

Court No. - 11

Case :- APPLICATION U/S 482 No. - 771 of 2024

Applicant :- Naseem

Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko.
And Another

Counsel for Applicant :- Anand Mani Tripathi, Yugal Kishor
Tripathi

Counsel for Opposite Party :- G.A.

Hon'ble Rajesh Singh Chauhan, J.

1. Heard Sri A.M. Tripathi, learned counsel for the petitioner and Sri Aniruddha Kumar Singh, learned Additional Government Advocate-I for the State.

2. In view of the order proposed to be passed, the notice to opposite party No.2 is hereby dispensed with.

3. By means of this petition filed under Section 482 Cr.P.C., the petitioner has prayed for the following reliefs:-

"(i) Wherefore, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to quash/ set aside the impugned order dated 15.12.2023 passed by the learned Additional Sessions Judge, Court No.1, Pratapgarh in S.T. No.271 of 2022 (State vs. Mustaq and others) in Case Crime No.336 of 2021, under Sections 302, 307, 147, 148, 149, 34, 504 & 506 I.P.C., Police Station-Mandhata, District-Pratapgarh against the applicant/ petitioner, so for as it relates to the present petitioner (Annexure No.1).

(ii) And it is further prayed that this Hon'ble Court may kindly be pleased to stay the operation and implementation of the impugned order dated 15.12.2023 passed by the learned Additional Sessions Judge, Court No.1, Pratapgarh in S.T. No.271 of 2022(State vs. Mustaq and others) in Case Crime No.336 of 2021, under Sections 302, 307, 147, 148, 149, 34, 504 & 506 I.P.C., Police Station-Mandhata, District-Pratapgarh against the applicant/ petitioner, so for as it relates to the present petitioner, during pendency of the aforesaid petition, in the interest of justice."

4. Sri A.M. Tripathi, learned counsel for the petitioner has stated that since the gravity of Section 319 Cr.P.C. is treated to be on a high pedestal and as per the trite law, the learned trial court may exercise such powers sparingly and in a rare circumstances, unless the trial court finds that there is cogent and relevant material available on the record which suggest that the allegations against a person is such, he may be summoned

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under Section 319 Cr.P.C. The person who is summoned under Section 319 Cr.P.C. is a person against whom the F.I.R. has not been lodged and the charge-sheet has not been filed. Therefore, as per Sri Tripathi, the Apex Court has held that while summoning such person invoking powers under Section 319 Cr.P.C. the specific reason of his summoning should be indicated in the order passed under Section 319 Cr.P.C. and it should have also been indicated in that order clearly as to what are those sections for which he has been summoned so that at the time of affording an opportunity of hearing, she/ he can defend herself/ himself properly.

5. In support of his aforesaid arguments, Sri Tripathi, has drawn attention of this Court towards paras-105 & 106 of the dictum of Apex Court rendered in the case in re: **Hardeep Singh vs. State of Punjab** reported in (2014) 3 SCC 92. The relevant paras-105 & 106 read as under:-

"105. Power under Section 319 Cr.P.C. 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 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."

6. Sri Tripathi, has also drawn attention of this Court towards para-15 of the dictum of Apex Court rendered in the case in re: **Brijendra Singh and others vs. State of Rajasthan** reported in (2017) 7 SCC 706. The relevant paras-11, 13, 14 & 15 read as under:-

"11. In Hardeep Singh case, the Constitution Bench has also settled the controversy on the issue as to whether the word "evidence" used in Section 319 (1) Cr.P.C. has been used in a comprehensive sense and indicates the evidence collected during investigation or the word "evidence" is limited

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to the evidence recorded during trial. It is held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word "evidence" has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, this Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that "evidence" under Section 319 Cr.P.C. could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

13. In order to answer the question, some of the principles enunciated in Hardeep Singh case may be recapitulated: power under Section 319 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C. 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 chargesheet 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 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

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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 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."

7. Sri Tripathi has further submitted that the learned trial court concerned has itself indicated para-99 (para-106 in the aforesaid reported judgment) in the impugned order dated 15.12.2023 wherein the Apex Court has categorically observed that at least satisfaction of the court should be indicated while invoking power under Section 319 Cr.P.C. Therefore, as per Sri Tripathi, the impugned order dated 15.12.2023 is non-speaking and unreasoned order and the court concerned has not recorded its satisfaction as to why the petitioner should be summoned under Section 319 Cr.P.C. and if the court summons, what are those sections under which his trial would be required, so the aforesaid impugned order is liable to be set aside on the aforesaid technical ground alone.

8. Sri Aniruddha Kumar Singh, learned Additional Government Advocate-I has fairly submitted that so far as the technical ground was raised by Sri Tripathi, learned counsel for the petitioner that the impugned order dated 15.12.2023 is non-speaking and unreasoned order where the trial court has not indicated its subjective satisfaction as to why the petitioner should be summoned under Section 319 Cr.P.c. and what are those sections under which his trial would be required, he has nothing to say and on that submission any appropriate order may be passed in the interest of justice.

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9. However, he has submitted that if the merits of the present case is touched, it is visible in the impugned order itself that on the basis of examination of the injured witness the power under Section 319 Cr.P.C. has been invoked by the learned trial court and the testimony of the injured witness is also considered on high pedestal and such testimony of the injured witness should not be ignored by the learned trial court. He has also submitted that if pursuant to the impugned summoning order the petitioner appears before the court concerned and convinces the court that he has been falsely implicated and during the course of investing nothing incriminating material / evidences have been found, rather, as per the CCTV Footage and the statement of other persons his implication is false, he may establish before the court and the trial court may pass appropriate order, but at least, the testimony of the injured witness should not be ignored. In support of his aforesaid arguments, Sri Aniruddha Kumar Singh, learned Additional Government Advocate-I has placed reliance upon the dictum of Apex Court rendered in the case in re: *Yashodhan Singh and others vs. State of U.P. and another* reported in (2023) 9 SCC 108.

10. Having heard learned counsel for the parties and having perused the material available on record as well as having regard to the dictums of Apex Court as considered above, I find that the learned trial court while passing the impugned order dated 15.12.2023 has not indicated its subjective satisfaction as to why the petitioner should be summoned under Section 319 Cr.P.C. and under which sections the trial of the petitioner would be required. To assign the reason and giving subjective satisfaction while passing any order is the first and for most requirement of the order passed by any Court or the Competent Authority inasmuch as the reasons and satisfaction of the court concerned is backbone of any order, without which, such order may not stand. At the same time, if the person summoned under Section 319 Cr.P.C. is not apprised as to what are those sections under which his trial would be required, he would be failed to defend himself properly and in that case the principles of natural justice of that person would be frustrated. Any order bereft of the reasoning would be nullity in the eyes of law. Therefore, on the aforesaid ground alone the impugned order dated 15.12.2023 is not liable to be sustained, hence, the same is set aside and quashed.

11. Since the aforesaid order has been quashed for the reason that the impugned order is bereft of the reasoning and the subjective satisfaction of the court concerned, therefore, the matter is remanded back to the learned trial court to pass a fresh order, strictly in accordance with law and in the light of the aforesaid dictums of Apex Court.

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12. It is needless to say that if the learned trial court wishes to invoke powers under Section 319 Cr.P.C. in this case, he may pass appropriate order with expedition, preferably, within a period of one month from the date of receipt of a certified copy of this order, strictly in accordance with law.

13. In view of the aforesaid observations and directions, the instant petition is ***allowed***.

14. No order as to the costs.

[Rajesh Singh Chauhan,J.]

Order Date :- 7.2.2024

Suresh/