

Court No. - 81

Case :- CRIMINAL REVISION No. - 6561 of 2024

Revisionist :- Harish Katib

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

Counsel for Revisionist :- Sunil Kumar, Vipin Gangwar

Counsel for Opposite Party :- Amit Kumar Verma, G.A.

Hon'ble Manjive Shukla, J.

1. Heard Sri Sunil Kumar and Sri Vipin Gangwar, learned counsels appearing for the revisionist, Sri R.B. Chaudhary, learned Additional Government Advocate appearing for the State and Sri Amit Kumar Verma, learned counsel appearing for Opposite Party No.2.

2. This revision has been filed challenging therein, the judgment and order dated 02.12.2024 passed by the learned Additional Sessions Judge, Court No.2, Bareilly in Sessions Trial No.199 of 2021 whereby, in exercise of power under Section 319 Cr.P.C., the revisionist had been summoned to face trial for the offences punishable under Sections 147, 148, 149, 302 and 120-B I.P.C.

3. The facts of the case, in brief, are that F.I.R. had been lodged by Smt. Shabnam Nihar Khan, wife of the deceased, which has been registered as Case Crime No.0378 of 2019, under Sections 147, 148, 149, 302 and 34 I.P.C. in Police Station Fatehganj West, District Bareilly. In the F.I.R., it has been alleged that the deceased while he was sitting in the Medical Store, three persons namely Harish Katib, Sharafat and Rifaqat along with two other persons came and fired at the deceased which resulted in his

death. The police pursuant to the aforesaid F.I.R. investigated the matter and recorded the statements of the witnesses under Section 161 Cr.P.C. and in the said statements, the name of the revisionist had been mentioned as an accused. The Investigating Officer after collecting some other material came to the conclusion that the revisionist is not connected with the crime in question and therefore, while filing charge sheet his name was expunged. Later on, the testimonies of the eye witnesses and other witnesses have been recorded during the trial wherein, all the witnesses have categorically stated that Mr. Harish Katib was involved in the crime in question.

4. On the basis of the testimonies of the witnesses recorded before the trial court, an application was filed by Opposite Party No.2 before the trial court for summoning the revisionist as an additional accused, in exercise of power under Section 319 Cr.P.C. The trial court, after considering the overall evidence available before it, had come to the conclusion that there is sufficient evidence against the revisionist and therefore, in exercise of its power under Section 319 Cr.P.C., had passed the impugned order dated 02.12.2024 whereby, the revisionist had been summoned to face the trial for the offences punishable under Sections 147, 148, 149, 302 and 120-B IPC.

5. Learned counsel appearing for the revisionist has argued that the application under Section 319 Cr.P.C. was filed by Opposite Party No.2 but subsequently, she submitted application before the trial court that she does not want to press her application therefore, in absence of any application under Section 319 Cr.P.C., the trial court could not have summoned the revisionist to face the trial. It has further been argued on behalf of

the revisionist that PW-4 i.e. Abrar, son of Anwar, while giving his testimony before the trial court, had stated that the revisionist was not present on the place of occurrence. Learned counsel appearing for the revisionist, on the strength of the aforesaid arguments, has submitted that there is no evidence available before the trial court which may be sufficient for the trial court to record its satisfaction that if the evidence available before it stands unrebutted, the revisionist can be convicted. It has also been argued that for summoning an additional accused under Section 319 Cr.P.C., the trial court has to record the satisfaction which may be of higher degree to that of the prima facie satisfaction that there is enough evidence available before the trial court which, if not rebutted, would lead to the conviction of the revisionist whereas, it is apparent on the face of the record that there is no such evidence therefore, the order passed by the trial court thereby summoning the revisionist as an additional accused, on its face, is illegal.

6. On the other hand, learned Additional Government Advocate appearing for the State has argued that initially an application was filed by Opposite Party No.2 and later on, she submitted before the trial court that she does not want to press that application but this alone cannot preclude the trial court from exercising its power under Section 319 Cr.P.C., as from bare perusal of the provisions made in Section 319 Cr.P.C., it is patently manifest that discretionary power has been vested in the trial court under Section 319 Cr.P.C. to summon an additional accused to face the trial. Learned Additional Government Advocate appearing for the State has also argued that it is a case where, there is ample evidence available before the trial court regarding the involvement of the revisionist in the crime in question i.e. the revisionist had been named in the F.I.R., the

witnesses in their statements recorded under Section 161 Cr.P.C. had categorically stated that the revisionist had committed the crime and the eye witnesses and other relevant witnesses, while deposing before the trial court, had categorically stated that the revisionist had committed crime in question.

