

Ankur @ Arun Kumar vs State Of U.P. Thru. Prin. Secy. Deptt. Of ... on 1 April, 2025

Author: Alok Mathur

Bench: Alok Mathur

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:17950

Court No. - 12

Case :- CRIMINAL REVISION No. - 355 of 2025

Revisionist :- Ankur @ Arun Kumar

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 SrivasTava, learned counsel for revisionist as well as learned A.G.A. for the State and Sri Shravan Kumar, Advocate ho has filed his Vakalatnama on behalf of respondent No. 2, which is taken on record.

2. By means of present criminal revision under Section 397/401 of Cr.P.C., 1973 read with Section 438/442 B.N.S.S. the revisionist has assailed the order dated 10.03.2025 passed by Additional Sessions Judge Court No. 7, Unnao, in Session Trial No. 12/2024 arising out of Case Crime No. 306/2016 under Section 323/34, 504, 506 I.P.C., Police Station Safipur, District Unnao (State Vs. Ram Sanehi) and has allowed the application under Section 319 Cr.P.C. adding the name of the revisionist as an accused in the said trial.

3. The brief facts stated by the revisionist are that respondent No. 2 has lodged an N.C.R. No 306/2016 Under Section 323, 504, 506I.P.C. Cr.P.C. Police Station Safipur, District Unnao alleging that at about 1.00 p.m., the revisionist along with co-accused, Ram Sanehi, Ram Saran, and Raj

Karan approached her in a drunken stage and abused her son, namely, Naresh and when respondent No. 2 asked them to stop the said abusing, they had beaten with lathi and danda and threatened her.

4. During investigation, statement of complainant was recorded under Section 161 Cr.P.C. where the allegations stated in the NCR were sustained. With regard to other accused except revisionist where it was recorded that though the revisionist was present on the place of occurrence but had left without saying anything and it is on the basis of the said statement that the charge-sheet has been filed in the trial court against all the other accused except revisionist.

5. During trial, the complainant had appeared as P.W.-2 and her statement was recorded where she has also stated about involvement of the revisionist in the said incident. Her statement which was recorded on 06.08.2024 which has been filed by the revisionist clearly indicates that she has given details about the said incident clearly implicated the revisionist which is alleged to have reached the house of the complainant on the date of incident. The motive for the said incident is the elections and he has alleged to have used caste related words against the complainant and when she had tried to stop them, she was assailed by all the accused and when her sons Naresh and Dinesh had come to rescue her they also were beaten up and have received injuries.

6. P.W.-2 was also cross examined but she has sustained her allegations against the revisionist and it is taking into consideration the said material which has come up during trial an application under Section 319 Cr.P.C. was moved by the complainant and allowed by means of order dated 10.03.2025. While allowing the said application, the trial court has duly considered the statement of P.W. 1 and also considered the medical reports which were filed in support of the said allegations from which a satisfaction was recorded with regard to implication of the revisionist and after considering all the material including different statements given by P.W. 1 during stage of investigation, he has allowed the applicant and summoned the revisionist to face the said trial.

7. It has been vehemently submitted by revisionist that there was no material available while allowing the application under Section 319 Cr.P.C. and there was sufficient material on record which have come up during investigation in form of statement under Section 161 Cr.P.C. to exclude the name of the revisionist and hence merely at the stage of trial on the basis of statement of P.W. 1, the revisionist could not have been summoned.

8. Learned A.G.A. on the other hand has opposed the revision. He has submitted that a bare perusal of the statement of P.W.-1 would indicate that the implication of the revisionist has been narrated in great detail indicating his involvement in the said offence.

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

10. 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.

11. 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.

12. 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 Indrana and accordingly, supported the impugned order.

13. 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 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?

* *

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 unrebutted, 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."

14. 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.

15. Considering the facts of the present case, in light of the judgments of Hon'ble the Supreme Court as stated above, it is noticed that from the statement of P.W.-1/Smt. Indrana the complainant, it is clear that she has named the revisionist as an accused who along with other accused had reached the house of the complainant on the date of incident and started abusing complainant and on her opposing and asking to the said, they started assaulting her due to which injuries were received by her as well as her two sons who have attempted to save her. Apart from the statements, the medical reports were also taken into consideration which supported the case of the prosecution.

16. Undoubtedly, a satisfaction has to be of highest degree than a prima facie case and from the impugned order, it is clear that trial court has looked into the statement of P.W. - 1 in great detail and it is only after recording their satisfaction and even considering her statement under Section 161 Cr.P.C. that the application has been allowed.

17. In view of the above, I find that there were sufficient material on record to have allowed the application under Section 319 Cr.P.C. All the grounds stated by the revisionist are in form of a defence giving a different version of the case which are liable to be looked into during the stage of trial and not at the stage of deciding the application under Section 319 Cr.P.C., accordingly, I do not find any ground for interference in the case, the criminal revision of bereft of merits and is hereby dismissed.

(Alok Mathur, J.) Order Date :- 1.4.2025/Ravi/