



2025:AHC:165520

A.F.R.

Reserved on 21.08.2025

Delivered on 16.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 6391 of 2023

Ramnarayan Ram Daroga And 2 Others

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s) : Byas Kumar Prasad, Suresh Kumar
Yadav

Counsel for Opposite Party(s) : Balbir Singh, G.A., Sukhendu Pal Singh

Court No. - 82

HON'BLE SAMEER JAIN, J.

1. Heard Sri Byas Kumar Prasad, learned counsel for the revisionists, Sri Pradeep Kumar, learned A.G.A. for the State-respondent and Sri Sukhendu Pal Singh, learned counsel for the opposite party no.2.

2. The instant criminal revision has been filed by the revisionists to set-aside the impugned order dated 30.10.2023 passed by Chief Judicial Magistrate, Chandauli in Criminal Case No.1697 of 2011 (State vs. Mithai Lal) arising out of Case Crime No.48 of 2011 by which they have been summoned to face trial under Sections 147, 148, 149, 323, 504, 506, 427 I.P.C., Police Station Mughal Sarai, District Chandauli.

Brief facts of the case:-

3. FIR of the present case was lodged on 12.02.2011 against revisionists and six others with regard to the incident dated 12.11.2010 for offences under Sections 147, 148, 149, 323, 325, 504, 506, 395, 452, 427, 341, 342 I.P.C. through an application under Section 156(3) Cr.P.C. dated 08.12.2010 and according to the FIR, revisionists and six others made assault and due to the assault made by them, wife of the opposite party no.2 and his two sons sustained injuries.

4. After registration of the FIR, investigation was conducted and during

investigation involvement of the revisionists were found false and charge-sheet has not been filed against them but during trial, on the basis of the statements of P.W.-1 (opposite party no.2), P.W.-2 and P.W.-3, revisionists have been summoned by the trial court under Section 319 Cr.P.C. vide impugned order dated 30.10.2023. Hence, the instant revision.

Argument advanced on behalf of the revisionists:-

5. Learned counsel for the revisionists submits that impugned order dated 30.10.2023 passed by the trial court is illegal as while summoning the revisionists under Section 319 Cr.P.C. trial court did not record any finding that more than prima-facie case is made out against the revisionists, which was necessary to summon them under Section 319 Cr.P.C.

6. He further submits that even it reflects, FIR of the present case was lodged after two months through an application moved under Section 156(3) Cr.P.C and even application under Section 156(3) Cr.P.C was moved after about one month. He next submits, even P.W.-1 (opposite party no.2), P.W.-2 and P.W.-3 in their statements recorded before the trial court stated that incident occurred on 12.11.2010 but while passing the impugned order, court concerned did not consider this fact and in routine manner summoned the revisionists under Section 319 Cr.P.C.

7. He next submits that however an additional accused can be summoned under Section 319 Cr.P.C. on the basis of the evidence laid before the trial court but before summoning him, it is the duty of the trial court to consider the other relevant factors including the material available on record collected by the I.O. during investigation.

8. He next submits that however power to summon an additional accused under Section 319 Cr.P.C. is discretionary power but the same cannot be exercised in routine manner and this power should be exercised sparingly only in appropriate cases, where there is strong evidence to summon such accused .

9. He further submits that in the present matter even from the statements of the witnesses recorded before the trial court, it reflects, they very casually disclosed the name of the revisionists and their testimonies were not of such quality on the basis of which revisionists should be summoned under Section 319 Cr.P.C.

10. He next submits that therefore, impugned order dated 30.10.2023 passed by the court concerned is illegal and is liable to be set aside.

Argument advanced on behalf of the State and Opposite Party No.2:-

11. Per contra; learned A.G.A. as well as learned counsel for the opposite party no.2 vehemently opposed the prayer and submit that from the statements of P.W.-1 (opposite party no.2), P.W.-2 and P.W.-3 recorded before the trial court, it is apparent that they specifically disclosed the name of the revisionists and from their statements, it is also apparent that more than prima-facie case is made out against them and therefore, while summoning them under Section 319 Cr.P.C . court concerned did not commit any illegality.

12. They further submit that law is settled that while summoning an accused under Section 319 Cr.P.C., trial court should consider only the statements of the witnesses recorded before it and trial court cannot consider the material/statements collected/recorded by the I.O. during investigation.

