

Neutral Citation No. - 2025:AHC:123873

Reserved on: 16.07.2025

Delivered on: 28.07.2025

Court No. - 80

Case :- CRIMINAL REVISION No. - 6362 of 2024

Revisionist :- Kallu And Another

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

Counsel for Revisionist :- Akshay Raj Singh, Gunjan Yadav

Counsel for Opposite Party :- Abhishek Kumar Mishra, Chandrakesh Mishra, G.A.

Connected with

Case :- APPLICATION U/S 482 No. - 41400 of 2024

Applicant :- Dayal

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

Counsel for Applicant :- Ajay Sengar

Counsel for Opposite Party :- Abhishek Kumar Mishra, Ankit Tyagi, Chandrakesh Mishra, G.A., Pankaj Kumar Tyagi

Hon'ble Rajeev Misra, J.

1. Heard Mr. Sagir Ahmad, the learned Senior Counsel assisted by Mr. Ajay Sengar alongwith Mrs. Gunjan Yadav, the learned counsel for revisionists/applicant, the learned A.G.A. for State-opposite party-1 and Mr. Daya Shankar Mishra, the learned Senior Counsel assisted by Mr. Chandrakesh Mishra alongwith Mr. Abhishek Kumar Mishra, the learned counsel representing first informant/opposite party-2 in both the matters.

2. Perused the record.

3. Challenge in both the matters is to the order dated 11.11.2024 passed by Additional District and Sessions Judge/Special Judge (POCSO Act), Jalaun at Orai in Sessions Trial No. 44 of 2020 (State of U.P. Vs. Golu @ Aniket and Others) arising out of Case Crime No. 47 of 2020, under Sections 363, 376, 302 IPC, Section 3/4 POCSO Act and Section 3(2)(v) SC/ST Act, Police Station-Churkhi, District-Jalaun, whereby revisionists/

applicant, who are prospective accused (i.e. not named in the FIR) have now been summoned by Court below in exercise of jurisdiction under Section 319 Cr.P.C. to stand their trial in aforementioned Sessions Trial.

4. The chain of events preceding the order impugned may be summarized in a summary manner as under;-

5. Record shows that an information was received by the Chaukidar (Watchman) of Village Musmariya that a dead body of a girl is hanging on the branch of a tree at a distance of 1 KM from the village. Bhagat Singh, the aforementioned Village Chaukidar, accordingly, visited the place of occurrence. He, thereafter, submitted a written report regarding the said crime at Police Station-Churkhi, District Jalaun. The same was entered in the General Diary of Police Station-Churkhi, District-Jalaun. It reads as under;-

“सेवा में,
थाना इन्चार्ज साहब
चुर्खी थाना जिला जालौन

साहब निवेदन है कि प्रार्थी भगत सिंह पुत्र मिही लाल ग्राम मुसमरिया थाना चुर्खी जिला जालौन का रहने वाला है तथा ग्राम मुसमरिया का चौकीदार हूँ कल दिनांक **01/07/20** को समय लगभग सात बजे शाम को सूचना मिली कि मुसमरिया गाँव के बाहर करीब **1** किलोमीटर दूरी पडुआहार में जटा विजय सिंह पुत्र प्रागू सिंह के खेत की मैड में नीम के पेड़ की डाल में किसी अज्ञात लड़की ने फाँसी लगा ली ग्राम वसियों की सूचना से मैं मौके पर गया देखा कि एक अज्ञात लड़की जिसकी उम्र करीब **19 20** वर्ष है तथा दाहिने हाथ में आरती देवी लिखा गुदा है गले में रस्सी के फंदे से आत्महत्या कर ली है तथा लाश रस्सी से पेड़ में लटकी हुई है जो काले लाल सफेद चौखानेदार सलवार व लाल पीले फूलदार कुर्ता पहने है तथा लड़की का रंग सौवला है तथा ईकहरे बदन है मैं चौकीदार होने के नाते सूचना दे रहा हूँ कानूनी कार्यवाही करने की कृपा करें। **PH No”**

6. On the basis of aforesaid written report, the police arrived on the spot and recovered the dead body. Thereafter, the inquest (Panchnama) of the body of deceased was conducted on 02.07.2020. In the opinion of the witness of inquest (Panch witnesses) the nature of death of deceased was categorized as suicidal.

