

Court No. - 18

Case :- APPLICATION U/S 482 No. - 418 of 2008

Applicant :- Smt. Rekha And 3 Ors.

Opposite Party :- State Of U.P. And 2 Ors.

Counsel for Applicant :- Tung Nath
Tewari,Ravindra Bajpai

Counsel for Opposite Party :- Govt.
Advocate,R.C. Gupta,S. Misra

Hon'ble Manoj Bajaj,J.

1. Applicants-Accused are aggrieved against the order dated 14th September, 2007 passed by Additional Sessions Judge, Court No. 1, Lakhimpur Kheri in Sessions Trial No. 659 of 2004; titled *State vs. Ram Narain alias Sukhdeo and others*, arising out of Case Crime No. C-3 of 2001, under Sections 147, 302, 406 IPC, Police Station Gola, District Lakhimpur Kheri, whereby the trial court has summoned them as an additional accused by exercising jurisdiction under Section 319 Code of Criminal Procedure.

2. Briefly the facts of the case are that on the basis of a complaint by Kanshi Ram (PW-1), the above noticed Case Crime No. C-3 of 2001 was registered pursuant to the order passed by the Magistrate under Section 156(3) Code of Criminal Procedure, and as per allegations by complainant, his son Shyam Prakash left the house on 12th July, 2000 to visit his brother-in-law Rambilas Mishra. The complainant's son was wearing three gold rings, a chain, and was also carrying cash of Rs.

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1,55,000/- as well as a mobile phone. The complainant's son was residing with his second wife Rekha, who in order to grab his house at Lucknow was illegally occupying it. The complainant further alleged that the accused persons in connivance with each other administered poison to his son on 14th July, 2000, which resulted in his death. Broadly on these allegations, the above FIR was registered for alleged commission of offences punishable under Sections 302, 147 and 406 IPC against eight accused persons including the applicants namely Smt. Rekha, Anant Ram Awasthi, Smt. Ram Boli and Barkan.

3. Thereafter, the investigation in the case was conducted, and through the final report under Section 173(2) Cr.P.C., only five accused persons were sent to face trial, and during investigation, accused namely Virendra Kumar (son-in-law of Ram Narain Mishra) was also arraigned, whereas the applicants were declared innocent.

4. After considering the final report under Section 173(2) Cr.P.C., the trial against the five accused persons commenced and in order to discharge the onus, prosecution had examined three witnesses namely Kanshi Ram (PW-1), Om Prakash (PW-2) (another son of complainant) and Putti Ram (PW-3), and at that stage, an application under Section 319 Code of Criminal Procedure was moved for summoning the applicants as an additional accused.

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5. The trial court vide impugned order dated 14.09.2007 proceeded to allow the said application and summoned the applicants as additional accused. Hence, this application.

6. Learned counsel for the applicants has argued that the trial court has committed an error of law in exercising jurisdiction under Section 319 Cr.P.C. in a casual manner, as the facts, circumstances and the evidence on record do not suggest the involvement of the applicants in the alleged commission of crime. Learned counsel has drawn the attention of the Court to the impugned order to point out that the trial court has noticed the testimony of three witnesses examined by the prosecution and proceeded to observe that a *prima facie* case regarding involvement of the applicants-accused is also made out, and the court has not examined the nature of the evidence adduced and the case set up by prosecution. Learned counsel submits that pursuant to the interim protection granted by this Court, the proceedings against the newly added accused made no progress, whereas the trial regarding other five accused continued, which finally ended in their acquittal through the judgment dated 11th September, 2009. Learned counsel prays that the impugned order is not based upon the correct appreciation of material on record, therefore, it calls for interference by this Court. He prays that the impugned order be set aside and the application be dismissed.

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7. Learned State Counsel while opposing the prayer has argued that the complainant from the very beginning had set up a common case against all the accused persons and name of the applicants was also mentioned in the statements of prosecution witnesses recorded under Section 161 Cr.P.C. Learned State Counsel submits that in their depositions recorded before the trial court, the witnesses have narrated about the involvement of the accused-applicants, therefore, considering the material on record, the trial court has rightly exercised the jurisdiction under Section 319 Cr.P.C. According to him, at the stage of considering the prosecution case for summoning additional accused, the Court is not required to record a satisfaction that the evidence adduced during trial would certainly lead to the conviction of the said accused and even *prima facie* involvement in commission of crime is sufficient to summon the additional accused.

