possession of the revisionist and on the other hand she stated that the said Maanpal was also attacked by the gun and the said gun was recovered from the possession of her husband. On the basis of the aforesaid facts and materials on record, the learned trial court found that the complicity of the revisionist in the instant crime was very well found by the police during investigation which was a wrong notion. It is further submitted that there was no evidence on record at all before the trial court to pass an order of summoning against the revisionist to face trial under sections 452, 323, 307 IPC alongwith co-accused persons.

10. The validity of the impugned order is also questioned on the ground that while passing impugned order, the learned trial Court did not pay attention over the legal principles prevailing in the matter and only on the basis of evidence of P.W.1 and 2, the revisionist was summoned in haste for the aforesaid offence, hence the impugned order is not sustainable in law and deserves to be set aside by allowing the present revision.

11. Per contra, learned counsel for the opposite party no.2 as well as learned A.G.A. for the State vehemently opposed the present revision and submitted that the revisionist of this case was named accused in the FIR lodged by the informant. It is also submitted that the learned

trial court was never under obligation to take under consideration the statements of the witnesses recorded by the Investigating Officer during investigation rather the power of the Court to summon additional accused under section 319 Cr.P.C. is limited to the evidence adduced before the trial court after cognizance. It is also submitted that the learned trial Court committed no error in passing the impugned order and summoning the present revisionist to face the trial for the offence under Sections 452, 323, 307 I.P.C. by invoking its power granted to it by virtue of section 319 Cr.P.C.

12. Before this Court enters into examining the correctness and legality of the order in question it is desirable to have a glance upon the legal position as to whether after taking cognizance of an offence the power which may be exercised by the Magistrate includes to summon any person as an accused to face trial in case his name is not found in the charge sheet submitted by the I.O.. Taking cognizance of an offence, is a very initial stage where the issue to the extent of power of Magistrate to summon any person as an accused to face trial whose name is missing in the charge sheet arises. The legal position with regard to the powers of the Magistrate as to whether at the time of taking cognizance of the offence, the person not named as an offender in the charge sheet but whose complicity in the crime comes to light from the material available on record may be proceeded against as an accused to face trial by the court and he has to wait till the stage of Section 319 Cr.P.C. reaches, is now well established.

13. In **SWIL Ltd. Vs. State of Delhi and Another (2001) 6 SCC 670** the Hon'ble Supreme Court held as under:

"At the stage of taking cognizance of the offence, provisions of Section 190 CrPC would be applicable. As per this provision, the Magistrate takes cognizance of an offence and not the offender. After taking cognizance of the offence, the Magistrate under Section 204 CrPC is empowered to issue process to the accused. At the stage of issuing process, it is for the Magistrate to decide whether process should be issued against particular person/persons named in the charge-sheet and also not named therein. For that purpose, he is required to consider the FIR and the statements recorded by the police officer and other documents tendered along with charge-sheet. Further, upon receipt of police report under Section 173(2) CrPC, the Magistrate is entitled to take cognizance of an offence under Section

190(1)(b) even if the police report is to the effect that no case is made out against the accused by ignoring the conclusion arrived at by the investigating officer and independently applying his mind to the facts emerging from the investigation by taking into account the statement of the witnesses examined by the police. At this stage, there is no question of application of Section 319 CrPC. That provision would come into operation in the course of any enquiry into or trial of an offence."

14. In the instant matter the trial is pending before the Sessions Court leaving behind the stage of cognizance and committal proceedings were exhausted by the Magistrate. The question arises as to what course of procedure should be adopted by a Sessions Court if the cognizance is taken by the Magistrate in a Sessions triable case and the record is received by the Sessions on committal; whether the Sessions Court enjoys the power to summon any person as an accused to face trial even if he was not arraigned in the charge sheet but the complicity of whom in the commission of the crime appears from the perusal of the record and the Magistrate also failed to proceed against him.

15. In the case of **Ranjit Singh Vs. State of Punjab (1998) 7 SCC 149**, the Hon'ble Supreme Court expressed the view that from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 of the Code of Criminal Procedure that Court is empowered to deal with only the accused referred to in Section 209 of the Code and there is no intermediary stage till then enabling the Sessions Court to add any other person to array of the accused.

16. In the leading case on the subject **Hardeep Singh Vs. State of Punjab and Ors. (2014) 3 SCC 92** (five judges bench) relating to the powers of the Court to be invoked under Section 319 Cr.P.C. which was a referred matter from **Hardeep Singh versus State of Punjab and others (2009) 16 SCC 785** discussing the power of Sessions Court to add a person as accused under section 193 Cr.P.C., it was reiterated by the Hon'ble Apex Court that the Sessions Court need not necessarily wait till the stage of section 319 is reached to direct a person, not facing trial, to appear and face trial as an accused because section 193 confers power of original jurisdiction upon the Sessions Court to add an accused once the case is committed to it.

