

Bhim Singh vs State Of U.P. And 3 Others on 31 January, 2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Neutral Citation No. - 2025:AHC:15463

Court No. - 81

Case :- CRIMINAL REVISION No. - 5581 of 2023

Revisionist :- Bhim Singh

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Kapil Tyagi

Counsel for Opposite Party :- Alok Kumar Singh,G.A.

Hon'ble Manjive Shukla,J.

1. Heard learned counsel appearing for the revisionist, learned Additional Government Advocate appearing for the State and Sri Alok Kumar Singh, learned counsel appearing for Opposite Parties No. 2 to 4.

2. The revisionist through this revision has assailed the order dated 21.7.2023 passed by the learned Additional District & Sessions Judge, Court No. 6, Gautam Budh Nagar in Sessions Trial No. 68 of 2012 (State Vs Ramkaran & Ors.) whereby, the revisionist's application filed under Section 319 Cr.P.C. had been rejected.

3. Facts of the case, in brief, are that the revisionist lodged an F.I.R. on 21.5.2011 at about 9:20 P.M. which has been registered as Case Crime No. 269 of 2011 under Sections 147, 323 & 504 I.P.C. in Police Station Dadri, District Gautam Budh Nagar. In the F.I.R. it had been stated that sister-in-law of Ramveer Singh son of Latoor Singh, when came out of the residence of Latoor Singh, Ram Karan put his hand at the waist of Sundari and when Latoor Singh resisted then Dinesh, Vinesh and Dharmendra son of Ram Karan, Monti son of Harkaran , Harveer brother of Harkaran, Harkaran,

Kundan, Banti son of Kundan, Tarachandra and Umendra and Nagendra son of Tarachand armed with 'Lathi and Danda' came on the spot and started beating Latoor Singh. On hearing the noise of the incident Ram Ji Lal, Kishan, Sukhveer Singh, Surendra Singh, Ramswaroop, Raj Singh and Bhim Singh came on the spot and the aforesaid assailants also beaten them and ran away.

4. The Investigating Officer conducted the investigation and filed Charge Sheet against all the assailants, except Umendra and Nagendra son of Tarachandra and Banti son of Kundan, under Sections 308, 147, 323, 325 and 504 I.P.C. It is noteworthy that all the injured witnesses and other witnesses present on the scene of occurrence in their statements recorded under Section 161 Cr.P.C., categorically stated that Opposite Parties No. 2, 3 & 4 were present on the scene of occurrence, they were armed with 'Lathi and Danda' and they also beaten the informant and other persons.

5. The Investigating Officer after completing the investigation submitted Charge Sheet against all the assailants named in the F.I.R. except Opposite Parties No. 2 to 4 though the injured witnesses and other witnesses, in their statements recorded under Section 161 Cr.P.C., categorically said that Opposite Parties No. 2 to 4 were also involved in the crime in question.

6. The learned Magistrate, in exercise of its power under Section 190 Cr.P.C., took cognizance of the offence on the basis of the Charge Sheet filed by the Investigating Officer. Thereafter the trial started in the matter and testimony of P.W.-1 Bhim Singh and P.W.-2 Surendra Singh had been recorded, wherein they have categorically stated that Opposite Parties No. 2 to 4 were involved in the crime in question but the Investigating Officer, in spite of there being clinching statements of the injured witnesses, has expunged their names while filing Charge Sheet in the matter. The revisionist on the basis of the testimonies of P.W.-1 Bhim Singh and P.W.-2 Surendra Singh recorded during the trial, filed an application under Section 319 Cr.P.C. and prayed that the Court may summon Opposite Parties No. 2 to 4 to face the trial as their names have been illegally expunged by the Investigating Officer while filing the Charge Sheet.

7. The trial court had passed the impugned order dated 21.7.2023 in Sessions Trial No. 68 of 2012 whereby, the revisionist's application for summoning Opposite Parties No. 2 to 4, in exercise of power under Section 319 Cr.P.C., had been rejected.

8. Learned counsel appearing for the revisionist has argued that sufficient evidence is available regarding involvement of Opposite Parties No. 2 to 4 in the crime in question, as the injured witnesses and other witnesses in their statements recorded under Section 161 Cr.P.C. have categorically stated that Opposite Parties No. 2 to 4 were involved in the crime and further injured witnesses i.e. P.W.-1 Bhim Singh and P.W.-2 Surendra Singh in their testimonies recorded before the trial court have categorically stated that Opposite Parties No. 2 to 4 are involved in the crime in question, therefore there was no occasion for the trial court to reject the application filed by the revisionist under Section 319 Cr.P.C. for summoning Opposite Parties No. 2 to 4 to face the trial.

9. It has further been argued on behalf of the revisionist that the trial court had rejected the revisionist's application filed under Section 319 Cr.P.C. primarily on the ground that after filing of the Charge Sheet, learned Magistrate had taken cognizance of the offence under Section 190 Cr.P.C.

and if in the Charge Sheet names of Opposite Parties No. 2 to 4 were missing, the revisionist ought to have challenged the cognizance order and once he has not challenged the cognizance order there is no occasion for him to file application under Section 319 Cr.P.C. for summoning Opposite Parties No. 2 to 4 to face the trial, whereas under Section 190 Cr.P.C., court takes cognizance of the offence and not the cognizance of the fact as to who are the real accused of the crime and why their names have not been included in the Charge Sheet, as the power of summoning of the accused lies with the trial court under Section 319 Cr.P.C.

