IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE AVANINDRA KUMAR SINGH

ON THE 2nd OF FEBRUARY, 2026

CRIMINAL REVISION No. 2559 of 2025

GANESH PRASAD GARG AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Manoj Kumar Mishra - Advocate for the applicants.

Ms. Seema Jailswal - Panel Lawyer for the State of M.P.

Shri Manoj Kushwaha - Advocate for the respondents.

ORDER

This revision has been filed by the applicants namely applicant no.1- Ganesh Prasad Garg and applicant no.2- Bablu Mishra being aggrieved by the impugned order dated 24.5.2025 passed in S.T. No.07 of 2025 (State of M.P. Vs. Rajju and others) by learned Additional Sessions Judge, of the Court of Additional Sessions Judge, Lavkush Nagar, District Chhatarpur, M.P. whereby an application under Section 213 of B.N.S.S. filed by the respondent no.2- Jitendra Mishra – complainant was allowed the applicants have been arrayed in the array of accused persons and process has been issued to the applicants to appear before the trial court.

2. The ground of revision is that the order dated 24.5.2025 (Ann.A-6) is bad in law because learned Trial court was not justified in

invoking Section 213 of B.N.N.S., 2023 (the old Section 193 of Cr.P.C.) as the applicants were not charge sheeted by the prosecution.

3. After conducting investigation and as per material available in the charge sheet it was found that there is no involvement of the applicants and they were not present on the alleged place of incident. Therefore provisions of Section 213 of B.N.N.S., 2023 could not be invoked against them on the basis of material available.

4. It is further submitted that the trial court did not consider the fact that Magistrate had already taken cognizance and no application under Section 210 of B.N.N.S., 2023 was filed by the prosecution or the complainant before the Magistrate. After the committal proceedings the trial court has also taken cognizance but at that time also no application was filed. Thereafter charges were framed and case was fixed for evidence stage, therefore the cognizance could not taken at this stage against the present applicants.

5. It is further submitted that due to enmity of Sarpanch Election the application has been filed. Infact the wife of the applicant no.2 is the elected Sarpanch of the village and applicant no. 1 is the father of the applicant no.2- Bablu Mishra and the applicant no. 2 belongs to the family of the complainant therefore due to enmity his name was included. The Police did not find any involvement of the applicants in the alleged incident, hence prayer is made to set aside the order dated 24.5.2025, (Annexure A-6).

6. Learned counsel for the State supports the impugned order dated 24.5.2025, (Annexure A-6).

7. Learned counsel for the respondent – complainant also supports the impugned order dated 24.5.2025, (Annexure A-6).

8. The question before this court is whether in this revision any interference can be made in the impugned order dated 24.5.2025?

9. Perused the record. It is seen that as per FIR Crime No.318 of 2024 was filed. The incident is said to have been of 14.8.2024.

10. Learned counsel for the applicants relied on the judgment of **Guddi Devi Vs. State of Raj. & anr.** reported in **2012 SCC OnLine Raj.3539** in which it has been held by Hon'ble High Court at Rajasthan that it is settled preposition of law that in a Sessions Trial triable case once the matter is committed to the Court of Sessions then the Sessions Court has no power to summon an additional accused except at the stage of Section 319 of Cr.P.C. after evidence has been recorded at the trial and provision of Section 193 of Cr.P.C. cannot be involved for the same purpose.

11. Learned counsel for the applicants also relied on the judgment in the case of **Farman and two others Vs. State of U.P. and another** passed in **Application U/S 482 No.38681 of 2019, vide order dated 7.11.2019** wherein it has been held as under :-

> "It is well settled position of law that cognizance of an offence can only be taken once and if once the cognizance of the offence has been taken in the present case by the Sessions Court

after committal of the case to the Sessions Court and the Sessions Court had charged the accused and the trial of the accused has commenced then again the Sessions Court will not be able to go back and to take further cognizance of the case again under Section 193 Cr.P.C."

In the present matter as the cognizance has already been taken by the learned Sessions Judge and charges were framed against the accused after considering the police papers annexed with the charge-sheet and the trial had started, it would not be proper for the trial court to take further cognizance of the case and to summon the three accused by the impugned order. The summoning of the three accused by the impugned order is not in consonance with the legal provisions of law. The cognizance taken by the trial sessions court under Section 193 Cr.P.C. for the second time is not perfectly valid and permissible by law. The impugned order is not legally proper and the impugned order transpires that the trial sessions court has abused the process of law. The impugned order is liable to be quashed.

