

In the Court of the Senior Municipal Magistrate

Kolkata

Present :

Smt. Reshmi Das

J O Code UID No.-WB01253

Senior Municipal Magistrate,

Kolkata, Dist.- Kolkata

GR Case no. 142 of 2021

CNR no. WBCS03-000200-2021

State

Vs.

Shahzad Anwar

Order dated

18-09-2024

Today is fixed for passing order in connection with the petition u/s 319 of Cr.P.C. filed on behalf of the prosecution.

The instant petition is taken up for passing order.

The brief fact of the instant petition is that,

The accused Shahzad Anwar has deposed before this Court as D.W.1 and stated during his deposition he narrated before this Court that he used to work as a caretaker at the case premises under the control and super vision of M.A Leasing and Construction Pvt. Ltd. The accused person/D.W.1 also stated that the directors of the above mentioned company are Madina Khatoon, Md. Anwar Rahmani @ Hazi Sahib and Md. Kamran. He was entrusted with supervision of the case premises by executing a Power of Attorney but subsequently, the said instrument was revoked by the directors of the company and a deed of revocation was executed to that effect. As per his further statement, the original deed of revocation is in the custody of the directors of the company. He submitted photocopy of the aforesaid deed of revocation and also stressed upon him claim that he is not involved with the alleged unauthorized construction at the case premises and he has no knowledge about the same. Hence, this instant petition on behalf of the prosecution praying for incorporating the names of the directors as accused persons/persons responsible for raising unauthorized construction at the case premises. The Ld. Advocate for the accused raised no objection against the instant petition filed by the prosecution.

Heard submission of Ld. Advocate for the accused as well as submission of Ld A.P.P in this regard. As reiterated above the accused Shahzed Anwar deposed as D.W.1 and submitted certain documents which have been marked as Exhibit A during trial. On scrutiny of Exhibit A it is incipient before this Court that the letter was issued by one of the Directors of M.A Leasing & Construction Pvt. Ltd. and addressed to the accused person of this case. As per the contents of the letter which bears the official seal of the company, the Power of Attorney dated 12.01.18 was revoked and rescinded on 27.07.17. Therefore, by dint of the deed of revocation of Power of Attorney dated 27.07.17 the authority, rights and power granted in favour of the accused in connection with supervision of the case premises was revoked by the directors of the above mentioned company. It is pertinent to mention at this juncture that the Investigating Officer of this case already deposed as P.W.3 and during his investigation he issued notice to the accused u/s 41A Cr.P.C. in compliance of which the accused appeared before him and submitted photocopy of deed of Power of Attorney dated 27.07.17 which have been marked as Exhibit 17 (3) and on scrutiny of the same it is apparent that it was executed in connection with the repair, renovation and construction work along with other rights accruing in connection with the property at the case premises.

At this juncture it is pertinent to mention herein that as per contents of the provision u/s 319 Cr.P.C It mandates the court to add any such person to the trial with the accused against whom strong evidence has been presented. Such a person against whom sufficient evidence has been produced and the court is satisfied as to his involvement in the case becomes an accused on the date when the order has been passed by the court. Section 319 CrPC finds its roots in this powerful doctrine "*Judex damnatur cum nocens absolvitor*", which means the judge is condemned when the guilty is acquitted. This doctrine is the guiding principle behind the underlying philosophy of Section 319 CrPC. The monumental importance of this doctrine was highlighted in the important case of *Hardeep Singh v. State of Punjab(Crl. Appeal No. 1750 of 2008)*. In this case, the court held that while a prima facie case against the new accused needs to be established from the evidence presented before the court, it requires evidence that is much stronger than just a mere probability of the person's involvement. The standard of proof that should be applied should be more than a prima facie case as exercised at the time of framing of charges. But less than the satisfaction that the evidence, if unchallenged, would lead to a conviction. If such a level of satisfaction is not met, the court should refrain from exercising power under Section 319 of CrPC.

The power under Section 319 of Cr.P.C is an extraordinary power that is conferred on the court, and it is exercised at the discretion of the judge. It should be used carefully and cautiously, and should be exercised only if the compelling reasons exist against the individual against whom the action has not been taken. The provision enshrined under Section 319 Cr.P.C is a special provision. It seeks to meet an extraordinary situation.

The Hon'ble Apex Court observed in the case of *Hardeep Singh vs State of Punjab & Ors* the nature of power vested with courts under as section 319 CrPC as-***“Section 319 of the Criminal Procedure Code gives a special and arbitrary power. It should only be employed sparingly and when the situation clearly calls for it. It cannot be utilized because the Magistrate or Sessions Judge thinks another individual may also be responsible for committing that crime. Only when there is clear and convincing evidence against a person in the evidence provided to the court should this power be used, and not arbitrarily or carelessly.”***

In this instant case the both the oral and documentary evidence which was adduced by the side of the defence is strongly indicating towards the fact that the accused person was relieved from his duties as supervisor in connection with the case premises by dint of the Power of Attorney executed by the company in the name and style of M.A Leasing & Construction Pvt. Ltd. and there was intention on part of the directors of the company to relieve the accused from the duties assigned to him for repair, renovation, construction etc in connection with the case premises. However, the directors of the company have not been incorporated in the category of accused person along with the accused person facing trial at present. Therefore, there is sufficient, relevant and reliable evidence, both oral and documentary against the directors of the aforesaid company i.e Madina Khatoon, Md. Anwar Rahmani @ Hazi Sahib and Md. Kamran and sufficient ground for incorporating them as co-accused in this instant case in presence of clear and convincing evidence against them in connection with this case.

Therefore, the instant petition is considered and allowed on contest.

Fix 12-11-2024 for S/R and appearance of the added accused. Issue notice upon Madina Khatoon, Md. Anwar Rahmani @ Hazi Sahib and Md. Kamran i.e the Directors of the company in the name and style of M.A Leasing & Construction Pvt. Ltd. having its registered office at No. 113, Park Street, Poddar Point Ground Floor Rear Portion, Kolkata-700016 for ensuring their appearance in this case as co-accused.

D/C by me

Senior Municipal Magistrate,
Kolkata, Dist.- Kolkata.

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