7. It has been argued on behalf of the State that the provisions made in Section 319 Cr.P.C. make it crystal clear that the trial court has to look into the evidence produced before the trial court during course of inquiry or during course of trial and if any material has been collected by the Investigating Officer during investigation, that cannot be taken into account while passing the order under Section 319 Cr.P.C.

8. Learned Additional Government Advocate appearing for the State, on the basis of the aforesaid submissions, has vehemently argued that it is a case where the Investigating Officer deliberately had expunged the name of the revisionist and there is sufficient evidence in the form of testimonies of the eye witnesses and other witnesses before the trial court therefore, the trial court, while summoning the revisionist to face the trial under Sections 147, 148, 149, 302 and 120-B IPC, in exercise of its power under Section 319 Cr.P.C., has not committed any error in law and the order impugned in this revision does not suffer from any illegality or infirmity.

9. Learned Additional Government Advocate appearing for the State has relied on the judgment rendered by the Hon'ble Supreme Court in the case of **Hardeep Singh and others vs. State of Punjab and others, 2014 (3) SCC, 92** and has submitted that the Hon'ble Supreme Court in the said judgment had considered the

law in respect of summoning of an additional accused under Section 319 Cr.P.C. and it had been held that the material collected by the Investigating Officer is not relevant for the purpose of exercising power under Section 319 Cr.P.C. and only the evidence recorded before the trial court during course of inquiry and the trial is relevant. It has further been submitted that in the present case, there is enough evidence before the trial court in the form of testimonies of the eye witnesses and other witnesses wherein, categorical role had been assigned to the revisionist in respect of the crime in question therefore, this revision filed by the revisionist is liable to be dismissed by this Court.

10. I have considered the rival arguments advanced by the learned counsels appearing for the parties and have perused the documents available in the record of this revision.

11. Before proceeding to consider the case in detail, it is apt to have a look over the provisions made in Section 319 Cr.P.C. For ready reference, Section 319 Cr.P.C. is extracted as under:-

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. From perusal of Section 319 Cr.P.C. it is apparent that the legislature had categorically provided that power under Section 319 Cr.P.C. can be exercised by the trial court on the strength of the evidence collected during inquiry and trial before the trial court. The provisions of Section 319 Cr.P.C. have been considered by the Hon’ble Supreme Court in the case of **Hardeep Singh and others vs. State of Punjab and others, 2014 (3) SCC, 92**. The relevant paragraphs of the judgment rendered by the Hon’ble Supreme Court in the case of **Hardeep Singh (supra)** are extracted as under:-

Question (iii)—Whether the word “evidence” used in Section 319(1) CrPC 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?

58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers under Section 319 CrPC, the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that come up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 CrPC indicate that the material has to be “where ... it appears from the *evidence*” before the court.

59. Before we answer this issue, let us examine the meaning of the word “evidence”. According to Section 3 of the Evidence Act, “evidence” means and includes:

“(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry;

such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the court;

such documents are called documentary evidence.”

60. According to *Tomlin's Law Dictionary*, evidence is

“the means from which an inference may logically be drawn as to the existence of a fact. It consists of proof by testimony of witnesses, on oath; or by writing or records.”

61. Bentham defines “evidence” as

“any matter of fact, the effect, tendency or design of which presented to mind, is to produce in the mind a persuasion concerning the existence of some other matter of fact—a persuasion either affirmative or disaffirmative of its existence. Of the two facts so connected, the latter may be distinguished as the principal fact, and the former as the evidentiary fact.”

62. According to *Wigmore on Evidence*, evidence represents:

“any knowable fact or group of facts, not a legal or a logical principle, considered with a view to its being offered before a legal tribunal for the purpose of producing a persuasion, positive or negative, on the part of the tribunal, as to the truth of a proposition, not of law, or of logic, on which the determination of the tribunal is to be asked.”

