

**N. Manogar & Anr.**

v.

**The Inspector of Police & Ors.**

Criminal Appeal No. 1333 of 2024

16 February 2024

**[Vikram Nath and Satish Chandra Sharma, JJ.]**

#### **Issue for Consideration**

Whether the High Court was justified in setting aside the order passed by the trial court whereunder, the trial court rejected the application filed by the complainant u/s. 216/319 CrPC seeking the summoning of, and the impleadment of the appellants as accused persons in connection with the case u/ss. 452, 294(b), 323 and 506(1) IPC.

#### **Headnotes**

**Code of Criminal Procedure, 1973 – ss. 216/319 – Discretionary powers under – Exercise of, by the High Court – Application by the complainant u/s. 216/319 seeking the summoning of, and the impleadment of the appellants as accused persons in connection with the case u/ss. 452, 294(b), 323 and 506(1) IPC – Rejected by the trial court, however, allowed by the High Court – Correctness:**

**Held:** Trial court's order was well reasoned and did not suffer from any perversity – High Court impleaded the appellants' as accused persons in the underlying proceedings on the satisfaction of a prima-facie finding that the materials on record sufficient to proceed against the appellants – High Court failed to appreciate that the discretionary powers u/s. 319 CrPC ought to have been used sparingly where circumstances of the case so warrant – Moreover, the materials on record could not be said to have satisfied the threshold envisaged, that more than a prima facie case, as exercised at the time of framing of charge but short of evidence that if left unrebutted would lead to conviction – Thus, the impugned order set aside. [Paras 9, 10, 11]

#### **Case Law Cited**

*Hardeep Singh v State of Punjab & Ors.*, [\[2014\] 2 SCR 1](#) : (2014) 3 SCC 92 - relied on.

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*Jogendra Yadav v. State of Bihar, [2015] 9 SCR 69 : (2015) 9 SCC 244; Jitendra Nath Mishra v. State of Uttar Pradesh, [2023] 7 SCR 642 : (2023) 7 SCC 344; Sagar v. State of Uttar Pradesh & Anr., (2022) 6 SCC 389 – referred to.*

### List of Acts

Code of Criminal Procedure, 1973; Penal Code, 1860.

### List of Keywords

Discretionary powers; Approach adopted by the High Court; Summoning; Impleadment; Reasoned order; Perversity; Prima-facie finding.

### Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1333 of 2024

Arising out of Special Leave Petition (Crl.) No(s). 8696 of 2021

From the Judgment and Order dated 13.09.2021 of the High Court of Judicature at Madras in CRLRC No. 133 of 2020

### Appearances for Parties

S. Nagamuthu, Sr. Adv., M.P. Parthiban, Ms. Priyaranjani Nagamuthu, R. Sudhakaran, T. Hari Hara Sudhan, Ms. Shalini Mishra, Bilal Mansoor, Shreyas Kaushal, P.V.K. Deivendran, Advs. for the Appellants.

V. Krishnamurthy, Sr. AAG., D. Kumanan, Ms. Deepa S., Veshal Tyagi, Chandan Kumar, Madhu Prakash, P. Soma Sundaram, Advs. for the Respondents.

### Judgment / Order of the Supreme Court

#### Order

1. Leave granted.
2. The present appeal has been filed by the Appellant(s) assailing the correctness of a decision of the Madras High Court (the “**High Court**”) dated 13.09.2021, setting aside an order dated 24.10.2019 passed by the Ld. XIV Metropolitan Magistrate, Egmore, Chennai (the

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**"Trial Court"**) whereunder, the Trial Court rejected the application instituted by the Complainant under Section 216 read with Section 319 of the Code of Criminal Procedure, 1973 (the "**CrPC**") seeking (i) the summoning of; and (ii) the impleadment of the Appellant(s) as accused person(s) in connection with Case Crime No. 7243 of 2018 under Section(s) 452, 294(b), 323 and 506(1) of the Indian Penal Code, 1860 (the "**IPC**") (the "**Impugned Order**").