13. Learned counsel for the opposite party no.2 placed reliance on the judgments of the Apex Court passed in the case of *Omi @ Omkar Rathore Vs. State of Madhya Pradesh and Another 2025 INSC 27 and Shiv Baran Vs. State of Uttar Pradesh and Another decided on 16th July, 2025 in Criminal Appeal No.3008 of 2025 (Arising out of SLP (Criminal) No.3993 of 2025*.

14. He further submits that P.W.-2 and P.W.-3 are injured witnesses and therefore, their statements recorded before the trial court cannot be disbelieved and as they categorically stated that revisionists participated in the incident, therefore, trial court rightly summoned them under Section 319 Cr.P.C..

15. He further submits that therefore instant revision is devoid of merit and is liable to be dismissed.

Analysis and conclusion:-

16. I have heard both the parties and perused the record of the case.

17. In the instant revision, revisionists challenged the order dated 30.10.2023 passed by the trial court by which they have been summoned under Section 319 Cr.P.C.

18. Section 319 Cr.P.C. read as under:-

"319. 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 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."

19. Therefore, from Section 319 Cr.P.C., it is apparent that trial court is empowered to summon a person to face trial, who is not the accused in the case on the basis of the evidence. The word 'evidence' used in Section 319 Cr.P.C. is significant. The Constitution Bench of the Apex Court in case of ***Hardeep Singh Vs. State of Punjab & Others (2014) 3 SCC 92*** held that the word 'evidence' used in Section 319(1) Cr.P.C. indicates, the word 'evidence' is limited to the evidence recorded during trial.

20. The Apex Court in case of ***Omi @ Omkar Rathore (supra)*** also held 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.

21. The Apex Court in the case of ***Shiv Baran (supra)*** also held 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.

22. The Apex Court in case of ***Brijendra Singh & Others Vs. State of Rajasthan (2017) 7 SCC 706***, observed that however, the word 'evidence' used in Section 319 Cr.P.C. means, the material brought before the court during trial but evidence collected by the I. O. can be utilized for corroboration.

23. Therefore, from the above dictum of the Apex Court, it is apparent that while invoking power under Section 319 Cr.P.C. trial court should consider the statements of the witnesses adduced before it and it should not place reliance upon the material available in the charge-sheet or the case diary.

24. The law with regard to the summoning of an 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 is made out, or not. For summoning an additional accused under Section 319 Cr.P.C. mere prima-facie case is not sufficient. [*See: Constitution Bench judgment of Apex Court Hardeep Singh (surpa)*]. Therefore, in light of the above principles, it is to analyze, whether before the trial court material was sufficient to summon the revisionists under Section 319 Cr.P.C. or not.

25. From the impugned order dated 30.10.2023 passed by the trial court it reflects before it statements of P.W.-1 (opposite party no.2), P.W.-2 and P.W.-3 have been recorded and P.W.-2 and P.W.-3 are the injured witnesses of the case and these witnesses stated that on 12.11.2010, revisionists along with others made assault due to which, three persons sustained injuries including Bahadur Sonkar (P.W.-2) and Lilly Sonkar (P.W.-3) but it reflects that FIR of the present case was lodged on 12.02.2011 i.e. after three months through an application under Section 156(3) Cr.P.C. and even application under 156(3) Cr.P.C. was moved on 8.12.2010 i.e. after one month, therefore, there is inordinate delay in lodging the FIR of the present case. It reflects while summoning the revisionists under Section 319 Cr.P.C. court concerned did not consider this fact.

26. Further, from the impugned order dated 30.10.2023, it could not be reflected that trial court recorded any finding, whether more than prima-facie case is made out or not against the revisionists, which was necessary in the light of the law laid down by the Constitution Bench of Supreme Court in case of *Hardeep Singh (supra)*.

27. Further, after considering the fact that there is inordinate delay in lodging the FIR, the statements of P.W.-1, P.W.-2 and P.W.-3 recorded before the trial court do not appear to be of such quality on the basis of which, revisionists should be summoned by exercising power under Section 319 Cr.P.C. as from their statements, it could not be reflected that more than prima-facie case is made out against them.

28. It reflects from the impugned order dated 30.10.2023 that without properly analyzing the facts and circumstances of the case, trial court blindly accepted the statements of P.W.-1 (opposite party no.2), P.W.-2 and P.W.-3 and summoned the revisionists under Section 319 Cr.P.C., which was not permissible.

29. Therefore, from the discussion made above, in considered view of this Court, impugned order dated 30.10.2023 is illegal and is liable to be set-aside.

30. Accordingly, impugned order dated 30.10.2023 is hereby set aside. Instant revision stands **allowed**.

September 16, 2025
Zafar

(Sameer Jain,J.)