

JITENDRA NATH MISHRA

v.

STATE OF U.P. & ANR

(Criminal Appeal No. 978 of 2022)

JUNE 02, 2023

[DIPANKAR DATTA* AND PANKAJ MITHAL, JJ.]

Code of Criminal Procedure, 1973 – s.319 – Exercise of power under – Held: What is essential for exercise of the power u/s.319 is that the evidence on record must show the involvement of a person in the commission of a crime and that the said person, who has not been arraigned as an accused, should face trial together with the accused already arraigned – However, the court holding a trial, if it intends to exercise power conferred by s.319 must not act mechanically merely on the ground that some evidence has come on record implicating the person sought to be summoned; its satisfaction preceding the order thereunder must be more than prima facie as formed at the stage of a charge being framed and short of satisfaction to an extent that the evidence, if unrebutted, would lead to conviction – In the present case, the FIR disclosed offences having been committed by one ‘D’, his brother (the appellant) and an unknown person – Complainant and his wife described the manner of assault inflicted by ‘D’ and the appellant and the utterances used by them touching the caste of the complainant and his wife – It is not that involvement of the appellant in the crime was referred to for the first time in the court – Thus, though, the appellant was not named in the FIR but, that by itself cannot be held to be decisive – Once it is conceded that the appellant is a sibling of ‘D’ and he is named as one of the assailants, the material for forming the requisite satisfaction cannot be said to be non-existent – Special Court formed the requisite satisfaction prior to summoning the appellant to face trial with ‘D’ – Impugned order affirming the order of Special Court cannot be faulted – Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 – ss.3(1)(r), (s) – Penal Code, 1860 – ss. 419, 420, 323, 406, 506.

Hardeep Singh v. State of Punjab (2014) 3 SCC 92 : [2014] 2 SCR 1 – relied on.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.978 of 2022.

From the Judgment and Order dated 01.06.2022 of the High Court of Judicature at Allahabad in CRLA No.303 of 2022.

Girijesh Pandey, Sarabh S., Ms. Alpana Pandey, Ramjee Pandey, Advs. for the Appellant.

S. R. Singh, Sr. Adv., Ankur Prakash, Adv. for the Respondents.

The Judgment of the Court was delivered by

DIPANKAR DATTA, J.

1. This appeal, by special leave, takes exception to an order dated 1st June, 2022 of the Allahabad High Court. The impugned order dismissed an appeal filed by the appellant under Section 14A(1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act, 1989 (hereafter '1989 Act'). Under challenge in the appeal was a summoning order dated 16th October, 2021 passed by the relevant Special Court under the 1989 Act, in exercise of power conferred on him by Section 319, Code of Criminal Procedure (hereafter, 'Cr. PC').
2. A First Information Report (hereafter 'FIR') came to be registered by the Khalilabad Police Station, District Sant Kabir Nagar, under Sections 419, 420, 323, 406 and 506, Indian Penal Code and 3(1) (r) & (s) of the 1989 Act on the basis of information furnished by the complainant. Accusations were levelled against (1) Dharmendra Nath Mishra (hereafter 'Dharmendra'); (2) brother of Dharmendra; and (3) an 'unknown person' of having assaulted and abused the complainant and his wife, amounting to commission of offences punishable under the aforesaid provisions. Investigation of the FIR culminated in a charge-sheet under Section 173(2) of the Cr. PC being filed, wherein Dharmendra was shown as the sole accused. The Special Court constituted under the 1989 Act took cognisance of the offence and framed charges against Dharmendra, whereafter the trial commenced. In course thereof, the complainant and his wife deposed as PW-1 & PW-2 respectively. According to them, Dharmendra and the appellant together with an unknown person had assaulted them apart from hurling caste related abuses.
3. At this stage, the Special Court passed the order dated 16.10.2021 summoning the appellant for trial along with Dharmendra for offences punishable under Sections 323, 504 and 506, IPC and 3(1)(r) &

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(s) of the 1989 Act. The said order dated 16th October, 2021 was unsuccessfully challenged by the appellant before the High Court which, by its order dated 1st June, 2022, dismissed the appeal of the appellant under Section 14A(1) of the 1989 Act as noted above.

4. Mr. Pandey, learned counsel appearing for the appellant contended as follows:

- (i) The FIR is grossly delayed. Although the incident of assault and abuse giving rise to the FIR allegedly happened on 30th September, 2017, the complainant lodged the complaint as late as on 28th February, 2018. There is no cogent explanation for such belated lodging of complaint and this is an indicator that the contents of the FIR are absolutely false.
- (ii) There are material contradictions in the versions of PW-1 & PW-2. While PW-1 deposed that Dharmendra, his brother (i.e., the appellant) and an unknown person were travelling in a car when they stopped PW-1 and his family members whereafter the alleged incident of assault and abuse took place, PW-2 deposed that the accused persons (Dharmendra, the appellant and an unknown person) arrived at the place of occurrence riding two motorcycles. Therefore, the depositions of PW-1 & PW-2 are absolutely unreliable and untrustworthy.
- (iii) It is to be found in the versions of PW-1 & PW-2 that since 2015, they personally knew the appellant; hence, not naming the appellant in the FIR and instead disclosing that the brother of Dharmendra too had involved himself in the alleged assault and abuse and taking the name of the appellant as a co-accused only in course of recording of evidence is a clear embellishment, which has been made with a view to harass the appellant by dragging him to face an unnecessary trial.
- (iv) The appellant and Dharmendra are siblings no doubt; but they have three other siblings. If indeed the appellant was one of several co-accused, it defies reason as to why the complainant knowing the appellant quite well would not name him and vaguely allege that the brother of Dharmendra too had assaulted and abused the complainant.
- (v) Falsity of the versions of PW-1 & PW-2 would be manifest if one were to read their depositions. The incident giving rise to

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the trial occurred on 30th September, 2017 at 6.00 pm, which happened to be the day of Dussehra. Although, it was alleged that the accused persons assaulted and abused the complainant and his wife in a public place while they were returning home, no other public witness has been cited to prove the prosecution case of assault and abuse. It is, therefore, a clear case of false implication.

