

[2022 LiveLaw \(SC\) 265](#)

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
AJAY RASTOGI; ABHAY S. OKA, JJ.

MARCH 10, 2022

CRIMINAL APPEAL NO(S). 397 OF 2022 (Arising out of SLP(Crl) Nos.7373 of 2021)
SAGAR VERSUS STATE OF U.P. AND ANOTHER

Code of Criminal Procedure, 1973; Section 319 - Power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. [Referred to Hardeep Singh v. State of Punjab (2014) 3 SCC 92] (Para 9)

Summary: Appeal against the High court order which set aside the Trial Court order refusing to summon appellant under Section 319 CrPC - High Court even failed to consider the basic principles laid down by this Court while invoking Section 319 of the Code, which has been considered by the learned trial Judge.

(Arising out of impugned final judgment and order dated 28-07-2021 in CRLR No. 774/2018 passed by the High Court Of Judicature At Allahabad)

For Petitioner(s) Ms. Parthvi Ahuja, Adv. Mr. Anoop Prakash Awasthi, AOR

For Respondent(s) Mr. Vishwa Pal Singh, AOR Mr. Ashish Pandey, Adv. Mr. Sanchit Garga, AOR Mr. Sandeep Singh, Adv. Mr. Shashi Kumar, Adv. Mr. Nikunj Jain, Adv.

J U D G M E N T

Rastogi, J.

Leave granted.

2. The instant appeal has been filed by the appellant assailing the correctness of the order dated 28th July, 2021 passed by the High Court of Judicature at Allahabad setting aside order dated 30th January, 2018 passed by the Additional Sessions Judge, Muzaffarnagar, whereby the trial Court had rejected the application filed by the complainant under Section 319 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”) for summoning the appellant as accused and to face trial in Case Crime No.164 of 2014 under Section 302 IPC registered at PS Fugana, District Muzaffarnagar, Uttar Pradesh.

3. The brief facts of the case culled out from the record are that on a written complaint made by one Ravinder s/o Sadharam that on 10th September, 2014, both his sons

Sachin and Nitin were called by Jagpal s/o Shital Singh and his nephew Sagar s/o Charan Singh (appellant) from his house for tying the sugarcane crop and his son Nitin was seen in the company of Jagpal and Sagar (appellant) by the complainant while he was returning back and later at about 9.00 a.m. when the complainant went to the field of Jagpal and called Nitin, Jagpal asked Sagar to disconnect the electric wire and at some distance he saw Nitin lying near the Mend in a naked position, and was burnt by electric wire around the neck. On calling Jagpal and Sagar, they ran away from the spot. On the said written complaint Case Crime No.164 of 2014 came to be registered under Section 302 IPC.

4. After investigation, chargesheet came to be filed against Jagpal Singh s/o Shital Singh. At the same time, it was recorded in the chargesheet that from the statements of the complainant and witnesses and inspection of the place of incident, naming of the accused Sagar who was a juvenile and minor at the relevant point of time, was found to be wrong. No case was made out against him and challan was filed against Jagpal under Section 302 IPC.

5. After the statements of complainant (PW.1) and Sadhu Ram (PW.2), father of the complainant were recorded, the complainant during trial filed application under Section 319 of the Code on 17th March, 2016, stating, inter alia, that during the course of investigation when the statement of complainant and his father were recorded under Section 161 of the Code, the investigating officer had arbitrarily removed the name of the present appellant from the chargesheet, although he was also involved in committing the said crime and this fact has been recorded by PW.1 and PW.2 in their statements on oath while recording their deposition during the course of the prosecution and accordingly asked to summon the present appellant also for trial for the crime committed by him.

