



2026:AHC:4391

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

**CRIMINAL REVISION No. - 7009 of 2025**

Nabeel Alias Guddu

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite  
Party(s)

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| Counsel for Revisionist(s)    | : | Shubham Kumar    |
| Counsel for Opposite Party(s) | : | G.A., Javed Alam |

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**Court No. - 89**

**HON'BLE DIVESH CHANDRA SAMANT, J.**

1. Heard Sri Shubham Kumar, learned counsel for the Revisionist, Sri Javed Alam, learned counsel for the opposite party No. 2, learned AGA for the State and perused the record.

2. Present Revision has been filed with the prayer to set aside the impugned judgment and order dated 12.09.2025 passed by Special Judge, Exclusive Court(Pocso Act)/Additional Session Judge Meerut in Sessions Trial No. 260 of 2019 (State Vs. Abdul Wajid and others), whereby the application under Section 319 Cr.P.C. has been allowed and the Revisionist accused Nabeel Alia Guddu has been summoned under Section, 147, 148, 149, 302 IPC for facing the trial.

3. Opposite Party No. 2, Firoz Khan, lodged an FIR being Case Crime No. 225 of 2016 under Sections 147, 148, 149 and 302 IPC at Police Station Delhi Gate, District Meerut. During investigation, the statement of Opposite Party No. 2 was recorded under Section 161 Cr.P.C., and the post-mortem of the deceased was conducted. The Investigating Officer also recorded the statements of witnesses namely Asim Khan, Shamshad Ali, Suhail Khan, Mohd. Kasif, Asgar Ali and Ravi. Upon completion of investigation, the charge-sheet was submitted against the other co-accused persons. During trial, the learned Trial court recorded the statements of P.W.1 to P.W.3. Thereafter, Opposite Party No. 2 moved an application under Section 319 Cr.P.C., pursuant to which the learned Trial court summoned the revisionist. Aggrieved thereby, the revisionist preferred

Criminal Revision No. 3727 of 2025, which was heard and decided. Subsequently, after passing of the order by this Hon'ble Court, the learned Trial court again summoned the revisionist vide impugned order, giving rise to the present revision.

4. It has been argued by the learned counsel for the Revisionist that the impugned order dated 12.09.2025 has been passed by the learned Trial Court without considering the material on record. The learned Trial Court has not considered the fact that the Revisionist was not named in the FIR and on the basis of the statement of some interested witnesses the investigating officer has implicated him during the investigation and at the later stage of the investigation, some credible witnesses appeared on whose statement under Section 161 Cr.P.C., the Investigating Officer has exonerated the Revisionist and filed the charge-sheet against other accused persons. It is also not stated that informant has not named the Revisionist in his statement under Section 161 Cr.P.C.

5. It is further submitted that the learned Trial Court utterly failed to consider the material on record and passed the impugned order dated 12.09.2025, which is based upon conjectures and surmises. There is not a single whisper against the Revisionist. Thus, the impugned order is perverse and against the fact and law, which cannot be allowed to sustain.

6. It is further argued that before passing the impugned order, order dated 24.06.2025 was passed by the learned Trial court, whereby, the Revisionist was summoned under Section 319 Cr.P.C. and that order was challenged before this Court by filing Criminal Revision No. 3727 of 2025(Nabeel Alias Guddu Vs. State of U.P. and Another), which was allowed and the matter was remitted back to Trial Court to decide the application under Section 319 Cr.P.C. afresh.

7. It is further argued that the learned Trial Court has again without making any heed to the observations and directions of this Court passed in Criminal Revision No. 3727 of 2025, allowed the application under Section 319 Cr.P.C. in a cursory manner, which is against the settled principle of law.

8. Per contra, it has been argued by the learned counsel for the Opposite Party No. 2 and learned AGA for the State that the FIR has been lodged by the informant Opposite Party No. 2, in which he has mentioned the name of all the eye witnesses who have seen the incident and during the investigation on the basis of statement of the eye witnesses, the name of the Revisionist came into light, but the Investigating Officer in connivance with the Revisionist, did not arraign the Revisionist as an accused in the charge-sheet, despite sufficient material being available in the case diary. The Investigating Officer exonerated the accused merely on the basis of stereotyped statements of the eyewitnesses in regard to the eyewitness. During trial, the eye witnesses were examined by the Trial Court and they stated about the presence and involvement of the eyewitness in the occurrence, and the material available on record is sufficient to raise a *prima facie* grave suspicion against the eye witness. The order passed by the learned Trial Court is just and proper and does not suffer from any illegality or perversity.

