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SLP(Cr1.)No. 1521 OF 2001
ITEM No.2

Court No.08

SECTION II
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Cr1.) No. 1521/2001

(From the judgement and order dated 02/02/2001 in CRLR 263/2001
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

RUKHSANA KHATOON

Petitioner (s)

VERSUS

SAKHAWAT HUSSAIN & ORS.

Respondent (s)

(With Appln(s). for stay & exemption from filing O.T.)
(for final disposal)

Date : 18/09/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE M.B. SHAH
HON'BLE MR. JUSTICE R.P. SETHI

For Petitioner (s) Mr. Krishna Pal Singh,Adv.

For Respondent (s)

Mr. Rajender Pd. Saxena,Adv.
Mr. Vineet Sinha, Adv.

UPON hearing counsel the Court made the following
O R D E R

...L.....I....T.....T.....T.....T.....T.....T.....T.....J
.SP2

Leave granted.
The appeal is allowed in terms of the signed order.

.SP1

(D.L. Chugh)
Court Master

(K.K. Chadha)
Court Master

Signed order is placed on the file

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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 965 OF 2001.
(Arising out of SLP (Cr1.) No.1521 of 2001)

Smt. Rukhsana Khatoon

& . Appellant

Versus

Sakhawat Hussain & Others

& . Respondents

O R D E R

Leave granted.

Heard the learned counsel for the parties.

By the judgment and order dated 2nd February, 2001, the High Court of Allahabad allowed the Criminal Revision No.263 of 2001 filed by respondents no.1 to 4 and set aside the order passed by the Sessions Court summoning and arraigning them as accused under Section 319 of Cr.P.C. That order is challenged by filing this appeal.

It is apparent from the record that the complainant lodged a report with Police Station Kotwali Thakurdwara, Moradabad on 5.5.1998 that at about 6.30 p.m., he alongwith his nephew Afroj, Kamal Singh and his son Alam was going towards his house from bus stand and when they reached near the house of Netram son of Dharm Vir, all of a sudden, accused named therein came there and caught Afroj and threatened to kill him for giving evidence against them. Afroj was witness in a case under Section 302 IPC against the accused persons. Accused Sakhawat exhorted saale ko goli mar do and hence, the complainant and others tried to save Afroj. At that time, the accused persons pulled out country made pistol towards them and threatened to shot down if they approached nearby. They stopped out of fear. Meanwhile, accused caught the hands of Afroj and Luvkush shot at Afroj, resultantly Afroj died on the spot. However, after investigation of the case, the Investigating Officer challaned only Luvkush and excluded the names of other persons. During the trial, an application under Section 319 Cr.P.C. was filed before the learned Sessions Judge stating that the names of above four accused persons find mention in the FIR and the evidence of PW1 Mohd. Alam son of Abdul Wahid and PW2 Kamal Singh corroborates the role of those persons in the alleged incident. The learned Sessions Judge allowed the application and ordered summoning of all the above accused persons to stand trial under Sections 147, 148, 149, and 302 IPC. By the impugned order the High Court set aside the said order by holding that Section 319 cannot be invoked by the Court when a person named as an accused in FIR is not charge-sheeted.

In our view, the impugned order is, on the face of it, illegal and erroneous. It is against the provisions of Section 319 Cr.P.C. and the decisions rendered by this Court interpreting the same. In Kishun Singh and others vs. State of Bihar [(1993) 2 SCC 16], this Court considered a case where a FIR was lodged naming 20 persons including the two appellants as assailants of the deceased who died in the occurrence. After investigation, police submitted its report under Section 173 Cr. P.C. showing 18 persons other than the two appellants as offenders. The Magistrate committed those 18 persons named in the report to the Court of Session under Section 209 Cr.P.C. to stand trial. Before Sessions Court, an application under Section 319 of the Code was filed praying that remaining two accused be summoned and arraigned as accused. The Sessions Court impleaded them as co-accused. That order was finally challenged before this Court and the Court dismissed the appeal by holding that Section 319 can be invoked both by the Court having original jurisdiction as well as the Court to which the case has been committed or transferred for trial. Similar is the view taken in Girish Yadav and others vs. State of M.P. [(1996) 8 SCC 186].

The learned counsel for the respondents contended that the High Court was justified in passing the impugned order and in support of his contention he has relied upon the decision in Municipal Corporation of Delhi vs. Ram Kishan Rohtagi and others [AIR 1983 SC 67]. In our view, there is no substance in his contention. In that case also, after considering Section 319 Cr.P.C., this Court held that the said provision gives ample power to any Court to take cognizance and add any person not being an accused before it and try him alongwith other accused, if there appears during the trial sufficient evidence indicating his involvement in the offence. The Court also observed that this power is really an extra ordinary power and should

be used very sparingly.

Considering the facts as stated above, in our view, it cannot be said that the Sessions Court committed any illegality or irregularity in summoning the respondents as accused. Hence, this appeal is allowed and the impugned order passed by the High Court is set aside. The trial court to proceed with the matter in accordance with law.

& & & & & & & .J.
(M.B. SHAH)

New Delhi;
September 18, 2001.

& & & & & .& &J.
(R.P. SETHI)