

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2984 of 2017
With
CRAN 3/2018 (Old CRAN 3433/2018)

Kedar Nath Sen
Versus
Prabir Kumar Sen and Ors.

For the Petitioner : Mr. Sekhar Pal, Adv.
Mr. Mobakshar Islam, Adv.

For the State : Mr. Debasish Roy, Adv.
Mr. Imran Ali, Adv.
Ms. Debjani Sahu, Adv.

Heard on : 13.12.2024

Judgment on : 12.02.2025

Ajay Kumar Gupta, J:

1. Petitioner has preferred this application under Article 227 of the Constitution of India challenging the impugned Order No. 9 dated 27th July, 2017 passed by the Learned Additional District and Sessions Judge, First Fast Track, City Sessions Court at Calcutta in Sessions Case No. 122 of 2013.

2. By the said impugned order, the Learned Additional District and Sessions Judge rejected the prayer of the petitioner for addition of the name of Pradip Kumar Sen as an additional accused in the proceedings pending before the Learned Additional District & Sessions Judge, First Fast Track Court, City Sessions Court at Calcutta.

3. The background facts, which led to filing of this application, may be adumbrated as under: -

3a. On 8th June, 2013 at about 6.00 PM, the opposite party no. 1, Prabir Kumar Sen along with his younger brother Pradip Kumar Sen, opposite party no. 2 allegedly assaulted the petitioner with a wooden bar on his head. As a result, the petitioner sustained serious injuries and was hospitalised to R.G. Kar Medical College & Hospital where he was treated until 15th June, 2013.

3b. The petitioner's son lodged an FIR being Jorabagan P.S. Case No. 128 dated 08.06.2013 under Sections 307/379 of IPC against Prabir Kumar Sen. Subsequently, a charge sheet being No. 115/13 dated 24.08.2013 was submitted against the sole accused Prabir Kumar Sen, as a prima facie case has been established against him under Section 307 of IPC.

3c. Dhruba Sen, son of the victim, did not disclose the name of another accused person, Pradip Kumar Sen in the written complaint ostensibly because the complainant did not have any direct knowledge of the occurrence at the time of lodging the FIR and also because he was not present at the time of incident.

3d. Being aggrieved by and dissatisfied with the investigation and submission of charge sheet against one accused person only, the petitioner filed a writ petition being WP No. 1084 of 2013 before this Court and the same was disposed of on 25th November, 2013 by the then Hon'ble Justice Sanjib Banerjee, given a liberty to apply before the Learned Trial Court under Section 173(8) of the CrPC within a reasonable time.

3e. The petitioner approached before the Learned Trial Court with an application under Section 173(8), but the same was rejected on the ground that the proceedings had already been committed to

the Court of Sessions. The petitioner, thereafter, filed a fresh application before the Learned Trial (Sessions) Court which was, however, rejected by the impugned order No. 11 dated 18th June, 2014. Against that order, a Revisional application had been filed being CRR No. 2118 of 2014 and the then Hon'ble Justice Sudip Ahluwalia, after hearing the parties, passed order, inter alia, as follows:-

“To that extent there was no material irregularity in the order passed by the learned Additional Sessions Judge.

Yet the fact of the matter is that the grievance of the petitioner/victim remains unattended. In such circumstances, there still remains an appropriate remedy open to him by virtue of Section 319 of the Criminal Procedure Code since the victim must necessarily have to be the most vital prosecution witness according to the charge-sheet. He, therefore, has ample scope to bring his alleged assailant to book in case sufficient proof is otherwise available.

The determination of the Apex Court in the Group cases headed by “Hardeep Singh v. State of Punjab” reported in (2015)1 C. Cr.LR (SC) as specified in answering the question no. V involved in the aforesaid proceedings in paragraph 110 of the detailed judgment is set out as under: -

"Question No.V.

Q.V Does the power under Section 319. Cr.P.C. extend to persons not named in the FIR or named in the FIR but not chargesheeted or who have been discharged?

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

In the circumstances, the revisional application is disposed of with a direction upon the prosecution to assist to the petitioners to take recourse to the aforesaid provision of law as and when the appropriate stage arrives in the Trial Court."

