A.F.R.

Neutral Citation No. - 2024:AHC-LKO:48204

Court No. - 11

Case :- CRIMINAL REVISION No. - 809 of 2024

Revisionist :- Chetram
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko And Another
Counsel for Revisionist :- Krishna Gopal
Counsel for Opposite Party :- G.A.

Hon'ble Abdul Moin,J.

1. Heard Sri Krishna Gopal, learned counsel for the revisionist as well as Sri Anurag Verma, the learned A.G.A. for the State-respondents and perused the record.

2. Instant revision under Section 438/442 B.N.S.S., 2023 has been filed against the order dated 15.05.2024 passed by the learned Additional District and Sessions Judge/FTC-2nd, Bahraich in Criminal Case No.321 of 2018 arising out of Case Crime No.117 of 2018, under Sections 307, 452, 323 and 506 IPC, Police Station Herdi, District Bahraich whereby the revisionist has been summoned by exercising the powers under Section 319 of the Code of Criminal Procedure (hereinafter referred to as 'Code').

3. Contention of the learned counsel for the revisionist is that though the name of the revisionist found place in the FIR that had been lodged by respondent No.2, yet in the charge-sheet that had been filed by the investigating officer dated 13.07.2018, a copy of which is Annexure-2 to the revision, he was not named. Thereafter upon an application being filed by the respondent No.2, the learned court has passed the order impugned whereby the revisionist has been summoned.

4. Placing reliance on the judgments of the Hon'ble Supreme court in the cases of ***Brijendra Singh & Ors vs State of Rajasthan : (2017) 7 SCC 706*** as well as ***Hardeep Singh vs State of Punjab & Ors : (2014) 3 SCC 92***, the argument of the learned counsel for the revisionist is that the learned court has only considered the statements

of the Prosecution Witnesses (hereinafter referred to as 'P.Ws.') 1 to 3 while passing the order impugned but has failed to consider the material that had been gathered by the enquiry officer whereby the revisionist had not been named and this 'evidence' should also have been considered by the learned court while passing the order impugned. He contends that non consideration of the said material, as gathered by the investigating officer, while passing the order impugned, thus vitiates the impugned order and therefore, it deserves to be set aside.

5. On the other hand, Shri Anurag Verma, learned A.G.A. has placed reliance on the Constitution Bench judgment of the Hon'ble Supreme Court in the case of ***Hardeep Singh (supra)*** as well as the judgments of the Hon'ble Supreme Court in the cases ***Yashodhan Singh & Ors*** *vs* ***State of U.P. & Anr : (2023) 9 SCC*** **108** and ***Manjeet Singh vs State of Haryana & Ors : (2021) 8 SCC 321*** to contend that the judgment of the Hon'ble Supreme Court in the case of ***Brijendra Singh (supra)*** has been considered in the judgment in the case of ***Yashodhan Singh (supra)***.

6. Reliance has also been placed on the judgment of this Court in the case of ***Mohd. Rafiq vs State of U.P & Ors*** in ***Criminal Revision No.772 of 2024***, decided on 11.07.2024, to contend that power of summoning as granted to the court under the provisions of Section 319 of the Code has been considered threadbare by this court.

7. Placing reliance on the aforesaid judgment, the argument of the learned A.G.A. is that there is no infirmity in the order impugned whereby the learned court has considered the statements of the P.Ws. 1, 2 and 3 and has been of the view that *prima facie* a case is made out against the revisionist while passing the impugned order and thus there is no infirmity in the impugned order.

8. Having heard learned counsel for the parties and perused the record, it emerges that after the FIR had been lodged by respondent No.2 against various persons including the revisionist namely

Chetram, the investigating officer submitted his report dated 13.07.2018 whereby the name of the revisionist does not find place.

9. Upon an application under Section 319 of the Code being filed by the respondent No.2, learned court has summoned the revisionist after considering the statements of the P.Ws. 1, 2 and 3 to find that *prima facie* a case is made out for summoning the revisionist and hence the instant revision.

10. The sheet anchor of the argument of the learned counsel for the revisionist is that the material collected by the investigating officer while submitting the report should also have been considered by the learned trial court while issuing the impugned summoning order inasmuch as there is only one sided consideration of the statements of the P.Ws.1, 2 and 3 without considering the material gathered by the investigating officer, while passing the impugned order and as such considering the law laid down by the Hon'ble Supreme Court in the case of ***Brijendra Singh (supra)*** the order impugned is legally unsustainable.

11. On the other hand, said order has been supported on the basis of the judgments of the Hon'ble Supreme Court in the cases of ***Hardeep Singh (supra)***, ***Yashodhan Singh (supra)*** and ***Manjeet Singh (supra).***

12. For consideration of the argument of the learned counsel for the revisionist, the court has to consider as to what has been laid down by the Hon'ble Supreme Court in the case ***Brijendra Singh (supra)***. For the sake of convenience, relevant observations as have been made by the Hon'ble Supreme Court in the case ***Brijendra Singh (supra)*** are reproduced below:-

> ***"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."

