

Sarvendra @ Sarvender Pal vs State Of U.P. Thru. Addl. Chief Secy. ... on 1 May, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:25121

Court No. - 12

Case :- CRIMINAL REVISION No. - 492 of 2025

Revisionist :- Sarvendra @ Sarvender Pal

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

Counsel for Revisionist :- Arjun Singh Somvanshi

Counsel for Opposite Party :- G.A.

Hon'ble Alok Mathur, J.

1. Sri Arjun Singh Somvanshi, learned counsel for the revisionist and learned AGA on behalf of the State-respondent.
2. By means of the present criminal revision under Section 438/442 of Bhartiya Nagrik Suraksha Sanhita, 2023, the revisionist has challenged the order dated 12.03.2025 passed by Additional District and Sessions Judge/FTC (14th Finance Commission), Hardoi in S.T. No.1612 of 2021 (State versus Chhatrapal), arising out of Case Crime No.269 of 2019, under Sections 308, 342, 323, 504 and 506 IPC, P.S.- Sandi, District - Hardoi, by which the trial court has allowed the application under Section 319 of the Cr.P.C. and summoned the revisionist to face the trial.

3. It has been submitted by counsel for the revisionist that the opposite party no.2 has lodged the first information report on 26.06.2019 against the revisionist and his father Chhatrapal alleging that on 25.06.2019 the opposite party no.2 had come to his brother-in-law Ramsahay's village - Khutehna, Police Station - Sandi, for a wedding along with his daughter Meenakshi. His brother-in-law's brother Chhatrapal's daughter Kalpana went to defecate and could not be traced and consequently, they made allegations that his daughter Meenakshi has eloped with the daughter of the complainant / prosecutrix due to enmity and the accused persons thereafter locked his daughter in the room and started abusing her and assaulted her with sticks and belt due to which she failed down unconscious. When the complainant reached the spot, he saw his daughter in serious condition lying in unconscious state and it is then the accused Chhatrapal and Savendra threatened them by stating that he should take his daughter away or else they will kill her. Accordingly, with this aforesaid allegation, the first information report was lodged in Case Crime No.269 of 2019, P.S.- Sandi, District - Hardoi.

4. It has been submitted that during the course of investigation, the statement of the prosecutrix was recorded under Section 161 of the Cr.P.C. where she supported the case of the prosecution and she was also medically examined on 26.06.2019 and seven injuries on her body were found. It was further stated that during investigation statements of number of villagers were recorded and their affidavits were obtained wherein it was stated that the revisionist at that point of time was attending a marriage / daughter of Ramsahay and was present with the said villagers. It is on account of the apposite facts especially the statements of the villagers stating that the revisionist was not present at the site of occurrence and his name was removed from the list of accused and chargesheet was filed only against Chhatrapal.

5. It is during the trial that the statements of P.W.-1, the complainant and P.W.-2, the prosecutrix have been recorded and relying upon the aforesaid statements, an application under Section 319 of the Cr.P.C. was moved for including the revisionist to be joined as an accused in the said trial. According to P.W.-1, Ramswaroop, he stated in his examination in chief that the daughter of the brother of his Sadhu, Kalpana had gone to ease herself in the fields and did not return for quite some time due to which Chhatrapal thought that daughter of the complainant Meenakshi was responsible for disappearance and accordingly, Chhatrapal along with his son Sarvendra (revisionist) dragged Meenakshi to a room and locked her at around 10:30 in the night and started assaulting her with wooden rod and belt. When the complainant came to know about the said incident, he reached at the site of the incident and found his daughter lying in unconscious state. He has further stated that the accused persons were also there and Chhatrapal told him to take her daughter away and further threatened that he would kill her and it is on this that the complainant took his daughter away to Sandi and went to the police station to register the said FIR. He has further stated that he has seen mark of injuries on her back, legs and face. He has further stated that at that point of time, he had gone to his relative's house Ramsahay for a wedding.

6. P.W.-2 i.e. the prosecutrix was also examined where she also reiterated the same facts and clearly indicated that the revisionist and his father Chhatrapal had locked her in a room and assaulted her due to which she has received injuries. Further, the trial court duly considering the statement of P.W.-1 and P.W.-2 has allowed the application under Section 319 of the Cr.P.C., finding that there

was sufficient evidence with regard to the complicity of the revisionist.

7. Counsel for the revisionist has submitted that once there was sufficient evidence, including the statement under Section 161 of the Cr.P.C. indicating that the revisionist was not present at the site of the incident then the order under Section 319 of the Cr.P.C. should not have been passed. Accordingly, he submits that implication of the revisionist in the present case is wholly arbitrary and false and accordingly, allowing of the revision and setting aside of the order dated 12.03.2025.

