

[2024] 6 S.C.R. 10 : 2024 INSC 366

Shankar
v.
The State of Uttar Pradesh & Ors.

(Criminal Appeal No. 2367 of 2024)

02 May 2024

[Pamidighantam Sri Narasimha and Aravind Kumar, JJ.]

Issue for Consideration

Whether there is sufficient material against the appellant prompting the trial court to pass a summoning order u/s. 319 Cr.P.C.

Headnotes

Code of Criminal Procedure, 1973 – s. 319 – Summoning order u/s. 319 – Legality of – Appellants facing trial for offence u/s. 302 – Summoning order passed u/s. 319 by the trial court – High Court refused to quash the summoning order – Correctness:

Held: Degree of satisfaction required to exercise power u/s. 319 is much stricter, considering that it is a discretionary and an extraordinary power – Only when the evidence is strong and reliable, the power can be exercised – It requires much stronger evidence than mere probability of his complicity – Appellants were named in the first information statement by the first informant despite not being an eyewitness to the offence, however, in the statement u/s. 161 Cr.P.C, first informant clarified that her family had a long-standing enmity with appellants' family; that the names of appellants were written in the FIR falsely and without full information; and that the appellants were not involved in the murder of her son – Even in the charge sheet, the names of the appellants were not mentioned as accused – It is only in her deposition before the trial court the names of the accused resurfaced again – Almost a year later, the prosecution chose to file an application u/s. 319 – Change of circumstance which the prosecution seeks to contend on the basis of first informant's deposition does not satisfy the requirement of s. 319 at all – First informant not being an eye-witness, her deposition not sufficient enough to invoke the extra-ordinary jurisdiction u/s. 319 to summon the appellants – No other witnesses deposed anything against the appellants – No documentary evidence collected against the appellants – Also no role attributed to the appellants – These factors when looked in a holistic manner, make it clear that the

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higher degree of satisfaction required for exercising power u/s. 319 not met with – Trial court erred in allowing the application u/s. 319 and issuing summons to the appellants – High Court having failed to quash the order of summons, the order passed by the trial court as also by the High Court set aside. [Paras 18-26]

Case Law Cited

Hardeep Singh v. State of Punjab [\[2014\] 2 SCR 1](#) :
(2014) 3 SCC 92 – referred to.

List of Acts

Code of Criminal Procedure, 1973.

List of Keywords

Sufficient material; Summoning order; Degree of satisfaction; Power u/s. 319 CrPC; Discretionary and an extra-ordinary power.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.2367 of 2024

From the Judgment and Order dated 04.04.2023 of the High Court of Judicature at Allahabad in A482 No. 30221 of 2017

With

Criminal Appeal No. 2368 of 2024

Appearances for Parties

Ms. Preetika Dwivedi, Abhisek Mohanty, Advs. for the Appellant.

Yasharth Kant, Jitendra Kumar Tripathi, Ankit Goel, Dhawal Uniyal, Nikhil Sharma, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

1. Leave granted.
2. The present appeals arise out of a decision of the High Court of Judicature at Allahabad dated 04.04.2023 in Application under Section 482 No. 30221 of 2017, whereby the High Court refused to quash a summoning order dated 24.08.2017 passed under Section 319

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of the Cr.P.C. by the Additional District & Sessions Judge, Kanpur Dehat, where the Appellants herein were directed to face a trial for offence under Section 302 IPC. Both the Appellants being identically placed, their appeals are being dealt with together.

3. The issue that arises for our consideration is whether there is sufficient material against the Appellant prompting the Trial Court to pass a summoning order under Section 319 Cr.P.C. The principles of law being settled by the judgments of the constitutional benches of this Court, this question hinges upon the facts of the present case, which is as follows:
4. **Facts and investigation:** On 10.05.2011, the first informant (PW-1), who is the mother of the deceased, got an FIR lodged at P.S. Ghatampur, informing that her son was found dead near a tubewell in the wheat field of a fellow villager. In her statement, she alleged that her son was murdered by the present appellants, the father of the appellants, along with two others, due to certain old enmity existing between the two families.
5. The following day, the investigation officer recorded a statement of PW-1 under Section 161 Cr.P.C. In this statement she also stated that the deceased was quarrelsome, had a habit of picking up fights with other villagers and had a few criminal cases going on against them. Previously, he had also picked up fights with the father of the appellants. She stated that on 08.05.2011, Mahendra Singh, a gangster of the same village, came on a bike and asked the deceased to accompany him, on the pretext that Mahendra Singh would pay back a sum of Rs. 8,000 which he had borrowed from PW-1, and also that he would help the deceased arrive at a compromise with Accused No. 1 (father of the appellants) and Accused No. 3. Accordingly, the deceased left on the motorcycle of Mahendra Singh. She stated that Accused Nos. 1-3 were standing at a distance noticing the developments. She stated with conviction that Accused Nos. 1-3 along with Mahendra Singh killed the deceased. In this statement, PW-1 stated that the appellants were not involved and that she wrote their name in her first information statement incorrectly and without collecting full information. Two other persons (witness), Rajau Sengar and Karan Singh, in their Section 161 statements reiterated the statement of PW-1. Even they stated that the present appellants had no role whatsoever in the commission of the crime.