(Emphasized by the Court)

13. From perusal of the aforesaid observations as made by the Hon'ble Supreme court in the case of ***Brijendra Singh (supra)***, it emerges that the Hon'ble Supreme Court has held that once from the police investigation it was revealed that the statements of certain persons regarding the presence of the accused at the place of occurrence was doubtful and did not inspire confidence, consequently this aspect should have been considered by the learned court while summoning the accused and the trial court was duty bound to look into the said evidence while passing the order impugned.

14. On the other hand, Hon'ble Supreme Court in the case of ***Yashodhan Singh (supra)*** while considering the judgment of Hon'ble Supreme Court in the cases of ***Brijendra Singh (supra)*** as also ***Hardeep Singh (supra)*** has held as under:-

*"**28.** In Brijendra Singh [Brijendra Singh v. State of Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] , after referring to Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , this Court considered the question as to the degree of satisfaction that is required for invoking the powers under Section 319CrPC and the related question, namely, as to, in what situations, this power should be exercised in respect of a person named in the FIR but not charge-sheeted. This Court held that once the trial court finds that there is some "evidence" against such a person on the basis of which it can be gathered that he appears to be guilty of the offence, there can be exercise of power under Section 319CrPC. **It was observed that the evidence in this context means the material that is brought before the court during trial.** Insofar as the material or evidence collected by the investigating officer (IO) at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by court to invoke the power under Section 319CrPC."*

(Emphasized by the Court)

15. The Hon'ble Supreme Court in the case of ***Hardeep Singh (supra)*** has held as under:-

> *"**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.**"*
>
> *(Emphasized by the Court)*

16. Subsequently, the Hon'ble Supreme Court in the case of ***Manjeet Singh (supra)*** while considering the Constitution Bench judgment in the case of ***Hardeep Singh (supra)*** has held as under:-

> *"**13.1.4.** While answering Question (iii), namely, **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, this Court, in the aforesaid decision has observed and held as under** : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 126-27 & 131-32, paras 58-59, 78 & 82-85)*
>
> *'58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers under Section 319CrPC, 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 319CrPC 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."

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78. ***It is, therefore, clear that the word "evidence" in Section 319CrPC 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 319CrPC is to be exercised and not on the basis of material collected during the investigation.*

***

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 319CrPC. ***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 319CrPC. ***The "evidence" is thus, limited to the evidence recorded during trial.'"***

(Emphasized by the Court)

17. Recently the Hon'ble Supreme Court in the case of ***Sandeep Kumar vs State of Haryana & Anr :AIR 2023 SC 3648*** after referring to ***Hardeep Singh (supra)*** and ***Manjeet Singh (supra)*** has held as under:-

"14. *The entire purpose of criminal trial is to go to the truth of the matter. Once there is satisfaction of the Court that there is evidence before it that an accused has committed an offence, the court can proceed against such a person. At the stage of summoning an accused, there has to be a prima facie satisfaction of the Court. The evidence which was there before the Court was of an eye witness who has clearly stated before the Court that a crime has been committed, inter alia, by the revisionist. The Court need not cross-examine this witness. It can stop the trial at that stage itself if such application had been moved under Section 319. The detail examination of the witness and other witnesses is a subject matter of the trial which has to begin afresh. The scope and ambit of Section 319 CrPC has been discussed and dealt with in detail in the Constitution Bench judgment of Hardeep Singh v. State of Punjab reported in (2014) 3 SCC 92 where it said:*

"12. Section 319 CrPC springs out of the doctrine judex

damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr. P.C.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial."

15. *In Hardeep Singh (supra), this court further said that the Court only has to see at the state of Section 319, whether a prima facie case is made out although the degree of satisfaction has to be much higher.*

"95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in Vikas v. State of Rajasthan, held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

16. *In Para 106 it stated as under:*

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" it 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."

17. *In our considered opinion, the prosecution had fully made out its case for summoning the three as accused under Section 319, Cr. P.C., so that they may also face trial.*

"

18. The Hon'ble Supreme Court in the case of ***Rajesh & Ors vs State of Haryana : (2019) 6 SCC 368*** after considering the sheet anchor judgment of the revisionist herein in the case of ***Brijendra Singh (supra)*** as well as Constitution Bench judgment in the case of ***Hardeep Singh (supra)*** has held as under:-

*"**6.8.** Considering the law laid down by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) 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 (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with*

the accused already facing trial."