63. The provision and the abovementioned definitions clearly suggest that it is an exhaustive definition. Wherever the words “means and include” are used, it is an indication of the fact that the definition “is a hard-and-fast definition”, and no other meaning can be assigned to the expression that is put down in the definition. It indicates an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expression. (Vide *Mahalakshmi Oil Mills v. State of A.P.* [(1989) 1 SCC 164 : 1989 SCC (Tax) 56 : AIR 1989 SC 335] , *Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court* [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] , *P. Kasilingam v. P.S.G. College of Technology* [1995 Supp (2) SCC 348 : AIR 1995 SC 1395] , *Hamdard (Wakf) Laboratories v. Labour Commr.* [(2007) 5 SCC 281 : (2007) 2 SCC (L&S) 166] and *Ponds India Ltd. v. CTT* [(2008) 8 SCC 369] .)

64. In *Feroze N. Dotivala v. P.M. Wadhwani* [(2003) 1 SCC 433] , dealing with a similar issue, this Court observed as under : (SCC p. 443, para 14)

“14. Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition. Unless there are compelling reasons to do so, meaning of a restrictive and exhaustive definition would not be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined.”

65. We, therefore proceed to examine the matter further on the premise that the definition of the word “evidence” under the Evidence Act is exhaustive.

66. In *Kalyan Kumar Gogoi v. Ashutosh Agnihotri* [(2011) 2 SCC 532 : (2011) 1 SCC (Civ) 513 : (2011) 1 SCC (Cri) 741 : AIR 2011 SC 760] , while dealing with the issue this Court held : (SCC p. 544, para 33)

“33. The word ‘evidence’ is used in common parlance in three different senses : (a) as equivalent to relevant, (b) as equivalent to proof, and (c) as equivalent to the material, on the basis of which courts come to a conclusion about the existence or non-existence of disputed facts. Though, in the definition of the word ‘evidence’ given in Section 3 of the Evidence Act one finds only oral and documentary evidence, this word is also used in phrases such as best evidence, circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.”

67. In relation to a civil case, this Court in *Ameer Trading Corpn. Ltd. v. Shapoorji Data Processing Ltd.* [(2004) 1 SCC 702 : AIR 2004 SC 355] , held that the examination of a witness would include evidence-in-chief, cross-examination or re-examination. In *Omkar Namdeo Jadhao v. Second Addl. Sessions Judge, Buldana* [(1996) 7 SCC 498 : 1996 SCC (Cri) 488 : AIR 1997 SC 331] and *Ram Swaroop v. State of Rajasthan* [(2004) 13 SCC 134 : 2005 SCC (Cri) 61] , this Court held that the statements recorded under Section 161 CrPC during the investigation are not evidence. Such statements can be used at the trial only for contradictions or omissions when the witness is examined in the court. (See also *Pedda Narayana v. State of A.P.* [(1975) 4 SCC 153 : 1975 SCC (Cri) 427 : AIR 1975 SC 1252] , *Sat Paul v. Delhi Admn.* [(1976) 1 SCC 727 : 1976 SCC (Cri) 160 : AIR 1976 SC 294] and *State (Delhi Admn.) v. Laxman Kumar* [(1985) 4 SCC 476 : 1986 SCC (Cri) 2 : AIR 1986 SC 250] .)

68. In *Lok Ram v. Nihal Singh* [*Lok Ram v. Nihal Singh*, (2006) 10 SCC 192 : (2006) 3 SCC (Cri) 532 : AIR 2006 SC 1892] , it was held that it is evident that a person,

“even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added [as an accused] to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and *not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence*”. (SCC p. 196, para 10)

(emphasis supplied)

69. The majority view of the Constitution Bench in *Ramnarayan Mor v. State of Maharashtra* [*Ramnarayan Mor v. State of Maharashtra*, AIR 1964 SC 949 : (1964) 2 Cri LJ 44] has been as under : (AIR p. 953, para 9)

“9. It was urged in the alternative by counsel for the appellants that even if the expression ‘evidence’ may include documents, such documents would only be those which are duly proved at the enquiry for commitment, because what may be used in a trial, civil or criminal, to support the judgment of a Court is evidence duly proved according to law. But by the Evidence Act which applies to the trial of all criminal cases, the expression ‘evidence’ is defined in Section 3 as meaning and including all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry and documents produced for the inspection of the court. *There is no restriction in this definition to documents which are duly proved by evidence.*”

