

Suneel Kumar And Another vs State Of U.P. Thru Principal Sec. Home ... on 1 April, 2025

Author: Manish Kumar

Bench: Manish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LK0:17996

Court No. - 14

Case :- APPLICATION U/S 482 No. - 2579 of 2025

Applicant :- Suneel Kumar And Another

Opposite Party :- State Of U.P. Thru Principal Sec. Home And 3 Others

Counsel for Applicant :- Sajjad Husain, Mohd. Saud Khan

Counsel for Opposite Party :- G.A.

Hon'ble Manish Kumar, J.

1. Heard learned counsel for the applicants and Shri Piyush Kumar Singh, learned A.G.A. for the State. Shri Harsh Prakash, learned counsel has put in appearance on behalf of respondent/ opposite party no.4 alongwith the vakalatnama of the complainant but the same is to be filed through e-mode as this matter is an e-file so he is permitted to file the same today itself through e-mode.

2. The present application under Section 482 Cr.P.C./528 B.N.S.S. has been preferred with the following relief:-

"For the facts, reasons and circumstances stated in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the the order dt. 24.02.2025 passed in ST No. 124 of 2023 Computer No. 405 of 2023 State vs. Shyam Ji & Ors in Case Crime No. 114 of 2022 Police Station Jahangirganj, District Ambedkar Nagar, passed by Additional District & Session Judge, 1st, Ambedkar Nagar, in the interest of justice. Copy of order dt. 24.02.2025 is annexed herewith as Annexure No. 1 to the application.

The Hon'ble Court may further be pleased to stay the operation and implementation of order 24.02.2025 passed in ST No. 124 of 2023 Computer No. 405 of 2023 State vs. Shyam Ji & Ors in Case Crime No. 114 of 2022 Police Station Jahangirganj, District Ambedkar Nagar passed by Additional District & Session Judge, 1st, Ambedkar Nagar, in the interest of justice. Copy of order dt. 24.02.2025 is annexed herewith as Annexure/No. 1 to the application.

The Hon'ble Court may kindly be pleased to stay the arrest of the applicants in furtherance of order dt. 24.02.2025 passed in ST No. 124 of 2023 Computer No. 405 of 2023 State vs. Shyam Ji & Ors in Case Crime No. 114 of 2022 Police Station Jahangirganj. District Ambedkar Nagar passed by Additional District & Session Judge, 1st, Ambedkar Nagar, in the interest of justice. Copy of order dt. 24.02.2025 is annexed herewith as Annexure No. 1 to the application."

3. Learned counsel for the applicants has submitted that the court concerned has passed an impugned order dated 24.02.2025 under Section 319 Cr.P.C. issuing summons against the applicants without application of mind or sufficient material/ evidence available before the court concerned. He has further submitted that the Full Bench decision of the Hon'ble Supreme Court in the case of Hardeep Singh & Others versus State of Punjab & Others reported in (2014) 3 SCC 92 which has been followed by the Hon'ble Supreme Court in the case of Shankar versus State of U.P. & Others reported in (2024) 6 SCR 10 and by this Court in Application U/S 482 No.418 of 2008 (Smt. Rekha and 3 Others versus State of U.P. and 2 Others), wherein it has been held, that the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be different than satisfaction for summoning the original accused. It is further submitted that the learned trial court while passing the order under Section 319 Cr.P.C. had merely on the statements of the prosecution witnesses passed the impugned order, whereas during the investigation by the police, there were three eye witnesses, who had deposed under Section 161 Cr.P.C. that the applicants were not present at the time of incident. Hence, the order is bad in the eyes of laws and is liable to the quashed.

4. On the other hand, learned A.G.A. has submitted that the judgments which has been relied by the learned counsel for the applicants are not applicable on the facts of the present case and there is no illegality in the orders passed by the trial court under Section 319 Cr.P.C. summoning the applicants in Case Crime No.114 of 2022 as their names were there since the very inception.

5. Learned counsel for the respondent no.4 has submitted that all the injured witnesses had taken the name of the applicants in their statements recorded under Section 161 Cr.P.C. and at the time of examination-in-chief under Section 142 of the Indian Evidence Act during the trial so the police without considering the same had purposely merely on the statements of alleged eye witnesses had dropped the names of the applicants.

6. After hearing learned counsel for the parties, going through the record of the case and the judgments relied by the learned counsel for the applicants, the position which emerges out in the present case is that the FIR was lodged by the complainant against the named accused persons including the present applicants. During the investigation the five injured witnesses had taken the names of the applicants. The Investigating Officer of the case had also recorded the statements of alleged three eye witnesses, who had deposed that the applicants were not present and not involved in the offence as alleged in the FIR and on that basis had dropped the name of the applicants while filing the charge-sheet.