6. The learned trial Judge after taking into consideration the material on record and so also the statements of PW.1 and PW.2 recorded a finding that neither the complainant (PW.1) nor his father (PW.2) were eyewitness and it has only been stated about removal of the electric wire by the appellant and this fact was noticed by the investigating officer even when the chargesheet came to be filed and the investigating officer has not found the present appellant to have participated in the commission of crime and at least at the stage when Section 319 of the Code is to be invoked, there must be a strong and cogent evidence occurred against a person from the evidence led before the Court and taking into consideration the material available on record, was not satisfy to summon the present appellant under Section 319 of the Code and consequently rejected the application by an order dated 30th January, 2018. The finding recorded by the learned trial Judge in passing the order dated 30th January, 2018 is reproduced hereunder:

“In the present session trial, the Ld. Counsel for the Complainant has argued that in the captioned Session Trial, in the FIR, name of Sagar S/o Charan Singh was written and in the statements of the Complainant, name of Sagar has come and hence he should be summoned for Trial. In this regard, it is clear from the statement of PW1 that the Complainant is not the eye witness of the incident and he has got the name of accused Jagpal and Sagar written in FIR on the basis of Jagapal and Sagar having gone with his son. In the same way, the PW2, in the crossexamination has only stated about removal of the electricity wire by Sagar. This is important to state that the Investigating Officer of the case has found the naming of Sagar as incorrect and hence he did not include his name in the chargesheet. In addition to that, it has been accepted in the Crossexamination of Sadhram that "the investigation of the case has been done by many Inspectors. First it was done by Fugana Police thereafter my son Ravinder got the Investigation transferred to crime branch". Under Section 319, summoning cannot be done on the ground that some evidence has come against the person. The evidence should be of such nature which would satisfy the court that the said person is involved in the crime.

In the opinion of the Court, from the evidence available on record, there is no sufficient ground for summoning Sagar as accused u/s 319 of the Code of Criminal Procedure. Hence the application is liable to be dismissed.”

7. The respondent/complainant, father of the deceased, filed Criminal Revision Petition before the High Court of Judicature at Allahabad. The learned Single Judge, without even appreciating the evidence of PW.1 and PW.2, which was recorded during the course of trial, in a casual and cavalier manner, set aside the wellreasoned order passed by the learned trial Judge under its order impugned dated 28th July, 2021. It will be apposite to quote the manner in which the learned Single Judge has set aside a cogent reasoning recorded by the learned trial Judge under its order dated 28th July, 2021. The relevant portion of the order of the learned Single Judge dated 28th July, 2021 is reproduced hereunder:

“I have perused arguments of Ld. Counsel for Revisionist, the case file and order under question.

After going by the arguments of both sides the Ld. Counsels and the perusal of the case file, summarily the order dated 30.04.2018 passed by Additional Session Judge, Court No. 1, Muzaffarnagar seems erroneous.

Therefore, this Criminal Revision is hereby accepted and Session Revision No. 508 of 2015, State Versus Jagpal, passed by Additional Session Judge, Court No. 1 Muzaffarnagar vide order dated 30.01.2018 is hereby quashed it is hereby directed that without being influenced by the merits of any observation made in this order, after allowing sufficient opportunity to the parties, and after complete perusal of the case file appropriate order be passed in the matter within two months.

The Office is hereby directed to ensure of sending a copy of this order and the record of the case to the Court concerned without any delay.”

8. The scope and ambit of Section 319 of the Code has been wellsettled by the Constitution Bench of this Court in ***Hardeep Singh v. State of Punjab and others, (2014) 3 SCC 92*** and paras 105 and 106 which are relevant for the purpose are reproduced hereunder:

“105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if “it appears from the evidence that any person not being the accused has committed any offence” is clear from the words “*for which such person could be tried together with the accused*”. The words used are not “for which such person could be convicted”. There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused.”

9. The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. The learned Single Judge of the High Court has even failed to consider the basic principles laid down by this Court while invoking Section 319 of the Code, which has been considered by the learned trial Judge under its order dated 30th January, 2018.

10. Consequently, in our opinion, the appeal deserves to succeed and the same is accordingly allowed. The order passed by the High Court dated 28th July, 2021 is hereby quashed and set aside.

11. Pending application(s), if any, shall stand disposed of.