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Reserved on 12.03.2021

Delivered on 17.03.2021

Court No. - 16

Case :- CRIMINAL REVISION No. - 428 of 2020

Revisionist :- Satypal Singh

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home & Anr.

Counsel for Revisionist :- Kamlesh Singh

Counsel for Opposite Party :- G.A.,Manoj Kumar Misra

Hon'ble Dinesh Kumar Singh,J.

1. Present criminal revision under Section 397/401 Cr.P.C. has been filed impugning the order dated 03.03.2020 passed by the Addl Sessions Judge, Court No.11, Hardoi in S.T. No.111 of 2018: State vs Pawan Singh and Ors. arising out of Crime No.267 of 2017 registered under Sections 452, 302, 504, 506 IPC, Police Station Kachauna, District Hardoi.

2. Learned Trial Court vide impugned order has summoned the revisionist under Section 319 Cr.P.C. on an application filed by the complainant, respondent No.2 to face trial as an additional accused.

3. An FIR was registered at Case Crime No.0267 of 2017 under Sections 147, 148, 149, 452, 302, 504, 506 IPC P.S. Kachauna, Hardoi on a written complaint of respondent No.2 having allegations that on 02.11.2017 at around 9:00 PM. accused Pawan Singh, Satyapal Singh (revisionist), Sonu Singh all sons of Barrister Singh, Harshit @ Jeepu s/o Satyapal Singh, Munna s/o Rajaram came to the house of the complainant and told the uncle of the complainant that he had to leave the land. When uncle of the complainant objected, all these accused entered the house of the complainant. Accused-Pawan, Sonu, Harshit and Munna caught hold of the uncle and present revisionist fired at the uncle of the complainant with illegal weapon. Hearing the sound of gun shot, complainant, his brother, Harisharan and his father Vishnu Narayan came out of the house exhorting the accused, then the accused fled away from the scene of occurrence

extending threats. Uncle of the complainant had died on the spot, however, he was taken to the hospital at Kachauna where doctor declared him brought dead. The complainant is a practicing advocate at Hardoi which is evident from the FIR itself.

4. Inquest proceedings were conducted on the same day i.e. 02.11.2017 at 23:05 Hours. Post mortem was conducted on the next day and following injuries were found on the body of the deceased:-

(i) Fire arm entry wound of size 2 x 1.5 cm on interior aspect of left thigh. 7 cm away from root of penis; 13' O clock position margin inflicted; blackening present;

(ii) Fire arm exit wound of 2.5 cm x 2 cm present on back of right thigh on gluteal region;

5. The investigating officer examined as many as 38 witnesses during the course of investigation and filed charge sheet against accused-Pawan Singh, Sonu Singh, two brothers of the revisionist, Harshit @ Jeepu son of the revisionist, Munna Singh s/o Rajaram under Sections 452, 302, 504, 506/34 IPC and absolved the revisionist of the charges as he was not found to be present at the time and place of incident when the alleged incident took place.

6. There is enmity between the complainant who is practicing advocate and the revisionist who happened to be the Village Pradhan. Respondent No.2 had instituted nine cases against the revisionist in which he has either been acquitted or final report has been filed in his favour or complaint cases have been rejected. Details of the cases instituted against the revisionist by the complainant have been given in Annexure-10 of the revision petition.

7. The Investigating Officer found the location of mobile phone of the revisionist at Sandila, 35 kms away from the place of incident i.e. village Tikari on the basis of Call Detail Record. It is also stated that a dispute took place between Pawan, brother of the revisionist and the complainant side in the evening of 02.11.2017 and Pawan Singh called the police by dialing number 100. Police reached the village at around 7:30 PM. Pawan Singh, brother of the revisionist also informed the revisionist about the dispute on his Mob.No.8009185252. Police reached village Tikari and settled the dispute in the evening.

8. It is further stated that respondent No.2 (complainant) after learning about the dispute between the brother of the revisionist and Munna came to the village and bet the brother of the revisionist. However, on intervention of the villagers, Pawan was separated from the complainant. It is also stated that soon thereafter, the complainant himself threatened Ram Sewak, elder brother of his father to grab his property. It is also mentioned that in the year 1998, the complainant and his father had shown Ram Sewak, who did not have any son and had only three married daughters and his wife had died around 30 years back, dead and got recorded his land in their name in the revenue record. When Ram Sewak came to know about this fact, he got annoyed from the complainant and his father and he was not having good relations with them.