7. Subsequent to above, post-mortem of the body of deceased was

conducted on 02.07.2020 itself. In the opinion of Doctor, who conducted autopsy on the body of deceased, the cause of death of deceased was shock and asphyxia as a result of ante-mortem strangulation. The autopsy surgeon found following ante-mortem injuries on the body of deceased.

“AMI-

Ligature mark is horizontal continuous and below the thyroid brownish colour of sized 28.0 cm x 3.0 cm around the neck.

Ligature mark is 6.0 cm below the Rt. Ear. 8.0 cm below the chin and 6.0 cm below the Lt. Ear.

On direction of L.M. thyroid Bone Fractured multiple contusion present over Rt. Leg and Lathal aspect of shed Larger and is 12.0 cm x 10.0 cm smaller is 4.0 cm x 2.0 cm bluish in colour.

Multiple contusion present over Lt. Leg anterior lathal aspect larger are is 10.0 cm x 5.0 cm, smaller is 3.0 cm x 2.0 cm bluish in colour.”

8. After aforesaid proceedings had been conducted, Malkhan Singh, father of the girl/deceased submitted an application dated 02.07.2020 at Police Station-Churkhi stating therein that after receipt of information that a female dead body is hanging on the branch of a tree near village Musmariya, he visited the District Hospital Orai and when he saw the dead body, which was lying in the mortuary, he identified the same as the dead body of his daughter Aarti. The said application was also entered in the General Diary of Police Station-Churkhi. For ready reference, the same is reproduced herein under;-

सेवा में

श्रीमान थाना अध्यक्ष महोदय

थाना चुर्खी जिला जालौन

महोदय

निवेदन है कि मेरी पुत्री आरती दिनांक 30.06.2020 की रात को घर से बिना बताये चली गई थी आज मुझे सूचना मिली कि मुसमरिया में कल रात को एक लड़की की लाश पेड़ पर फाँसी पर लटकी मिली है जो अज्ञात है मैंने मर्चरी उरई में लाश को आकर देखा तो यह लाश मेरी लड़की

आरती की ही है जिसकी उम्र 20 वर्ष और दाहिने हाथ पर आरती देवी का नाम गुदा था अतः मैं लिखित सूचना दे रहा हूँ आवश्यक कार्यवाही करने की कृपा करें।

9. On the same day, i.e. 02.07.2020 Malkhan lodged an FIR dated 02.07.2020, which was registered as Case Crime No. 0047 of 2020, under Sections 306, 366 IPC and Sections 3(2)(v) SC/ST Act, Police Station-Churkhi, District-Jalaun. In the aforesaid FIR, two persons namely Golu and Mayank were nominated as named accused. Since the FIR has a material bearing on the issue that have emerged for consideration in this criminal revision, therefore, the same is extracted herein under.

10. After aforesaid FIR was lodged, Investigating Officer proceeded with statutory investigation of concerned crime number in terms of Chapter-XII Cr.P.C. Accordingly, Investigating Officer examined the first informant and the following witnesses under Section 161 Cr.P.C.:-

- (i). Malkhan Singh (First Informant),
- (ii). Bayan Mazid of Malkhan Singh
- (iii). Smt. Meena (wife of first informant/mother of deceased).
- (iv). Raja Bhaiya (Mama of deceased)
- (v) Mukesh (Brother of deceased)
- (vi). Darshan Kushwaha (Independent witness)
- (vii). Bhola
- (viii) Raj Shree
- (ix). Bayan Mazid of Bhola
- (x). Smt. Simkura (Independent witness)
- (xi) Hari Mohan (Independent witness)
- (xii) Balwan Singh (Independent witness)
- (xiii) Rekha (Independent witness)
- (xiv) Smt. Asha Rani (Independent witness)

(xv) Masharam (Independent witness)

11. On the basis of above and other material collected by the Investigating Officer, during course of investigation, he came to the conclusion that complicity of only one of the named accused namely Golu @ Aniket is fully established in the crime in question. He, accordingly, submitted the charge sheet/police report dated 04.10.2020 in terms of Section 173 (2) Cr.P.C., whereby named accused Golu @ Aniket was charge-sheeted under Sections 302, 376(1), 363 IPC, Sections 3/4 POCSO Act and Sections 3(2)(v) SC/ST Act. However, investigation in respect of co-accused Mayank was said to be pending.

