Pankaj Kumar Rai vs State Of U.P. & Another on 31 January, 2018

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R.

Reserved on 9.01.2018

Delivered on 31.01.2018

Court No. - 17

Case :- CRIMINAL REVISION No. - 2300 of 2013

Revisionist :- Pankaj Kumar Rai

Opposite Party :- State Of U.P. & Another

Counsel for Revisionist :- Ravindra Nath Rai,Ashok Kumar Rai

Counsel for Opposite Party :- Govt. Advocate,Pradeep Singh Sengar

connected with

Case :- CRIMINAL REVISION No. - 2323 of 2013

Revisionist :- Rananjay Rai

Opposite Party :- State Of U.P. And Anr.

Counsel for Revisionist :- Girdhar Prasad Tripathi

Counsel for Opposite Party :- Govt. Advocate,Pradeep Singh Sengar

Hon'ble Dinesh Kumar Singh-I,J.

1. Criminal Revision 2300 of 2013 (Pankaj Kumar Rai Vs. State of U.P. and another) and Criminal Revision 2323 of 2013 (Rananjay Rai Vs. State of U.P. and another) have been directed against the order dated 7.6.2013 passed by Additional Sessions Judge, Court No. 2, Ballia in Session Trial No. 54 of 2009 (State Vs. Praveen and others) whereby the revisionists have been summoned on an application moved under Section 319 Cr.P.C. (to be referred as 'Code' in brief) by the O.P. No. 2 to face trial under Sections 147, 148, 304 I.P.C. read with Section 149; Section 307 I.P.C. read with

Section 149; Section 308 I.P.C. read with section 149 I.P.C.; Section 323 I.P.C. read with Section 149 I.P.C.; Section 324 I.P.C. read with Section 149 I.P.C.; Section 504 I.P.C. & Section 506 I.P.C. Since both the above revisions arise out of the same order passed by the court below, they are being decided together by common judgment.

2. From the perusal of the impugned order, it is apparent that an application 154 (Kha) was moved before the court below by the O.P. No.2, Nirmala Rai, in which she stated that the I.O. did not submit charge-sheet against Rananjay Rai and Pankaj Rai (revisionists). P.W. 1, Nirmala Rai was an eye-witness of the occurrence and had lodged a report at the concerned police station. Her cross-examination has been completed. The other eye-witness P.W.2, Amit Kumar Rai has also given complete statement before court below and both of them have corroborated the version of the F.I.R. In F.I.R., it is stated that Rananjay Rai with 'Farsa' in his hand and Pankaj Rai with 'Lathi' had assaulted the deceased and in the injury memo of the deceased, wounds and contusion marks have been found. Hence, it was prayed that both Rananjay Rai and Pankaj Rai (revisionists) be summoned for facing trial and in this regard a large number of citations have been relied upon.

3. On the other hand, from the side of revisionists it was argued before the court below that they had no role in the occurrence. The said application had been moved with a view to destroying their life. The presence of the complainant, Nirmala was doubtful on the spot. She had lodged an F.I.R. after consultation. The statement of P.W.2, Amit Rai was not believable at all. In support of their contention, a large number of citations were relied upon.

4. The learned court below, after having gone through the respective versions of the parties and perusing the evidence on record, has recorded in the impugned order that P.W.1, complainant Nirmala Rai had lodged an F.I.R. (Ex. Ka-1) at the police station with allegation that both the revisionists threatened to break her hands and legs if she did not restrain from giving statement before court. Giving effect to this threat, on 25.08.2008 at about 7:00 p.m., when her husband was sitting in his 'Dera', Dinanath Rai, Shiv Bachan Rai, Shesh Nath Rai, Rananjay Rai (revisionist) & Yogesh Rai having 'farsa' in their hands, Dhananjay Rai & Sumit Rai carrying spear in their hands and Praveen Kumar Rai, Brijesh Rai, Punendra Rai and Pankaj Rai weilding 'lathis' in their hands, converged on the 'dera' of her husband, started abusing him and caused injuries to him with the weapons they were carrying, with an intention to kill. After having received injuries, her husband fell down and thereafter with an intention to kill him, Praveen Rai caused him injury by spear. Thereafter her husband became unconscious. These accused were also accompanied by Sumit Rai who was also carrying spear with which he assaulted her husband, which penetrated in his stomach. Dhananjay Rai also assaulted her husband with spear in his chest. A large number of injuries were caused to her husband of 'farsa', spear and 'lathi'. This occurrence was witnessed by Jai Narayan Rai and Amit Rai. Further, it is recorded in the said order that P.W. 1, Nirmala has stated in her examination-in-chief that Dina Nath Rai, Shesh Nath Rai, Rananjay Rai (Revisionist) wielding 'farsa' in their hands and Sumit Rai and Dhananjay Rai wielding spear in their hands and Praveen, Pankaj (Revisionist) & Sunendra wielding 'lathies' in their hand gheraoed her husband and started abusing her and her daughter. When her husband tried to run away across the road to save his life, all these accused started causing him injuries with the above-mentioned weapons. Sumit Rai, who was having spear, hit her husband which caused injury in his stomach. Her husband fell down after

