

RAMESH CHANDRA SRIVASTAVA

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v.

THE STATE OF U. P. & ANR.

(Criminal Appeal No. 990 of 2021)

SEPTEMBER 13, 2021

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**[K. M. JOSEPH AND PAMIDIGHANTAM
SRI NARASIMHA, JJ.]**

*Code of Criminal Procedure, 1973 – s.319 – Summons purporting to invoke power u/s.319 CrPC – Challenge to – Murder – Deposition of second respondent that her husband (deceased) was murdered by his employer (the appellant) with the help of his friends – Deceased was the driver of appellant – Application on behalf of prosecution invoking s.319 CrPC – Sessions Judge held that power u/s.319 CrPC has to be invoked and ordered to summon the appellant – Order upheld by High Court – Held: The statement of law as regards the standards fixed for invoking power u/s.319 CrPC is contained in paragraphs 105 and 106 of the Constitution Bench decision of Supreme Court in Hardeep Singh case – The test as laid down in Hardeep Singh case for invoking power u/s.319 CrPC inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence, the power u/s.319 Cr.P.C. should be exercised – The power cannot be exercised in a casual and cavalier manner – The test to be applied is one which is more than *prima facie* case which is applied at the time of framing of charges – It will all depend upon the evidence which is tendered in a given case as to whether there is a strong ground within the meaning of paragraph 105 of Hardeep Singh case – Order of the Sessions Judge issuing summons, set aside – Sessions Judge to re-consider the matter in light of the principles enunciated in Hardeep Singh case.*

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Allowing the appeal, the Court

HELD:1. While the Supreme Court has approved of relying upon deposition which has not suffered cross examination for the purpose of invoking Section 319 Cr.P.C., it is relevant to note the standards which have been fixed by this Court for invoking the power under Section 319 Cr.P.C. The

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- A statement of law in this regard is contained in paragraphs 105 and 106 of *Hardeep Singh* case. [Para 7][222-E-F]

- 2.1. The respondents, no doubt, point out that the deposition of the second respondent as given by her, would suffice in law for the Court to invoke the power under Section 319 Cr.P.C., however, the matter must be reconsidered.[Para 8] [223-D]

- 2.2. The test as laid down by the Constitution Bench of this Court in *Hardeep Singh* case for invoking power under Section 319 Cr.P.C. *inter alia* includes the principle that only when strong and cogent evidence occurs against a person from the evidence, the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than *prima facie* case which is applied at the time of framing of charges. It will all depend upon the evidence which is tendered in a given case as to whether there is a strong ground within the meaning of paragraph 105 of *Hardeep Singh* case. [Paras 10, 11][223-E-G]

3. The order passed by the Sessions Judge issuing summons, is set aside. The Sessions Judge is directed to consider the matter afresh in the light of the principles which have been clearly enunciated by this Court in *Hardeep Singh* case. [Paras 12, 13][223-H; 224-A-B]

- F *Hardeep Singh v. State of Punjab and Others (2014) 3 SCC 92 : [2014] 2 SCR 1 – followed.*

Labhuji Amratji Thakor and Others v. State of Gujarat and Another AIR 2019 SC 734 : [2018] 13 SCR 822 – referred to.

G	<u>Case Law Reference</u>		
	[2014] 2 SCR 1	followed	Para 6
	[2018] 13 SCR 822	referred to	Para 6

- H CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 990 of 2021.

From the Judgment and Order dated 09.01.2020 passed by the Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow in Criminal Misc. Case under section 482/378/407 bearing no. 93 of 2020. A

Gaurav Srivastava, Adv. for the Appellant.

Adarsh Upadhyay, Abhishek Chaudhary, Sansriti Pathak, Advs. B for the Respondents.

The Judgment of the Cour was delivered by

K. M. JOSEPH, J.

1. Leave granted. C

2. This is yet another case where summons issued purporting to invoke power under Section 319 of the Code of Criminal Procedure (Cr.P.C.) has brought the newly summoned person to this Court.

