



2026:AHC:84459

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL REVISION No. - 1617 of 2011**

Rishipal And Others

.....Revisionist(s)

Versus

State Of U.P. And Anr.

.....Opposite
Party(s)

Counsel for Revisionist(s) : Ali Hasan, Manish Kumar Singh
Counsel for Opposite Party(s) : Govt. Advocate, Mohd. Akbar Shah
Alam Khan

Court No. - 85

HON'BLE MANOJ BAJAJ, J.

Petitioners have filed this revision petition to challenge the impugned order dated 3.3.2011 passed by Additional Sessions Judge, Fast Track Court, Baghpat in Sessions Trial No. 185 of 2010, titled State Vs. Smt. Munesh and others, arising out of Case Crime No. 13 of 2010, under Sections 498-A, 304-B I.P.C. and Section 3/4 D.P. Act, Police Station Baraut, District Baghpat, whereby the application under Section 319 Cr.P.C. filed by prosecution was allowed and the petitioners were summoned as additional accused.

Learned counsel for the petitioners has argued that the complainant's daughter namely, Rachna was married to Pradeep on 6.3.2009, who died of burn injuries on 8.1.2010, within a period of one year, whereupon the complainant-opposite party no.2 implicated the petitioners and others for alleged commission of offences punishable under Section 304-B I.P.C. etc. Learned counsel has drawn the attention of the Court to the subject F.I.R to argue that the allegations by complainant-Mainpal against the petitioner nos.3 to 5 (unmarried sisters of Pradeep-husband) are absolutely vague and no specific attribution of demand of dowry is made against them. Learned counsel further submits that the victim gave her statement before death and the said dying declaration only implicates Munesh (mother-in-law of victim), whereas nothing is mentioned by victim about other accused persons, therefore, after investigation, the petitioners were declared innocent and the charge sheet was filed against Pradeep and Munesh.

Learned counsel for the petitioners has further argued that the statements of Mainpal (P.W.-1) and Neeraj Kumar (P.W.-2) echoes the allegations in the F.I.R. and on the basis of those statements, the trial court proceeded to summon the petitioners as additional accused, but the said order is not sustainable. Learned counsel has pointed out that initially the impugned order dated 3.3.2011 was stayed by this Court qua the petitioner nos.3 to 5 namely, Renu, Nidhi @ Chinu and Ritu, whereas the petitioner nos.1 and 2 were directed to associate with the trial, and during the pendency of the revision petition, the trial ended in acquittal of four accused persons namely, Munesh (mother-in-law), Pradeep (husband), Nitin (brother-in-law) and Rishipal (father-in-law). The judgment of acquittal dated 29.3.2012 is on record as Annexure No.SA-1. Learned counsel prays that the impugned order dated 3.3.2011 be set aside.

Learned A.G.A. while opposing the prayer has argued that the impugned order dated 3.3.2011 is based upon proper appreciation of testimonies of P.W.-1 and P.W.-2 and when the impugned order was passed, the trial was pending. He submits that the judgment of acquittal passed in respect of other accused persons may not be relevant as the evidence adduced during trial of the acquitted accused persons cannot be read qua the petitioners, if, the impugned order dated 3.3.2011 is upheld. He prays that the revision petition be dismissed.

After hearing the learned counsel for the parties and considering their submission, this Court finds that as far as petitioner nos.1 and 2 are concerned, qua them the revision petition is rendered infructuous, who faced the trial and stand acquitted vide judgment dated 29.3.2012.

Before analyzing the merits of the petition, it would be appropriate to have a glance of section 319 Cr.P.C., which reads 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 the 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."

A perusal of the above provision makes it abundantly clear that the power vested with the trial court under Section 319 Cr.P.C. is extraordinary in nature, and by now it is settled law that such a power can not be exercised in a casual manner. The trial court would be justified in resorting to the above provision where the evidence recorded during trial strongly suggests about the involvement of any other person(s), who is not before the trial court.

While examining the alleged involvement of petitioner nos.3 to 5 i.e. unmarried sisters of Pradeep, this Court finds that F.I.R. does not contain any specific allegation against them regarding demand of dowry and even according to the complainant, on 7.1.2010 husband-Pradeep had called Neeraj Kumar (P.W.-2) to demand a sum of Rs.1 lac and motorcycle. That apart, the dying declaration also implicates only one accused namely, Munesh, therefore, the investigating officer proceeded to exonerate the petitioners and filed charge sheet against Pradeep and Munesh. A reading of the testimonies of Mainpal (P.W.-1) and Neeraj Kumar (P.W.-2) also makes it clear that both these witnesses had attributed demand of dowry to accused Pradeep, who telephonically contacted Neeraj on 7.1.2010 to demand cash and motorcycle, therefore, the depositions of these witnesses P.W.-1 and P.W.-2, if, reiterates the version contained in the F.I.R. cannot be construed as a new piece of evidence emerging only during trial as the same stood analyzed and tested by Investigating Officer while declaring them innocent.

Most importantly, the trial court exercised the extraordinary jurisdiction under Section 319 Cr.P.C. while relying upon the allegations in the F.I.R. and the statements of witnesses recorded under Section 161 Cr.P.C., and in the considered opinion of this Court this is a serious error of law, as the powers under Section 319 Cr.P.C. can be exercised only on the strength of the evidence adduced during trial. The material relied upon by trial court was already before it when it took cognizance and framed charges against the accused, but at that stage, no such order was passed against the petitioner nos.3 to 5.

Notably, in the present case the dying declaration of the deceased does not at all implicate the unmarried sisters of Pradeep, therefore, the bald allegations in the deposition of P.W.-1 and P.W.-2 before the trial court cannot be construed as a strong *prima faice* evidence suggesting involvement of petitioner nos.3 to 5 in the alleged commission of crime. A perusal of the impugned order dated 3.3.2011 would show that the trial court has not carefully examined the evidence on record relied upon by prosecution while exercising powers under Section 319 Cr.P.C. Thus, the impugned order dated 3.3.2011 suffers from grave illegality and impropriety, which calls for interference by this Court.

Resultantly, the revision petition is allowed and the impugned order dated 3.3.2011 is set aside qua the petitioner nos.3 to 5, whereas in respect of petitioner nos.1 and 2, the petition is dismissed as infructuous in view of their acquittal recorded on 29.3.2012.

(Manoj Bajaj,J.)

April 16, 2026
P.S.Parihar