having received these injuries and thereafter Dhananjay Rai caused injury with spear which hit his chest. Her husband had received various injuries. It is further recorded that the defence side had made extensive cross-examination of the said witnesses and it was stated in the cross examination that there were in all 15 persons on the spot, out of which there were 10 accused and 5 persons belonged to the complainant side. This witness has also deposed that Rananjay Rai had also caused injury of 'farsa' to the deceased. Similarly, P.W. 2 Amit Rai who was also an eye-witness of the occurrence has stated that when he reached the spot he saw that Dinanath Rai, Shesh Nath Rai, Yogesh Rai & Rananjay Rai (Revisionist) armed with 'farsa', Dhananjay and Sumit armed with spear and Praveen @ Pinto, Brijesh Rai, Sunendra @ Sonu and Pankaj Rai armed with 'lathi' all had 'gheraoed' Shri Alakh Dev Rai on the northern patti of the road and started abusing him badly and with an intention to kill, all of them started beating him with the said weapons in their hands. This witness in cross-examination stated that Rananjay Rai (revisionist) and Dhananjay Rai were present on the spot. He had seen Rananjay Rai at the place of occurrence with Pankaj Rai (Revisionist). Having quoted the said statements, the learned court below has recorded the finding that P.W. 2 was wholly corroborating the statement of P.W.1 regarding this occurrence. Both of them were eye witnesses and were exposed to thorough cross-examination. Both the witnesses have supported the statement of each other on all points of fact. P.W.1 besides being an eye-witness is also the first informant of this case who has supported the said version in her statement by mentioning that both revisionists were involved in giving effect to the occurrence besides other accused persons and their names were also mentioned in the F.I.R. Thus, it was held that there was sufficient evidence against the revisionists, which if left unrebutted, would result in their conviction, hence they were summoned by impugned order.

5. The learned counsel for the revisionists has assailed the order on several counts which are as follows:

6. Firstly, he has contended that no permission was taken by the private counsel from the court to move an application under Section 319 Cr.P.C. which is violation of the provisions of section 301 Cr.P.C. and for this reliance has been placed upon the Judgment of Dhariwal Industries Limited Vs. Kishore Wadhwani and others 2017 (1) SCC (Cri) 116.

7. Secondly, it is contended that the jurisdiction under Section 319 Cr.P.C. has to be exercised sparingly, the same being of extra-ordinary nature not to be exercised in routine manner. For this he has relied upon the law laid down in Ram Singh and Others Vs. Ram Niwas and Another (2010) 1 SCC (Cri) 1278; Brijendra Singh and Others Vs. State of Rajasthan 2017 (100) ACC 601; and Smt. Bhagwati and Others Vs. State of U.P. and another 2017 (101) ACC 601.

8. Thirdly, he has contended that there were 10 accused whose names were mentioned at page 24 of the paper book, out of whom persons at Srl. Nos. 1 to 4 were armed with 'farsa', persons at serial Nos. 5 and 6 were armed with spear 'bhala' and persons at serial Nos. 7 to 10 were armed with 'lathis', but the statement of Nirmala at page 40 of the paper book clearly states that there was no injury caused to the deceased by 'lathi' and spear rather he had injuries only of 'farsa'. It is also argued that the injuries recorded in the post-mortem report at page 33 of the paper book were found to have been caused by 'farsa' and not by 'lathis' and spear.

