

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPEAL NO.1327/2019
[@ SLP [CRL.] NO.1271/2017]**

SHISHUPAL SINGH

Appellant(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

J U D G M E N T

SANJAY KISHAN KAUL, J.

1. Leave granted.

2. An FIR dated 04.09.2005 was registered in P.S. Khera Garh, District Agra, Uttar Pradesh in respect of Crime Case No.331/05 under Sections 147,148,149,307,302,323,504 and 506 of IPC.

3. The police carried out investigation and filed a charge-sheet. While the trial was on, during the examination-in-chief of PW-1, an order has been passed exercising power under Section 319 of the Cr.P.C. to summon the appellant as an accused. This order was sought to be assailed in a revision petition which was dismissed. Thus, the appellant has filed the present appeal.

4. A perusal of the FIR would show that the complainant is PW-1. The role ascribed to the appellant was that he came with a country made revolver at the site but the deceased Satyapal was fired upon by two other accused which caused the death. This is what has been stated in the examination-in-chief of PW-1.

5. It is pointed out by learned counsel that PW-1 was the only person who named the appellant while other eye witnesses including the injured witness did not do so.

6. A perusal of the order dated 02.09.2006 would show that what is recorded is that the prosecution has given an application under Section 319 of the Cr.P.C. This is admittedly not factually correct. The application was filed by the complainant aggrieved by the dropping of the name of the appellant from the array of accused on which orders have been passed. The trial Court has stated that the appellant was not summoned as an accused on the basis of the charge-sheet which did not name him as an accused. The order for summoning has been passed on the following rationale:

"In the present case PW-1, has stated under the evidence given on oath that shishupal son of gitam singh was also present alongwith other accused he was carrying a country made revolver. He had fired upon them with an intention to kill form which persons from their side have suffered injury. Them of this accused was mentioned in the written complaint of the complainant and the FIR. But the police had not sent chargesheet against him. There are sufficient grounds available for summoning the accused shishupal son of Gitam Singh u/s 319 Cr.P.C. application No.13 KH. Is fit to be admitted."

7. The role ascribed to the appellant is also not correctly reflected as it as been stated that he fired upon them with an intention to kill them. This is not what was stated in the

complaint nor is it part of the testimony recorded of PW-1. If we turn to the order of the High Court in revision, after extracting the legal principles what has been observed is that Section 319 Cr.P.C. is a power available to summon a person as an accused even if he is not named in the FIR or in the charge-sheet.

8. On hearing learned counsel for the parties, we are of the view that there is a non-appreciation of the legal principles by both the Courts below despite the same being referred to. The legal principle on this behalf has been enunciated in the judgment of this Court in *Brijendra Singh and Others. v. State of Rajasthan* - (2017) 7 SCC 706 following the Constitution Bench judgment in *Hardeep Singh v. State of Punjab & Ors.* - (2014) 3 SCC 92. It would suffice to reproduce para 13 as under:

“13. In order to answer the question, some of the principles enunciated in *Hardeep Singh* case may be recapitulated: power under Section 319 CrPC can be exercised by the trial Court at any stage during the trial i.e. before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some “evidence” against such a person on the basis of which evidence it can be gathered that he appears to be guilty of the offence. The “evidence” herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the court to

invoke the power under Section 319 CrPC. No doubt, such evidence that has surfaced in examination in chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the court under Section 319 CrPC and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The *prima facie* opinion which is to be formed requires stronger evidence than mere probability of his complicity."

9. The controversy generated was not whether power could or could not be exercised under Section 319 of the Cr.P.C. but whether the exercise, which was required to be undertaken by the trial Court before exercising such power, had been completed or not.

10. We thus set aside the orders of the High Court as well as the trial Court leaving it open to the trial Court to consider the issue of exercise of powers under Section 319 Cr.P.C. to summon the appellant, if it so feels, based on aforesaid principles.

11. The appeal is accordingly allowed leaving the parties to bear their own costs.

.....J.

[SANJAY KISHAN KAUL]

.....J.

[K.M. JOSEPH]

NEW DELHI;

SEPTEMBER 03, 2019.