The impugned order dated 18.09.2019 passed by Additional Sessions Judge, Court No.10, Meerut in S.T. No.447 of 2018 and 912 of 2018 (State of U.P. Vs. Ikram and Ors.), under Sections 147, 148, 149, 323, 342, 352, 307, 302 and 308 IPC, Police Station Parichitgarh, District Meerut, is hereby quashed with the direction that since the trial has proceeded and is at an advanced stage as the prosecution has examined the prosecution witness of the trial and if the trial court considers after evaluating the evidence before it, which has come during trial then the trial court may proceed against the persons, who appears to be guilty of the commission of offence with the aid of Section 319 Cr.P.C.

12. On perusal of the impugned order dated 24.5.2025, (Annexure A-6) it is seen that the trial court has mentioned that the application filed by the complainant in detail and reply of the proposed accused persons,

it is to be noted that learned A.G.P. in the trial court opposed the application that till statements of complainant party are recorded till then no prima facie conclusion can be drawn against involvement of the proposed accused in the crime and held that application is premature.

13. On perusal of the impugned order dated 24.5.2025, (Annexure A-6) it is seen that learned trial court has mentioned that name of proposed accused persons were in the FIR. Learned Sessions Court held that after committal the Sessions Court has power to take cognizance and it has mentioned in detail as to when the statements of various witnesses were recorded by Police and ultimately on the basis of **Balveer Singh and another Vs. State of Rajasthan (Cr.Appeal No.253 of 2016,** vide **judgment dated 10.5.2016)** and **Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92** has mentioned that if the court finds that on record there is evidence to summon the proposed accused persons then court need not wait for a proceeding under Section 319 of Cr.P.C. He further mentioned that when the complainant will come then he will give same evidence against proposed accused which he has given to Police therefore there is no need to wait.

14. After considering the arguments and perusal of record it is seen that the reasoning of the trial court is faulty and cannot be justified for the simple reason that when cognizance of the accused was taken by the learned trial court after committal and before framing charges if court

was of the same view as reflected in order dated 24.5.2025 on facts and law, then cognizance should have been taken against the two proposed revisioners earlier but that was not done. It was only done when an application was filed for the same purpose by the complainant.

15. This legal situation has been explained by Hon'ble Supreme in the case of **Omi @ Omkar Rathore and another Vs. State of Madhya Pradesh** reported in **(2025) 2 SCC 621.** Paragraph no. 19 to 19.4 are relevant which are reproduced before :-

> **19.** The principles of law as regards Section 319CrPC may be summarised as under:
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> **19.1.** On a careful reading of Section 319CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.
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> **19.2.** The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence.
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> **19.3.** The power of the court under Section 319CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the charge-sheet by the police against the person concerned. As regards the contention that the phrase "any person not being the accused" occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the charge-sheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very

purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court are included in the said expression.

19.4. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the investigating officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the investigating officer hardly matters. If satisfaction of investigating officer is to be treated as determinative then the purpose of Section 319 would be frustrated.

16. Therefore on the basis of principles as held by Hon'ble Supreme Court in Para -19 of aforesaid case of Omi @ Omkar Rathore (supra) at the time of taking cognizance and before framing of charge learned trial court could have summoned the complainant and given a choice to file protest application against non charge sheeting of some persons who were named in the FIR but if that was not done as in the present case, then only after recording the evidence that power to summon other person as proposed accused can be exercised under Section 319 of Cr.P.C. The power of the trial court under Section 319 of Cr.P.C. is not controlled or governed by the name or not naming of the accused persons in the FIR nor it is dependent upon submission of the charge sheet by the Police against the person concerned. When the evidence of complainant is found worthy of acceptance then the satisfaction of the Investigating Officer hardly matters.

17. In the present case i.e. in S.T. No.07 of 2025 in which

proposed accused have filed revision against the order dated 24.5.2025, it is seen that the charges were already framed on 28.1.2025 and case was fixed for recording of prosecution evidence on 13.2.2025 and 14.2.2025. Thereafter for recording prosecution evidence it was further posted on 21.2.2025 and 22.2.2025 and on 7.3.2025 an application was filed by the respondent no.2-complainant – Jitendra Mishra under Section 213 of B.N.N.S., 2023, therefore for the reasons mentioned and law discussed above the impugned order dated 24.5.2025 passed in S.T. No.07 of 2025 (State of M.P. Vs. Rajju and others) by learned Additional Sessions Judge, of the Court of Additional Sessions Judge, Lavkush Nagar, District Chhatarpur, M.P. is **set aside** with the direction that after recording evidence of the complainant and other eye – witnesses during trial which includes the cross-examination also the trial court can proceed under Section 319 of Cr.P.C. as per law.

18. With the aforesaid direction and observation, this revision is disposed of.

(AVANINDRA KUMAR SINGH)
JUDGE

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