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HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 4037 of 2025

Bhagwan Singh

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Bindeshwari Prasad Mishra

Counsel for Opposite Party(s) : Alok Kumar Srivastava, G.A., Yogesh Kumar

Court No. - 86

HON'BLE SUBHASH CHANDRA SHARMA, J.

List revised. None appeared on behalf of opposite party no. 2 even in the revised call.

Heard learned counsel for the revisionist as well as learned A.G.A. and perused the record.

The present criminal revision has been filed by the revisionist with prayer to allow the revision and set aside the impugned judgment and order dated 15.05.2025 passed by learned Session Judge, Mathura by which an application under Section 319 Cr.P.C. has been rejected that was moved to summon the opposite party no. 2 Kallan @ Gajendra for trial with other co-accused persons Ravindra and Ankit in Session Trial No. 688 of 2024 (State Vs. Ravindra and others) arising out of Case Crime No. 65 of 2024, under section 302 IPC, Police Station Surir, District Mathura.

It is submitted by learned counsel for the revisionist that in this case, in the F.I.R. the opposite party no. 2 Kallan @ Gajendra was named with other co-accused persons Ravindra and Ankit for committing murder of the deceased. The incident was witnessed by Rajendra P.W.2, the brother of the informant. During the course of investigation, the Investigating Officer exonerated Kallan @ Gajendra without collecting proper material and filed charge sheet against co-accused Ravindra and Ankit. During the course of trial, the statement of P.W. 2 the informant Bhagwan Singh was recorded and the statement of P.W. 1 Rajendra was also recorded in which both of them deposed about the involvement of the opposite party no. 2 in

committing murder of the deceased Raj Kumar by throttling. The learned trial court did not consider the evidence on record but passed the order in question without appreciating the evidence on record and also misinterpreting the settled principles of law regarding exercise of powers under Section 319 Cr.P.C. therefore, order passed by learned trial court dated 15.05.2025 being erroneous is liable to be set aside and revision is to be allowed.

Learned A.G.A. opposed the prayer as aforesaid and contended that in this case, the F.I.R. was lodged by P.W. 1 Bhagwan Singh on 16.03.2024 at about 13.56 p.m. and incident took place between 15.3.2024 to 16.3.2024. In F.I.R. the co-accused Ravindra was said to have committed murder of the deceased Raj Kumar who has illicit relation with the wife of Ravindra. The informant mentioned in F.I.R. that as per his belief, the son of Ravindra and brother Kallan also assisted Ravindra in committing murder of the deceased. During the course of investigation, the revisinist did not disclose the fact that Kallan has also committed murder of the deceased with other co-accused persons as a result he was exonerated. He also contended that there was gap of 34 hours in lodging F.I.R. and P.W. 2 Gajendra is real brother of the informant. P.W. 2 is said to be an eye witness of the incident. It is unnatural that he would not have disclosed the names of culprits with his brother/the informant who has lodged the F.I.R. In this way, the learned trial court has considered all these facts and evidence on record and then passed the order in question. There is no any illegality or impropriety in the order.

On considering the fact and circumstances of the case, submissions made by learned counsel for the revisionist as well as learned A.G.A. perusal of record, the statements of P.W. 1 Bhagwan Singh and P.W. 2 Rajendra and also contents of F.I.R. and the order passed by learned trial court dated 15.05.2025, it transpires that in the F.I.R. the informant has mentioned the name of Ravindra who have committed murder of his son Raj Kumar and expressed his belief that his son Ankit and brother Kallan also assisted him. The F.I.R. was lodged at 1.56 p.m. on the next day of the commission of incident but till that time, he was not sure that the opposite party no. 2 Kallan was also involved with co-accused Ravindra in committing murder of his son. During the course of trial, he has deposed before the learned trial court that there was illicit relation between the wife of Ravindra and the deceased Raj Kumar, this was the reason the accused persons committed murder of the deceased Raj Kumar in the night of 15/16.03.2024. Further

contended that he and members of his family saw the accused person while coming out of the house after committing murder. His brother Rajendra saw the accused person while committing murder of the deceased by pressing his neck. This fact was disclosed to him after lodging of F.I.R. by his brother that all three accused persons committed murder of the deceased by pressing his neck. P.W. 2 Rajendra has also been examined before the learned court in which he deposed that in the night of 15/16.3.2024 at about 1.30 a.m. he was sitting near his mother who was ill and he went to attend natural call outside the house, he saw Ravindra, his son Ankit and brother Kallan while committing murder of his nephew Raj Kumar by pressing his neck. He saw them while committing the murder. He was threatened by them. He further stated that this fact was disclosed by him before his brother Bhagwan Singh after lodging of the F.I.R. Since he was under threat that was the reason, he did not disclose it.

On perusal of statements of both the witnesses and the version in F.I.R. it transpires that the F.I.R. was lodged by the informant himself who has been examined as P.W. 1 and told himself to be eye witness of the incident but in the F.I.R. he clearly mentioned that his son Raj Kumar was murdered by co-accused Ravindra. Till lodging of F.I.R. he was not sure that the opposite party no. 2 Kallan has also committed murder of the deceased except his belief that he was also involved in commission of murder. The F.I.R. was lodged at about 1.56 p.m on the next day though the incident took place in previous night and his brother P.W. 2 Rajendra also says himself to be eye witness but he did not disclose this fact to his brother P.W.1, it is unnatural. In the case of **Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92**, the Hon'ble Supreme Court has clearly stated that while exercising the powers under Section 319 Cr.P.C. the learned trial court is not to pass the order in casual manner but the evidence on record is to be subjected to scrutiny to find out stronger case than that of prima facie case at the stage of framing of charge though short of conviction, if it is unrebutted.

Para Nos. 105 and 106 of Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92 are quoted as under:

"105. Power under Section 319 Code of Criminal Procedure is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of

the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, 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 Code of Criminal Procedure."

From the evidence it cannot be said that the nature of evidence is stronger than that of prima facie case at the stage of framing of charge. In this way, the order passed by learned trial court dated 15.05.2025 cannot be said to suffer illegality or impropriety but this revision being devoid of merit is liable to be dismissed.

Accordingly, the present revision is ***dismissed***.

May 7, 2026
Anurag Singh

(Subhash Chandra Sharma,J.)