5. Based on such contentions, Mr. Pandey argued that exercise of power under Section 319, Cr. PC by the Special Court is arbitrary and that the High Court erred in law as well as on facts in not interfering with such order in exercise of appellate jurisdiction. He, thus, prayed for quashing of the order 16th October, 2021 of the Special Court, since affirmed by the High Court on 1st June, 2022.
6. Opposing the appeal, Mr. Singh, learned senior counsel representing the State of Uttar Pradesh, contended that the law relating to summoning a person for being tried along with an accused is no longer *res integra*. He invited our attention to the Constitution Bench decision of this Court in **Hardeep Singh vs. State of Punjab**: (2014) 3 SCC 92 and placed reliance on paragraphs 106, 117.4 and 117.6 thereof. It was his contention that the Special Court duly took into consideration the oral evidence adduced by the complainant and his wife and summoned the appellant under Section 319, Cr. PC; hence, such order does not suffer from any illegality, far less patent illegality. He also contended that the points urged by the appellant to have the impugned order set aside are points which he can urge in defence before the Special Court. According to him, the impugned order of the High Court, affirming the summoning order of the Special Court, does not call for any interference and, as such, he prayed that the appeal be dismissed.
7. We have heard the parties and perused the materials on record.
8. Having bestowed due consideration to the rival claims, we are of the view that any expression of ours while dealing with each and every point urged on behalf of the appellant could result in prejudgment; and thereby hinder a fair trial hence, adopting a cautious approach, we propose to restrict our consideration solely to the question as to whether the evidence adduced by the complainant and his wife in course of recording of their depositions did justify the Special Court to make the order it did.

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9. Section 319, Cr. PC, which envisages a discretionary power, empowers the court holding a trial to proceed against any person not shown or mentioned as an accused if it appears from the evidence that such person has committed a crime for which he ought to be tried together with the accused who is facing trial. Such power can be exercised by the court *qua* a person who is not named in the FIR, or named in the FIR but not shown as an accused in the charge-sheet. Therefore, what is essential for exercise of the power under section 319, Cr. PC is that the evidence on record must show the involvement of a person in the commission of a crime and that the said person, who has not been arraigned as an accused, should face trial together with the accused already arraigned. However, the court holding a trial, if it intends to exercise power conferred by section 319, Cr. PC, must not act mechanically merely on the ground that some evidence has come on record implicating the person sought to be summoned; its satisfaction preceding the order thereunder must be more than *prima facie* as formed at the stage of a charge being framed and short of satisfaction to an extent that the evidence, if unrebutted, would lead to conviction.
10. In the present case, the FIR disclosed offences having been committed by Dharmendra, his brother and an unknown person. Both the complainant and his wife, while testifying before the court, described the manner of assault on the former inflicted by Dharmendra and the appellant and the utterances used by Dharmendra and the appellant, *inter alia*, touching the caste of the complainant and his wife. At least, on this point, *prima facie* there appears to be no contradiction at all. The FIR in this case is not such where one finds complete absence of any reference to the brother of Dharmendra who had joined Dharmendra in assaulting and abusing the complainant or that the allegations are entirely Dharmendra centric with none else playing any role. It is not that involvement of Dharmendra's brother in the crime is being referred to for the first time in the court. True it is, the appellant was not named in the FIR; but, that by itself, cannot be held to be decisive. Once it is conceded that the appellant is a sibling of Dharmendra and he is named as one of the assailants, the material for forming the requisite satisfaction cannot be said to be non-existent. For the purpose of passing an order under section 319, Cr. PC, it is sufficient to form a satisfaction of the nature indicated in paragraph 106 of the decision in **Hardeep Singh** (*supra*). We are

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satisfied, on facts and in the circumstances, that the Special Court formed the requisite satisfaction prior to summoning the appellant to face trial with Dharmendra.

11. In such view of the matter, the order of the Special Bench dated 16th October, 2021 and the impugned order of the High Court dated 1st June, 2022 affirming it cannot be faulted.
12. In so far as the points regarding delay in registration of the FIR, material contradiction in the versions of the complainant and his wife, absence of any public witness as well as the circumstances that the complainant and his wife were known to the appellant since 2015 are concerned, the same are left open to be urged by the appellant in course of the proceedings before the Special Court.
13. There is no merit in the appeal, and it stands dismissed.
14. The Special Court is encouraged to expedite the trial. But, in the process, it shall proceed uninfluenced by reason of its order under Section 319, Cr. PC having been upheld by the High Court and this Court. The points raised on behalf of the appellant, recorded above, if raised before it as well as other points, if any, shall be given the consideration the same deserve.
15. In view of dismissal of the appeal, nothing survives for decision on the application for stay. The same stands dismissed together with any other application, if any.

Headnotes prepared by: Divya Pandey
(Assisted by : Roopanshi Virang, LCRA)

Result of the case: Appeal dismissed.