17. Now the issue in hand is that whether the order passed by the

learned Sessions Court to summon the present revisionist as additional accused to face the trial in the pending case was a legally correct order or not and this issue on its face has two aspects. Firstly, it relates to the jurisdiction of the Sessions Court for addition of other persons as accused whose names are not included in the charge sheet but subsequently the Court finds some discernible materials which lead the Court to make a view that some other persons may also be tried together with the accused already being tried before the Sessions Court and secondly, the factual aspect of the matter has to be examined as to whether there was sufficient evidence to show complicity of the proposed accused persons in the commission of the alleged crime.

18. To answer the first question it would be apt to put a glance over the relevant provisions of Section 319 Cr.P.C.

Section 319(1) of The Code of Criminal Procedure, 1973

"(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."

19. The language of Section 319 Cr.P.C. does not leave even an iota of doubt that the power of the Court under the said provision can be invoked in the course of any inquiry or trial both. In the case in hand the trial was going on when the application under Section 319 Cr.P.C. was moved hence, so far as the exercise of power under Section 319 Cr.P.C. is concerned the said power was never exceeded and it was well within the jurisdiction of the Sessions Court to invoke its power under Section 319 Cr.P.C. and to pass order there under.

20. There had been several debatable issues concerning the power of the Court which might be invoked under Section 319 Cr.P.C. but all the controversies are set at rest after the judgement of Hardeep Singh case (supra) (five Judges Bench) wherein the Hon'ble Apex Court found an occasion to deal with the matter thoroughly on reference made in Hardeep Singh case (supra) and framed five questions to answer in the matter, which, in short relate to the stage to exercise the power under section 319 Cr.P.C., the meaning and sense of the word 'evidence' used under section 319 (1) Cr.P.C. and

further whether test of the evidence by way of cross examination is required or only examination in chief is sufficient to invoke the power, the extension of the word 'evidence' as to whether it is limited to the evidence recorded during trial or includes the evidence collected during investigation, the nature of the satisfaction of court and the scope of power under section 319 Cr.P.C. against different persons. Umpteen of authorities were discussed in the aforesaid judgement by the Hon'ble Apex Court such as **Dharam Pal and others (2014) 3 SCC 306** which was followed, *Vikas versus State Of Rajasthan*, (2014) 3 SCC 321, *Rajendra Singh versus State Of U.P.* (2007) 7 SCC 378, *Hardeep Singh versus State Of U.P.* (2009) 16 SCC 785, *Molly versus State Of Kerela* (2004) 4 SCC 584; *SWIL Ltd. Versus State Of Delhi* (2001) 6 SCC 670; *Ranjit Singh versus State Of Punjab* (1998) 7 SCC 149; *Kishun Singh versus State of Bihar* (1993) 2 SCC 16; *Joginder Singh versus State of Punjab* (1979) 1 SCC 345 and so on.

21. After discussing the various aspects of the matter the Hon'ble Apex Court in agreement with the Constitution Bench judgement in *Dharam pal and others* (supra) expounded that after committal cognizance of an offence taken against a person not named as an accused but against whom materials are available from the evidence filed by the police after completion of the investigation is permissible 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. Further, it was held that since the trial commences after framing of charge the material coming before the Court in the course of such inquiries such as Section 200, 201, 202 and 398 Cr.P.C. etc. may be used for corroboration of the evidence recorded in the Court after the commencement of trial for the sake of exercise of power under Section 319 Cr.P.C. and also to add an accused whose name has been shown in column II of the charge sheet. The consequences which flow from the aforesaid observations of the Hon'ble Apex Court ensue that the Sessions Court has jurisdiction on committal of a case to it to take cognizance of the offences committed by the persons not named as offender but whose complicity in the case would be evident from the materials available on record, hence, even without recording evidence upon committal under Section 209 Cr.P.C. the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.

22. However, when the Sessions Court chooses to invoke its power under section 319 Cr.P.C. during trial after some evidence is recorded before it, it is to be remembered that the power under Section 319 (1) Cr.P.C. can be exercised only if it is so obvious from the evidence at trial and not otherwise. In fact sub Section (1) of Section 319 Cr.P.C. contemplates existence of some evidence appearing in the course of trial wherefrom the Court can prima facie conclude that the person not arraigned as an accused before it is also involved in the commission of the crime for which he can be tried together with those already named by the police and are being tried by the court. Even a person who has earlier been discharged would fall within the sweep of the power conferred by the Section 319 of the Code and needless to say that the power under Section 319 of the Code cannot be invoked in a case where no evidence has been led at a trial to connect the proposed accused with the crime along with the co-accused persons who have already been sent up for trial by the prosecution.

23. Coming back to the findings recorded by the Hon'ble Apex Court in Hardeep Singh (supra) case in response to all the five questions formulated therein it was summed up in the manner 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 person 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 decree of satisfaction for summoning the accused (original and subsequent) has to be different. It was further clarified by the Hon'ble Apex Court that:

"117.6 A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh."