8. Learned AGA on the other hand has opposed the revision and has submitted that there was cogent and reliable evidence available on record which has been adduced during the examination of P.W.-1 and P.W.-2. He submitted that the testimony of P.W.-2, the prosecutrix would be relevant where she has clearly stated about the implication of the revisionist in the said incident and accordingly submitted that there is no infirmity in the same and prayed for dismissal of the revision.

9. I have heard the rival contentions of the parties and perused the record.

10. The grievance raised by the revisionist with regard to the allowing of the application under Section 319 of the Cr.P.C., whereby the revisionist has been summoned as an accused and to be tried in the said trial. To consider the validity of the impugned order, the law in this regard would be relevant to consider which has been very clearly stated in the judgement of the Supreme Court in the case of Brijendra Singh and others versus State of Rajasthan, Criminal Appeal No.763 of 2017, Order dated 27.04.2017 reported in AIR 2017 SUPREME COURT 2839. The relevant paragraphs are quoted below:

"9) Powers of the Court to proceed under Section 319 Cr.P.C. even against those persons who are not arraigned as accused, cannot be disputed. This provision is meant to achieve the objective that real culprit should not get away unpunished. A Constitution Bench of this Court in Hardeep Singh v. State of Punjab & Ors., (2014) 3 SCC 92, explained the aforesaid purpose behind this provision in the following manner:

?8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under Cr.P.C. indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the

guilty does not go unpunished.

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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 CrPC.

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. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

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19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.?

10) It also goes without saying that Section 319 Cr.P.C., which is an enabling provision empowering the Court to take appropriate steps for proceeding against any person, not being an accused, can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment, except during the stage of Section 207/208 Cr.P.C., the committal etc., which is only a pre-trial stage intended to put the process into motion.

11) In Hardeep Singh's 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 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.

12) The moot question, however, is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by the Constitution Bench in Hardeep Singh's case and answered in the following manner:

¶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* [(2014) 3 SCC 321], 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.

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105. Power under Section 319 CrPC 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 un rebutted, 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' 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.

(emphasis supplied)?

13) In order to answer the question, some of the principles enunciated in Hardeep Singh's 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 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 warrants. 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."

11. It is in the back drop of the aforesaid judgement, the facts in the present case have to be considered. In the present case, the quality of the evidence which has come up during the trial would be of relevance inasmuch as the satisfaction of the trial court should not be a prima facie satisfaction should be something more and there should be an objective satisfaction before passing any order under Section 319 of the Cr.P.C. In the present case, the first information report was lodged on 26.06.2019 bearing FIR No.0269 against two persons, including the revisionist. It is during the investigation that certain statements under Section 161 of the Cr.P.C. were recorded of the villagers, who have stated that the revisionist was present during a wedding and accordingly, his presence at the site of incident was doubtful and consequently, his name was removed from the list of accused in the chargesheet which was filed before the trial court. It is during the trial that the complainant as well as the prosecutrix have been examined. The statement of the complainant is not relevant at this stage inasmuch as there is no doubt that the complainant is not an eye witness of the said incident. The prosecutrix has clearly stated that she was locked in a room by the revisionist and his father Chhatrapal on account of the fact that his daughter, who has gone to ease herself in the field was missing and they had an impression that the prosecutrix was responsible for the same. They assaulted the prosecutrix with a danda and belt due to which she received injuries to such an extent that she fell unconscious. It is thereafter that her father complainant arrived at the spot where also the presence of the revisionist and his father Chhatrapal has been confirmed as

they threatened the complainant.

12. I also take notice of the fact that even during investigation the prosecutrix has supported the case of the prosecution and had levelled the same allegations against the revisionist and his father Chhatrapal. The trial court has duly considered the statements of both the witnesses in great detail and found that they were unequivocal and the prosecutrix herself has named the revisionist as the person responsible for assaulting her with the belt. Even the medical report which has come up during the investigation supports the case of the prosecution pertaining to the injuries. It is in the aforesaid circumstances, I have find that there was cogent and reliable evidence available on record necessitating due cognizance of the application under Section 319 of the Cr.P.C. which was allowed and the revisionist has been summoned to join the trial. The statement of the prosecutrix would be at par with the testimony of injured witness, and would therefore be of great value and cannot be discussed unless there is cogent reason.

13. For the aforesaid reasons, I find that there was sufficient material allowing the application under Section 319 of the Cr.P.C. and with regard to the alibi, if any, raised by the revisionist would be a defence which can be taken by him during the course of the trial. Considering the statement of the prosecutrix, we find that there was sufficient material to summon the revisionist.

14. Accordingly, I do not find any infirmity in the impugned order. The revision being devoid of merits and is rejected.

[Alok Mathur,J.] Order Date :- 1.5.2025 KR