9. Fourthly, it was contended that in the earlier order dated 23.7.2011 (Annex. 7) passed by the Additional Sessions Judge, Court No. 2, Balia, it had been clearly recorded by the court that at that stage there was not sufficient credible evidence on the file, on the basis of the statement of P.W.1 given in examination-in-chief, to summon the accused persons to face trial with co-accused. It was argued that the said order was never challenged and therefore, this opinion of the court below would still hold good and, therefore, the impugned order summoning the revisionists should be set aside.

10. Fifthly, it was argued that right from the initial stage of investigation till the filing of charge-sheet and thereafter till beginning of recording of statements of witnesses, no protest was made in regard to revisionists not being made accused. Therefore, at this stage, summoning the revisionists should be refused.

11. Lastly, it is argued that the main motive behind getting the revisionists summoned is that, by showing therm involved in the said case, they would be deprived of getting any job.

12. In rebuttal, from the side of the learned A.G.A., further, it is stated that under Section 301 Cr.P.C., it is stipulated that a private counsel of the complainant may act under the direction of the Public Prosecutor. There is no such bar for a private counsel to move an application with the permission of the Government Advocate/ D.G.C. For this, he has relied upon the same citation which has been relied by the learned counsel for the revisionists i.e. Dhariwal Industries Limited Vs. Kishore Wadhwani and others 2017 (1) SCC (Cri) 116. Secondly, he has argued that this Court should avoid getting into the factual aspects of the case such as whether the injuries of the weapons were found to have been caused to the deceased or not or whether the injuries mentioned in the postmortem report did not find support from the statements of eye-witness in respect of the weapons which were allegedly used in causing the said injuries. It was further stated that the name of the revisionists were mentioned in the F.I.R. but their names were expunged by the police malafidely which compelled the complainant side to move an application before court after examination of witnesses and after perusal of the evidence on record. The court below has rightly summoned the revisionists to face trial because it has found, on the basis of statement of P.W.1 and P.W.2., the involvement of these accused in the said case, who deserve to face trial along with the co-accused. It is clearly recorded by the court below that if the evidence which has come on record against the revisionists, remains un-rebutted, there would stand fair chance of their conviction. It is further stated that in Hardeep Singh Vs. State of Punjab and Others (2014) 3 SCC 92, the Supreme Court clearly defines the position of law that if even the name of the accused persons appear in the statement of the witnesses during trial, it would be within the power of the court below, if it is convinced about their involvement in the occurrence, to summon them to face trial with other accused persons. Lastly it was contended that the order dated 23.07.2011 (Annexure-7) which has been pointed out to have been passed by the court below expressing opinion that it did not find sufficient evidence on record to summon the revisionists to face trial as accused and rejected their summoning was passed due to the fact that the application was prematurely moved there, by the complainant at that time, when only the examination-in-chief of P.W.1 had been recorded. Subsequently, he had moved another application under Section 319 of the Code to get those accused summoned which was rejected by the court below vide order dated 30.03.2013 (Annexure-8), against which he had filed an application under Section 482 No.14362 of 2013 before this Court

(Smt. Nirmala Rai Vs. State of U.P. and two others), wherein this Court had set-aside the said order dated 30.03.2013 and had remitted the matter to the Additional District and Sessions Judge, Court No.2, Ballia to reconsider the same and pass appropriate order as per law after hearing the parties within a period of one month from the date of production of certified copy of the order. The impugned order is the finally passed order in this regard.

13. First of all, the point that the private counsel did not have right to move an application under Section 319 Cr.P.C. is being taken up. It is argued that in the case at hand, the application 154(kha) under Section 319 of the Code has been moved by private counsel of the complainant which is not maintainable. The reliance has been placed by him in this regard on Dhariwal Industries Limited Vs. Kishore Wadhwani and others 2017 (1) SCC (Cri) 116.