(emphasis supplied)

70. Similarly, this Court in *Sunil Mehta v. State of Gujarat* [(2013) 9 SCC 209 : (2013) 3 SCC (Cri) 881 : JT (2013) 3 SC 328] , held that : (SCC p. 217, para 16)

“16. It is trite that evidence within the meaning of the Evidence Act and so also within the meaning of Section 244 CrPC is what is recorded in the manner stipulated under Section 138 in the case of oral evidence. Documentary evidence would similarly be evidence only if the documents are proved in the manner recognised and provided for under the Evidence Act unless of course a statutory provision makes the document admissible as evidence without any formal proof thereof.”

71. In *Guriya v. State of Bihar* [(2007) 8 SCC 224 : (2007) 3 SCC (Cri) 521 : AIR 2008 SC 95] , this Court held that in exercise of the powers under Section 319 CrPC, the court can add a new accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary.

72. In *Kishun Singh* [*Kishun Singh v. State of Bihar*, (1993) 2 SCC 16 : 1993 SCC (Cri) 470] , this Court held : (SCC p. 27, paras 11-12)

“11. On a plain reading of sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of any inquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused. This power [under Section 319(1)], it seems clear to us, can be exercised only if it so appears from the evidence at the trial and not otherwise. Therefore, this sub-section contemplates existence of some evidence appearing in the course of trial wherefrom the court can prima facie conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police. Even a person who has earlier been discharged would fall within the sweep of the power conferred by Section 319 of the Code. Therefore, *stricto sensu*, Section 319 of the Code cannot be invoked in a case like the present one where no evidence has been led at a trial wherefrom it can be said that the appellants appear to have been involved in the commission of the crime along with those already sent up for trial by the prosecution.

12. But then it must be conceded that Section 319 covers the post-cognizance stage where in the course of an inquiry or trial the involvement or complicity of a person or persons not named by the investigating agency has surfaced which necessitates the exercise of the discretionary power conferred by the said provision.”

(emphasis supplied)

73. A similar view has been taken by this Court in *Raj Kishore Prasad* [*Raj Kishore Prasad v. State of Bihar*, (1996) 4 SCC 495 : 1996 SCC (Cri) 772 : AIR 1996 SC 1931] , wherein it was held that : (SCC p. 499, para 8)

“8. ... In order to apply Section 319 [CrPC], it is thus essential that the need to proceed against the person other than the accused, appearing to be guilty of offence, arises only on evidence recorded in the course of any inquiry or trial.”

74. In *Lal Suraj v. State of Jharkhand* [*Lal Suraj v. State of Jharkhand*, (2009) 2 SCC 696 : (2009) 1 SCC (Cri) 844] , a two-Judge Bench of this Court held that : (SCC p. 701, para 16)

“16. ... A court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 CrPC, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction.”

75. A similar view has been reiterated by this Court in *Rajendra Singh v. State of U.P.* [*Rajendra Singh v. State of U.P.*, (2007) 7 SCC 378 : (2007) 3 SCC (Cri) 375 : AIR 2007 SC 2786] , observing that the court should not exercise the power under Section 319 CrPC on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence. The word “evidence” in Section 319 CrPC contemplates the evidence of the witnesses given in the court.

76. Ordinarily, it is only after the charges are framed that the stage of recording of evidence is reached. A bare perusal of Section 227 CrPC would show that the legislature has used the terms “record of the case” and the “documents submitted therewith”. It is in this context that the word “evidence” as appearing in Section 319 CrPC has to be read and understood. The material collected at the stage of investigation can at best be used for a limited purpose as provided under Section 157 of the Evidence Act i.e. to corroborate or contradict the statements of the witnesses recorded before the court. Therefore, for the exercise of power under Section 319 CrPC, the use of word “evidence” means material that has come before the court during an inquiry or trial by it and not otherwise. If from the evidence led in the trial the court is of the opinion that a person not accused before it has also committed the offence, it may summon such person under Section 319 CrPC.