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6. After conducting the investigation, the IO filed a chargesheet on 22.06.2011, where the present appellants were not named as accused. There were only four named accused in the chargesheet, however, Mahendra Singh who was arrayed as Accused No. 4 was absconding. It was categorically stated in the chargesheet that after investigation, it came to light that the naming of the present appellants was false.
7. **Trial:** On 20.05.2016, PW-1 was examined where she stated that *"My old enmity with accused Bacha Singh has been going in for the last 11 years and on the basis of suspicion, I had written the names of Shankar and Vishal in the FIR."* However, at a later stage of her examination, she stated that *"It is wrong to suggest that because of old enmity, I have wrongly written the names of Bacha Singh and his sons in the FIR"*. Apart from PW-1, none of the other 5 witness, spoke about the complicity of the appellants in the commission of the offence.
8. **Trial Court:** Pursuant to the statement made by PW-1 in her examination in chief, the Assistant Public Prosecutor, on 31.07.2017, filed an application under Section 319 of the Cr.P.C. to summon the appellants herein to face the trial.
9. The Ld. Trial Court, on 24.08.2017, allowed the application filed by the APP after noting certain previous decisions of this Court where it was held that if the evidence tendered in the course of trial shows that any person not named as an accused has a role to play in the commission of the offence, then he could be summoned to face trial even though he may not have been charge sheeted.
10. **High Court:** The above order passed by the Trial Court was challenged by the Appellants before the High Court by filing a petition under Section 482 Cr.P.C. This petition came to be dismissed by the High Court by its order dated 04.04.2023. While dismissing the petition, the High Court noted that at the stage of Section 482, the Court is only supposed to see if there exists a prima-facie case. It is this order of the High Court which is impugned before us.
11. **Issue:** The only question arising in the present appeal is whether the power under Section 319 Cr.P.C. has been properly exercised in light of the facts of the present case and evidence on record.
12. **Analysis:** We have heard Ld. counsel for appellants, Ms. Preetika Dwivedi and Ld. counsel for the Respondent State Mr. Ankit Goel.

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13. At the outset, we may note that the four accused who were charge-sheeted, have passed away. As against them, the trial has abated. The learned counsel for the Respondent State has argued that even if the trial has abated against existing accused, there is no bar in summoning the appellants and starting the trial afresh¹. This position of law is well-settled and the learned counsel for the appellant has also not disputed the same.
14. In this background, we will examine the legality of the summoning order under Section 319 Cr.P.C. on its own footing. Section 319 of the Cr.P.C. is as follows:

“319. Power to proceed against other persons appearing to be guilty of offence

(1) *Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*

(2)

(3)

(4)”

15. Having taken note of the provision, we will note the principles laid down by a Constitution Bench of this Court in [Hardeep Singh v. State of Punjab](#), (2014) 3 SCC 92, for criminal courts to follow while exercising power under Section 319 Cr.P.C.:

“94. In Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094, a four-Judge Bench of this Court was concerned with the meaning of the word “appear”. The Court held that the appropriate meaning of the word “appears” is “seems”. It imports a lesser degree of probability than proof. In Ram Singh v. Ram Niwas, (2009) 14 SCC 25, a two-Judge Bench of this Court was again required to examine the importance of the word “appear” as appearing

¹ Gurmail Singh v. State of UP, (2022) 10 SCC 684

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in the section. The Court held that for the fulfilment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as the accused in the case.

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 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter...*

105. *Power under Section 319 CrPC 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.*

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 CrPC.....*

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

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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.

17. In this background, we will examine the evidence on record which prompted the trial court to exercise the power under Section 319 Cr.P.C. PW-1, who is the mother of the deceased, is the only witness who has named the appellants.

- 17.1 In the first information statement, she has taken the name of the appellants as having played a role in the commission of the crime owing to the past enmity between the two families. The relevant portion of this statement is as follows:

"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."

- 17.2 However, in her Section 161 statement, she has stated that the appellants were not involved and that she named them without collecting full information. Two other witness, Rajau Sengar and Karan Singh, in their Section 161 statements have also stated that the appellants had no role whatsoever in the commission of the crime. Relevant portion of PW-1's statement under Section 161 Cr.P.C., is as follows:-

"...I had lent Rs. 8000 to Mahendra Singh long ago after selling Lahi. Vijay Singh had asked Mahendra Singh many times to repay the borrowed money but he did not give it back. Coming under the guise of this assurance, Vijay Singh left on Mahendra's motorcycle. Sanjay Singh and Kallu Singh sons of Munna Singh and Bacha Singh s/o Mohan Singh were also standing at some distance outside the house."