14. Before analyzing position of law as interpreted by the Supreme Court in the above citation, it would be pertinent to reproduce Section 301 Cr.P.C. Which is as follows:

> "301. Appearance by Public Prosecutors.- (1) The Public Prosecutor or Assistant Public Prosecutor in charge of a case may appear and plead without any written authority before any Court in which that case is under inquiry, trial or appeal.
>
> (2) If in any such case, any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case."

15. By a bare reading of this provision, it is apparent that, if any, private person instructs his pleader/counsel to prosecute any person in any court, he shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor and not directly. In the above citation relied upon by the learned counsel for the revisionists, it is made clear that role of the complainant is limited under Section 301 of the Code. He cannot be allowed to take over control of the prosecution by directly addressing the Court, but he shall act under the direction of A.P.O., in-charge of the case. There is no denying the fact that in Sessions Trial Cases, the Government Advocate is known as D.G.C. (Crl.) who conducts the prosecution and in case, the complainant of the case wants to engage a private counsel, such a counsel will have right to proceed in the case only through the learned D.G.C. (Crl.) and not directly. In the estimation of this Court, this position of law is affirmed by the above citation relied upon by the learned counsel.

16. In the case at hand, in the second paragraph of the impugned order, it is recorded by the court below that application 154 (kha) was moved from the side of the complainant with the consent of the Additional D.G.C., hence it cannot be said that the said application was moved illegally, as same would be found to have been moved in accordance with the provisions of Section 301 of the Code. The objection of the learned counsel for the revisionists in this regard is not found tenable.

17. The next argument made upon by the learned counsel for the revisionists is that there was no sufficient evidence on record to make out a prima facie case against the revisionists, strong enough to summon them to face trial with the co-accused persons. The legal requirement in this regard is that court ought not take it lightly, rather should ensure that there was such a strong piece of evidence on record against the accused to be summoned that if the same was left unrebutted or uncontroverted that would result in ultimate conviction of them. It was also pointed out by the learned counsel that earlier also an attempt was made by the complainant side to get the revisionists summoned by moving an application under Section 319 of the Code but the same was dismissed by Court on 23.7.2011 not finding the evidence sufficient.

18. Three citations have been relied upon, which have been described above by the learned counsel for the revisionists but he has mainly relied upon Brijendra Singh and others Vs. State of Rajasthan (Supra).

19. A perusal of this judgment would show that facts of this case were altogether different. In this case, a written complaint was made, on the basis of which F.I.R. was registered under Sections 147, 148, 149, 323, 448 302/149 I.P.C. and also under Sections 3 and 3(2) (v) of S.C./S.T. Act. After the investigation in this case, the appellants were also interrogated by the police in which they had stated that they were residing in Jaipur at the time of incident. They had given very strong proof in regard to the plea of alibi which included: (i) Duty Certificate signed by the Assistant Inspector General of Police, Jaipur, Rajasthan certifying that they were present on duty on 29.4.2000; (ii) Medical certificates issued by Medical Officer, Primary Health Centre, Moti Kotla, Jaipur certifying that Jagdish Singh was suffering from disease on 24.4.2000 and was advised five days rest; (iii) Letter dated 17.2.2002 signed by the Police Superintendent, District Karauli, addressed to Circle Officer, Circle Kailadevi, giving the sanction under Section 173(9) of the Cr.P.C. to end investigation in crime No. 53/2K Police Station, Sapotra, and submitted a report in the Court; (iv) Statement of Rajendra Prasad, Deputy Inspector General of Police, Police Head Office, Jaipur, recorded under Section 161 Cr.P.C. on 7.12.2000, wherein he stated that on 29.4.2000, he was working on the post of Assistant Inspector General of Police (Training), Jaipur, Rajasthan and Brijendra Singh, Constable, was his driver who was present on duty on that day. Log book of the vehicle was also produced to show the presence of Brijendra Singh; (v) Statement recorded under Section 161, Cr.P.C. of Smt. Shashi Rajawat (Medical Officer, In-charge, Government Ayurvedic Hospital, Nahati Ka Naka) wherein she had stated that as per the record one Bhanu Pratap Singh had come to the hospital on 26.4.2000 suffering from sickness as he was having loose motions and was vomiting as well as he was treated by the said medical officer and was prescribed medicines on slip written by her. She verified the prescription; (vi) Statements of Mr. Naveel Kasliwal of Jain Medical Store recorded under Section 161 Cr.P.C. wherein he stated that the said medical store was owned by him. He verified that medical slip of Government Hospital had been written by Sudhir Sharma on 29.4.2000 and based thereupon he had given the medicines; (vii) Statement of Sudhir Sharma, Medical Officer, Government Hospital, Moti Katla, Jaipur recorded under Section 161 Cr.P.C., wherein he stated that from 22.2.2000-4.05.2000, his duty was at Vidhan Sabha from 3:00 p.m. to 7:00 p.m. and in the morning from 8:00 a.m. till 12:00 noon at Government Hospital. He further stated that on 29.4.2000, a patient name Jagdish Singh, who was suffering from malaria fever, had come and was prescribed medicines by him on slip, which are medicines of the Government

