

Presented on:03-08-2023

Heard on: 17-08-2023

Ordered on: 28-08-2023

**IN THE COURT OF IIIrd ADDITIONAL SESSIONS JUDGE, KASGANJ
PRESENT - GAGAN KUMAR BHARTI, H.J.S. JO CODE (UP-6253)**

State v/s Deepak & others.
Session Trial No.- 102/2020,
Case Crime No. 206/2019

Disposal application bearing no. 16-A u/s 319 Cr. P. C.

1. The complainant Satish Chandra filled an application u/s 319 Cr.P.C. bearing no. 16-A dated 03-08-2023 to summon Jugal Kishore, Munna Lal and Jaiveer additionally as accused to face the trial along with the other accused persons.
2. Heard the complainant and ADGC (Cri.) and perused the entire evidence available on the record.
3. In brief, the gravamen of the allegations made in the FIR, is to the effect that Smt. Lata Devi the wife of the complainant's brother Bablu, had an illicit relationship with Deepak alias Budha s/o Mulk Bhan Singh. About 5 months back, the complainant's wife Satyavati caught Deepak and Lata talking on the mobile on which an argument ensued, and both of them confessed their love affair and then Satyaveer Singh Fauji of the village scolded Deepak and said that such an incident should not happen again. The accused Jugal Kishore, Munna Lal and Jaiveer Singh have a past enmity regarding the land dispute with the complainant's family. On the date of 17/18.10.19 at around 12 o'clock in the night, his brother's wife Lata Devi called Deepak and at the behest of Jugal Kishore, Munna Lal and Jaiveer Singh, Smt. Lata and Deepak alias Buddha committed the murder of his brother Bablu who was sleeping in a shed outside the kutcha house by strangulating him under a well-thought conspiracy. The complainant saw all of them coming out of his brother's house and Lata was also standing at the door, so he thought that he would talk about this in the morning. At the same time, his brother Vinod also came to the spot and saw the incident. In the morning it came to his knowledge that his brother Bablu had been killed by the accused persons in the night. The complainant did not report the incident at the earliest because his mental condition was not good. After performing the last rites of his brother, he went to the police station- Sidhpura, Kasganj and moved a typed report to lodge an FIR against the accused persons.
4. Based on the aforesaid typed report, a First Information Report was registered in the case crime number 206/2019, under section 302/120-B IPC against the accused Deepak, Lata, Jugal Kishore, Munna Lal and Jaiveer at Police Station Sidhpura, Kasganj. After the investigation, the investigator filed a charge sheet u/s 302 read with 34 IPC against the accused Deepak and Lata as their complicity was found in this case. The remaining accused Jugal Kishore, Munna Lal and Jaiveer were exculpated based on insufficient evidence.
5. After the framing of the charge, trial commenced and the statement of P.W.1, Satish Chandra has been recorded and after completion of cross-examination, an application

bearing no. 16-A has been filed by the complainant under Section 319 Cr.P.C. to summon the proposed/alleged accused Jugal Kishore, Munna Lal and Jaiveer additionally as accused to face the trial along with the other accused persons as the said witness had named them as the co-assailant or participant.

6. Now it is to be determined whether the proposed/alleged accused Jugal Kishore, Munna Lal and Jaiveer are liable to be summoned as accused in the light of the evidence available before this court and the judgment passed in Hardeep Singh and Sartaj Singh's cases.
7. Before parting with the matter, it is pertinent to mention the relevant provision of law in this regard as follows; -

Section 319 Cr.P.C.; - 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) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then –

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

8. The issues relating to the scope and object of summoning the accused under Section 319 Cr.P.C. have been well considered and settled by The Hon'ble Apex court in **Sartaj Singh Vs. State of Haryana & Anr, (2021) 5 SCC 337**, wherein the law declared by the Constitution Bench in the case of **Hardeep Singh & Ors. Vs. State of Punjab & Ors, 2014 (3) SCC 92**, was followed "The Power under Section 319 Cr.P.C. is discretionary and extraordinary. 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. 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 Examination, it requires much stronger evidence than the mere probability of his complicity. The test that has to be applied is more than a 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 a 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 a 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".