9. It is also stated that respondent No.2 was in inebriated condition and he fired at Ram Sewak. He was not taken to the hospital immediately but Ram Sewak was being pressurized to name the revisionist and his family members. However, Ram Sewak did not agree to falsly implicate the revisionist and his other family members. Ram Sewak died due to excessive bleeding.

10. One villager, Bablu called the revisionist at 8:10 PM on 2.11.2017 informing about the incident. Transcript of conversation between the revisionist and Bablu forms part of the case diary. It is also said that one sepoy of police station Kachauna also called the revisionist at 09:03 PM informing that he was being implicated in the offence. This also forms part of the case diary.

11. In the FIR, it has been said that Ram Sewak was taken to the C.H.C., Kachauna. However, from the statement of the medical Officer of C.H.C., Kachauna, it is clear that he was never brought to C.H.C. Kachauna on 02.11.2017 as alleged in the FIR. The investigating officer on the basis of statement of the witnesses Bhaiya Lal, Ranjana Singh, Uttam Kumar Singh found the presence of the revisionist at Sandila in Gayatri Maha Yagya at the time when the incident allegedly took place. The deceased had received a firearm injury on his leg and he had died due to excessive bleeding as is evident from the post-mortem report.

12. One FIR on the basis of an order on a complaint filed under Section 156(3) Cr.P.C. by Rohit Kumar Singh came to be registered on 17.03.2018

at Police Station Kachauna at FIR No.0098 of 2018 in respect of the same incident under Sections 147, 148, 452, 302, 504, 506 IPC against respondent No.2 and five other persons. The police, however, after investigation of the aforesaid offence filed a final report absolving the named accused. Against final report, protest petition has been filed and same has been treated as complaint.

13. Allegation in FIR No.098 of 2018 is that the deceased's wife had died 30 years before the date of incident. He had no son and had only three daughters. All of them were married. Respondent No.2, his father and brothers had an eye on the property of the deceased. The deceased wanted to get his will registered in favour of his three daughters on the very next day of the incident. When it came to the knowledge of respondent No.2, he fired at the deceased and falsely implicated the revisionist and others. It is also alleged that in past also respondent No.2 and his father had shown the deceased dead and got mutated his land in their names in the revenue record.

14. Heard Mr. Sharad Pathak, learned counsel for the revisionist, Mr. Manoj Kumar Mishra, learned counsel for opposite party no.2 as well as Mr. Umesh Kumar Singh, learned counsel for the State. .

15. Trial Court has summoned the present revisionist on the basis of the statements of respondent No.2-P.W.-1 and P.W.-2 (Basant) who have reiterated the allegations in the FIR. Learned counsel for the revisionist has submitted that investigation carried out by the investigating officer and evidence collected by him is cogent and credible which is not only based on oral testimony of the several witnesses regarding non presence of the revisionist at the time and place of incident but also fully gets established from the scientific and electronic evidence collected by him. He has further submitted that the learned trial Court has ignored the cogent and credible evidence available on record and only on the basis of reiteration of the allegation of the FIR by P.W.-1 and P.W.-2, has summoned the revisionist under Section 319 Cr.P.C. as additional accused to face trial.

16. On the other hand, Mr. Manoj Kumar Mishra, learned counsel for respondent No.2 has submitted that the trial Court has applied the law correctly on the facts and circumstances of the case inasmuch as during the course of trial, evidence against the revisionist has come regarding his

involvement in the commission of offence. He has been assigned role of firing and his presence at the place and time of occurrence is clearly established from the statements of P.W.-1 and P.W.-2 and, therefore, this Court may not interfere with the impugned order in exercise of its powers under Section 397/401 Cr.P.C.

17. Learned counsel for respondent No.2 has placed reliance on the judgment of the Supreme Court in the case of ***Saeeda Khatoon Arshi v. State of U.P.*, (2020) 2 SCC 323** to submit that the Supreme Court after taking survey of the judgments on the power of the Court under Section 319 Cr.P.C. to summon a person as additional accused to face trial has set aside the order of High Court quashing the order of the Sessions Judge summoning a person as an additional accused on the ground that evidence of P.W.-1 and P.W.-2 meet the threshold requirement for summoning the accused under Section 319 Cr.P.C.

18. I have considered the submission of learned counsel for the parties.

19. Section 319 Cr.P.C. reads 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 a fresh, 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."

