Allahabad High Court
Ruksar And Another vs State Of U.P. And 3 Others on 7 July, 2022
Bench: Rahul Chaturvedi

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 67

Case :- CRIMINAL REVISION No. - 2487 of 2022

Revisionist :- Ruksar And Another

Opposite Party :- State Of U.P. And 3 Others

Counsel for Revisionist :- Satish Kumar Tyagi

Counsel for Opposite Party :- G.A.

Hon'ble Rahul Chaturvedi,J.

Heard Shri Satish Kumar Tyagi, learned counsel for the revisionists and learned Additional Government Advocate representing the State and perused the record of the case.

The revisionists, namely, Ruksar and Muskan, who are the two real sisters have filed the present revision assailing the legality and validity of the order dated 26.4.2022 passed by Additional Sessions Judge (Rape and POCSO Matters), court No. 1, Ghaziabad in Sessions Trial/Criminal Case No. 76 of 2018 (State vs. Guddu and others) arising out of Case Crime No. 331 of 2017, under Sections 363, 366, 376, 506 IPC and 3/4 POCSO Act, police station Sahibabad, district Ghaziabad, whereby both these non accused (revisionists) were summoned by the trial trial judge in exercise of powers under Section 319 Cr.P.C.

Contention raised by the counsel for the revisionists is that for the incident of 20.2.20217, the present F.I.R. was got registered by one Smt. Nafeesa for the offence under Sections 363 and 366 IPC against six accused persons including the revisionists. The F.I.R. is self revealing and express in its own way.

It has been culled out from the F.I.R. that the contesting parties are neighbour and about one and a half months back there was a heated altercation and bad breath between them, however, that

incident has ended into a compromise, but on 20.2.20217 when there was nobody at the residence, the revisionists Rukhsar and Muskan have taken away the victim along with them and handed over to one Shakeel, who brutally ravished the victim.

During investigation, the police caught hold of the principal and other relevant document indicating that Ruksar and Muskan were in the school at the relevant point of time. After recording the statement of the principal and the headmaster of the alleged school, the names of revisionist were dropped from the report under Section 173(8) of the Code of Criminal Procedure. It is a clear cut case, where plea of alibi has been raised and prima facie substantiated by the principal of the school by recording her own statement and showing the attendance register.

Shri Tyagi, learned counsel for the revisionist has relied upon the judgment of Hon'ble the Apex Court in the case of Brijendra Singh and others vs. State of Rajasthan AIR 2017 Supreme Court 2839. The relevant paragraph No. 15 of the said judment is reproduced herein below:-

"Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material."

From pairing the facts of the aforesaid case with the present one, it is clear cut case where the learned trial judge ought to have recorded the satisfaction before summoning the revisionist. It is further urged that the trial court was atleast duty bound to look into the final report against the revisionist, which suggests otherwise. The impugned order is completely blank and silent about the same. The learned trial judge has not even whispered or bothered to give an eye over the report given by the I.O. during investigation.

Learned counsel for the revisionist has also relied upon the latest judgement of Hon'ble Apex Court passed in the case of Sugreev Kumar Vs. State of Punjab and others; MANU/SC/0389/2019 passed in Criminal Appeal No. 509 of 2018 arising out of SLP No. 9687 of 2018 with regard to the degree to satisfaction required to be invoked while exercising the power under section 319 Cr.P.C.The relevant paragraph of the said judgment reads as under;-

"95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in

Vikas v. State of Rajasthan, held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

Learned counsel for the revisionist has further drawn the attention of the Court to para-12 of the above judgement:

"12. Provision contained in section 319 Cr.P.C. sanction the summoning of any person on the basis of any relevant evidence as available on record. However, it being a discretionary power and an extraordinary one,is to be exercised sparingly and only when cogent evidence is available. The prime facie opinion which is to be formed for exercise of his power requires stronger evidence than mere probability of complicity of a person. The test to be applied is the one which is more than a prime facie case as examined at the time of framing charge but not of satisfaction to be extent that the evidence, if goes uncontroverted, would lead to be conviction of the accused."

Learned counsel for the revisionist has further relied upon the judgement of Hon'ble Supreme Court in the case of Periyasami and others Vs. S. Nallasamy, MANU/SC/0375/2019 decided on 14.3.2019 in Criminal Appeal No. 456 of 2019 arising out of SLP. No. 208 of 2019.The relevant part of the said judgment is reproduced herein below"-

"The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused."

Moreover, in the case of Brijendra Singh and others Vs. State of Rajasthan, (2017) SC 2839 decided on 27.04.2017 has stated that," Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record".

Thus, perusing the impugned order, I have no hesitation to say that the impugned order is well short of the standard set up by Hon'ble Apex Court (as mentioned above).

Accordingly, the order dated 26.4.2022 passed by Additional Sessions Judge (Rape and POCSO Matters), court No. 1, Ghaziabad in Sessions Trial/Criminal Case No. 76 of 2018 (State vs. Guddu and others) arising out of Case Crime No. 331 of 2017, under Sections 363, 366, 376, 506 IPC and 3/4 POCSO Act, police station Sahibabad, district Ghaziabad is hereby set aside and the matter is remanded back to learned trial Judge with a direction to re-consider and re-visit the entire matter once again and decide the same in the light of the ratio laid down in the case of Hardeep Singh Vs. State of Punjab, 2014(3) SCC92; Brijendra Singh and others Vs. State of Rajasthan, (2017) SC 2839; Labhuji Bhai Amratji Thakor & others Vs. State of Gujrat, AIR 2019 SC 734; Periyasami and others Vs. S. Nallasamy, MANU/SC/0375/2019 and Sugreev Kumar Vs. State of Punjab and others; MANU/SC/0389/2019 by passing a well reasoned order within a period of eight weeks from the date of production of certified copy of this order.

With the aforesaid observations, this criminal revision stands disposed of.

Order Date :- 7.7.2022 Sumaira