12. After submission of aforementioned charge sheet/police report, cognizance was taken upon same by Court concerned in exercise of jurisdiction under Section 190(1)(b) Cr.P.C. Resultantly, Sessions Trial No. 44 of 2020 (State of U.P. Vs. Golu @ Aniket and Otehrs) arising out of Case Crime No. 47 of 2020, under Sections 363, 376, 302 IPC, Sections 3/4 POCSO Act and Sections 3(2)(v) SC/ST Act, Police Station-Churkhi, District-Jalaun came to be registered in the Court of District and Sessions Judge, (POCSO Act), Jalaun at Orai.

13. The concerned Special Judge, thereafter, proceeded with the trial. He, therefore, framed charges against charge sheeted accused Golu @ Aniket, in exercise of jurisdiction under Section 228 Cr.P.C. Charge sheeted accused denied the same, pleaded innocence and demanded trial. Resultantly, the trial procedure commenced.

14. Prosecution in discharge of it's burden to bring home the charges so framed against charge-sheeted accused Golu @ Aniket, adduced the following witnesses up to this stage. PW-1 Malkhan Singh (First informant-father of deceased), PW-2 Mina (Wife of Malkhan Singh and mother of deceased)

15. Accordingly, the statement-in-chief and examination-in-chief of PW-1 Malkhan Singh and PW-2 Mina were recorded.

16. At this stage, prosecution/first informant/opposite party-2 filed an application dated 16.07.2024 under Section 319 Cr.P.C. with the prayer that since complicity of Dayal, Kalu and Mayank i.e. the revisionists/applicant herein, has also emerged in the crime in question, as per the depositions of PW-1 and PW-2, therefore, they be also summoned to face trial in aforementioned Sessions Trial.

17. One of the prospective accused Dayal-applicant in Application U/s 482 Cr.P.C. No. 41400 of 2024 (Dayal Vs. State of U.P. and Another) filed his objections dated 19.10.2024 to the application dated 16.07.2024 under Section 319 Cr.P.C. filed by the prosecution/first informant.

18. Court below, thereafter, considered the aforementioned application under Section 319 Cr.P.C. and examined the veracity of allegations made in the same in the light of the depositions of PW-1 and PW-2. Having undertaken the aforesaid exercise, it came to the conclusion that the application dated 16.07.2024 under Section 319 Cr.P.C. is liable to be allowed. It, accordingly, allowed the same, vide order dated 11.11.2024. Consequently, the prospective accused i.e. the revisionists/applicant herein were summoned by Court below to face trial in aforementioned Sessions Trial.

19. Perusal of order dated 11.11.2024 will go to show that the application under Section 319 Cr.P.C. filed by the first informant was allowed by Court below on the finding that since complicity of the prospective accused has emerged in the depositions of the two prosecution witnesses, who have deposed before Court up to this stage i.e. PW-1 and PW-2 and if the said evidence goes unrebutted, it shall lead to the conviction of the prospective accused.

20. Thus, feeling aggrieved by the above order dated 11.11.2024 passed by Court below, revisionists/applicant have now approached this Court by means of aforementioned criminal revision/application under Section 482 Cr.P.C.

21. Criminal Misc. Application U/s 482 Cr.P.C. No. 41400 of 2024 (Dayal Vs. State of U.P. and Another) came up for admission on 21.01.2025 and this Court passed the following order:-

“1. Heard Mr. Sagir Ahmad, the learned Senior Counsel, assisted by Mr. Ajay Sengar, the learned counsel for applicant, the learned A.G.A. for State-opposite party-1 and Mr. D.S. Mishra, the learned Senior Counsel, assisted by Mr. Abhishek Kumar Mishra, the learned counsel representing first informant-opposite party-2.

2. On the matter being taken up, the learned A.G.A. submits that Criminal Revision No. 6362 of 2024 (Kallu and Another Vs. State of U.P and Another) filed by co-accused is already pending before this Court.