9. It is further argued by the learned counsel for the Opposite Party No. 2 and the learned AGA that the learned counsel for the Revisionist has taken the ground of the statements of witnesses collected by the Investigating Officer during investigation, whereas, in the previous revision filed by the accused-Revisionist, this Court has observed that the statements under Section 161 Cr.P.C. cannot be considered while exercising power under Section 319 Cr.P.C. The order passed in the previous revision itself counters the grounds taken by the learned Counsel for the Revisionist.

10. A perusal of the record shows that the informant, Opposite Party No. 2 Firoz Khan, has lodged the F.I.R. alleging therein that on 09.12.2016 at about 7:15 pm, the informant's younger brother, Nasir, was standing at the corner of a lane near Chhapla Malla Halwai, Khairnagar, when Rahman Saifi, Salman Saifi and Shakir Saifi, along with their associates including Abdul Wajid alias Guddu and Arif, all residents of the same locality, arrived armed with illegal firearms with the intention to kill and attacked him. During the assault, accused Rahman Saifi fired a gunshot at Nasir, hitting him in the neck. The incident was witnessed by Shamshad Ali, Shahjad Ali, Suhail, Asim and others present at the spot. After firing

the shot, the accused fled towards their homes. Nasir was immediately taken by the people present to S.M. Prakash Hospital for treatment, where the doctor declared him dead.

11. It is very much clear from the F.I.R. that the informant is not himself an eyewitness but has mentioned Shamshad Ali, Suhail Khan, Asim Khan, etc., who had seen the occurrence. It is true that Junaid was not named in the F.I.R. The statements of witnesses Asim Khan, Shamshad Ali, Suhail Khan, Mohammad Kashif, Asgar Ali and Ravi, recorded under Section 161 Cr.P.C., show that all of them are eye witnesses and have stated about the involvement of Junaid in the occurrence by assigning him a specific role.

12. So far as the involvement of the accused-revisionist is concerned, the eye witnesses Asim Khan, Shamshad Ali, and Suhail Khan have clearly stated about the involvement of the revisionist, Nabeel Alias Guddu in the occurrence by assigning him a specific role, namely that he was present at the place of occurrence and had caught hold of the deceased along with the other co-accused persons. So far as the other eye witnesses are concerned, they have made statements similar to each other that Revisionist Nabeel Alias Guddu was not involved in the occurrence and he has been wrongly implicated.

13. The copies of the statements of PW-1 Feroz Khan, PW-2 Suhail Khan, and PW-3 Asim Khan are available on record, which have been recorded during trial. All of them have taken the name of the accused-Revisionist, Nabeel Alias Guddu, as being involved in the occurrence and present at the spot. Though PW-1 is not an eye witness, he has lodged the FIR after receiving information from the eye witnesses, and PW-2 and PW-3 are the eye witnesses who have specifically stated about the involvement of the accused-Revisionist, Nabeel Alias Guddu, in committing the offence.

14. For summoning any person as an accused, the provisions are contained under Section 319 Cr.P.C. which is as follows:

***"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."*

15. In regard to the summoning of any person for consideration of an application under Section 319 Cr.P.C., the Hon'ble Apex Court has passed various judgments and laid down guiding principles which are required to be followed by the Trial Courts while passing any order under Section 319 Cr.P.C.

16. For consideration of application under Section 319 Cr.P.C., the Hon'ble Apex Court has laid down the guiding principle in the case of ***Hardeep Singh vs State Of Punjab & Ors, (2014) 3 SCC 92 (Constitutional Bench)***, that the power to summon a person as an accused under Section 319 Cr.P.C. is discretionary and extraordinary and it should be exercised sparingly for summoning any person. The evidence adduced before the Court must be strong and cogent suggesting a greater than prima-facie case though it need not be proved beyond reasonable doubt. The evidence should be such that if unrebutted, it would lead to the conviction of the person being summoned.