3. The brief fact(s) culled out of the record are as follows:

- 3.1. Pursuant to an order of the High Court dated 24.01.2018, Respondent No. 1 registered a First Information Report ("**FIR**") dated 20.04.2018 under Section(s) 448, 294(b), 323 and 506(1) of the IPC pursuant to a complaint lodged by Respondent No. 2 i.e., the Complainant whereunder it was alleged that, Respondent No. 3 came to the Complainant's home asking about one Vidhul i.e., the Complainant's son. Upon being told that Vidhul was the Complainant' son Respondent No. 3 slapped the Complainant, pushed her on the sofa, made vulgar comments and thereafter dragged Vidhul out of the bathroom and physically assaulted him up until he fell unconscious. Subsequently, Respondent No. 3 extended threat(s) to the Complainant. Pertinently, it was also stated in the FIR that Respondent No. 3 was accompanied by her husband and another 'boy', however no role was ascribed to aforesaid person(s).
- 3.2. A chargesheet came to be filed before the Trial Court by Respondent No. 1 against Respondent No. 3 under Section(s) 294(b), 323, 506(1) and 448 IPC. Subsequently the charge under Section 448 IPC came to be altered to Section 452 IPC. Pertinently, the Complainant, other eyewitnesses and the doctor who examined the injured victim(s) only named; and ascribed a role to Respondent No. 3 in their statement(s) under Section 161 CrPC before the investigating authorities.
- 3.3. An application dated 27.01.2019 under Section 482 CrPC came to be preferred by the Complainant before the High Court seeking re-investigation qua the FIR. At this stage, for first time, the Complainant individually (a) named (i) Appellant No. 1 i.e., Respondent No. 3's husband; and (ii) Appellant No. 2 i.e., a

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relative of Respondent No. 3; and (b) ascribed a particular role qua the alleged incident to them i.e., that the Appellant(s) trespassed into the Complainant's home, hurled vulgar abuses and also threatened to kill the Complainant's son. It was also stated that although the Complainant allegedly named the aforesaid person(s), the same was not recorded in the FIR ("**Re-Investigation Application**"). The High Court *vide* an order dated 05.02.2019 in the Re-Investigation Application, observed that the investigation had concluded; and a chargesheet had been filed by the investigating authorities. Accordingly, the High Court granted the Complainant liberty to prefer an application under Section(s) 319 read with 216 of the CrPC before the Trial Court seeking impleadment of the Appellants qua the proceedings emanating from the FIR. Further, the Trial Court was directed to consider the application of the Complainant under Section(s) 319 read with 216 of the CrPC and implead the Appellant(s) as accused person(s) during the examination of witnesses (if necessary) (the "**Re-Investigation Order**").

- 3.4. Pursuant to the Re-Investigation Order, an application dated 19.03.2019 under Section(s) 319 read with 216 of the CrPC came to be preferred by the Complainant before the Trial Court whereunder it was stated that (i) despite naming the Appellants, the FIR only came to be lodged against Respondent No. 3 i.e., allegedly the names of the Appellants were omitted by the investigating authorities; (ii) the statement(s) recorded by investigating authority under Section 161 of the CrPC were mechanically recorded and purposely did not disclose to names of the Appellants; (iii) that the prosecution witnesses ("**PWs**") Nos. 1-5 have named the Appellants' during their examination-in-chief before the Trial Court; and have also ascribed a specific role to the Appellants' (the "**Underlying Application**").
- 3.5. *Vide* an order dated 06.05.2019, the Trial Court partly allowed the aforesaid application i.e., impleaded Appellant No. 1 as an accused person in the proceedings emanating from the FIR observing *inter alia* that Appellant No. 1 i.e., a policeman ought to have prevented an offence from taking place and accordingly, his omission would necessarily amount to abetment, however,

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the Trial Court rejected the prayer qua the impleadment of Appellant No. 2 as an accused on the ground that no reason(s) have been attributed as to how the Complainant; and other PWs' have been able to identify the unknown 'boy' as Appellant No. 2.