3. In view of above, connect aforementioned criminal revision along with this application.

4. Matter shall re-appear as fresh on 10.02.2025 along with connected matter.

5. When the matter is listed next, the details of both the matters shall be duly published in the cause list.

6. Office may obtain an order of nomination from Hon'ble The Chief Justice, if necessary.”

22. Subsequent to aforesaid order, Office has submitted a report dated 07.02.2025 stating therein that in compliance of administrative order dated 05.12.2018 passed by Hon'ble The Chief Justice, the criminal revision connected along with this application shall be listed before the Senior Most Bench having the roster for any of the connected matter.

23. Accordingly, both the matters have been placed together by the registry before this Bench.

24. Mr. Sagir Ahmad, the learned Senior counsel for revisionists/applicant contends that the order impugned dated 11.11.2024 passed by Court below is manifestly illegal and therefore, the same is liable to be set aside by this Court. According to the learned Senior counsel, an FIR is not the encyclopedia of the prosecution case but it does disclose the basic prosecution case. To buttress his submission, he has referred to the following 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. However, from perusal of the FIR dated 02.07.2020 lodged by first informant/opposite party-2 Malkhan Singh, father of the deceased, it is apparent that revisionists/applicant have not been nominated as named accused therein. Even in the body of FIR, no allegation has come forward against revisionists/applicant. He, therefore, contends that revisionists/applicant have been implicated in the crime in question on account of an afterthought, on the part of first informant Malkhan Singh and his wife Mina. However, court below while passing the order impugned has completely overlooked the aforesaid aspect of the matter, which has vitiated the same.

25. According to the learned Senior counsel, the crime in question, consists of three parts (A) Abduction, (B) Rape and (C) Murder. However, the two prosecution witness, who have deposed before Court below up to this stage i.e. PW-1 and PW-2 are not an eye witnesses of the occurrence at any stage. The said submission is founded on two facts i.e. (A) had the two prosecution witnesses i.e. PW-1 And PW-2 been eye witnesses of the occurrence, then the name of revisionists/applicant, would have been certainly mentioned in the FIR as named accused and allegations would have been made against them in the body of the FIR. However, the same are conspicuous by their absence, (B) PW-1 Malkhan Singh in his deposition before Court below has stated that he has not witnessed the occurrence at any stage i.e. abduction, rape and murder of the deceased. PW-2 in her deposition before Court below has stated that she has not witnessed the occurrence regarding rape and murder of the deceased. However, when her deposition is read as a whole and examined in the light of the facts noted above, it is apparent that PW-2 is not an eye witness of the occurrence regarding abduction of the deceased also. Moreover had P.W.-2 been an eye-witness of the occurrence of abduction then certainly the name of the revisionists would have been mentioned in

the FIR and the FIR would have been lodged immediately and not after the dead body of deceased had been seen by PW-1-father of the prosecutrix in the mortuary of District Hospital.

26. On the above premise, the learned Senior counsel would submit that once the prosecution witnesses, who have deposed before Court below up to this stage are not an eye witness of the occurrence then no satisfaction could have been recorded by Court below on the basis of their deposition regarding complicity of present revisionists/applicant in the crime in question. Moreover, the facts stated in depositions of the aforementioned two witnesses qua the complicity of revisionists/applicants in the crime in question were never investigated by the Investigating Officer during course of investigation. As such, Court below has proceeded to summon the revisionists/applicant to face trial in aforementioned Sessions Trial on the basis of an erroneous assumption. Consequently, the order impugned is unsustainable in law and fact and therefore, liable to be quashed by this Court.

27. It was lastly contended by the learned Senior counsel that the factum regarding abduction, rape and murder of the deceased is a relevant fact in the present case. Referring to Sections 60 and 101 of the Evidence Act, the learned Senior counsel urged that the two prosecution witnesses, who have deposed before Court below up to this stage, were required to depose about the aforementioned relevant fact. However, both the witnesses, in their depositions before Court below have clearly stated that they did not witness the occurrence in question. It is thus apparent from record that once the two prosecution witnesses i.e. PW-1 and PW-2 are not an eye witness of the occurrence, therefore, they could not explain the said relevant fact. As such, the burden required to be discharged by the two prosecution witnesses under the Evidence Act, does not stand discharged. In view of above, Court below on the basis of depositions of PW-1 and PW-2 could not have recorded, the same degree of satisfaction as is required to be observed before summoning a prospective accused as per

the observations made in parataph 106 by the Five Judges Bench in **Hardeep Singh Vs. State of Punjab and Others, (2014) 3 SCC 92**. He, therefore, contended that in view of above, the order impugned is manifestly illegal. As such, the same is liable to be quashed by this Court.