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They also lured my son Vijay Singh and accompanied Vijay Singh and Mahendra Singh and all four of them killed my son Vijay Singh and threw the dead body in the field near the tubewell of Mahendra Pratap Singh Bhadoria. The names of Shankar Singh and Vishal Singhs sons of Bachha Singh, which I have written in the FIR, have been written by me falsely without collecting full information. My son Vijay Singh was murdered by Mahendra Singh s/o Chandrapal Singh Sachan of village Laukaha, Bacha Singh s/o Mohan Singh of village Raha and Sanjay Singh and Kallu Singh s/o Munna Singh of village Jalala. Shankar and Vishal sons of Bacha Singh were not involved in my son's murder."

(emphasis supplied)

17.3 Even in the chargesheet, which was filed after investigation, the name of the appellants has not been mentioned as accused.

17.4 It is only in her deposition before the trial court that PW-1 has once again named the appellants. However, she has also stated that she has named them only on the basis of suspicion. The relevant portion of her deposition before the Trial Court is as follows:

"In my report, I made Bachha Singh, Shankar, Vishal, Kallu Singh and Mahendra Sachan accused. I had an old enmity with these people."

In her cross-examination, PW-1 stated as follows:-

"There were two-three outstation cases and two-three local cases from the village were pending against my son Vijay Singh, which are closed now. The said cases were closed/concluded during the lifetime of Vijay Singh. My old enmity with accused Bacha Singh has been going on for the last 11 years and on the basis of suspicion, I had written the names of Shankar and Vishal in the FIR."

18. It is evident from the above that the appellants were named in the first information statement, however, in the statement under Section 161 Cr.P.C, PW-1 clarified that the names of appellants were written

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in the FIR falsely and without full information. She has also stated that the appellants were not involved in the murder of her son. Even in the charge sheet, the names of the appellants were not mentioned as accused. It is only in her deposition before the Trial Court the names of the accused resurfaces again.

19. None of the other witnesses, being PW's-2, 3, 4, 5 and 6 have deposed anything about the appellants.
20. On 31.07.2017, i.e. almost a year after the deposition of PW-1, the prosecution chose to file an application under Section 319 Cr.P.C. to the following effect:-

"It is most respectfully submitted that in the above mentioned case, the first informant Mrs. Sheela Singh had written the names of Shankar Singh and Vishal Singh in the First Information Report and the names of Shankar Singh and Vishal Singh have also been mentioned by her in her examination in chief also. For this reason, it is necessary to summon Shankar Singh and Vishal Singh for trial in the said case.

Therefore, the Hon'ble court is requested to kindly pass an order thereby summoning accused Shankar Singh and Vishal Singh sons of Bachha Singh for trial in the said case.

*Yours faithfully,
Sd/-illegible
31.7.2017"*

21. At the first place, PW-1 has named the appellants in the FIR despite not being an eyewitness to the offence. In her statement under Section 161, she sought to clarify the position by recording that her family had a long-standing enmity with appellants' family. She also stated that the names of the appellants were mentioned and written by her "*falsely without collecting full information.*" She categorically stated that the appellants are not involved in the murder of her son.
22. When we contrast this statement with her deposition given five years later, we do not see a drastic change in the stand of PW-1. Even in her chief examination, she had stated that she had an old enmity with the family of the accused. However, in her cross examination, she clarified that as the enmity with the appellants family was going on for the last eleven years, names of the appellants

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were mentioned in the FIR on the basis of suspicion. Therefore, the change of circumstance which the prosecution seeks to contend on the basis of PW-1's deposition does not satisfy the requirement of Section 319 at all.

23. Having considered the matter in detail, we are of the opinion that PW-1, not being an eye-witness, her deposition is not sufficient enough to invoke the extra-ordinary jurisdiction under Section 319 to summon the appellants.
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.
25. For the reasons stated above we are of the opinion that the Trial Court committed a serious error in allowing the application under Section 319 and issuing summons to the appellants. The High Court should have exercised its jurisdiction under Section 482 and quashed the order. The High Court having failed to quash the order of summons dated 24.08.2017, we are inclined to allow these appeals and set-aside the order passed by the Trial Court dated 24.08.2017 and the also the judgment of the High Court dated 04.04.2023 dismissing the petition under Section 482.
26. For the reasons stated above, the present appeals are allowed, and the impugned order dated 04.04.2023 passed by the High Court of Judicature at Allahabad in Application under Section 482 No. 30221 of 2017 and the order dated 24.08.2017 passed by the Additional District and Sessions Judge, Court No. 5, Kanpur Dehat, in S.T. No. 434 of 2011 in Application Paper No. 83Kha under Section 319 Cr.P.C. are hereby set aside.

Headnotes prepared by: Nidhi Jain

*Result of the case:
Appeals allowed.*