3f. Subsequently, the trial commenced before the Fast-Track Court. P.W. 1/petitioner herein was examined and during his deposition, the name of opposite party no. 2 was mentioned several times in the examination-in-chief. As a result, the Learned PP made an application under Section 319 of CrPC for addition of an accused i.e. Pradip Kumar Sen, opposite party no. 2 herein in the proceedings. However, the Learned Fast Track Court dismissed the said application filed by the Learned PP vide order dated 27th July, 2017. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONER:

4. Learned counsel appearing on behalf of the petitioner submitted that the Learned Trial Court failed to consider the prayer of the petitioner for inclusion of name of the opposite party no. 2 as an accused. During examination-in-chief and cross-examination, the name of Pradip Kumar Sen was stated by the P.W. 1 and his role in the crime. It is the provision, if name appears in the trial of any accused, who was involved in committing an offence, his name must be impleaded to face the trial under Section 319 of the CrPC and the Court may proceed against such person for the offence which he appears to have committed.

5. It was further submitted that the Learned Additional District and Sessions Judge failed to appreciate the true import, scope and effect of the order passed by the Hon'ble High Court time to time in different proceedings, even his name appears in the deposition but the Learned Judge mechanically and without applying his judicious mind rejected the prayer for impleading as an additional accused, namely, Pradip Kumar Sen. Therefore, the impugned order is liable to be set aside and his name needs to be added as an additional accused.

6. None appears on behalf of the opposite party no. 2 despite service of notice. No accommodation has been prayed for at the time of call.

SUBMISSION ON BEHALF OF THE STATE:

7. On the other hand, learned counsel appearing on behalf of the State submitted that it is true that the name of the accused was not reflected in the FIR or Charge Sheet. However, during examination of P.W. 1, name of another accused, namely, Pradip Kumar Sen has been transpired. So, his name may be added as an additional accused in view of Section 319 of the CrPC.

DISCUSSION AND FINDINGS BY THIS COURT:

8. Heard the arguments and submissions made by the parties and on perusal of the record, this Court finds name of the another accused was not mentioned in the written complaint by the complainant. Furthermore, no material was collected against the alleged accused, Pradip Kumar Sen during the investigation.

9. However, the claim of the Petitioner is that his son was unaware about the actual incident as such he had given only the name of one accused, Prabir Kumar Sen though his brother, another accused, Pradip Kumar Sen was also involved in the alleged incident

and played a vital role in insisting for assaulting the victim. To implead him as an accused, the Petitioner approached this Hon'ble High Court in twice occasions but both occasions, the Co-ordinate Bench of this Court directed the Petitioner to take appropriate steps in due course by filing application under Section 173(8) of the CrPC and, thereafter, Section 319 of the CrPC in course of trial.

10. Be that as it may, both petitions were rejected by the Learned Court below one after another. Now, the question arises before this Court is whether final application filed under Section 319 of the CrPC should be allowed based on the name of the accused Pradip Kumar Sen appears during examination and cross-examination of the P.W. 1, who was injured in the alleged incident that took place on 8th June, 2013.

11. Before deciding the issue involved herein and taking note of the aforesaid facts, it would be appropriate and convenience to refer the important Section 319 of the CrPC as follows:-

Section 319 of CrPC reads 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.”

12. Upon perusal of the aforesaid section, it is evident that the section 319 of CrPC allows for the petition seeking arraignment of the person named therein as the accused, in the light of the documentary and oral evidence submitted by the prosecution allegedly indicating

his involvement and collusion in the offences as alleged. Where there is sufficient material on record and prima facie case is made out, individual can be summoned under Section 319 of the Criminal Procedure Code to face trial.

13. An order under Section 319 of Criminal Procedure Code can only be passed by the Learned Trial Court during the inquiry or trial and that too based on the evidence already presented by the prosecution. Learned Trial Court cannot arraign a person as an additional accused except on the evidence so adduced. The Court has power to summon any person as accused person provided sufficient material on record available to justify the evidence is strong and reliable. It requires much stronger evidence than mere probability of his complicity.