77. With respect to documentary evidence, it is sufficient, as can be seen from a bare perusal of Section 3 of the Evidence Act as well as the decision of the Constitution Bench [*Ramnarayan Mor v. State of Maharashtra*, AIR 1964 SC 949 : (1964) 2 Cri LJ 44] , that a document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial.

78. It is, therefore, clear that the word “evidence” in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation.

79. The inquiry by the court is neither attributable to the investigation nor the prosecution, but by the court itself for collecting information to draw back a curtain that hides something material. It is the duty of the court to do so and therefore the power to perform this duty is provided under CrPC.

80. The unveiling of facts other than the material collected during investigation before the Magistrate or court before trial actually

commences is part of the process of inquiry. Such facts when recorded during trial are evidence. It is evidence only on the basis whereof trial can be held, but can the same definition be extended for any other material collected during inquiry by the Magistrate or court for the purpose of Section 319 CrPC?

81. An inquiry can be conducted by the Magistrate or court at any stage during the proceedings before the court. This power is preserved with the court and has to be read and understood accordingly. The outcome of any such exercise should not be an impediment in the speedy trial of the case. Though the facts so received by the Magistrate or the court may not be evidence, yet it is some material that makes things clear and unfolds concealed or deliberately suppressed material that may facilitate the trial. In the context of Section 319 CrPC it is an information of complicity. Such material therefore, can be used even though not an evidence in stricto sensu, but an information on record collected by the court during inquiry itself, as a prima facie satisfaction for exercising the powers as presently involved.

82. This pre-trial stage is a stage where no adjudication on the evidence of the offences involved takes place and therefore, after the material along with the charge-sheet has been brought before the court, the same can be inquired into in order to effectively proceed with framing of charges. After the charges are framed, the prosecution is asked to lead evidence and till that is done, there is no evidence available in the strict legal sense of Section 3 of the Evidence Act. The actual trial of the offence by bringing the accused before the court has still not begun. What is available is the material that has been submitted before the court along with the charge-sheet. In such situation, the court only has the preparatory material that has been placed before the court for its consideration in order to proceed with the trial by framing of charges.

83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. This would harmonise such material with the word “evidence” as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.

84. The word “evidence” therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 CrPC. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial

commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The “evidence” is thus, limited to the evidence recorded during trial.”

.....

117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

— *What is the stage at which power under Section 319 CrPC can be exercised?*

AND

— *Whether the word “evidence” used in Section 319(1) CrPC 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?*

Answer

117.1. In *Dharam Pal case* [*Dharam Pal v. State of Haryana*, (2014) 3 SCC 306 : AIR 2013 SC 3018] , 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 the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till “evidence” under Section 319 CrPC becomes available for summoning an additional accused.

117.2. Section 319 CrPC, 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 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word “evidence” in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii)—Whether the word “evidence” used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv)—What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer

117.5. Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge [Ed. : The conclusion of law as stated in para 106, p. 138c-d, may be compared: “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”. See also especially in para 100 at p. 136f-g.] . The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v)—Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

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.”

13. From the aforesaid paragraphs of the judgment rendered by the Hon’ble Supreme Court in the case of **Hardeep Singh (supra)**, it is patently manifest that the Hon’ble Supreme Court, in categorical terms, had laid down the law that the trial court, while exercising power under Section 319 Cr.P.C., is not under obligation to look into the material collected by the Investigating Officer. It had further been held that the trial court has to exercise the power under Section 319 Cr.P.C. only on the basis of the evidence led before it during inquiry or during trial.

14. This Court finds that in the case in hand, the informant, while lodging the F.I.R. with the police, had categorically stated that the revisionist had been involved in the crime in question. For ready reference, the relevant portion of the F.I.R. is extracted as under:-