17. In a case of ***Juhru and others Vs. Karim and another (2023) 5 SCC 406***, the Hon'ble Apex Court has reiterated the requirement of high standard of evidence. The Hon'ble Court stressed that the standard for

summoning an additional accused under Section 319 Cr.P.C. is much higher than the standard required for framing a charge. It must be strong and credible evidence, pointing to the person's complicity.

18. In a recent case law ***Neeraj Kumar Alias Neeraj Yadav Vs. State of U.P. : (2025 INSC 1386)***, the Hon'ble Supreme Court has again reiterated that the power under Section 319 Cr.P.C. is discretionary and extraordinary. The Court must be satisfied that evidence against the person sought to be summoned is strong and cogent more than *prima facie*, but short of proof for conviction. It is further held that summoning cannot be based on conjectures and speculations, evidence recorded during the trial must reasonably indicate involvement of proposed accused.

19. Though earlier passed order on the application under Section 319 Cr.P.C. was set aside by this Court in Criminal Revision No. 3727 of 2025(Nabeel Alia Guddu Vs. State of U.P. and Another), in which this Court had observed that the Trial Court cannot consider the material collected by the Investigating Officer or statement recorded under Section 161 Cr.P.C. during the investigation for exercising the power under Section 319 Cr.P.C., but has to derive its satisfaction only on the basis of evidence collected during the trial and inquiry and the matter was remitted back to the Trial Court to decide the matter afresh. Thereafter, the impugned order under challenge in this Criminal Revision was passed by the learned Trial Court.

20. Learned Counsel for the revisionist has relied upon the case law ***Bijendra Singh and others v. State of Rajasthan:2017(7) SCC 706*** and argued that the learned Trial Court has not considered the statements of eye witnesses recorded under Section 161 Cr.P.C., who have specifically stated that the Revisionist was not involved in committing the offence. In the case law ***Bijendra Singh(Supra)***, it has been held by the Hon'ble Apex Court as follows:

*"This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial*

*was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny."*

21. In this case law, there were cogent evidence available to corroborate the statements of witnesses under Section 161 Cr.P.C. regarding the fact that the proposed accused was not present on spot at the time of occurrence, whereas, in the present case, the incident appears to be substantiated by the prompt FIR, medical evidences and the statements of witnesses made under Section 161 Cr.P.C. in favour of Revisionist are not supported with any cogent evidence.

22. In the case in hand, it is very much clear that there are statements of as many as six eye witnesses recorded by the Investigating Officer during investigation, out of which all have named Junaid to be involved in the commission of the offence, who was also not named in the FIR. Three eye witnesses have stated that the revisionist, Nabeel Alias Guddu, was not present at the spot, whereas PW-2 and PW-3, being eye witnesses, have stated before the Court about the involvement of the Revisionist, whose credibility stands at a much higher pedestal than the statements recorded under Section 161 Cr.P.C.

23. The truthfulness and credibility of the statements given by the witnesses before the Court and the evidence collected by the Investigating Officer can be assessed only after completion of the trial by examining all the material witnesses. The facts and circumstances of the present case are factually different from those relied upon by the learned Counsel for the revisionist, therefore, the said judgment does not come to the rescue of the Revisionist.

24. In view of facts and circumstances of the case and the law discussed above, this Court finds no illegality, perversity or jurisdictional error in the order passed by the learned Trial Court. The learned counsel for the Revisionist has failed to demonstrate any manifest injustice or gross miscarriage of justice that warrants the exercise of this Court's revisional jurisdiction. The impugned order is well reasoned and based on a proper appreciation of the evidence and legal provisions.

25. Consequently, the Criminal Revision being devoid of merit stands **dismissed**. The order dated 12.09.2025 passed by Special Judge, Exclusive Court(Pocso Act)/Additional Session Judge Meerut in Sessions Trial No. 260 of 2019 is hereby confirmed.

26. The observation made herein are limited only for the purpose of deciding the instant Revision Petition and shall not be construed as an expression of opinion on the merits of the case during the trial.

**(Divesh Chandra Samant,J.)**

**January 8, 2026**

ADY