

DISTRICT : HAILAKANDI.

IN THE COURT OF THE SESSIONS JUDGE, HAILAKANDI

**Present:- Sri Syed Imdadur Rahman,
Sessions Judge, Hailakandi.**

Dated, the 06th day of June, 2024.

Criminal Revision No. 67/2022

(Revision against order dated 23.08.2022 passed by the Ld.
Judicial Magistrate First Class, Hailakandi in connection with
GR Case No. 1995/2017)

1) Sri. Azhar Uddin Barbhuiya,

-and-

2) Sri. Arif Hussain Barbhuiya,

Both are S/o- Basir Uddin Barbhuiya

Resident of Hailakandi Town,

PO/PS- HailakandiRevisionist

Versus

1) Sri. Abul Kasim Tapadar

-and-

2) The State..... Opposite parties

Appearance :-

For the Revisionist :- Sri F. I. Barbhuiya, Ld. Advocate.

For the O.P :- N. I. Laskar, Ld. Advocate.

Date of Argument :- 02.05.2024.

Date of Judgment :- 06.06.2024.

J U D G M E N T

1. This Criminal Revision petition was filed by petitioners Azhar Uddin Barbhuiya and Arif Hussain Barbhuiya against the impugned order dated 23.08.2022 passed by the Ld. Judicial Magistrate First Class, Hailakandi in connection with GR Case No. 1995/2017. Vide the impugned order, the Ld. Court of the Judicial Magistrate First Class, Hailakandi impleaded both revisionist in GR Case No. 1995/2017, invoking Section 319 CrPC and issued summons to them.

2. That, being aggrieved with the impugned order, both revisionists have filed this revision petition, praying for setting aside the impugned order.

3. I have perused the revision petition as well as the LCR and also I have heard both sides.

Point to be decided:-

4. Whether the impugned order dated 23.08.2022 is incorrect, improper or illegal and requires intervention, exercising revisional jurisdiction?

DECISION AND REASONS THEREOF:-

5. Both Revisionists were aggrieved by the impugned order dated 23/08/2022, as they have been impleaded in the main case, i.e, GR Case No. 1995/2017 and summons were issued to them, for their appearance.

6. I have perused the LCR and found that, FIR of this case was lodged on 03/12/2017, which was registered as Hailakandi PS Case No. 760/2017, U/S 457/294/354/427/506/34 IPC and in pursuance to that, GR Case No. 1995/2017 was registered. Police after investigation, forwarded charge sheet bearing C.S No. 206/18 dated 30/04/2018, U/S 447/427/379/394 IPC, against Basir Uddin Barbhuiya. The charge sheet shows that the present revisionist namely, Azar Uddin Barbhuiya @ Munna and Arif Uddin Barbhuiya were mentioned to be not sent up for trial. The charge sheet mentioned that, during investigation, the I/O did not find any evidence against them.

7. Accordingly, summons was issued to accused Basir Uddin Barbhuiya and on 10/04/19, and charge was framed against him. Thereafter, summons were issued to witnesses and on 05/09/19, the PW 1 was examined, cross examined and discharged. On 23/08/2022, the Ld. Court below examined the PW 2 and on that day, invoking Section 319 CrPC, impleaded Azhar Uddin Barbhuiya and Arif Hussain Barbhuiya as accused persons in this case.

8. It is the case of both revisionist that the Ld. Judicial Magistrate First Class, Hailakandi committed error in law and facts, while passing the impugned order, impleading them as accused persons. That, the Ld. Court below without applying any judicial mind committed miscarriage of justice in passing the impugned order dated 23/08/22. That, as no strong or cogent evidence come-up from PW 1 and PW 2, there is no prima facie material against both revisionists for their impleadment as accused persons in this case.

9. Section 319 CrPC is as follows, " Power to proceed against other persons appearing to be guilty of offence- i) 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”.

In this case, the Ld. Court below vide the impugned order, after considering evidences of PW 1 and PW 2, invoked Section 319 CrPC and impleaded both revisionists as accused persons.

Perusal of the FIR shows that, both revisionists were named as accused persons in it. The PW 1 of this case is the informant, and PW 2 is one of the material witness of this case. If we consider allegations levelled in this case, then it is clear that both PW 1 and PW 2 being materials witnesses in this case. During their evidence clearly mentioned about direct involvement of both revisionists in the alleged offence.

10. It is submitted on behalf of revisionist that the Ld. Court below without considering materials on record passed the impugned order, for which the impugned order is liable to be set aside and quashed. The Ld. Counsel placed his reliance in the case of **Babubhai Bhimabhai Bokhria and another VS State of Gujarat** (Crl. Appeal No. 735/2014) SLP (Crl.) 9184/2008, where the Hon’ble Sepreme Court held that, “ 98. Power Under Section 319 CrPC is a discretionary and 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 causal and cavalier manner.

I have considered the basis of invoking Sec. 319 CrPC, in this case by the Ld. Court below, and found that source for invoking Section 319 CrPC were evidences of the PW 1 and PW 2 (informant/victim of this case). Both those two materials witnesses specifically mentioned about both revisionists/accused persons about their direct involvement in the alleged incident.

The **Hon'ble Supreme Court in Michael Machado VS C.B.I (AIR 2000 SC 1127)** held that the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First, that the other person has committed an offence. Second, that for such offence that other persons could be tried along with already arraigned accused.

11. After considering the impugned order along with case record which includes the evidence of the PW 1 and PW 2, I find that the impugned order is based on proper scrutiny

of evidences on record, as the court below on the basis of materials before, it used its discretion, invoking Section 319 CrPC. Scrutiny of materials on record shows that no manifest illegality is there apparent on the face of the impugned order.

Considering these aspects, this revisional court invoking Section 397 CrPC did not find anything to interfere with the impugned order, for which this revision petition is dismissed.

12. Send back the LCR along with the copy of Judgment.

Given under my hand and seal of this Court on this the 06th day of June, 2024.

Sd/-

Sessions Judge, Hailakandi.

*Dictation is taken and transcribed by Abhishek Samanta
(Stenographer)*