Hospital. He verified that the slip was written by him containing the prescription. Three days medicines were given to the patient. On 2.5.2000, again two days medicines for the patient were prescribed on the said slip; (viii) Statement of Shri Mahendra Singh Tanwar, who was working as a driver at Government District Mahila Hospital, Sanganeri Gate, Jaipur, recorded under Section 161 Cr.P.C. He stated that son of his elder brother, Bhanu Pratap Singh who was a student, was unwell for 15-20 days in the month of April 2000. For this purpose, he was given treatment in private hospital but no improvement was found and, therefore, he was taken to Ayurvedic Hospital on 26.4.2000 for treatment. He was suffering from loose motions and cough for which he was prescribed three days medicines and the medicines were repeated again on 29.4.2000 for further three days.

20. Based on these statements under Section 161 Cr.P.C., the police had filed final report against the appellants but the court below had passed the summoning order against them ignoring the said evidence. The Apex Court observed that the entire record was available to trial court. Notwithstanding the same, it went by deposition of the complainant and some other persons in their cross-examination, with no other material to support their so called verbal / ocular version. Thus, the evidence recorded during trial was nothing more than the statements which were already there under Section 161 Cr.P.C., recorded at the time of investigation of the case. No doubt the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However in a case like the present one where plethora of evidence was collected by the I.O. during investigation which suggested otherwise, the trial court was at least duty bound to look into the same for forming prima-facie opinion and to see whether much stronger evidence than mere possibility of their (i.e. appellants) complicity had come on record. There was no satisfaction of this nature, even if it is presumed that trial court was not apprised of the same when it passed the order (as the appellants were not on the scene at that time), what was found more troubling even was when this matter on record was specifically brought to the notice of the High Court in the revision/petition filed by the appellants, High Court too blissfully ignored the said material contained in the order of trial court expressing agreement therewith. Nothing more has been done. Such order could not stand judicial scrutiny. In this case, the Supreme Court has also relied upon the law laid down by the Constitution Bench of Supreme Court in Hardeep Singh Vs. State of Punjab and Others (supra) and has cited the relevant paragraph nos. 8, 12, 19, 95, 105 and 106, which are as follows:-

> "8. The Constitutional mandate under Articles 20 and 21 of the Constitution of India, 1950 (hereinafter referred to as the "Constitution') 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 the 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 the Cr.P.C. 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 Cr.P.C. 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 Cr.P.C.

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.

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 Cr.P.C., 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, 2013 (11) SCALE 23, 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 Cr.P.C. is a discretionary and an extra- ordinary 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 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."

21. Further, in paragraph 13 of this case, following paragraph has also been quoted:-

> "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 Cr.P.C.?"