3. FIR came to be lodged on 27.06.2015 by the second respondent before us. It is *inter alia* alleged in the FIR that her husband(deceased) told her that he is leaving for work to meet the appellant. There is, in fact, no dispute that the deceased was the driver of the appellant. In the FIR, it is also stated that at 2 p.m., he called and informed the second respondent-his wife that he is going to Gola and shall return by evening. It is thereafter her case that her husband's phone was switched off and an unidentified dead body was found. The second respondent reported that the murder of her husband was committed by his employer (the appellant before us) with the help of his friends. The statement came to be recorded from her on 27.06.2015. She also gave an additional statement. Thereafter, the police investigated the matter and chargesheet was filed against three persons. Thereafter, the second respondent deposed: D

4. In her evidence, she has *inter alia* deposed that, on 23.06.2015, her husband left home at around 7-8 in the morning telling her that his car owner had called him immediately. On the same day her husband called her around 2 p.m. on her mobile phone and told her that he was going to Gola with the appellant and that he will return by evening. She also deposed that when she called the appellant, he told her that the car was found near the Government tubewell near Lagucha and that slippers of her husband were lying in that car. She has also stated that she and her family are convinced that her husband was E

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- A murdered by the appellant with the help of his friends. She further stated that she is fully confident that her husband was murdered by the appellant. This statement was made on 05.08.2017. On the very same day, an application was filed on behalf of the prosecution invoking Section 319 Cr.P.C. The Sessions Judge, Khiri, by order dated 11.09.2018, took the view that the power under Section 319 Cr.P.C. has to be invoked and ordered to summon the appellant. This order came to be unsuccessfully challenged before the High Court. It is thus, the appellant is before us.
- C 5. We have heard Mr. Gaurav Srivastava, learned counsel for the appellant, Mr. Adarsh Upadhyay, learned counsel for the first respondent-State and Ms. Sansriti Pathak, learned counsel for the second respondent.
- D 6. Learned counsel for the appellant would point out that the courts have erred in law in invoking power under Section 319 Cr.P.C. solely based on the deposition as already noted by us, given by the second respondent. The appellant has relied on the judgments of this Court rendered in *Hardeep Singh v. State of Punjab and Others* (2014) 3 SCC 92 and *Labhuji Amratji Thakor and Others v. State of Gujarat and Another* AIR 2019 SC 734.
- E 7. While this Court has approved of relying upon deposition which has not suffered cross examination for the purpose of invoking Section 319 Cr.P.C., it is relevant to note the standards which have been fixed by this Court for invoking the power under Section 319 Cr.P.C. The statement of law in this regard is contained in paragraphs 105 and 106 of *Hardeep Singh* (supra):
- F 105. Power under Section 319 Cr.P.C. 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.
- H 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 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused."

8. After hearing learned counsel for the respondents, who, no doubt, point out that the deposition of the second respondent as given by her, would suffice in law for the Court to invoke the power under Section 319 Cr.P.C., we are of the view that the matter must be reconsidered.

9. We say this for the following reason:

10. The test as laid down by the Constitution Bench of this Court for invoking power under Section 319 Cr.P.C. *inter alia* includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than *prima facie* case which is applied at the time of framing of charges.

11. It will all depend upon the evidence which is tendered in a given case as to whether there is a strong ground within the meaning of paragraph 105.

12. We are of the view that from the facts of this case, it becomes necessary for us to direct the Sessions Judge, Khiri, to consider the matter afresh in the light of the principles which have been clearly enunciated by this Court.

13. The appeal is accordingly, allowed. The impugned judgment will stand set aside and we also set aside the order passed by the

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A learned Sessions Judge issuing summons. The Sessions Judge, Khiri, will apply his mind in the light of the principles which have been laid down by the Constitution Bench.

14. The Sessions Judge, Khiri, will call this case on 30.09.2021. The parties will be present on the said day.

B Thereafter the Court will pass appropriate orders bearing in mind the principles which have been laid down by this Court in *Hardeep Singh* (supra). The appeal is allowed as above.

Bibhuti Bhushan Bose

Appeal allowed