24. Recently, in **Nahar Singh Vs. State of U.P., Criminal Appeal No. 443 of 2022 decided on 16.3.2022** the legal proposition with regard to the scope of power exercisable by the Magistrate and Sessions Court under Section 319 Cr.P.C. has been reiterated by the Hon'ble Apex Court as extracted herein-below-

"20. The uniform view on this point, irrespective of the fact as to whether cognizance is taken by the Magistrate under Section 190 of the Code or jurisdiction exercised by the Court of Session under Section 193 thereof is that the aforesaid judicial authorities would not have to wait till the case reaches the stage when jurisdiction under Section 319 of the Code is capable of being exercised for summoning a person as accused but not named as such in police report We have already expressed our opinion that such jurisdiction to issue summons can be exercised even in respect of a person whose name may not feature at all in the police report, whether as accused or in column (2) thereof if the Magistrate is satisfied that there are materials on record which would reveal prima facie his involvement in the offence. None of the authorities limit or restrict the power or jurisdiction of the Magistrate or Court of Session in summoning an accused upon taking cognizance, whose name may not feature in the FIR or police report."

25. It was submitted by the learned A.G.A. that the aforesaid settled propositions of law reveal no shadow of doubt that on the basis of the evidence before it during trial the sessions court was fully empowered and armed with competent jurisdiction over the issue of summoning the additional accused persons to face trial along with accused persons who were already facing trial in the same Court but in my

view the required alertness and use of judicial discretion is found missing in the case in hand.

26. Referring to the evidence of P.W.2, learned counsel for the revisionist has vehemently submitted that the actual incident has been concealed in the F.I.R. and it is clear from the statement of P.W.2 that her own husband opened fire upon one Maanpal who sustained gunshot injuries and the said gun was recovered on the pointing out of her husband, P.W.1. However, if the informant or his associates were also guilty to attack over the accused side, there might be an F.I.R. naming the revisionist side but there is nothing on record to show that any cross-case or any other case against the informant side was lodged by the accused side.

27. On the basis of the aforesaid analysis and scrutiny of the evidence deposed before the court and the materials collected by the Investigating Officer during investigation, there appears to be a chance for the present revisionist to relieve himself from the offences charged against him. The law, as discussed above, is settled on the point of summoning an accused under section 319 Cr.P.C. alongwith other accused already facing the trial. Keeping in view the trite law, the Court finds that a specific role of firing has been assigned to the present revisionist in the deposition of P.W.1 and P.W.2 deposed so far before the trial court. Both of them have assigned the role of firing to the present revisionist and except firing no other role of assault has been attributed to the present revisionist. It has been found in the above-mentioned discussion on the basis of the evidence recorded during trial that the gun allegedly used by the revisionist in the commission of the crime has been retrieved by the police on the pointing out of P.W.1 himself and a genuine question arises that if the fire was made by the present revisionist, how the weapon used in the aforesaid firing was retrieved on the pointing out of P.W.1. It is significant to note that no gunshot injury has been sustained by P.W.1. Hence, the fact of firing made by the revisionist falls under the shadow of suspicion and summoning him to face trial under section 307 IPC does not seem to be correct. So far as the offence under section 323 IPC is concerned, since except firing no specific role of assault has been assigned to the present revisionist, there is no question for inflicting injuries to the injured person by the present revisionist and the role of the revisionist in the commission of the alleged crime becomes highly suspicious. It appears as if he did not

accompany the other accused persons who actually after entering into the house of the informant made assault upon P.W.1 and P.W.2. and the injured sustained serious injuries also which made them liable for the offence under section 308 IPC. During investigation, P.W.1, P.W.2 and other witnesses of fact have assigned the role of firing only to the present revisionist, hence if material / evidence collected by the Investigating Officer is also taken into consideration, which seems to corroborate the evidence rendered by the prosecution during trial, an inference of innocence can be drawn in favour of the present revisionist that he has been falsely implicated in this case and there was no such material on record for the trial court to summon the present revisionist to face trial under sections 323, 452, 307 IPC by invoking its power under section 319 Cr.P.C. alongwith other accused persons who were already facing trial.

28. Hon'ble Supreme Court on this issue in **Sarabjit Singh & Anr. Vs. State of Punjab & Anr., AIR 2009 SC 2792** while explaining the scope of Section 319 Cr.P.C. observed like this -

"....For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.....Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied."

29. 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 not sustainable at this stage of the matter. In this way, the present criminal revision deserves to be allowed and the impugned order is liable to be set-aside.

30. Revision is **allowed**. The impugned order dated 18.07.2025 passed by the Additional Session Judge / F.T.C.-Ist, Etah in Session Trial No.295 of 2022 (State Vs. Satnesh alias Swadesh alias Satta and others) arising out of Case Crime No.249 of 2020, Police Station Kotwali Dehat, District Etah is set-aside.

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

September 10, 2025

SS

(Nalin Kumar Srivastava,J.)