28. Per contra, the learned A.G.A. for State-opposite party-1 has, however, vehemently opposed the present criminal revision/application. He submits that order impugned is perfectly just and legal and therefore, no interference is warranted by this Court in present criminal revision/application. With reference to the order impugned, the learned A.G.A. contended that Court below upon evaluation of the depositions of the two prosecution witnesses, who have deposed up to this stage, has returned a clear and categorical finding that as per the depositions of PW-1 and PW-2, the complicity of prospective accused i.e. the revisionists/applicant herein has emerged in the crime in question and if the said evidence goes un rebutted, it may lead to their conviction. It was thus urged that in view of the aforesaid finding returned by Court below, no illegality can be said to have been committed by Court below in passing the order impugned. As such, the order impugned is not liable to be interfered with by this Court.

29. Mr. D.S. Mishra, the learned Senior counsel representing first informant-opposite party-2 in both the matters has also opposed the present criminal revision/application. Apart from adopting the submissions urged by the learned A.G.A. in opposition to the arguments addressed by the learned Senior counsel for applicant/revisionsits in support of the present matters, he would submit that PW-1 Malkhan Singh (first informant-father of deceased) and PW-2 (mother of deceased) in their deposition before Court below have clearly implicated the present revisionists/applicant in the crime in question. He then took the Court to the depositions of aforesaid witnesses and extensively referred to the relevant places in their statements to show the complicity of revisionists/applicant in the crime in question. He further urged and rather

vehemently that both the witnesses are an eye witness of the occurrence. On the above premise, he thus contended that Court below has not committed any illegality in recording its prima-facie satisfaction regarding the complicity of revisionists/applicant in the crime in question. To lend legal support to this submission, he has also referred to the Five Judges Bench judgment of Supreme Court in **Hardeep Singh (Supra)**, wherein also the Court has observed that a prospective accused can be summoned by Court only after recording a prima-facie satisfaction.

30. In furtherance of his opposition to the present Criminal Revision/Application, it was next contended by the learned Senior counsel that the Court, while dealing with an application under Section 319 Cr.P.C. is not required to conduct a mini trial. Once prima-facie satisfaction has been recorded by Court below regarding complicity of prospective accused in the crime in question, no further enquiry is required in law. The said submission derives its sustenance from the judgment of Supreme Court in **Yashodhan Singh Vs. State of U.P., (2023) 9 SCC 108**, wherein the Court has observed in unequivocal terms that no mini trial is required to be conducted by Court while dealing with an application under Section 319 Cr.P.C.

31. It was also contended by the learned Senior counsel that once the trial has started and depositions of prosecution witnesses have been recorded then the complicity of a prospective accused in the crime in question has to be considered as per the said material alone and not upon evaluation of the material that was collected by the Investigating Officer during the course of investigation. He would thus submit that no illegality has been committed by Court below in not referring to the material, which was collected by the Investigating Officer during course of investigation/the material accompanying the police report submitted in terms of Section 173(2) Cr.P.C. In support of aforesaid submission, he relied upon the judgment of Supreme Court in **Omi @ Omkar Rathore and Another Vs. State of Madhya Pradesh and Another, 2025 SCC OnLine SC 27**.

32. It was lastly contended by the learned Senior Counsel that this court while examining the veracity of an order passed by court below in exercise of jurisdiction under Section 319 Cr.P.C. cannot evaluate the credibility/reliability of the witness nor can the court examine the quality of the statement so as to flush out the innocence of the prospective accused. Once the complicity of the revisionists/applicant has clearly emerged in the depositions of P.W.-1 and P.W.-2, therefore, no interference is warranted by this court in present revision/application. To buttress his submission, he has relied upon paragraph 11 of the judgement in **Akhilesh Vs. State of U.P. and others, 2025 SCC OnLine SC 727** Reference has also been made to the judgement of Supreme Court in **Shiv Baran Vs. State of U.P. and another, 2025 SCC OnLine SC 1457** and has referred to paragraphs 22, 23, 24 and 25 of the report. The Apex Court in aforementioned judgments has held that once the complicity of prospective accused has emerged in the deposition of the prosecution witnesses then no further enquiry is required to be conducted qua the credibility and reliability of the witnesses nor other circumstances have to be evaluated to find out the innocence of prospective accused.