20. Power under Section 319 Cr.P.C. is an extraordinary power conferred on a Court to do real justice. It should be used to that occasion only if compelling reason exists for proceeding against a person against whom action has not been taken. Policy of the code is that the offence can be

taken cognizance of once only and not repeatedly upon discovery of further particulars. In a given case, the complainant may not even know the names and other particulars of an offender and it would, therefore, be sufficient for him to make a complaint in respect of persons who are known offenders as accused. When such a trial proceeds against a known accused, if the evidence led in the trial disclose offence committed by other persons who can be tried along with the accused facing trial, then Section 319 Cr.P.C. comes into play. Object of Section 319 Cr.P.C. is to ensure that no one who appears to be guilty escapes trial in relation to the offence.

21. Power under Section 319 Cr.P.C. is not to be exercised in a cavalier and mechanical manner but requires to be invoked when on consideration of material available on record, the Court feels the necessity of implicating some person(s) as accused. Power under Section 319 Cr.P.C. is to be exercised by the Court to do real justice. Provisions of Sub-Section 1 of Section 319 Cr.P.C. provide that "if it appears from the evidence" that any person has committed any offence. The question which Court has to confront itself is that whether when the Investigating Agency/Officer has filed a closure /final report against a named accused, should the Court summon the said person as additional accused only on the statement of the complainant or other witnesses who has/have reiterated the allegation in the FIR. Power under Section 319 Cr.P.C. is to be used primarily to advance the cause of criminal justice but not as a handle at the hands of the complainant to harass a person who is not involved in the commission of the offence/crime.

22. A Constitutional Bench of Supreme Court in the case of **Hardeep Singh vs State of Punjab (2014) 3 SCC 92** has held that power under Section 319 Cr.P.C. which is discretionary and extraordinary power, is to be exercised only when strong and cogent evidence comes against a person before the Court and such power should not be exercised in a casual and cavalier manner.

Para 105 and 106 of the aforesaid judgment is reproduced hereunder:-

> **"105.** Power under Section 319 CrPC 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, 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused."

23. If the evidence recorded during the trial is nothing more than the statements which are already made under Section 161 Cr.P.C. during the course of investigation and such evidence is against the plethora of evidence collected during the course of investigation which suggests otherwise, trial Court would not be correct in law for summoning a person as an additional accused on the basis of such evidence.

24. While answering the question that what degree of satisfaction is required for invoking powers under Section 319 Cr.P.C. and in what circumstances powers should be exercised in respect of a person named in the FIR but not charge-sheeted, the Supreme Court in the case of **Brijendra Singh & Ors vs State of Rajasthan : (2017) 7 SCC 706** in paras 13 to 15 has held as under:-

> **"13.** In order to answer the question, some of the principles enunciated in *Hardeep Singh case* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] may be recapitulated: power under Section 319 CrPC can be exercised by the trial court at any stage during the trial i.e. before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some "*evidence*" against such a person on the basis of which evidence it can be gathered that he appears to be guilty of the offence. The "*evidence*" herein means the material that is brought before the court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. No doubt, such evidence that has surfaced in examination-in-chief,

without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the court under Section 319 CrPC and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.

14. When we translate the aforesaid principles with their application to the facts of this case, we gather an impression that the trial court acted in a casual and cavalier manner in passing the summoning order against the appellants. The appellants were named in the FIR. Investigation was carried out by the police. On the basis of material collected during investigation, which has been referred to by us above, the IO found that these appellants were in Jaipur city when the incident took place in Kanaur, at a distance of 175 km. The complainant and others who supported the version in the FIR regarding alleged presence of the appellants at the place of incident had also made statements under Section 161 CrPC to the same effect. Notwithstanding the same, the police investigation revealed that the statements of these persons regarding the presence of the appellants at the place of occurrence was doubtful and did not inspire confidence, in view of the documentary and other evidence collected during the investigation, which depicted another story and clinchingly showed that the appellants' plea of alibi was correct.

15. This record was before the trial court. Notwithstanding the same, the trial court went by the depositions of the 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 were already there under Section 161 CrPC 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 a 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 the agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny."

25. Thus, trial Court is required to look into the material collected by the investigating officer during the course of investigation before forming prima facie opinion for summoning a person as an additional accused.

