



2026:AHC:74109

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1354 of 2026

Mukesh Singh @ Salaj Singh

.....Appellant(s)

Versus

State of U.P. and Another

.....Respondent(s)

Counsel for Appellant(s) : Keshari Nandan Singh,
Shriyansh Singh
Counsel for Respondent(s) : Arvind Kumar, G.A., Gaurav
Mishra, Vimal Chandra
Mishra

Court No. - 51

HON'BLE MADAN PAL SINGH, J.

1. Heard Sri Kamal Krishna, learned Senior Counsel assisted by Sri Keshari Nandan Singh, learned counsel for the appellant, Sri Gaurav Mishra along with Sri Arvind Kumar, learned counsel for the opposite party no.2, learned A.G.A. for the State and perused the record.
2. This Criminal Appeal has been filed against the order dated 28.11.2025 passed by the learned Additional Sessions Judge/Special Judge (SC/ST Act), Hamirpur in Special Case No. 15 of 2022 (arising out of Case Crime No. 273 of 2021), State of U.P. vs. Rajnarayan Gautam @ Rajjan & Others, registered under Sections 147, 148, 149, 308, 323, 504 IPC and Sections 3(1)(r), 3(1)(s) and 3(2)(v) of the SC/ST (Prevention of Atrocities) Act, 1989, Police Station Maudaha, District Hamirpur, whereby the learned Trial Court summoned the appellant under Section 319 Cr.P.C. to face trial along with other accused persons.
3. The brief facts of the case are that the FIR was lodged by the informant/opposite party no.2 alleging that on 06.09.2021 at about 9:00 p.m., when his son Mangal was returning from work, the named accused persons

assaulted him with lathi, danda and battle-axe with an intention to kill him, and when the informant along with his family members intervened, they were also assaulted. The injured persons were medically examined and the statements under Section 161 Cr.P.C. were recorded during the course of investigation.

4. During investigation, the Investigating Officer recorded statements of various witnesses, including independent witnesses, who categorically stated that the appellant was not present at the place of occurrence at the relevant time and was at Maudaha, which fact was further corroborated by the Call Detail Records of the appellant. The investigation also revealed that both sides had sustained injuries and a cross NCR was lodged by the co-accused side. Upon conclusion of investigation, the Investigating Officer found no credible evidence against the appellant and exonerated him, submitting charge-sheet only against three co-accused persons. However, during trial, after examination of PW-1, PW-2 and PW-3, the learned Trial Court, on an application under Section 319 Cr.P.C., summoned the appellant by the impugned order without there being any new or strong evidence against him.
5. Learned Senior Counsel submitted that the impugned summoning order dated 28.11.2025 is wholly illegal, arbitrary and has been passed in a mechanical manner without proper appreciation of evidence on record. He submitted that the appellant was exonerated during investigation after a thorough and fair inquiry, wherein it was found that he was not present at the place of occurrence and his presence at another place was duly established by Call Detail Records as well as statements of independent witnesses. Despite such categorical findings, the learned Trial Court has summoned the appellant without there being any fresh or incriminating evidence against him.

6. In support of his contention, he has drawn attention towards the case reported in **(2014) 3 SCC 92, Hardeep Singh Vs. State of Punjab** along with the other connected petitions and has referred paragraphs 105 and 106 of the judgement. Paragraph 105 and 106 of the judgement are read as under:-

"105. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused. "

7. Referring the aforesaid, he submits that Hon. Apex Court has held that the power under Section 319 CrPC is discretionary and an extraordinary power and thus the

same should be used sparingly and it has further been held that much stronger evidences than mere probability of complicity is the rule, where the trial court exercises power under Section 319 of CrPC.

8. He has further drawn attention towards the case reported in **(2017) 7 SCC 706, Brijendra Singh Vs. State of Rajasthan** and referred paragraph 14 and 15 of the judgement. Paragraph 14 and 15 of the judgment are quoted hereinunder:-

"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 kms. 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 Cr.P.C. 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 appellants plea of alibi was correct.

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. "

9. Per contra, learned counsel appearing for the opposite party no. 2 has opposed the aforesaid contentions and submitted that a detailed and reasoned order dated 28.11.2025 has been passed by the learned Trial Court after due consideration of the material available on record. He further submits that all the three prosecution witnesses have specifically named the present appellant and have clearly stated in their statements before the Court regarding his involvement in the alleged incident of marpeet, and that the testimony of injured witnesses carries great evidentiary value and cannot be disbelieved in the absence of exceptional circumstances. It is further argued that the learned Trial Court has thoroughly discussed all relevant aspects of the matter in the impugned order, and therefore, the said order does not suffer from any illegality or infirmity. Hence, the present appeal is liable to be dismissed.

10. Having heard learned counsel for the parties and perused

the record, this Court finds that the appellant was admittedly not charge-sheeted and was exonerated by the Investigating Officer after a thorough investigation, wherein his presence at the place of occurrence was not found and the same was further corroborated by independent witnesses as well as Call Detail Records. This Court further finds that no new, strong or cogent evidence has emerged during the course of trial so as to justify invocation of powers under Section 319 Cr.P.C. The statements of prosecution witnesses, at best, amount to mere reiteration of the allegations made in the FIR and do not satisfy the higher degree of satisfaction as required for summoning a person under Section 319 Cr.P.C.

11. Further Section 319 of Cr.P.C envisages an extraordinary power conferred upon a Court to do substantial justice and thus should be exercised cautiously as the investigating agency found no evidence against such allegedly accused person during course of the investigation. The very purpose of Section 319 of Cr.P.C is to avoid any escape of a guilty person from the trial and therefore discovery of the further evidence must disclose more than prima facie case. The settled law is that the Courts should not exercise its power under Section 319 of Cr.P.C in a supine and cavalier manner but if the Court is on a material conclusion that there are more than prima facie evidence against an accused, certainly this power can be exercised.
12. In case of *Hardeep Singh Vs. State of Punjab (Supra)*, it has categorically been held that Section 319 of CrPC is a discretionary and extraordinary power which is to be exercised when there is a strong and cogent piece of evidence against an accused person and thus it should be exercised sparingly. The apex Court has very cautiously interpreted the abovesaid provision and held that for exercising of power under Section 319 Cr.P.C, it requires

much stronger evidence than mere probability of complicity.

13. The Apex Court later on, in case of *Brijendra Singh and Others (Supra)* has also discussed the law enunciated in Hardeep Singh's case and has held that power under Section 319 CrPC can be exercised by the trial Court at any stage during the trial and any person can be summoned as an accused for facing the trial. The Apex Court has very clearly held that the word 'evidence' means the material brought before the Court during trial. The material/evidence collected by the Investigating Officer at the stage of enquiry can only be utilised for corroboration thereof.
14. Further no satisfaction has been recorded by the Court below with respect to the fact that the prosecution succeeded to establish that there are more than prima facie or much stronger case against the appellant and if such an evidence are adduced, there are chances of conviction of the appellant. Further, the learned trial Court has also skipped the law enunciated by the Apex Court.
15. In view of the aforesaid, this Court is of the considered opinion that the impugned order dated 28.11.2025 passed by the learned Additional Sessions Judge/Special Judge (SC/ST Act), Hamirpur suffers from illegality and perversity and is not sustainable in the eyes of law. Accordingly, the present criminal appeal is allowed and the impugned order dated 28.11.2025 is hereby set aside.

April 6, 2026

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(Madan Pal Singh,J.)