19. Scope of summoning under the provisions of Section 319 of the Code has also been considered threadbare recently by this Court in the case of ***Mohd. Rafiq (supra)*** wherein this Court has held as under:-

*"**27**. The Hon'ble Supreme Court in the case of Hardeep Singh (supra) has held as under:-*

> *"81. The second question referred to herein is in relation to the word `evidence` as used under Section 319 Cr.P.C., which leaves no room for doubt that the evidence as understood under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In Rakesh (Supra), it was held that ?It is true that finally at the time of trial the accused is to be given an opportunity to cross-examine the witness to test its truthfulness. But that stage would not arise while exercising the court?s power under Section 319 CrPC. Once the deposition is recorded, no doubt there being no cross-examination, it would be a prima facie material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not.? In Ranjit Singh (Supra), this Court held that ?it is not necessary for the court to wait until the entire evidence is collected,? for exercising the said power. In Mohd. Shafi (Supra), it was held that the pre-requisite for exercise of power under Section 319 Cr.P.C. was the satisfaction of the court to proceed against a person who is not an accused*

but against whom evidence occurs, for which the court can even wait till the cross examination is over and that there would be no illegality in doing so. A similar view has been taken by a two-Judge Bench in the case of Harbhajan Singh & Anr. v. State of Punjab & Anr. (2009) 13 SCC 608. This Court in Hardeep Singh (Supra) seems to have misread the judgment in Mohd. Shafi (Supra), as it construed that the said judgment laid down that for the exercise of power under Section 319 Cr.P.C., the court has to necessarily wait till the witness is cross examined and on complete appreciation of evidence, come to the conclusion whether there is a need to proceed under Section 319 Cr.P.C."

(Emphasized by Court)

***28**. From perusal of the aforesaid observations as have been made by the Hon'ble Supreme Court in Hardeep Singh (supra), it clearly emerges that the Hon'ble Supreme Court which considering the powers under Section 319 of the Code has held that the evidence as understood under Section 3 of the Evidence Act is statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act and such evidence begins with the statement of the prosecution witnesses and, therefore, would also include statements including examination in chief. Further, the Hon'ble Court held that it would be discretion of the Court concerned to summon any persons who are found to be accused.*

***29**. Likewise, the Hon'ble Supreme Court in the case of Sukhpal Singh Khaira (supra) has held as under:-*

"20. A close perusal of Section 319 of CrPC indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in

the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the Court to summon such a person so that he could be tried together with the accused and such power is exclusively of the Court. Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation ?conclusion of trial? in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in Hardeep Singh (supra) since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the Court."

(Emphasized by Court)

30. *From perusal of the judgment in the case of Sukhpal Singh Khaira (supra), it clearly emerges that the Hon'ble Supreme Court has held that it is open for the Court to summon such a person so that he would be tried together with the accused and such power is exclusively of the Court. The said observation also finds place in the recent judgment of the Supreme Court in the case Sandeep Kumar (supra).*

31. *The Supreme Court in the case of Juhru & Ors vs Karim & Anr : Criminal Appeal No.549 of 2023, decided on 21.02.2023 after considering its earlier judgments in the case of Hardeep Singh (supra) and Sukhpal Singh Khaira (supra) has held as under :-*

"17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under

Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is sine quo non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked."

(Emphasized by Court)

32. *From perusal of the judgment of the Hon'ble Supreme Court in the case of Juhru (supra), it also emerges that the Apex Court has categorically held that the powers of summoning under Section 319 of the Code is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused."*

20. From the judgments as referred to above, it is apparent that the scope of exercise of powers under Section 319 of the Code is vested with the court i.e. the power to summon is exclusively of the court and that prerequisite for exercise of the power under Section 319 of the Code is the satisfaction of the court to proceed against a person who is not an accused but against whom evidence is there.

21. Being armed with the aforesaid interpretation as given to Section 319 of the Code and power to summon an accused, when the

impugned order is seen in context of the law laid down by the Hon'ble Supreme Court in the aforesaid judgments, it thus emerges that the learned court while passing the order impugned has considered the statements of P.Ws.1, 2 and 3 to arrive at a prima facie satisfaction of the revisionist to be summoned for being tried for the offences as have been levelled.

22. The judgment of the Hon'ble Supreme Court in the case of ***Brijendra Singh (supra)*** which is the sheet anchor of the argument of the learned counsel for the revisionist has also been considered by the Hon'ble Supreme Court in the case of ***Yashodhan Singh (supra)*** wherein the Hon'ble Supreme Court has categorically held that once the trial court finds that there is some 'evidence' against such a person on the basis of which it can be gathered that he/she **appears** to be the guilty of the offence, there can be exercise of the power under Section 319 of the Code.

23. Keeping in view the aforesaid discussion and the satisfaction of the Court as per the provisions of Section 319 of the Code *vis*-à-*vis* the impugned order and summoning the revisionist, this Court does not find any perversity in the impugned order. The revision is accordingly ***dismissed***.

Order Date :- 16.7.2024
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