8. Mr. Rajiv Kumar Verma, learned State Counsel submits that the impugned order is based upon proper appreciation of material on record, therefore, no interference is warranted by this Court. He prays that the application be dismissed.

9. Upon hearing the learned counsel for the parties and considering their submissions, this Court finds that the entire case of the prosecution hinges upon circumstantial evidence, and according to the complainant, his son had visited the house of his brother-in-law Rambilas Mishra, where he was

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administered poison and the motive behind this occurrence is that the accused wanted to take away cash and gold ornaments worn by the victim. Though, the complainant has alleged conspiracy amongst all the accused persons, but in the FIR or in the final charge sheet, Section 120-B IPC or any other section, much less showing the common intention/object has not been incorporated. The death of the victim is stated to be because of poison, which was administered at the house of the accused persons, who had faced the trial, but there is nothing on record to indicate that all these accused-applicants, who have been summoned as an additional accused either resided or visited the said place, when the alleged crime was committed. The allegations by complainant in the beginning relating to the involvement of the accused-applicants is vague and was disbelieved by the investigating officer while declaring them innocent.

10. Time and again, the Hon'ble Supreme Court as well as various High Courts have consistently examined the scope of Section 319 Cr.P.C., which empowers the trial court to summon any other person as an accused in a pending trial, where the evidence recorded during trial suggests the involvement of such person in commission of the alleged crime. The said provision reads as under:-

"Section 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

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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 afresh, 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."

11. A reading of the above would show that this Section vests extraordinary power with the trial court to summon any other person as an accused to face trial along with other accused, who are before the trial court, but invariably the Hon'ble Supreme Court as well as different High Courts have held that this discretionary power should be exercised sparingly and with circumspection. At this juncture, when the trial has already commenced, the degree of satisfaction required to be recorded by the trial court while summoning any other person as additional accused, should be more than the standards required at the stage of framing of charges. In other words, the evidence on record must strongly suggest more than a "*prima facie*" case against such a person and his

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involvement in commission of the crime.

12. Reference in this regard can be made to the decision of larger Bench of Hon'ble Supreme Court rendered in **Hardeep Singh Vs. State of Punjab and others reported in (2014) 3 SCC 92**, wherein the Question (iv), was answered in the following manner:-

"Question (iv)- *What is the degree of satisfaction required for invoking the power under Section 319 Cr.P.C.?*

Ans.-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."*

13. Though, according to the learned State Counsel, the deposition of complainant-PW-1 recorded during the trial proceedings is enough for summoning the applicants as an additional accused. But, this Court does not find any force in the arguments advanced by the learned State Counsel as the deposition of complainant-PW-1 before the court cannot be construed as a new piece of evidence, which emerged for the first time and was not previously available when either the first information report was registered or the investigation was carried out. The expression "Evidence" as contained in Section 319 Cr.P.C. would not include a vague statement, and essentially the deposition of prosecution witness

has to be tested in its substance.

14. The decision in **Hardeep Singh's case (supra)** was again followed by Hon'ble Supreme Court in **Labhuji Amratji Thakor and others Vs. State of Gujraat and another reported in (2019) 12 SCC 644**, wherein it was held that the process under Section 319 Cr.P.C. cannot be issued by the trial court in a casual manner, as in view of the decision in **Hardeep Singh's case (supra)**, the trial court is required to analyze the substance of the evidence recorded during trial. The relevant observations are reproduced below:

*"13. The High Court does not even record any satisfaction that the evidence on record as revealed by the statement of victim and her mother even makes out a prima facie case of offence against the appellants. The mere fact that the Court has power under Section 319 Cr.P.C. to proceed against any person who is not named in the F.I.R. or in the Charge Sheet does not mean that whenever in a statement recorded before the Court, name of any person is taken, the Court has to mechanically issue process under Section 319 Cr.P.C. 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's (supra)** 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 un rebutted, would lead to conviction."*

15. Further, a reading of the impugned order dated 14th September, 2007 would show that the trial court has failed to analyze the substance of the prosecution witnesses while exercising the powers under Section 319 Cr.P.C. Thus, this Court has no hesitation in holding that the impugned order dated 14th September, 2007 suffers from grave illegality and impropriety and warrants

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interference by this Court.

16. Resultantly, the petition succeeds and the impugned order dated 14th September, 2007 is hereby set aside. The application under Section 319 Cr.P.C. filed by the prosecution is dismissed.

17. The petition is allowed.

Order Date :- 7.1.2025

Brijesh