14. In order to summon a person under Section 319 of the CrPC, mere taking of name is not sufficient but there must be sufficient reliable and cogent corroborative evidence to show implication of the person who has been sought to be summoned.

15. In the present case, upon perusal of the case diary, produced by the prosecution, it reveals no whisper of name or specific role played by the brother of the principal accused is mentioned in the complaint. Even for the sake of argument, if this Court considers the

contention of the petitioner that his son/complainant was not aware/present at the time of alleged incident. He had written a complaint on the basis of information received from others over telephone, who has not disclosed the name of Pradip Kumar Sen. Be that as it may, no material was collected during the investigation by the Investigation Officer. Charge Sheet was submitted against sole accused namely, Prabir Kumar Sen under Section 307 of the Indian Penal Code.

16. No specific name or role played by Pradip Kumar Sen was narrated by any of the witnesses including the injured/petitioner during their examination under Section 161 of the CrPC.

17. Medical documents including injury report, collected during investigation, have also not mentioned/whisper about the name and role played by Pradip Kumar Sen.

18. First time, the injured person named Pradip Sen, while examining as P.W. 1. During his examination, he deposed against Pradip Sen as follows:

“At the time of cleaning the courtyard, the accused and his brother and mother was standing in the first floor. The accused Prabir Sen and his elder brother Pradip Sen and their mother Smt. Sulekha Sen were standing there. At that time, the elder

brother Pradip Sen directed his brother Prabir Sen to go to down stair and stop the work or he may assault me if, necessary. Accused Prabir Sen and his brother Pradip Sen are my nephew in relation. They also residing at same place. Their father i.e. my elder brother died in the year 1981.

Prabir Sen came in the ground floor and directed me to stop all the work, otherwise he will he will assault me. A hot altercation was happened in between me and accused person but he could not allow me to done the work. At that time Pradip Sen came at ground floor with a wooden beam and directed the accused that he shall assault me with the said wooden beam. The said wooden beam handed over to accused person. Prabir Sen then assault me with the said wooden beam. I sustained severe bleeding injury in my head. At that time Prabir Sen snatched my golden neck chain weighing 1/1.5 bhoris. The said neck chain handed over to Pradip Sen. Subsequently, it was not recovered.”

19. Oral evidence of injured clearly shows that Prabir Sen was involved in the commission of the crime as he urged the principal accused to assault him. The material on record shows details of the incident and manner in which the accused persons have acted and committed the alleged crime. The present Petitioner and alleged

accused person are close relative and a property related dispute exists between them with many criminal and civil suits. As per deposition of P.W. 1, at the time of incident, many other eye witnesses, like family members, mason, helper and maid were present.

20. Therefore, it would be very early to exercise power and justify summoning of accused, namely, Pradip Kumar Sen under Section 319 of the CrPC because other eye witnesses are yet to be examined. Court must be very careful while issuing summon against the additional accused. The power conferred on the Court under Section 319 of CrPC is an extra-ordinary power and is required to be used only for compelling reasons or should be exercised sparingly or during unexceptional circumstances of the case so warrant. Without corroboration by other oral or documentary evidences, it would not be proper to allow this application. Furthermore, Courts are required to apply stringent test that whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned. Consequently, application is devoid of merits and is liable to be dismissed at this stage. This Court does not find any error in rejecting the prayer for issuing summon to Pradip Kumar Sen under Section 319 of the CrPC at this stage.

21. The power under Section 319 of the CrPC can be exercised by the Court suo motu at any stage before passing judgment because section 319 of CrPC is enacted to ensure that no guilt person is left unpunished. Therefore, the impugned order No. 9 dated 27th July, 2017 calls for no interference.

22. Accordingly, **CRR No. 2984 of 2017** is **dismissed**. **CRAN 3/2018 (Old CRAN 3433/2018)** is also, thus, disposed of.

23. Let a copy of this Judgment be sent to the Learned Trial Court for information.

24. Case Diary, if any, is to be returned to the learned counsel appearing on behalf of the State.

25. Interim order, if any, stands vacated.

26. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)