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CRR-6219-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ANIL VERMA

CRIMINAL REVISION No. 6219 of 2024*NARENDRA SHARMA**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

.....
Appearance:

*Shri Atul Gupta - Advocate for the petitioner.**Shri Yogesh Parashar - PP for the respondent/State.**Shri Vijay Dutt Sharma - Advocate for respondent No.2.*

Reserved On- 28.07.2025

Delivered On- 07.08.2025.

ORDER

1. The petitioner has preferred this criminal revision under Section Criminal Procedure (in short as 'Cr.P.C) being aggrieved by the impug Additional Sessions Judge, Mehgaon District Bhind in Sessions Trial No.31 Section 319 of Cr.P.C filed by the respondent No.2/complainant has been allo the petitioner.

2. Briefly stated facts of the case are that, respondent No.2/complain Mehgaon stating that on account of previous enmity, accused persons name Tyagi, Saurabh, Pramod, Jitendra, Gaurav, Anil, Shiv Sagar, Prashant, Vikas, Rajawat, Vishal Tyagi and Surya Narayan armed with guns and sticks came :



around 10 a.m and started hurling abuses and firing, as a result, Hakim P Dhirendra Tyagi had sustained bullet injuries due to which they died, therea there. The said incident was witnessed by Manoj and Lokesh Tyagi. After it bearing Crime no. 10 / 23 was registered under sections 302, 307, 147, 148, Arms Act against the accused persons including the present petitioner Narendr

3. After completion of investigation, the charge-sheet has been filed the FIR except the petitioner and his son Nishant @ Bunty. The investig petitioner under section 173(8) of Cr.P.C. Further the investigation was ha investigation, on the basis of statements of witnesses and collecting electroni installed in different places, it has been found out that the present petitioner was present at Shri Ramchandra Mission Heart Fullness Center, Gwalior. Th 169 of Cr.P.C has been filed by the investigating officer against the present charges against the other co-accused persons and during trial, statements (PW2) and Lokesh Tyagi (PW1) have been recorded and at the relevant time under Section 319 of Cr.P.C for taking cognizance against the petitioner at hearing both the parties, the trial court has allowed the application under sec against the petitioner. Being aggrieved by the same, the petitioner has preferre

4. Learned counsel for the petitioner has contended that the petiti implicated in the matter due to political rivalry. Although, the offence has be initial stage, but during investigation, on the basis of oral as well as electroni the CID, plea of alibi of the petitioner is found to be proved because, at t Gwalior which is 60 Kms, away from the alleged place of incident. The discarded because, the same had not demonstrated any tempering in the FSL : not present on the place of incident at the relevant time. The investigation cc



therefore, the petitioner has been rightly exonerated from the aforesaid offence belated, concocted and fabricated. It is also contended that once the charge officer in the categorical terms and closure report so far as the petitioner is concerned application under Section 319 of Cr.P.C is not maintainable. The trial Court carefully because, the matter pertains to personal liberty of a person. The impugned perversion. Hence, he prays that this revision may be allowed and the order dated

5. Per contra, learned counsel for the respondent No.1/State as well as submitted that on the basis of judgment rendered by the Constitutional Bench **M.P. (2014) 3 SCC 1992**, wherein, it has been held that the petitioner can plead because, the prosecution witnesses have referred in their examination-in-chief. Therefore, it is prayed that at this stage, no interference can be made. Learned upon the following citation :

(i). **Rajendra Singh Vs. State of UP and Another** reported in (2007) 3 S and **Another Vs. The State of M.P. & Another** passed in SLP (Cri) No.(s) 1778

6. Heard learned counsel for both the parties and perused the record.

7. To decide the present revision, the provisions of section 319 of Cr.P

:

"319. Power to proceed against other persons appearing to be guilty of offence into, or trial of, an offence, it appears from the evidence that any person not offence for which such person could be tried together with the accused, the Court the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summons require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons 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 ti

*(b) subject to the provisions of clause (a), the case may proceed as if such per
Court took cognizance of the offence upon which the inquiry or trial was comm*

8. In the instant case, where the petitioner has been impleaded as an :
section 319 of Cr.P.C by the respondent No.2/complainant, although initially, ,
FIR, but thereafter, the matter was referred for further inquiry to the CID and
the CID, CDR of mobile location and DVR were produced and statements
Bhargava and Rustam Singh Gurjar have been recorded and on the bas
submitted closure report that it is established that at the relevant point of ti
place of incident and he was at Gwalior and no involvement of the petitioner v

9. It is well settled that while invoking of powers of 319 of Cr.P.C, the
for summing an accused and for summoning a person under Section 319 c
consider two points, firstly, whether, the prima facie evidence against a per
charge or not; and secondly, whether the material available on record if not r
sufficient to convict a person.

