

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 (Crl) No(s).6791/2009

(From the judgement and order dated 18/03/2009 in CRLR No. 733/2009
of The HIGH COURT OF JUDICATURE AT ALLAHABAD)

ANUVIND VARSHNEY Petitioner(s)

VERSUS

STATE OF U.P.& ANR. Respondent(s)

(With appln(s) for exemption from filing O.T.,stay)

Date: 27/08/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HARJIT SINGH BEDI
HON'BLE MR. JUSTICE CHANDRAMAULI KR. PRASAD

For Petitioner(s) Mr.S.R.Singh,Sr.Adv.
Mr.D.N.Dubey,Adv.
Ms.Sunita Pandit,Adv.
Mr.Nishant Yadav,Adv.
Mr.Himanshu Tyagi,Adv.
Mr.Ujjwal Pandey,Adv.
Mr.Ram Shiromani Yadav,Adv.
Mr.Ankur Yadav,Adv.
Ms.Asha Gopalan Nair,Adv.

For Respondent(s) Mr.Ratnakar Dash,Sr.Adv.
Mr.Rajeev K.Dubay,Adv.
Mr.Kamlendra Mishra,Adv.

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

We have heard learned counsel for the parties at
length.

While issuing notice on 7th September, 2009 we had
made the following observations:

"In view of the decision in Rajendra
Kumar Sitaram & Ors. vs. Uttam and Anr.(AIR
1999 (SC 1028), issue notice.

Interim order to continue till
further orders."

Today it has been pointed out to us that the above

cited decision pertains to a summoning order made under Section 204 of the Cr.P.C. which would be revisable but we see from the present proceedings that the summoning order in the present matter has been made under Section 319 of the Cr.P.C. We are, therefore, at this stage, not in a position to say as to whether the aforesaid judgment would be applicable to this case. As the proceedings in the Trial Court have been stayed, we have ourselves perused the impugned order. The learned counsel for the petitioner has pointed out that in the light of several decisions of this

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Court the Trial Court was bound to record a positive finding that the evidence which had been adduced to have the accused summoned under Section 319 of the Cr.P.C. was sufficient to record a conviction and in the absence of such a finding the summoning order was bad in law. We have gone through the summoning order and observe that the Trial Court has discussed the entire evidence inculcating the petitioner starting from the manner in which the complaint had been filed and suspicion raised that he was indulging in adulteration with his co-accused. We also see that the petitioner had been cited as an accused in the FIR but had been left out by the police in the final report and has now been summoned under Section 319 of the Cr.P.C. It is true, as contended by Mr. Singh that there is no specific observation in the summoning order that the evidence was sufficient to record a conviction in the normal course but a bare perusal of the order and the terminology in which it has been couched makes it abundantly clear that the Trial Court was of the opinion that it was sufficient to record a conviction.

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In this view of the matter we are not inclined to interfere in this matter and the question of the maintainability of a revision with respect to a summoning

order under Section 319 of the Cr.P.C. is left open for discussion in some other matter. We also make it clear that the observations made above would not prejudice either of the parties in the course of the trial and are to be deemed to be confined for the purpose of this petition only.

The special leave petition is accordingly dismissed.

[SUMAN WADHWA]
COURT MASTER

[VINOD KULVI]
COURT MASTER