

**Court No. - 50**

**Case :-** CRIMINAL REVISION No. - 504 of 2017

**Revisionist :-** Dinesh Pratap Singh Yadav

**Opposite Party :-** State Of U.P. And Another

**Counsel for Revisionist :-** Aklank Kumar Jain

**Counsel for Opposite Party :-** G.A.

**Hon'ble Rajesh Dayal Khare,J.**

Heard learned counsel for the revisionist, learned A.G.A. for the State respondent and Sri Arvind Agrawal, learned counsel, who has put in appearance on behalf of the opposite party no.2 by filing his power today in the Court, which is taken on record.

The present revision has been filed against the summoning order dated 21.01.2017 passed by learned Sessions Judge, Firozabad in Sessions Trial No 306 of 2016 (State Vs. Rakesh Kumar and others) arising out of Case Crime No. 183 of 2016 under Sections 352, 323, 304 I.P.C., Police Station Narkhi, District Firozabad, whereby revisionist has been summoned on an application filed under Section 319, Cr.P.C. to face trial under the charged Sections.

Learned counsel for the revisionist contends that the applicant is a sitting Pradhan and on account of political animosity, the revisionist has been falsely implicated in the present case. It is contended by the learned counsel for the revisionist that though the revisionist were named in the first information report but after investigation, the Investigating agency found complicity of the revisionist to be false and, therefore, exonerated him and submitted charge sheet against other accused persons, as such, order impugned be set aside. In support of his contention learned counsel for the revisionist has relied upon judgement of Hon'ble Apex Court in the case of ***Sarabjit Singh and another Vs. State of Punjab and another***, reported in (2010) 2 SCC (Cri) 141, in which Hon'ble Apex Court has held that '*an order under Section 319, should not be passed only because first informant or one of the witnesses seeks to implicate other persons(s)-sufficient and cogent reasons are required to be assigned by court so as to satisfy ingredients of Section 319.*' Learned counsel for the revisionist has also relied upon judgment of Hon'ble Apex Court in the case of ***Hardeep Singh Vs. State of Punjab and others***, reported in (2010)2 SCC (Cri) 355, in which Hon'ble Apex Court has held that '*power under Section 319 can be exercised only if the court is satisfied that the accused summoned in all likelihood would be convicted.*' Learned counsel for the applicant has further relied upon judgments in the case of ***Krishnappa Vs. State of Karnataka***, reported in 2004(50) ACC 343 and in the case of ***Mohd. Shafi Vs. Mohad. Rafiq and another***, reported in 2007(58) ACC 254. Learned counsel for the revisionist has also relied upon the judgment of Hon'ble Apex Court reported in 2009 (2) SCC 696 (***Lal Suraj alias Suraj Singh another Vs. State of Jharkhand***), in support of his contention. Learned counsel for the applicants has further relied upon a decision of Hon'ble Apex Court reported in 2009 (65) ACC 971 (***Ram Singh and others Vs. Ram Niwas and another***), in which Hon'ble Apex Court has held that *in the event, it appears from the evidence that any person, not being an accused, has committed any offence for which he could be tried together with the accused, the court may proceed against him for the offence which he appears to have committed. It has been further held that the provision of Section 319, Cr.P.C. confers an extraordinary power upon a court to*

*summon a person who, at the relevant time, was not being tried as an accused, subject, of course, to fulfilment of the condition that it appears to the court that he had committed an offence. A finding to that effect must be premised on the evidence that had been brought on record.*

Learned A.G.A. has contended that complicity of the revisionist came into light in the statement of P.W.1 and P.W.2 in their examination-in-chief, as a person, who was involved in commission of offence, therefore, the order impugned summoning the revisionist in exercise of power under Section 319, Cr.P.C. has rightly been passed and there is no illegality in the impugned order.

Under Section 319, Cr.P.C., the court can summon any person as an accused who has not been charge sheeted or is not an accused, but before passing the order the court has to satisfy itself that there is a prima facie evidence against the person to be summoned by the court.

Learned A.G.A. has placed reliance of judgment of Hon'ble Apex Court in the case of **Ram Pal Singh and others Vs. State of U.P. and another**, reported in 2009(75) AIC 4 (SC), wherein Hon'ble Apex Court has held that *all that is required by Court for invoking its powers under Section 319 of Cr.P.C. is, to be satisfied that from the evidence adduced before it, a person against whom no charge has been framed, but whose complicity in the offence appears to be clear, should be tried together with the other co-accused. Discretion is left with the Court to take a decision in the matter. It is further held that where prosecution witnesses had named appellants as persons, who were involved in the commission of offence, though they were not named in the charge sheet, trial court was not justified by rejecting the application under Section 319, Cr.P.C.*

From the perusal of the statement of P.W. 1 and P.W.2, since there are specific allegations against the revisionist, therefore, there is no illegality, incorrectness or impropriety in the order impugned by which the revisionist has been summoned.

The prayer for quashing the order impugned is refused.

However, considering the facts and circumstances of the case it is provided that if the revisionist appears and surrenders before the court below within a period of 30 days from today and applies for bail, his prayer for bail shall be considered and decided expeditiously by the Court below

With the aforesaid directions, this revision is disposed off.

**Order Date :- 14.2.2017**

S.Ali