33. On the edifice of aforesaid submissions, the learned Senior counsel concluded his submission by submitting that it has now come in evidence that the revisionists/applicant are also involved in the crime in question, therefore, no interference is warranted by this Court in present criminal revision/application.

34. Having heard the learned Senior counsel for revisionists/applicant, the learned A.G.A. for State-opposite party-1, the learned Senior counsel representing opposite party-2 and upon perusal of record, this Court finds that the primary issue, which arises for determination in present criminal revision is: What are the parameters for exercise of jurisdiction under section 319 Cr.P.C.? As a corollary to above, Court will also have to consider;- Whether the order impugned is within the established parameters or not?

35. Parameters regarding exercise of jurisdiction under section 319 Cr.P.C. have been considered time and again by the Supreme Court.

36. Before proceeding to do so, it must be noticed that following issues stand settled as per the judgements of Supreme Court, therefore, they are not required to be dealt with by this Court.

37. A non-charge sheeted accused can be summoned by the Court of Sessions after the case has been committed to the Court of Sessions under Section 193 Cr.P.C. and for that purpose need not wait for the evidence of the witnesses to be recorded so that non-charge sheeted accused could be summoned under Section 319 Cr.P.C., vide Five Judges Bench Judgment in **Dharam Pal and Others Vs. State of Haryana and Another, (2014) 3 SCC 306**.

38. Ambit and scope of powers under Section 319 Cr.P.C. now stand crystallized by Supreme Court in paragraph-34 of the judgement in **Manjeet Singh Vs. State of Haryana and Others, 2021 SCC Online SC 632**.

39. A prospective accused can be summoned on the basis of the statement-in-chief of one prosecution witness without getting his examination-in-chief recorded vide **Hardeep Singh (Supra)**.

40. The Court while summoning a prospective accused must come to the conclusion that a prima-facie case for summoning of a prospective accused is made out and in this regard, the Court must record its satisfaction in consonance with the observation made in paragraph 106 of the judgment in **Hardeep Singh (Supra)**.

41. Though in view of the law laid down by the Five Judges Bench in **Hardeep Singh (Supra)** that a prospective accused can be summoned on the basis of statement-in-chief of one prosecution witness but in case, if the statement of the witness, who have deposed before Court below, was also recorded under Section 161 Cr.P.C. then in such a circumstance, the Court must draw a parallel in between the deposition of the witness as

well as his statement under Section 161 Cr.P.C. to find out whether something new has emerged in the deposition or not, vide **Brijendra Singh and Others Vs. State of Rajasthan, (2017) SCC 706.**

42. The Court must consider the plethora of evidence collected by the Investigating Officer during the course of investigation as it is a relevant material, vide **Brijendra Singh (Supra).**

43. A prospective accused can be summoned only if, an inference of guilt of the accused can be drawn as per the material on record, vide **Brijendra Singh (Supra).**

44. The power under Section 319 Cr.P.C. is an extraordinary discretionary power, which should be exercised sparingly, vide **S Mohammed Ispahani Vs. Yogendra Chandak and Others, (2017) 16 SCC 226.**

45. A prospective accused should not be summoned by a Court by exercising its jurisdiction in a casual and cavalier fashion but diligently, vide **S Mohammad Ishpahani (Supra).**

46. Court can summon a prospective accused by exercising power under Section 319 Cr.P.C. only when some strong and cogent evidence had emerged against a prospective accused and not merely on the basis of his complicity in the crime in question, vide **S Mohammad Ishpahani (Supra).**

47. In the judgments referred to above, there is a common thread that the Court can scrutinize the evidence on record while exercising power under Section 319 Cr.P.C. Further a prospective accused can be summoned only if a prima-facie case for summoning of a prospective accused is made out.