"नकल तहरीर हिन्दी वादी:- सेवा में श्रीमान थाना प्रभारी महोदय थाना फतेहगंज (पं०) बरेली महोदय, निवेदन है कि प्रार्थिनी श्रीमती सबनम निहार खान पत्नी मौ० असलम खान निवासी मौहल्ला भोलेनगर कस्बा व थाना फतेहगंज (पं०) जिला बरेली की हूँ। प्रार्थिनी के कस्बे में रहने वाले हरीश कातिब पुत्र नामालूम निवासी मौ० लोधीनगर कस्बा व थाना फतेहगंज (पं०) जिला बरेली व उसके दो साथी सराफत पुत्र अमीर अहमद, व रिफाकत पुत्र शखावत नि०गण मौ० सराय कस्बा व थाना फतेहगंज (पं०) जिला बरेली जो कि स्मैक का धन्धा करते हैं। एवं अन्य अपराधिक गतिविधियों में संलिप्त रहते हैं एवं लोगों को डरा धमकाकर रंगदारी व अवैध वसूली करते हैं। इस बावत प्रार्थिनी के पति द्वारा उक्त लोगों के विरुद्ध शिकायत भी की गयी तथा वर्ष 2016 में प्रार्थिनी के पति मौ० असलम खान ने उक्त हरिश कातिब के विरुद्ध नगर पालिका, चैयरमैन के चुनाव में कृष्ण चन्द्र मौर्या की मदद की थी। जिसमें हरिश कातिब हार गया था तथा तभी से हरिश कातिब अपनी हार का जिम्मेदार प्रार्थिनी के पति मौ० असलम खान को ही मानता था तथा प्रार्थिनी के पति से रंजिश मानता था इसके अलावा उक्त मुल्जिमान प्रार्थिनी के पति को डरा धमकाकर रंग दारी की मांग करते थे तथा कुछ दिन पूर्व उक्त तीनों मुल्जिमान ने प्रार्थिनी के पति के मैडिकल स्टोर पर आकर झगड़ा किया था व जान से मारने की धमकी भी दी थी। इस बावत प्रार्थिनी के पति द्वारा थाना व पुलिस में शिकायत भी की गयी थी। दिनांक 16.10.2019 को समय लगभग शाम सात (7.0) बजे जब प्रार्थिनी का पति व प्रार्थिनी अपने घर के पास स्थित अपने मैडिकल स्टोर अहद मैडिकोज पर बैठे हुए थे। तभी उपरोक्त तीनों मुल्जिमान ने अपने अन्य दो साथियों जिन्हे प्रार्थिनी नाम पते से नहीं जानती है पर सामने आने पर पहचान लेगी ने एक राय होकर मैडिकल स्टोर पर आकर प्रार्थिनी के पति मौ० असलम खान पर हमला कर दिया व ताबड़ तोड़ फायर कर दिये। जिससे प्रार्थिनी के पति घायल हो गया। फायर की आवाज सुनकर व शोर सुनकर पड़ोस के लोग आ गये तो उक्त सभी मुल्जिमान भाग गये। समस्त घटना क्रम को अकरम खाँ, मुर्सिद वेग व नाजिम खाँ आदि लोगों ने देखा है। घायल अवस्था में मौजूद लोगों की मदद से प्रार्थिनी अपने पति मौ० असलम खान को इलाज हेतु सिद्धी विनायक अस्पताल बरेली लेकर गयी। जहाँ इलाज के दौरान प्रार्थिनी के पति की मृत्यु हो गयी। प्रार्थिनी घटना की रिपोर्ट लिखाने आयी है। श्रीमान जी से प्रार्थना है कि मुल्जिमान हरीश कातिब, शराफत व रिफाकत व उसके साथियों के विरुद्ध प्रथम सूचना रिपोर्ट दर्ज कर अविलम्ब कठोर कानूनी कार्यवाही करने की कृपा करें। *Sd* हिन्दी पठित शबनम निहार प्रार्थिनी श्रीमती शबनम निहार खान फतेहगंज (पं०) बरेली दिनांक 17.10.2019। नोट *SD* मैं *HM*/ मिथैलश कुमार गुप्ता प्रमाणित करता हूँ कि नकल तहरीर को मेरे द्वारा कम्प्यूटर पर बोल बोल कर टाईप व कायमी।"

15. Thereafter, the Investigating Officer during investigation had recorded the statements of various witnesses under Section 161 Cr.P.C. and there also the name of the revisionist had come into light in respect of the crime in question. The Investigating Officer, on the basis of some other material collected during investigation, somehow formed the opinion that the revisionist was not involved in the crime in question and thereby, while

submitting charge sheet in the matter, the name of the revisionist was expunged. This Court further finds that the trial court while proceeding with the trial had recorded the testimonies of the eye witnesses and other witnesses wherein, the witnesses have categorically deposed that it was the revisionist who had killed Dr. Mohd. Aslam Khan. The testimonies of the witnesses recorded by the trial court during trial have been considered by the trial court in the impugned order dated 02.12.2024. For ready reference, the relevant portions of the impugned order dated 02.12.2024 are extracted as under:-