- 3.6. Aggrieved by the aforesaid order, revision petition(s) were filed by Appellant No. 1 and Respondent No.2 before the High Court. *Vide* an order dated 10.06.2019, the revision petition(s) came to be allowed by the High Court on the ground that the Appellants' were not issued notice in the Underlying Application and accordingly, the Underlying Application could not be decided without affording the Appellants' an opportunity of hearing as mandated by this Court in Jogendra Yadav vs. State of Bihar, (2015) 9 SCC 244. Thus, the High Court remanded the Underlying Application back to be considered afresh by the Trial Court in line with our decision in Hardeep Singh v State of Punjab & Ors., (2014) 3 SCC 92 (the "Remand Order").
- 3.7. Pursuant to the Remand Order, the Trial Court *vide* an order dated 24.10.2019 dismissed the Underlying Application observing *inter alia* that there is no evidence qua the involvement of the Appellants to justify impleading the Appellants as accused person(s) in light of the fact that no specific allegation(s) had been levelled by the Complainant in either the underlying complaint; or before PW-6 i.e., the doctor treating the victim(s) immediately after the alleged offence (the "Underlying Order").
- 3.8. Aggrieved by the Underlying Order, the Complainant filed a criminal revision petition before the High Court. *Vide* the Impugned Order, the High Court held *inter alia* that the allegation(s) in the underlying complaint; and statement(s) recorded under Section 161 CrPC disclose that the Appellants were present with Respondent No. 3 at the time of the commission of the alleged offence; and accordingly trespassed into the home of the Complainant. Additionally, the High Court observed that the standard to be adopted by the Trial Court at the stage of invoking its' powers under Section 319 CrPC would be a *prima facie* satisfaction that that the accused person has committed the alleged offence. Accordingly, in view of the aforesaid, the High Court (i) allowed the criminal revision petition;

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- (ii) set aside the Underlying Order; and (ii) directed the Trial Court to implead the Appellants as Accused No. 2 and Accused No. 3 respectively, in the CC No. 7243 of 2018 before the Trial Court (the “**Underlying Proceedings**”).
4. Mr. S. Nagamuthu, learned senior counsel appearing on behalf of the Appellants has submitted before us that the High Court has exercised jurisdiction under Section 319 of the CrPC and erroneously reversed the Trial Court Order without appreciating (i) that the allegation qua the Appellants are vague and omnibus; (ii) that there is no evidence on record to suggest the involvement of the Appellants in the alleged offence; and (iii) the *dicta* laid down by this Court in *Hardeep Singh (Supra)*.
5. On the other hand, the learned counsel(s) appearing on behalf of the Respondent(s) have vehemently opposed the aforesaid contention; and submitted that the High Court has rightly appreciated the allegations disclosed in the underlying complaint, the statement(s) recorded under Section 161 CrPC and the examination-in-chief of the PWs to conclude that the evidence on record underscored the involvement of the Petitioners in the commission of a crime and accordingly, the Impugned Order could not be faulted on account of any perversity in view of our decision in *Jitendra Nath Mishra v. State of Uttar Pradesh*, (2023) 7 SCC 344.
6. We have heard the learned counsel(s) appearing on behalf of the parties and perused the materials on record.
7. The principles of law governing the exercise of jurisdiction under Section 319 of the CrPC are well established. Notably, a constitution bench of this Court in *Hardeep Singh (Supra)* observed as under:

*“105. Power Under Section 319 Code of Criminal Procedure 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 laid before the court that such power should be exercised and*

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*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 laid before the court, not necessarily tested on the anvil of cross-examination, it requires much strong evidence that near 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 Code of Criminal Procedure.”*

8. The aforesaid position was reiterated by this Court in **Sagar v. State of Uttar Pradesh & Anr.**, (2022) 6 SCC 389 wherein it was opined that:

*“9. The Constitution Bench has given a caution that power Under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as notice above 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....”*

9. In the present case, the High Court overturned the Trial Court Order; and accordingly impleaded the Appellants' as accused person(s) in the Underlying Proceedings on the satisfaction of a *prima-facie* finding that the materials on record i.e., (i) vague allegations emanating from the underlying complaint; (ii) the Complainant's statement under Section 161 of the CrPC; and (iii) the Complainant's examination-in-chief, are sufficient to proceed against the Appellant(s).
10. In our considered view, the approach adopted by the High Court was not in consonance with this Court's opinion in **Hardeep Singh (Supra)**. The High Court failed to appreciate that the discretionary powers under Section 319 of the CrPC ought to have been used sparingly where circumstances of the case so warrant. In the present

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case, the Trial Court Order was well reasoned and did not suffer from any perversity. Moreover, the materials on record could not be said to have satisfied the threshold envisaged under *Hardeep Singh (Supra)* i.e., more than a *prima facie* case, as exercised at the time of framing of charge but short of evidence that if left unrebutted would lead to conviction.

11. Consequently, this appeal stands allowed and the Impugned Order is set aside. Pending application(s), if any, stand disposed of.

*Headnotes prepared by:* Nidhi Jain

*Result of the case:*  
Appeal allowed.