10. Learned counsel appearing for the revisionist has vehemently argued that there is sufficient evidence available before the trial court, in respect of the involvement of Opposite Parties No. 2 to 4 in the crime in question, in the form of the statements of the witnesses recorded under Section 161 Cr.P.C. and the testimonies of P.W.-1 Bhim Singh and P.W.-2 Surendra Singh recorded before the trial court, therefore the trial court ought to have allowed the application filed by the revisionist under Section 319 Cr.P.C. for summoning Opposite Parties No. 2 to 4 to face the trial, as such the order impugned in this revision cannot be allowed to sustain.

11. On the other hand, learned Additional Government Advocate appearing for the State as well as Sri Alok Kumar Singh, learned counsel appearing for Opposite Parties No. 2 to 4 have argued that the evidence available before the trial court, in respect of the involvement of Opposite Parties No. 2 to 4 in the crime in question, is not sufficient to lead their conviction therefore, the trial court had rightly rejected the application filed by the revisionist under Section 319 Cr.P.C.

12. It has further been argued that since during investigation, the Investigating Officer did not find evidence in respect of the involvement of Opposite Parties No. 2 to 4 in the crime in question, therefore the Investigating Officer, while filing Charge Sheet before the court, had expunged the names of Opposite Parties No. 2 to 4.

13. Learned counsel appearing for Opposite Parties No. 2 to 4 has vehemently argued that after filing of the Charge Sheet by the Investigating Officer before the trial court, cognizance has been taken by the learned Magistrate and since the order of cognizance has not been challenged by the revisionist before any higher forum, he cannot be permitted to file application under Section 319 Cr.P.C. for summoning Opposite Parties No. 2 to 4 to face the trial, as such the impugned order dated 21.7.2023 does not suffer from any illegality or infirmity.

14. I have considered the rival arguments advanced by the learned counsels appearing for the parties and have perused the contents of the impugned order dated 21.7.2023. I find that in the F.I.R. lodged in respect of the crime in question, the informant had categorically stated that Opposite Parties No. 2 to 4 were armed with 'Lathi and Danda' and they have participated in the crime in question. The statements of the witnesses were recorded by the Investigating Officer under Section 161 Cr.P.C. wherein, the injured witnesses have stated that Opposite Parties No. 2 to 4 were involved in the crime in question. In spite of the statements of the injured witnesses recorded under Section 161 Cr.P.C., the Investigating Officer had expunged the names of Opposite Parties No. 2 to 4 and had submitted Charge Sheet before the court against the other assailants. P.W.-1 Bhim Singh and P.W.-2 Surendra Singh, who are the injured witnesses, their testimonies have already been recorded before

the trial court and they have categorically deposed that Opposite Parties No. 2 to 4 were involved in the crime in question.

15. This Court is of the view that once in the statements recorded under Section 161 Cr.P.C. injured witnesses have stated that Opposite Parties No. 2 to 4 were involved in the crime in question and further in the testimonies of the injured witnesses i.e. P.W.-1 Bhim Singh and P.W.-2 Surendra Singh, recorded before the trial court, they have categorically deposed that Opposite Parties No. 2 to 4 were involved in the crime in question, the evidence available on record, if unrebutted, is sufficient to convict Opposite Parties No. 2 to 4, therefore there was no occasion for the trial court to reject the application filed by the revisionist under Section 319 Cr.P.C. for summoning Opposite Parties No. 2 to 4 to face the trial. The trial court, in the impugned order dated 21.7.2023, had recorded a finding that the injured witnesses i.e. P.W.-1 Bhim Singh and P.W.-2 Surendra Singh in their testimonies recorded before the trial court have only assigned a general role to Opposite Parties No. 2 to 4 and their specific role in the crime in question has not been given. In the aforesaid regard, it is noteworthy that all the assailants including Opposite Parties No. 2 to 4, all along have been assigned a general role/common role in the crime i.e. the assailants who were armed with 'Lathi and Danda' have beaten the informant and other persons and thereafter ran away, therefore if on the basis of general/common allegation the other assailants can be summoned to face the trial then why for the same role, Opposite Parties No. 2 to 4 cannot be summoned to face the trial. Accordingly, the impugned order dated 21.7.2023 on its face is unsustainable.

16. The trial court, in the impugned order dated 21.7.2023, had recorded a finding that the learned Magistrate had taken cognizance over the Charge Sheet filed by the Investigating Officer and the said cognizance order has not been challenged by the revisionist, therefore now the revisionist cannot file application under Section 319 Cr.P.C. for summoning of Opposite Parties No. 2 to 4 to face the trial.

17. On filing of the Charge Sheet relating to a crime, learned Magistrate takes cognizance of the offence in exercise of its power under Section 190 Cr.P.C. For ready reference the Section 190 Cr.P.C. is extracted as under :-

"Section 190 discusses the cognizance of offences by magistrates.

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence?

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the Second Class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

18. From bare perusal of the provisions made under Section 190 Cr.P.C., it is apparent that the learned Magistrate, in exercise of its power under Section 190 Cr.P.C., takes cognizance of the offence and not of the fact as to who should have been included as accused in the Charge Sheet. If, while filing Charge Sheet in respect of a crime, the Investigating Officer had expunged certain names from the list of the accused, then even if the cognizance order passed by the learned Magistrate is not challenged by the informant and there is sufficient evidence, the additional accused can be summoned by the trial court in exercise of its power under Section 319 Cr.P.C. Thus the impugned order dated 21.7.2023 on its face is erroneous.

19. In view of the aforesaid reasons, this revision is allowed. The impugned order dated 21.7.2023 passed by the learned Additional District & Sessions Judge, Court No. 6, Gautam Budh Nagar in Session Trial No. 68 of 2012 (State Vs Ramkaran & Ors.) is hereby set aside. The trial court is directed to reconsider and decide the application filed by the revisionist under Section 319 Cr.P.C. afresh keeping in view the observations made by this Court in this order.

Order Date :- 31.1.2025 Gaurav