“..... दिनांक 16.10.2019 को समय करीब शाम 07.00 बजे जब मेरे पति अपने मेडिकल अहद मेडिकोज पर बैठे हुए थे, उस समय हरीश कातिब, रिफाकत, शराफत, प्रेमपाल ठेकेदार, दिनेश गुर्जर आये थे। इन लोगों ने मेरे पति से झगडा किया और विरोध करने पर उन पर हमला कर दिया, ताबड तोड फायरिंग की। उस समय मैं मौके पर मेडिकल के अन्दर ही बैठी थी। गोली मेरे पति को लगी थी जिससे वह घायल हो गये थे गोली की आवाज सुनकर आस पड़ोस के काफी लोग आ गये थे। मुल्जिमान मौके से फरार हो गये मैं अपने परिचितों के साथ अपने पति को लेकर सिद्धि विनायक बरेली लेकर आयी जहां कुछ देर उपचार के बाद मेरे पति मोहम्मद असलम खां की मृत्यु हो गयी।”

X X X X X X X X X X

.....असलम खां के मेडिकल स्टोर पर शाम को करीब 06.45 बजे गया था। मेरे भाई मेडिकल पर ही बैठे दिनांक 16.10.2019 को मैं अपने भाई थे। मेरे दो भान्जे मुर्शीद वेग और नाजिम व मेरे भाभी शबनम निहार खां और नौकर कांता भी वहां मौजूद था। इसी बीच पांच लोग दिनेश गुर्जर, प्रेमपाल ठेकेदार, हरीश कातिब, रिफाकत, शराफत आये। इन्हें उस्मान, इरफान उर्फ भूरा और शब्बीर उर्फ हरी टोपी ने षडयंत्र करके मेरे भाई को मारने भेजा था। दुकान पर आये पांचों लोगों के पास तमंचे थे। सभी ने मेरे भाई को जान से मारने की नीयत से अंधाधुंध फायर कर दिये। कल चार फायर किये थे। एक फायर मेरे भाई असलम को लगा, एक फायर काउंटर पर लगा, बाकी दो कहां लगे, मुझे ध्यान नहीं। मेरे भाई असलम खां गोली लगने से घायल हो गये जिन्हें मेरे भान्जे कार में डालकर सिद्धी विनायक अस्पताल बरेली लेकर आये जिनकी उसी दिन इलाज के दौरान मौत हो गयी।”

X X X X X X X X X X

..... दिनांक 16.10.2019 की शाम को मेडिकल स्टोर पर मैं, मेरा मौसेरा भाई मुर्शद वेग, मामा असलम कहा, अकरम, मामी शबनम निहार खां व दुकान का नौकर कान्ता दुकान पर मौजूद थे। शाम करीब 7 मैत्री मामा के मेडिकल दुकान के अन्दर पांच लोग हरीश कातिब, रिफाकत, शराफत, दिनेश गुर्जर और प्रेमपाल ठेकेदार घुस आये। दिनेश गुर्जर और प्रेमपाल ठेकेदार के हाथ में तमंचे थे। इन लार मेरे मामा असलम खां के ऊपर फायरिंग की। एक गोली मेरे मामा असलम खां के लगी जिससे वह मौके पर घायल हो गये। मुल्जिमान मौके से भाग गये। तीन लोग नकाशे की तरफ भागे दो लोग मोटर साईकिल से भाग गये। मामा असलम खां को घायल होने के बाद मामा असलम खां को हम लोग गाडी से सिद्धी विनायक अस्पताल लेकर आये। गाडी में मेरे साथ मेरी मामी शबनम निहार, मौसेरा भाई मुर्शद वेग थे। गाडी मैं चला रहा था। अस्पताल में मामा की इलाज के दौरान उसी दिन मौत हो गयी थी।”