10. The Hon'ble Apex Court in the case of **Hardeep Singh (Supra)** as l

*"8. that for summoning a persons [u/s 319 Cr.P.C.](#) the nature of the evidence
required for framing of the charge and secondly court has to consider that whet
if not rebutted then the accused might be convicted only on the basis of those e*

*9. Hon'ble Supreme Court has held in **Labhuji Amritji Thakor and ors. Vs. Stat**
decided on 13.11.2018] that for summoning a person [u/s 319 Cr.P.C.](#) court
evidence on the record which is, if unrebutted, sufficient to convict the accused*



10. Hon'ble Supreme Court has recently held in *Juhur and ors. Vs. Kareem* on 21.02.2023] that for summoning a person as accused *u/s 319 Cr.P.C.* court records only on that basis court has to decide that whether the proposed accused or not".

11. It is also settled position of law that if any evidence is produced (of investigation, the investigating officer should consider it carefully, such e which may help the investigating officer to discover the truth. His primary d and must satisfy himself that it is sufficient to send the case before the court. I had duly investigated the facts and submitted a detailed report, which cannot the State did not challenge the charge sheet filed before the trial court in wh this matter.

12. Now, the next question emerged, about the reasons behind the p Hon'ble Bombay High Court in the case of *Anand Shivaji Ghodake Vs. The S* on 23rd January, 2023 in Cr.Revision No.296 of 2022, has held as under :

*"18. The accused may claim discharge, raising the plea of alibi. The disc framing of the charge. The law does not prescribe the stage when such a plea claiming discharge, it is always wise to raise the plea of alibi as early as poss initial stage could be the stage of framing charge. In the case of *Lakhan S Delhi, Crl Appeal No. 166/1999* decided on 16th September 2011, in par observed thus :*

*"13. It must be noted that the above two decisions (*Ram Kisan V State (2000 State of MP Appeal (Crl) 320/2000* decided by Hon'ble Supreme Court on pleas of self-defence. The plea of alibi cannot be equated with the plea of se first instance and not belatedly at the stage of defence evidence....."*

19. Reading the relevant provisions of law as stated above, it emerges that it be considered only at the stage of defence evidence. On the contrary, it shoul at the earliest. Soon after the Court called the applicant after the application c 319 of Cr.P.C., he raised the plea of alibi. In the case at hand, there wa investigating officer that at the time of the alleged incident, the applicant was proved his alibi through electronic evidence, which is admissible evidence. ' plea of alibi has been proved with absolute certainty, completely excluding



applicant at the place of occurrence. In the circumstances discarding the electronic evidence collected by a neutral investigating officer soon after is correct".

13. On the basis of the aforesaid, this court is of the considered opinion that the accused should be tried by the accused at earliest stage, even at the stage of investigation also and although named in the FIR has not been charge-sheeted or a person, who has been named under section 319 of Cr.P.C provided from the evidence, it appears that such accused persons who are already facing trial. However, so far as accused with reference to the provisions of Section 300 and 398 of Cr.P.C have to be complied with.

14. The Hon'ble Apex Court in the case of **Asad Ali @ Munna and C** on 9th August, 2024 in an application under Section 482 of Cr.P.C No.5465 of

"According to the judgment(s) of the Constitution Bench of the Hon'ble **Singh Vs. State of Punjab**, reported in (2014) 3 SCC 92, and Brijendra Singh Vs. State of Punjab reported in (2017) 7 SCC 706, the trial court should record its subjective opinion under **Section 319** CrPC and the trial court is under obligation to take note of the evidence collected by the I.O. during investigation".

15. Further, in **Ramesh Chandra Srivastava Vs. The State of U.P. and Ors**, Cr.Appel No.990 of 2021 held in the following manner :

"The test as **laid down by** the Constitution Bench of this Court for invoking the power under **Section 319** Cr.P.C. should be exercised. The power should not be exercised in a cavalier manner. The test to be applied, as **laid down by** this Court, is one which is applied at the time of framing of charges".

16. On the basis of the aforesaid cumulative analysis of facts, it appears that the accused is being tried by the accused at earliest stage, even at the stage of investigation also and although named in the FIR. But later on, detailed investigation, collected relevant electronic evidence i.e. CCTV footage, mobile phone records, etc. of the accused, have been recorded under Section 161 of Cr.P.C.



of the prima facie evidence collected during investigation, submitted closure report. If prima facie offence is established against the petitioner. Therefore, the charge-sheet is valid. But the trial court has ignored the closure report as well as the material evidence collected during investigation in regard to the petitioner. The prosecution appears to be weak against the petitioner. Hence, in the prevailing circumstances, the learned trial judge should exercise the powers envisaged under section 319 of Cr.P.C.

17. Therefore, in the considered opinion of this court, the trial court committed error during the investigation and committed error in passing the impugned order. The order is illegal, improper and incorrect. As a result, the impugned order is set aside. The petitioner is entitled to impleadment and the charges as accused, over the application filed under section 319 of Cr.P.C.

18. The revision stands allowed and disposed of accordingly.

19. Let a copy of this order be sent to the trial court concerned for information. C.c as per rules.

(ANIL VERMA)
JUDGE

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