26. The Supreme Court in the case of ***Periyasami v. S. Nallasamy*, (2019) 4 SCC 342** taking note of the judgment of Hardeep Singh (supra) has held that for summoning a person as an additional accused to face trial in exercise of power under Section 319 of the Code, there has to be more than prima facie case which is otherwise the requirement at the time of framing of the charge. The level of satisfaction for exercising the powers under Section 319 Cr.P.C. is little less than the satisfaction required at the time of conclusion of trial for convicting an accused. Unless there is cogent and credible evidence available against a person which may lead to conviction of the person after conclusion of the trial, he should not be summoned as an additional accused.

Para 10 to 14 of the aforesaid judgment which are relevant are extracted hereunder:-

> **"10.** The learned counsel for the appellants relies upon a Constitution Bench judgment of this Court in *Hardeep Singh* v. *State of Punjab* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] to contend that satisfaction required to invoke the power under Section 319 of the Code to arraign an accused is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is only where strong and cogent evidence occurs against a person from the evidence laid before the court, such power should be exercised and not in a casual and cavalier manner. The Court held as under: (SCC p. 138, paras 105-06)
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> "*105*. Power under Section 319 CrPC 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, 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 unrebutted,

would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused."

(emphasis in original)

11. The learned counsel for the appellants also refers to a recent order of this Court in *Labhuji Amratji Thakor* v. *State of Gujarat* [*Labhuji Amratji Thakor* v. *State of Gujarat*, (2019) 12 SCC 644 : 2018 SCC OnLine SC 2547] , where, the order of summoning the additional accused on the basis of the statements of some of the witnesses in the witness box was set aside for the reason that there is not even suggestion of any act done by the appellants amounting to an offence under Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012. It was held as under: (SCC OnLine SC para 12)

"*12.* … The Court has to consider substance of the evidence, which has come before it and as laid down by the Constitution Bench in *Hardeep Singh* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] has to apply the test i.e. '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 unrebutted, would lead to conviction.'…"

12. We have heard the learned counsel for the parties and find that the order passed by the High Court is not sustainable in law. The present case is basically a matrimonial dispute wherein, the husband who is the complainant has levelled allegations against the wife and her other family members. Though in the FIR, the complainant has mentioned that 15 women and 35 men came by vehicles but the names of 11 persons alone were disclosed in the first information report.

13. In the statements recorded under Section 161 of the Code during the course of investigation, the complainant and his witnesses have not disclosed any other name except the 11 persons named in the FIR. Thus, the complainant has sought to cast net wide so as to include numerous other persons while moving an application under Section 319 of the Code without there being primary evidence about their role in house trespass or of threatening the complainant. Large number of people will not come to the house of the complainant and would return without causing any injury as they were said to be armed with weapons like crowbar, knife and ripper, etc.

14. In the first information report or in the statements recorded under Section 161 of the Code, the names of the appellants or any other description has not been given so as to identify them. The allegations in the FIR are vague and can be used any time to include any person in the absence of description in the first information report to identify such person. There is no assertion in respect of the villages to which the

> additional accused belong. Therefore, there is no strong or cogent evidence to make the appellants stand the trial for the offences under Sections 147, 448, 294(*b*) and 506 IPC in view of the judgment in *Hardeep Singh case* [*Hardeep Singh* v. *State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] . The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused."

27. To arrive at deserved satisfaction for summoning a person as an additional accused under Section 319 Cr.P.C., it depends on the quality of the evidence available on record. It is the duty of the trial Court to consider the evidence collected by the investigating officer during the course of investigation and power under Section 319 Cr.P.C. should not be exercised merely on statement of the complainant or the witnesses who have reiterated their statements recorded under Section 161 Cr.P.C. during the course of investigation which the investigating officer did not find credible and cogent on the basis of other plethora of evidence collected by him.

28. In the present case, learned trial Court has not considered overwhelming evidence collected by the investigating officer during the course of investigation which would demonstrate that the present revisionist was not present at the time and place of occurrence. I find order impugned herein is unsustainable and against the law. Thus, this revision is allowed and order dated 3.03.2020 passed by the Addl Sessions Judge, Court No.11, Hardoi in S.T. No.111 of 2018: State vs Pawan Singh and Ors. arising out of Crime No.267 of 2017 under Sections 452, 302, 504, 506 IPC, Police Station Kachauna, Hardoi is hereby quashed.

Order Date:-17.03.2021

prateek