X X X X X X X X X X

----- दिनांक 16.10.2019 को समय शाम के लगभग 7 बजे मैं अपने मामा असलम खां के मेडिकल पर उनके साथ बैठा हुआ था। मेरे अलावा मेरे दूसरे मामा अकरम खां, मेरी

मामी शबनम निहार खां, मेरा मौसेरा भाई नाजिम खां व दुकान का नौकर कांता प्रसाद वहां मौजूद था। अचानक से 5 लोग वहां पर आये जिनमें से हरीश कातिय, शराफत, रिफाकत को मैं जानता हूं, बाकी दो अज्ञात थे, जिन्हें मैं सामने आने पर पहचान सकता हूँ। इन पांचों लोगों ने आते ही मेरे मामा डॉ० असलम के ऊपर फायर कर दिया। फायर की एक गोली मेरे मामा के लगी जिससे वो वहीं घायल होकर गिर पड़े। गोली मारने के बाद हरीश कातिब, शराफत, रिफाकत नकाशे वाले बाग की तरफ भाग गये बाकी के दो लोग बाईक से बरेली की तरफ भाग गये। इसके बाद तुरंत मैं, मेरी मामी शबनम निहान और मेरा मौसेरा भाई नाजिम गाड़ी से मामा असलम को लेकर बरेली सिद्धी विनायक अस्पताल लेकर पहुंचे। रास्ते में हल्का सा होश आने पर मेरे मामा ने हम लोगों से, कहा था कि इन पांचों लोगों को छोड़ना मत। मेरे मामा डॉ० असलम का थोड़ी देर सिद्धी विनायक अस्पताल में इलाज हुआ था परंतु वह बच नहीं सके और उनकी अस्पताल में ही मृत्यु हो गयी।"

16. I have considered the testimonies of the witnesses recorded by the trial court and I find that most of the witnesses including the eye witnesses have taken the name of the revisionist and further have assigned the categorical role to the revisionist in the crime in question. I also find that if the testimonies of the eye witnesses and other witnesses, recorded during trial, are not rebutted by the revisionist by leading some evidence before the trial court, that itself is sufficient for conviction of the revisionist. Thus, this Court is of the view that the trial court on being satisfied that there is sufficient evidence against the revisionist, which if not rebutted, would lead to his conviction, had exercised the power under Section 319 Cr.P.C. and had summoned the revisionist to face the trial under Sections 147, 148, 149, 302 and 120-B IPC therefore, there is neither any illegality nor any infirmity in the impugned order dated 02.12.2024.

17. Now, this Court proceeds to consider the argument raised on behalf of the revisionist that the application under Section 319 Cr.P.C. was filed before the trial court by the informant i.e. Opposite Party No.2 and later on, she submitted that she does not want to press that application therefore, there was no occasion for the trial court to summon the revisionist under Section 319 Cr.P.C for facing the trial. This Court finds that the provisions made in Section 319 Cr.P.C. are very clear and there is no ambiguity in the

intention of the legislature while conferring the power to the trial court under Section 319 Cr.P.C. The provisions of Section 319 Cr.P.C. give absolute power to the trial court and it is the discretion of the trial court that if, at any stage during trial, it is satisfied that there is sufficient evidence against any person, which if not rebutted, would lead to his conviction, the trial court can summon him as an additional accused to face the trial. Once the power with the trial court is absolute and it is the discretion of the trial court, even if the application filed by Opposite Party No.2 under Section 319 Cr.P.C., for any reason, was subsequently not pressed, the trial court was still having power and jurisdiction to summon the revisionist under Section 319 Cr.P.C. therefore, the argument raised in that behalf by the revisionist, on its face, is absolutely misconceived and is liable to be rejected. It is also noteworthy that the trial court had also dealt with the issue in respect of there being no application under Section 319 Cr.P.C. and had recorded a finding that it is the discretion and the absolute power of the trial court therefore, even if Opposite Party No.2 had not pressed her application under Section 319 Cr.P.C., that does not preclude the trial court from exercising its power for summoning an additional accused.

18. In view of the aforesaid reasons, I do not find any illegality or infirmity in the impugned order dated 2.12.2024 passed by the learned Additional Sessions Judge, Court No.2, Bareilly in Sessions Trial No.199 of 2021.

19. Accordingly, this revision lacks merit and is hereby dismissed.

Order Date :- 20.2.2025

Salim