48. The evidence of an injured eye witness has greater evidentiary value and unless compelling reasons exist, the said statement is not to be discarded lightly, vide paragraph 37 of judgement in **Manjeet Singh (Supra).**

49. An accused, who has been summoned by the Court in exercise of

power under section 319 Cr.P.C., cannot claim discharge, vide **S. Mohammed Ispahani (Supra)** and **Vikas Rathi Vs. State of U.P., 2023 SCC OnLine SC 211.**

50. In **Sukhpal Singh Khaira Vs. State of Punjab, (2019) 6 SCC 638**, a subsequent Bench of Supreme Court opined that the law laid down by Constitution Bench in **Hardeep Singh's (Supra)** case requires re-consideration as certain questions remain unanswered in the Constitution Bench Judgement and further the parameters regarding exercise of jurisdiction under section 319 Cr.P.C need to be re-laid down.

51. In **Rajesh and Others Vs. State of Haryana, (2019) 6 SCC 368**, it has been held that failure on the part of first informant in not filing a protest petition against the charge-sheet, cannot be treated as an impediment or bar in exercise of jurisdiction under section 319 Cr.P.C.

52. The reference made by a Two Judges Bench judgment in **Sukhpal Singh Khaira (Supra)**, was answered by another Five Judges Bench judgment in **Sukhpal Singh Khaira Vs. State of Punjab, (2023) 1 SCC 289**. The Court held that "**The power under Section 319 CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.**". Thereafter, the Court also laid down the guidelines to be followed while exercising jurisdiction under Section 319 Cr.P.C.

53. A prospective accused is not required to be heard before an order under Section 319 Cr.P.C. is passed against him, vide **Yashodhan Singh**

and Others (Supra).

54. The Court, while dealing with an application under Section 319 Cr.P.C. is not required to conduct a mini trial, vide **Yashodhan Singh and Others (Supra)**.

55. In **Sandeep Kumar Vs. State of Haryana, 2023 SCC OnLine SC 888**, the Court after noticing paragraphs 95 to 106 of the Five Judges Bench judgment in **Hardeep Singh (Supra)**, considered the ingredients of Section 149 and with reference to above, upheld the order of trial Court, on the finding that in case, a person is a member of an unlawful assembly, the ingredients of Section 149 IPC are satisfied and therefore, no material qua the innocence of such an accused is required to be looked into at the stage of deciding an application under Section 319 Cr.P.C.

56. Having noted the settled position, the Court is now required to consider whether on the basis of deposition of PW-1 Malkhan Singh (first informant/father of the deceased) and PW-2 Smt. Mina (wife of first informant-mother of deceased), the revisionists/applicant 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."

57. From perusal of the order impugned, this Court finds that Court below has considered the application under Section 319 Cr.P.C. filed by the prosecution/first informant/victim on the basis of the depositions of PW-1 Malkhan Singh (first informant/father of the deceased) and PW-2 Mrs. Mina (wife of first informant-mother of deceased) and not after the entire prosecution evidence was recorded. However, irrespective of above, the order impugned cannot be impeached on the aforesaid ground. A Five Judges Bench of the Supreme Court in **Hardeep Singh (Supra)** has held that an application under Section 319 Cr.P.C. can be considered by the Court concerned on the basis of the statement-in-chief of one prosecution witness. Apart from above, since the cross examination of PW-1 and PW-2 had been recorded, therefore, their depositions before Court below shall

fall in the realm of legal evidence. In view of above, no illegality can be said to have been committed by Court below in deciding the application under Section 319 Cr.P.C., on the basis of the depositions of PW-1 and PW-2 alone.

58. The second issue which arises for consideration by this Court is whether the Court while dealing with an application under Section 319 Cr.P.C. is to record it's satisfaction that a prima-facie case is made out for summoning the prospective accused and if so what will be the nature of such satisfaction, which is required to be recorded by Court below before summoning a prospective accused. The aforesaid issues which are interlinked and intertwined are also no longer res-integra and stand concluded by the Five Judges Bench judgment of the Supreme Court in **Hardeep Singh (Supra)**. The Court while dealing with the aforesaid issue has observed in clear and unequivocal terms that the Court while dealing with an application under Section 319 Cr.P.C. has to record it's satisfaction that a prima-facie case is made out for summoning the prospective accused, but the nature of such satisfaction, which is required to be observed by a Court before summoning a prospective accused has been crystallized by the Bench in paragraph 106 of the report. For ready reference, the same is reproduced herienunder:-

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. 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. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words 'for which such person

could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.