7. The court concerned has not taken cognizance and issued summons against the applicants immediately after the filing of the charge-sheet, the same was issued under Section 319 Cr.P.C. after the examination-in-chief during the trial of the injured witnesses, who have again taken the names of the applicants. The name of the applicants were there since the very inception of the lodging of an FIR, the statements under Section 161 Cr.P.C. during investigation by the police and in the examination-in-chief before the trial court. The judgment in the case of Hardeep Singh (supra) the relevant para relied by the learned counsel for the applicants is quoted here-in-below:-

"Question No. IV Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different."

8. Another judgment in the case of Shankar (supra) the relevant para relied by the learned counsel for the applicants is quoted here-in-below:-

"16. The degree of satisfaction required to exercise power under Section 319 Cr.P.C. is well settled after the above-referred decision. The evidence before the trial court

should be such that if it goes unrebutted, then it should result in the conviction of the person who is sought to be summoned. As is evident from the above-referred decision, the degree of satisfaction that is required to exercise power under Section 319 Cr.P.C. is much stricter, considering that it is a discretionary and an extra-ordinary power. Only when the evidence is strong and reliable, can the power be exercised. It requires much stronger evidence than mere probability of his complicity.

24. There are no other witnesses who have deposed against the appellants. There is no documentary evidence that the prosecution had collected against the appellants. There is absolutely no role that is attributed to the appellants. We are of the opinion that the deposition of PW-1 is also in line and consistent with her statement under Section 161. When these factors are looked in a holistic manner, it would be clear that the higher degree of satisfaction that is required for exercising power under Section 319 Cr.P.C. is not met in the present case."

9. The last judgment dated 07.01.2025 in the case of Smt. Rekha (supra) the relevant para relied by the learned counsel for the applicants is quoted here-in-below:-

"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." "

10. The judgments relied by the learned counsel for the applicants, wherein the Hon'ble Supreme Court has held that the difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused. Fresh summoning of the accused will result in delay of the trial, therefore, the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

11. The word 'evidence' has also been discussed by the Hon'ble Supreme Court in the case of Hardeep Singh (supra), the relevant extract is quoted here-in-below:-

"....Which includes the proof by testimony of witnesses, on oath; or by writing or records...."

12. It is the case where the testimony of witnesses not only witnesses but the injured witnesses were in writing as well as during the examination-in-chief which constitutes the sufficient material for passing the order under Section 319 Cr.P.C. The judgment relied in the case of Shankar (supra) is not applicable on the facts of the present case. In that case, the FIR was lodged against the named accused persons. In the FIR, the complainant had said that "I am quite sure that my son Vijay Singh has been jointly murdered by Bachha Singh s/o Mohan Singh, Shankar s/o Bacha Singh, Vishal s/o Bacha Singh- residents of Raha and Sanjay s/o Munna Singh, Kallu Singh s/o Munna Singh-residents of Jalala, Police Station Ghatampur. We have an old existing enmity with these people." while at the time of recording of the statement under Section 161 Cr.P.C., she had stated that the appellants were not involved and that she named them without collecting full information and Shankar & Vishal were not involved in my son's murder. In her deposition as PW-1 before the trial court, she had once again named the appellants, however, she had said that she had named them only on the basis of suspicion and due to 11 years old enmity, I had written the names of the Shankar & Vishal in the FIR so in that circumstances or in these facts some more satisfaction was required, while passing the order under Section 319 Cr.P.C. Whereas in the present case, the applicants were named in the FIR, the five injured witnesses had taken the name of the applicants, the injury reports are on the record, all these injured witnesses at the time examination-in-chief during the trial had deposed the same statement as they had given at the time of recording of their statements under Section 161 Cr.P.C. and there was no suspicion in the minds of the injured witnesses that these applicants were not involved.

13. As far as the judgment in the case of Smt. Rekha (supra) relied by the learned counsel for the applicants is concerned i.e. also not applicable on the facts of the present case as para 13, which is also relied by the learned counsel for the applicants on perusal of the same it has come out that for the first time in the deposition of complainant PW-1, the name of the accused persons came in light

but not earlier either at the time the FIR was lodged or during investigation.

14. It is to be noted that alleged eye witnesses, who had not named the applicants in the statement under Section 161 Cr.P.C. are not injured witnesses, whereas, other five eye witnesses who consistently named the applicants are all injured witnesses. No error can be said to be committed by the trial court in summoning the applicants on the statements of injured eye witnesses.

15. In view of the facts, circumstances and discussion made here-in-above, undoubtedly, as per the law settled by the Full Bench of the Hon'ble Supreme Court in the case of Hardeep Singh (supra) that there must be difference of degree of satisfaction while framing of charge against the named accused person and the subsequent accused and the said satisfaction depends upon the facts of each case and as per the facts of the present case as discussed above, there is no illegality in the impugned order dated 24.02.2025 passed by the learned trial court. Hence, no interference is called for and the present application is hereby dismissed.

Order Date :- 1.4.2025 Mohd. Sharif