

A.F.R**Court No. - 15****Case :-** CRIMINAL REVISION No. - 471 of 2023**Revisionist :-** Yuvraj Naag**Opposite Party :-** State Of U.P. Thru. Prin. Secy. Home,
Lko And Another**Counsel for Revisionist :-** Ashish Kumar Rastogi**Counsel for Opposite Party :-** G.A.**Hon'ble Ajai Kumar Srivastava-I,J.**

1. Heard Sri A.K. Rastogi, learned counsel for the revisionist and Sri Anurag Verma, learned A.G.A. for the State.

2. The instant criminal revision has been has been filed by the present revisionist against order dated 24.02.2023, passed by learned Chief Judicial Magistrate, Sitapur, arising out of Case Crime No.0389/2022, under Section 306 I.P.C., Police Station Maanpur, District Sitapur, whereby learned Chief Judicial Magistrate, Sitapur summoned the present revisionist.

3. Brief facts of the instant case are that a first information report bearing Case Crime No.0389/2022 came to be lodged against six named accused persons including the present revisionist by the first informant, Vijay stating therein that his sister was married to accused Pinku @ Parmanand about 15 years ago and from their wedlock five children were born. It is also mentioned in the first information report that the sister of the first informant was being harassed continuously by all six named accused

persons including the present revisionist. Due to harassment meted out by the named accused persons including the present revisionist, the sister of the first informant, Silpy is stated to have committed suicide on 29.11.2022 by hanging herself. Upon conclusion of investigation, a police report in the form of charge sheet came to be submitted against accused, Pinku @ Parmanand/husband of the deceased and Shiv Bhagwan only. The statements of first informant, Vijay, mother of the deceased, Smt. Kiran and another brother of deceased, Atul were recorded under Section 161 Cr.P.C., wherein they have stated that the accused, Shiv Bhagwan and present revisionist also harassed the victim/deceased and she was also assaulted by Shiv Bhagwan and the present revisionist. Thereafter, on the basis of aforesaid statements, vide impugned order dated 24.02.2023, learned C.J.M. Sitapur has taken cognizance for the offence under Section 306 I.P.C. and summoned the present revisionist also including the other accused Pinku @ Parmanand and Shiv Bhagwan.

4. Learned counsel for the revisionist has submitted that the learned trial Court has committed error in issuing process to the present revisionist against whom charge sheet was not submitted before learned trial Court, the impugned order is therefore, patently illegal. His further submission is that if the learned C.J.M. is found to be entitled to issue process at this stage under Section 190 Cr.P.C. against any person against whom no charge sheet has been filed, then in such eventuality, the provision contained under Section 319 Cr.P.C. would be rendered nugatory.

5. He has also submitted that as the learned Magistrate is not empowered to issue process to any person other than the person against whom a charge sheet has been laid by the police, therefore, such order taking cognizance of the matter and issuing process is hit by the provision contained in Section 461 Cr.P.C which declares such proceeding, an irregular proceeding.

6. To buttress his aforesaid submissions, learned counsel for the revisionist has placed reliance upon the judgments rendered by the Hon'ble Supreme Court in **Prasad Shrikanht Purohit vs. State of Maharashtra**¹ and **Bhagwant Singh vs. Commissioner of Police**².

7. Per contra, learned A.G.A. has opposed the prayer by submitting that the learned Chief Judicial Magistrate has unfettered power to issue summon against any such person who has not been mentioned as an accused in the charge sheet or arraigned in the first information report. To lend support to his aforesaid submission, he has placed reliance on the judgment passed by Hon'ble Supreme Court in the case of **Nahar Singh v. State of U.P.**³

8. Having regard to the aforesaid overall facts and circumstances of this case and upon perusal of the records, it transpires that a first information report bearing Case Crime No.0389/2022 came to be lodged against six named accused persons including the present revisionist by the first informant, Vijay. Upon conclusion of investigation, no charge sheet was submitted against the present revisionist. The statements of first informant, Vijay, mother of the

¹ 2015 (3) SCC (Cri) 138

² 1985 AIR (SC) 1285

³ (2022) 5 SCC 295

deceased, Smt. Kiran and another brother of deceased, Atul were recorded under Section 161 Cr.P.C., wherein they have stated that the accused, Shiv Bhagwan and present revisionist also harassed the victim/deceased and she was also assaulted by Shiv Bhagwan and the present revisionist. Thereafter, on the basis of aforesaid statements, vide impugned order dated 24.02.2023, learned C.J.M. Sitapur has taken cognizance for the offence under Section 306 I.P.C. and summoned the present revisionist also including the other accused Pinku @ Parmanand and Shiv Bhagwan.

