

Vimlesh vs State Of U.P. Thru. Prin. Secy. Deptt. Of ... on 27 March, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:17758

Court No. - 12

Case :- CRIMINAL REVISION No. - 294 of 2025

Revisionist :- Vimlesh

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

Counsel for Revisionist :- Srees Kumar Srivastava

Counsel for Opposite Party :- G.A.

Hon'ble Alok Mathur,J.

1. Heard Sri Srees Kumar Srivstava, learned counsel for petitioner as well as learned A.G.A. for the State.

2. By means of the present revision under Section 397/401 Cr.P.C. read with Section 438/442 of B.N.S.S., the revisionist has assailed the order dated 26.11.2024 passed by Additional Sessions Judge, Court No. 3, Unnao whereby the application under Section 319 of Cr.P.C. moved by the informant/respondent No. 2 in Case Crime No. 230 of 2019 under Section 498A, 304B, I.P. & 3/4 Dowry Prohibition Act, Police Station Gangaghat, District Unnao in Session Trial No. 388 of 2018 (State Vs. Ashok) has been allowed.

3. It has been submitted by learned counsel for revisionist that a F.I.R. in Case Crime No. 230 /2019 was lodged by private respondents alleging that his daughter Laxmi was married to one Ashok who is the uncle (Mama) of the revisionist. It was alleged that there was a demand of Motorcycle from the deceased and she was also abused and maltreated for not bringing adequate dowry.

4. The deceased was found hanging on 06.04.2019 in Sulabh Chauchalaya, pursuant to which first information report was lodged. It has been submitted that family members of the deceased were present at the time of inquest and have also participated in rites and rituals and in the post mortem report the cause of death was shown to be Asphyxia as a result of antemortem hanging.

5. During investigation, the statements of complainants were recorded under Section 161 Cr.P.C. where only the husband-Ashok was named as accused. It is during the trial proceedings that when P.W.-1 and P.W.-2 have been examined that the application under Section 319 Cr.P.C. was moved which has been allowed by means of impugned order. It has been stated that a perusal of the statement of Ram Muneshwar who is the father of the deceased and P.W. 1, in his statement had also made vague allegations against all family members including revisionist with regard to demand of dowry.

6. Neither was any particulars of the allegations substantiated in the said statement nor was any other allegations linking them to the cause of death of the deceased. It is on the statement that application under Section 319 Cr. P.C has been moved and allowed by the trial court which has been assailed in the present case.

7. Counsel for the revisionist has submitted that for exercising power under Section 319 of Cr.P.C. there has to be sufficient material so as to join the person against whom evidence is available as an accused alongwith the others and the stronger evidence than mere probability of his complicity is required to be adduced rather than a vague statement made during examination-in-chief. He submits that a perusal of the statement of Prem Shanker would indicate that merely a passing reference has been made to the revisionist being present at the site of occurrence which is the only material available on record for allowing the application under Section 319 of Cr.P.C. He submits that this aspect of the matter has been duly considered by the Supreme Court in the case of Brijendra Singh and others versus State of Rajasthan, (2017) 7 SCC 706, where the Supreme Court has approved the dictum of another judgment of the Supreme Court in the case of Hardeep Singh versus State of Punjab, (2014) 3 SCC 92, where it has been stated that the provisions of Section 319 of Cr.P.C. cannot be invoked lightly and the material on record should be sufficient and the evidence on record has to be more than what is collected during evidence. He has further submitted that the trial court should have waited for the cross-examination of the witness before invoking its power under Section 319 of Cr.P.C. and also they should have waited till the police officer who had investigated the matter was duly examined.

8. He has further submitted that the trial court should have waited for the cross-examination of the police officer, who had investigated the matter and exculpated the revisionist from the array of the accused before proceeding to exercise its power under Section 319 of Cr.P.C.

9. Learned A.G.A., on the other hand, has opposed the revision and submitted that even in the FIR the revisionist was named as an accused and even during the trial the complicity of the accused came forth in the testimony of Ram Muneshwar and accordingly, supported the impugned order.

8. I have heard the rival contentions and perused the record. The issue in the present case is as to whether there was sufficient material before the trial court to invoke the provisions of Section 319 of Cr.P.C. The law with regard to exercise of power under Section 319 of Cr.P.C. have been duly considered by the Supreme Court in the case of Brijendra Singh (supra), where they affirmed the law laid down by the previous judgment of the Supreme Court in the case of Hardeep Singh (supra), the relevant portion is quoted here-in-below for ready reference:-

"9. The powers of the Court to proceed under Section 319 CrPC 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, (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 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.