59. The peculiar facts, which have emerged on record, are that PW-1 is not an eye witness of the occurrence in question i.e. abduction, rape and murder of deceased, as per his deposition itself before Court below and PW-2 is not an eye witness of the occurrence regarding rape and murder as per her deposition before Court below. However, the facts as have emerged on record and noted above, PW-2 is also not an eye witness of the occurrence regarding abduction as is evident from the discussion made in the previous part of this judgement i.e. (1) If PW-2 (mother of deceased and wife of first informant-PW-1) been an eye witness of the occurrence of abduction then the FIR would have been lodged immediately. (2) Revisionists/applicant would have been nominated as named accused. (3) The FIR was lodged only after the father of deceased/husband of PW-1 had seen the dead body of his daughter in the mortuary of District Hospital. (4) Revisionists/applicant have not been named as annexed in the FIR nor any allegation has been made against them in the body of FIR. The question that will thus arise for consideration before this Court is whether on the basis of depositions of PW-1 and PW-2, who are not eye witnesses of the occurrence i.e. rape, abduction and murder, the prospective accused could have been summoned on the basis of their testimonies.

60. Mr. Sagir Ahmad, the learned Senior counsel for revisionists/applicant is right in submitting that since PW-1 and PW-2 alleged themselves to be eye witnesses, therefore, they were required to discharge the burden in terms of Sections 60 and 101 of the Evidence Act, which admittedly, they have not discharged.

61. A similar question came up for consideration before the Apex Court in

the case of **Shankar Vs. State of Uttar Pradesh and Others, 2024 SCC OnLine SC 730**. The Bench in aforementioned judgment was dealing with the questions as to whether on the basis of deposition of PW-1, who is not an eye witness of the occurrence yet the prospective accused could be summoned on the basis of his deposition by the Court below. The Court answered the said question in paragraph 23 of the report, which is accordingly extracted herein below;-

“23. Having considered the matter in detail, we are of the opinion that PW-1, not being an eye-witness, her deposition is not sufficient enough to invoke the extra-ordinary jurisdiction under [Section 319](#) to summon the appellants.”

62. In view of the discussion made above, this Court finds that though PW-1 and PW-2 in their depositions before Court below have alleged themselves to be the eye witnesses of the occurrence. However, in the later part of their depositions, while PW-1 has categorically stated that he did not witness the occurrence i.e. abduction, rape and murder of the deceased. PW-2 in her deposition before Court below has also alleged herself to be an eye witness of the occurrence but in the later part of her deposition, she has categorically stated that she did not witness the occurrence of rape and murder. Though PW-2 has not stated in unequivocal terms in her deposition before Court below that she is not an eye witness of the occurrence of abduction but in view of the facts as noted in the preceding paragraph to demonstrate that both PW-1 and PW-2 are not eye witnesses of the occurrence of abduction, no credence can be attached to their depositions recorded before Court below qua the complicity of applicant/revisionists in the crime in question. As such, no prima-facie satisfaction as required in law (vide paragraph 106 of the judgment in **Hardeep Singh (Supra)**) could be recorded by Court below nor it has been recorded as required in law. Moreover, the issue as to whether a prospective accused can be summoned by Court on the basis of the deposition of a witness, who is not an eye witness, stands answered by

the judgment of Supreme Court in **Shankar (Supra)**. As such, the order impugned is unsustainable in law and fact.

63. As a result, the present criminal revision as well as the application under Section 482 Cr.P.C. succeed and are liable to be allowed.

64. They are, accordingly, **allowed**.

65. The order impugned dated 11.11.2024 passed by the Additional District and Sessions Judge/Special Judge (POCSO Act), Jaluan, in Sessions Trial No. 44 of 2020 (State of U.P. Vs. Golu @ Aniket and Otehrs) arising out of Case Crime No. 47 of 2020, under Sections 363, 376, 302 IPC, Sections 3/4 POCSO Act and Sections 3(2)(v) SC/ST Act, Police Station-Churkhi, District-Jalaun is quashed. Consequently, the application dated 16.07.2024 under Section 319 Cr.P.C. filed by first informant/opposite party-2 shall stand quashed.

66. However, considering the facts and circumstances of the case, the cost is made easy.

Order Date :-28.07.2025

Vinay