22. It is absolutely clear from the above position of law as to when an order of summoning accused u/s 319 Cr.P.C. may be passed. The Court has ample power under the said section to summon the accused whose name is mentioned in F.I.R. but in charge-sheet it has been expunged by the police after investigation. But if after framing of charge, the trial starts and the evidence is recorded and if any incriminating evidence is found to have come on record against any person which is strong enough to make out a prima facie case against him, of his having committed an offence, which if left uncontroverted, could result in conviction of such a person/accused, the court is considered well within its power to summon such a person as accused in the said trial to face trial with other co-accused persons. The question which has been considered by the Supreme Court in the above case, was the same which involved appreciation of evidence and its gravity. The Apex Court found that despite there being large number of evidence having been gathered by Investigating Officer proving the alibi of the accused-appellants, the court below, as well as the High Court, did not pay attention to the said evidence and passed the summoning order. In the case at hand such is not the matter because from perusal of evidence on record, which has already been cited by the court below in the impugned order, name of both the revisionists namely Pankaj Rai and Rananjay Rai were mentioned in the F.I.R. and in the statement of PW-1 Nirmla Rai (also first informant), she has clearly stated that Rananjay Rai having 'Farsa' in his hand and Pankaj Rai having 'Lathi' in his hand came with an intention to kill her husband on his 'dera', started abusing and along with other accused they also caused injuries to the deceased by the aforesaid weapons. Besides this, the other eye witness (PW-2), whose statement is also quoted in the impugned order, has fully supported the version of the FIR that both these accused had participated in causing injuries to the deceased. It was argued by the learned counsel for the revisionist that in post-mortem report, there were only four injuries found which appeared to have been caused by 'Farsa' and no injury was found on the person of the deceased of 'Lathi' or spear. It may be pointed out in this regard that this is elementary stage of summoning the accused where medical evidence may not be looked into in detail/in depth as the trial is yet to take place of these accused persons/revisionists. These arguments may be taken care of at the stage of final disposal of the case, when the cross-examination of the doctor, who conducted the post-mortem or conducted the medical examination of the deceased, would be recorded in the court below. It would be pertinent to mention here that the benefit of the above citation would not go to the accused-revisionist in this case because in that case strong pieces of evidence of alibi were presented which were relied upon by the police and final report was submitted

and yet the court below and High Court had not taken notice of such strong pieces of evidene and went on to summon the accused persons (appellants in that case). Such is not a situation in the case at hand, as, no such evidence has been cited from the side of the accused/revisionists of alibi. There is no other piece of evidence found on record which may lead this Court to believe that these revisionists were not involved in causing the said occurrence. The learned court below has not only recorded its prima facie satisfaction of finding these revisionists involved in causing occurrence, rather, has also expressed opinion that there was full likelihood of these revisionists being convicted, if the evidence which has come on record, remains un-controverted/un-rebutted. Hence, no infirmity is found in the order.

23. The other citation relied upon by the learned counsel for the revisionist is Ram Singh and Others Vs. Ram Niwas and Another (supra). In this case, it has been held by the Supreme Court that what was necessary for the Court was to arrive at a satisfaction that evidence adduced on behalf of prosecution, if unrebutted, would lead to conviction of the persons, sought to be added as accused in the case. It was held that the learned Judge was in a position to consider the evidence brought on record including the cross-examination of the prosecution witnesses. The High Court did not arrive at any finding that a case had been made out for exercise of such extraordinary jurisdiction, which in terms of the judgment of the Supreme Court was required to be exercised very sparingly. Nothing new has been found to have been stated in this case, as the judgment of Dhariwal Industries Limited Vs. Kishore Wadhwani and others 2017 (1) SCC (Cri) 116 contains all these points.

24. The other judgment relied upon by the learned counsel for the revisionist is Smt. Bhagwati and Others Vs. State of U.P. and another 2017 (101) ACC 601. The facts of this case were also totally different. This was a complaint case in which the evidence was recorded under Sections 200 and 202 Cr.P.C. of the witnesses. At the initial stage, case was found proved by the trial court only against one accused out of seven who was summoned to face trial, while the others (seven accused-revisionists) were subsequently summoned by the court under Section 319 Cr.P.C. of the Code, after framing of charge when the evidence was recorded. The revisional court found that such summoning was prima-facie not proper because initially the court did not find the same evidence sufficient to summon these accused/revisionists to face trial, but subsequently on the same pieces of evidence, after cross-examination of the witnesses, they were summoned on an application under Section 319 of the Cr.P.C., and accordingly the summoning order was quashed and the revision was allowed. Therefore, no benefit of this citation would go to the revisionists in the present case.

25. The other arguments which were made by the learned counsel for the revisionists need no consideration.

26. In view of above facts, this Court finds that this revision deserves to be rejected and is, accordingly, rejected.

Order Date :- 31.01.2018 A. Mandhani