9. The aforesaid principles laid down by the Hon'ble Apex Court in the case of Hardeep Singh (supra) have been reiterated further in the case of **Brijendra Singh and others vs. State of Rajasthan; 2017(7) SCC 706** as well as in the case **S Ahmad Ispahni vs. Yogendra Chandak and others; 2017 (16) SCC 226** observing that power under Section 319 Cr.P.C. can be exercised only where strong and cogent evidence is found against a person and not in a casual and cavalier manner. The decree of satisfaction before summoning the offence under Section 319 Cr.P.C. must be more than prima facie, which is warranted at the time of framing of charges against the accused.
10. Thereafter, The Hon'ble **Apex Court in the case of Labhuji Amratji Thakar and others vs. State of Gujarat and another; 2018 SCC online SC 2547** also followed the principle laid down by the Apex Court in the case of Hardeep Singh (Supra).
11. The Hon'ble Apex Court in the case of **Periyasami and others Vs. S. Nallasamy; 2019 (4) SCC 342** has also held that the additional accused cannot be summoned under Section 319 of the Code in a casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code, additional accused can be summoned only if there is more than a prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused.
12. Thus, 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. that empowers the court to proceed against other persons who appear to be guilty of the offence, though not an accused before the court. The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof. The power under Section 319 Cr.P.C. is discretionary and extraordinary. 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 rather it requires much stronger evidence than the mere probability of his complicity. The test that has to be applied is more than a 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 a conviction.

In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C.

13. Now, it is the settled position of the law that the proposed accused persons cannot be summoned under Section 319 of the Code in a casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code of Criminal Procedure, an additional accused can be summoned only if there is more than a prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused.
14. In the matter at hand, the statement of PW-1 Satish Chandra has been recorded during the trial wherein, he deposed that on the date of 17/18.10.19 at around midnight, his brother's wife Lata Devi called Deepak and at the behest of Jugal Kishore, Munna Lal and Jaiveer Singh, Smt. Lata and Deepak alias Buddha committed the murder of his brother Bablu by strangulating him under a well-thought conspiracy. He saw all of them coming out of his brother's house and Lata was also standing at the door, so he thought that he would talk about this in the morning while his brother Vinod also came to the spot and saw the incident. In the morning it came to his knowledge that in the last night, his brother had been killed by the accused persons. After performing the last rites of his brother, he went to the police station in Sidhpura, Kasganj to lodge an FIR against the accused persons.
15. The incident was reported in writing by the complainant and an FIR was registered against Deepak, Lata, Jugal Kishore, Munna Lal and Jaiveer at Police Station Sidhpura, Kasganj. After the investigation, a charge sheet was filed u/s 302 read with 34 IPC against the accused Deepak and Lata as their complicity was found true in the case, while the complicity of the other remaining accused Jugal Kishore, Munna Lal and Jaiveer was found false and in consequence thereof, they have been exculpated by the Investigator.
16. This way, the PW-1 admits in his deposition that he was not an eyewitness to the incident that occurred at midnight, while he asserted that the alleged incident took place over the issue that the deceased Bablu's wife Lata Devi had an illicit relationship with Deepak and the remaining proposed accused Jugal Kishore, Munna Lal and Jaiveer used to have enmity regarding the land disputes with the complainant and his family. His brother Vinod also saw the proposed accused along with the other accused at the place of occurrence. Under these circumstances, an obvious question arises as to why they did not interrupt at that moment when the complainant and his brother Vinod saw the accused at the place of occurrence on the fateful midnight, and why the complainant lodged a delayed FIR of the incident and the testimony of Vinod is yet to be recorded. The application is also not supported by an affidavit. Thus, under such compelling circumstances, the possibility can't be ruled out that the proposed accused are being falsely implicated in connection with the land dispute.
17. It is true that initially the first information report was lodged against 05 persons including the proposed accused persons but in the deposition of the above-named prosecution's witness, general and omnibus roles have been assigned to all the accused persons. It also appears that in the deposition of PW-1, neither any specific weapon has

been assigned to the proposed accused nor any specific role has been attributed to them while it is mandatory to attribute a specific role of every proposed accused.

18. Applying the law laid down by the Hon'ble apex court in the aforesaid landmark decision and available evidence on record, this court is of the considered opinion that in the absence of specific, strong and cogent evidence, the proposed accused persons cannot be summoned under Section 319 of the Code in a casual and cavalier manner. Thereby, at this juncture, evidence produced before this court appeared to be suspicious and there is no cogent as well as strong evidence which goes unrebutted, would lead to a conviction of the proposed accused persons. Thereby, it is established that there is no prima facie case made out against the proposed/alleged accused persons as per the law settled by the Hon'ble Apex Court in Hardeep Singh's and Sartaj Singh's case (supra).
19. Therefore, in the light of the above discussion and settled propositions of law propounded by the Hon'ble apex court, application no. 16-A u/s 319 Cr.P.C. is hereby liable to be rejected.

Order

20. This way, an application no. 16-A u/s 319 Cr.P.C. is hereby rejected accordingly. The file be fixed for prosecution evidence on 05-09-2023 and PW-2 Raghu Nandan be summoned for examination.

Date; 28-08-2023

Gagan Kumar Bharti
IIIrd, Additional Sessions Judge
Kasganj.

Note; The order is written with the help of Dragon Legal provided by the Hon'ble High Court of Judicature at Allahabad.