



2026:AHC:33200

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 8742 of 2025

Kanhaiya Alias Kanhaiya Lal

.....Revisionist(s)

Versus

State Of U.P. And 3 Others

.....Opposite
Party(s)

Counsel for Revisionist(s)	:	Arvind Agrawal
Counsel for Opposite Party(s)	:	G.A., Shailendra Singh

Court No. - 87

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the revisionist, learned counsel for opposite party no. 4, and learned A.G.A. for the State.
2. Learned counsel for the revisionist has vehemently submitted that the revisionist is not named in the F.I.R. and is only shown as a witness in the charge sheet. The incident is alleged to have occurred on 11.05.2024, whereas the F.I.R. was lodged on 07.06.2024 by the mother of the victim.
3. It has further been submitted that there was neither any mala fide intention nor mens rea on the part of the revisionist. It is argued that the basic principle of criminal jurisprudence, "actus reus nisi mens sit rea," applies; hence, any act committed by a person, unless accompanied by mens rea, does not constitute an offence. The summoning of the revisionist under Section 319 Cr.P.C. is illegal and without any basis in law. The impugned order dated 07.11.2025 is liable to be set aside, and the criminal revision deserves to be allowed.
4. Learned counsel for opposite party no. 4 has submitted that the revisionist prepared the video; hence, his act falls within the ambit of Sections 16 and 17 of the POCSO Act as well as Sections 67 and 67A of the Information Technology Act, 2000. Section 67 of the Information Technology Act, 2000 is as follows:

"Section 67. Punishment for publishing or transmitting obscene material in electronic form.-Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to

tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

Section 67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.-Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees."

5. The brief contents of the F.I.R. are that the alleged occurrence took place on 11.05.2024 and the F.I.R. was lodged on 07.06.2024 under Sections 376 and 506 I.P.C. and Section 3 of the POCSO Act, 2012. Sections 16 and 17 of the POCSO Act are quoted hereinbelow:

"Section 16. Abetment of an offence.-A person abets an offence, who--

First.-- Instigates any person to do that offence; or

Secondly.-- Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that offence; or

Thirdly.-- Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I.--A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.--Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III.--Whoever employ, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability

or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.

17. Punishment for abetment-Whoever abets any offence under this Act, if the act abetted is committed in consequence of the abetment, shall be punished with punishment provided for that offence."

6. The F.I.R. has been lodged against the accused, namely, Pujari Mahant Hemraj Suryavanshi alias Hemnath. The complainant has stated that she is a poor lady. On 11.05.2024, in the morning, her 12-year-old daughter (the victim) went to Sant Ravidas Ashram near her house. Thereafter, Pujari Mahant Hemraj Suryavanshi alias Hemnath called her near him and committed obscene acts on her private parts, chest, and other parts of her body, and sexually assaulted her. A video of the said incident was allegedly prepared by Kanhaiya, son of Vijay Singh. Pujari Mahant Hemraj Suryavanshi alias Hemnath threatened the victim that if she disclosed the incident to anyone, he would kill her. After several days, the victim informed her mother about the incident.

7. After completion of the investigation, a charge sheet was filed under Sections 376 and 506 I.P.C. and Sections 3/4 of the POCSO Act against the accused, Pujari Mahant Hemraj Suryavanshi alias Hemnath. Charges have been framed, and the statement of P.W.-1, the mother of the victim, was recorded on 16.10.2024. In her examination-in-chief, she reiterated the contents of the F.I.R. and did not make any allegation or deposition against the revisionist. Her entire statement is directed only against the charge-sheeted accused.

8. The statement of P.W.-2 (the victim) has also been recorded. She deposed that all sexual acts were committed by the charge-sheeted accused persons. She further verified that her medical examination was conducted at the hospital and reiterated in her statement that Pujari Mahant Hemraj Suryavanshi alias Hemnath committed the said acts with her, in response to specific questions put to her. When asked about her relationship with the revisionist, she stated that he is her brother in relation. She was specifically asked when Kanhaiya came to the Ashram after her arrival, to which she replied that she did not know. She further deposed that she did not know when Kanhaiya, who allegedly prepared the video, came to her house. It is true that Kanhaiya belongs to her family; however, she did not specify or disclose any specific sexual act committed by Kanhaiya.

9. The ingredients required under Section 319 Cr.P.C., as explained by the Hon'ble Supreme Court, are to be considered. It is held by Hon'ble Supreme Court in **Asim Akhtar Versus The State of West Bengal and another, 2024 INSC 794** that complicity of any person sought to be arrayed as an accused can be decided with or without conducting cross-examination of the complainant and other prosecution witnesses and there is no mandate to decide the application under section 319 Cr.P.C. before cross examination of other witnesses. It is held by the Hon'ble Supreme Court in **Hardeep Singh Versus State of Punjab, (2014) 3 SCC 92**, that the word "evidence" used in section 319 Cr.P.C. indicates, the word "evidence" is limited to the evidence recorded during trial. The summoning of accused under section 319 Cr.P.C. is settled, that this power is an extraordinary power, which should be used sparingly with circumspection and while passing the summoning order under section 319 Cr.P.C. court must consider whether more than prima facie case made out, or not; mere prima facie case is not sufficient. It is held by Hon'ble Supreme court in **Omi Versus State of M.P. (2025) 2 SCC 621**, that trial court can add an individual as accused only on the basis of the evidence adduced before it and not on the basis of the materials available in the charge sheet or the case diary because such materials contained in the charge sheet or the case diary do not constitute evidence. It is held by the Hon'ble Supreme Court in **Shiv Baran Versus State of U.P., 2025 SCC OnLine SC 1457** that trial court can exercise power to summon an additional accused under section 319 Cr.P.C. only on the basis of the evidence adduced before it and not any other material collected during investigation.

10. The basic requirement of any crime is that it must be supported by mens rea, and there must be mala fide intention to commit the alleged act. The evidence recorded before the learned trial court has not specifically assigned any role or act to the revisionist/Kanhaiya that may establish or prove mens rea or mala fide intention on his part. Any act that falls within the definition of a criminal offence must be tested on the touchstone of the basic principle of criminal jurisprudence, "actus reus nisi mens sit rea."

11. The evidence recorded before the learned trial court, which is to be considered for summoning an accused under Section 319 Cr.P.C., consists of the statements of P.W.-1 (the mother) and P.W.-2 (the victim). No specific role constituting an offence has been attributed to the revisionist so as to justify his summoning under Section 319 Cr.P.C., in light of the settled

provisions of law laid down by the Hon'ble Supreme Court. The matter involves questions of fact, and the final appreciation of evidence is to be undertaken by the learned trial court.

12. In view of the aforesaid facts, reasons, circumstances, and provisions of law, the impugned order dated 07.11.2025 is liable to be set aside and is accordingly set aside. The learned trial court is directed to decide the application under Section 319 Cr.P.C. afresh, in accordance with law.

13. With these observations, the present criminal revision is finally disposed of.

February 13, 2026
K.K. Maurya

(Abdul Shahid,J.)