* * *

12. Section 319 CrPC springs out of the doctrine *judex damnatur cum nocens absoluitur* (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 Sections 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) CrPC 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 CrPC 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.

* * *

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."

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 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 charge-sheet 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."

9. A perusal of the aforesaid judgment indicates that though even at the stage of examination-in-chief without cross-examination the power under Section 319 of Cr.P.C. can be exercised but undoubtedly, the reliable and cogent material which should be emerging from the statement should be a stronger evidence than mere probability of his complicity. The test which 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 the extent that the evidence is unrebutted would lead to conviction. On the touchstone of the aforesaid judgments, I find that the exercise of power by the trial court was not in conformity with the law laid down by the Supreme Court. Even in the examination-in-chief it was a mere occurrence of the name of the revisionist which was taken along with the other accused who had participated at the offence resulting into FIRs which were lodged on 26.03.2005. There is no further detail of involvement of the revisionist nor any mention of his further participation in the said crime.

10. In this regard, Hon'ble Supreme Court has given a much needed relief to the family members implicated in similar cases with vague allegations which does not disclose their active involvement in the case of *Geeta Mehrotra v. State of U.P.*, (2012) 10 SCC 741 :

"20. Coming to the facts of this case, when the contents of the FIR are perused, it is apparent that there are no allegations against Kumari Geeta Mehrotra and Ramji Mehrotra except casual reference of their names which have been included in the FIR but mere casual reference of the names of the family members in a matrimonial dispute without allegation of active involvement in the matter would not justify taking cognizance against them overlooking the fact borne out of experience that there is a tendency to involve the entire family members of the household in the domestic quarrel taking place in a matrimonial dispute specially if it happens soon after the wedding.

25. However, we deem it appropriate to add by way of caution that we may not be misunderstood so as to infer that even if there are allegations of overt act indicating the complicity of the members of the family named in the FIR in a given case, cognizance would be unjustified but what we wish to emphasise by highlighting is that, if the FIR as it stands does not disclose specific allegation against the accused more so against the co-accused specially in a matter arising out of matrimonial bickering, it would be clear abuse of the legal and judicial process to mechanically send the named accused in the FIR to undergo the trial unless of course the FIR discloses specific allegations which would persuade the court to take cognizance of the offence alleged against the relatives of the main accused who are prima facie not found to have indulged in physical and mental torture of the complainant wife. It is the well-settled principle laid down in cases too numerous to mention, that if the FIR did not disclose the commission of an offence, the court would be justified in quashing the proceedings preventing the abuse of process of law. Simultaneously, the courts are expected to adopt a cautious approach in matters of quashing, especially in

cases of matrimonial disputes whether the FIR in fact discloses commission of an offence by the relatives of the principal accused or the FIR prima facie discloses a case of overimplication by involving the entire family of the accused at the instance of the complainant, who is out to settle her scores arising out of the teething problem or skirmish of domestic bickering while settling down in her new matrimonial surrounding."

11. Accordingly, I find that the material on the basis of which the trial court had allowed the application, falls short of the test laid down by the Supreme Court in the aforesaid judgments. I am also of the view that once during the investigation number of witnesses were examined some of whom had stated that the revisionist was not present at the scene of crime but was with them elsewhere and, therefore, in these peculiar circumstances the trial court should have waited till examination of the investigating officer was complete which would have lead to a more cogent and reliable piece of material necessitating invocation of powers under Section 319 of Cr.P.C. Accordingly, merely naming the revisionist without giving any further details of his participation in the alleged offence does not show that there was sufficient material for invocation of power under Section 319 Cr.P.C.

12. Accordingly, this Court is of the considered view that at the present stage this Court finds that there was no reliable and cogent material available for exercising powers under Section 319 Cr.P.C., accordingly, the revision is allowed. The order dated 26.11.2024 passed by Additional Sessions Judge, Court No. 3, Unnao is set aside.

13. Further it is made clear that subsequently if the trial court is of the opinion that there is other substantial, relevant and cogent evidence available then he would be at liberty to exercise his powers in accordance with law.

(Alok Mathur, J.) Order Date :- 27.3.2025 Ravi/