9. Similar issue came to be considered by Hon'ble Supreme Court in **Nahar Singh (supra)** wherein it has been held that a Magistrate has power under Section 190 Cr.P.C. to issue summon against such person who has not been mentioned as an accused in the charge sheet or arraigned in the first information report.

10. Hon'ble Supreme Court in the case of **Nahar Singh (Supra)** in para no.17 has held as under :-

"17. As regards scope of jurisdiction of the Magistrate in a situation of this nature, it was held by the Constitution Bench in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] : (SCC p. 319, paras 35-36)

"35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2)CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed

against the persons named in Column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court."

11. A Constitution Bench of Hon'ble Supreme Court in the case of **Dharam Pal vs. State of Haryana**⁴ had affirmed its earlier view expressed in a judgment rendered in **Kishun Singh v. State of Bihar**⁵ which dealt with same issue wherein the Court had opined that it is the duty of Magistrate while taking cognizance of an offence, to go to the root of the matter by identifying the offender. Once the Court has done so, it is the duty of the Court to take action against such persons irrespective of the person being mentioned in any police report.

12. Hon'ble Apex Court in the case of **Hardeep Singh v. State of Punjab**⁶ in para no.111 has also held as under :-

"111. Even the Constitution Bench in Dharam Pal [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159] has held that the Sessions Court can also exercise its original jurisdiction and summon a

⁴ 2005 SCC Online SC 1781

⁵ (1993) 2 SCC 16

⁶ (2014) 3 SCC 92

person as an accused in case his name appears in Column 2 of the charge-sheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193CrPC can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled."

13. Adverting to the facts of this case, it transpires that a first information report bearing Case Crime No.0389/2022 came to be lodged against six named accused persons including the present revisionist by the first informant, Vijay. Upon conclusion of investigation, no charge sheet was submitted against the present revisionist. The statements of first informant, Vijay, mother of the deceased, Smt. Kiran and another brother of deceased, Atul were recorded under Section 161 Cr.P.C., wherein they have stated that the accused, Shiv Bhagwan and present revisionist also harassed the victim/deceased and she was also assaulted by Shiv Bhagwan and the present revisionist. Thereafter, on the basis of aforesaid statements, vide impugned order dated 24.02.2023, learned C.J.M. Sitapur has taken cognizance for the offence under Section 306 I.P.C. and summoned the present revisionist also including the other accused Pinku @ Parmanand and Shiv Bhagwan, which cannot be said to be illegal in view of the law laid down by Hon'ble Supreme Court in **Nahar Singh (supra), Dharam Pal (supra), Kishun Singh (supra)**.

14. Hon'ble Supreme Court in the case of **Prasad Shrikanth Purohit (supra)** in para no.77 has held as under :-

"The said statement of law reinforces the legal position that cognizance is always of the offence and not the offender and once the Magistrate applies his judicial mind with reference to the commission of an offence the cognizance is taken at that very moment."

15. In the case of **Bhagwant Singh (supra)** Hon'ble Supreme Court has held that when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section 2(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things, (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156.

16. There cannot be any quarrel with the aforesaid authoritative exposition of law by Hon'ble Supreme Court in **Prasad Shrikanth Purohit (supra)** and **Bhagwant**

Singh (supra), however, in the humble opinion of this Court the same are distinguishable on facts of this case.

17. In view of the aforesaid discussion, this Court is of the considered opinion that there is no illegality or irregularity in the impugned order dated 24.02.2023 warranting interference by this Court. The instant criminal revision lacks merit and the same deserves to be dismissed.

18. Accordingly, the instant criminal revision is **dismissed**.

[Ajai Kumar Srivastava-I, J]

Order Date :- 17.5.2023

A.Dewal