

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE PREM NARAYAN SINGH

CRIMINAL REVISION No. 3242 of 2023

BETWEEN:-

1. MAJID @ BABLU

2. IMRAN

.....PETITIONER

(BY SHRI HIMANSHU THAKUR, ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION HOUSE
OFFICER THROUGH POLICE CITY KOTWALI DISTRICT
MANDSAUR (MADHYA PRADESH)**

.....RESPONDENTS

(BY MS. NISHA JAISWAL, COUNSEL FOR THE STATE)

.....
HEARD ON :17.02.2024

DELIVERED ON :28.02.2024
.....

This petition coming for hearing this day and the Court passed the following;

O R D E R

With consent of the parties heard finally.

1. This criminal revision under Section 397/401 of Cr.P.C.has been filed by the petitioner being crestfallen by the order under Section 319 of Cr.P.C. delivered in judgment dated 17.03.2023, passed by the learned 7th Additional Sessions Judge, Mandsaur District Mandsaur in ST No.21/2017 whereby the learned trial Court has made the petitioners accused under Section 319 of

Cr.P.C. and issued notice for separate trial against the petitioners.

2. At the time of passing the impugned judgement, the learned trial Court has convicted and acquitted the accused persons. Appellants Sabir and Sadab were convicted under Section 148, 307/149, 333/149 and 394 of IPC and the co-accused namely Nahru, Raja @ Muzaffar, Juber, Jafar, Firoz, Mohd. Yusuf and Sadab were acquitted from all the charges.

3. In this regard, the learned trial Court, passing the impugned judgment, mentioned in para nos.73 to 75 that the petitioners have played important roles in the said offence. It is also disclosed that the petitioners were made accused at early stage, however, the prosecution has filed the final report under Section 173(8) of Cr.P.C. to the effect that they have no role in the crime. In this regard, the learned trial Court has also observed that the role of the petitioners is found suspicious, hence, they are required to be prosecuted. As such, after observing as aforesaid, in view of the judgement of Hon'ble Apex Court rendered in the case of **Sukhpal Singh Khaira vs. State of Punjab (2023) 1 SCC 289**, the learned trial Court has adjudicated that separate trial should be initiated against the petitioners and therefore, a notice for separate trial should be issued against them.

4. Counsel for the petitioners in this revision petition as well as in arguments submits that earlier, the petitioners were made accused at early stage, however, the prosecution has filed the final report under Section 173(8) of Cr.P.C. to the effect that they have no role in the crime. It is further submitted that the cognizance under Section 319 of Cr.P.C. has been taken against the petitioners whereas such type of evidence is not admissible. It is further submitted that the petitioners have been foisted as accused only on the ground of suspicion, therefore, the order of learned trial Court regarding taking

cognizance against the petitioners under Section 319 of Cr.P.C be set aside.

5. In course of arguments, it is further contended by learned counsel for the petitioner that the learned trial Court has made the petitioners as accused, in view of the guidelines enumerated by the Hon'ble Apex Court in the case of **Sukhpal Singh (supra)**, however, the learned trial Court has not passed the impugned order in accordance with the law laid down by Hon'ble Apex Court. It is further submitted that the order of summoning the petitioners as accused should be passed before pronouncement of the order of acquittal in such type of cases where the order of acquittal and conviction both are recorded.

6. With regard to merits of the case, it is demurred by learned counsel for the petitioners that the petitioners only on the basis of suspicion, they cannot be implicated in this case. Therefore, the order of learned trial Court is not in conformity with law and therefore, it is entreated that the impugned order regarding the petitioner, deserves to be set aside. In support of his contention, counsel for the petitioner placed reliance over the judgment of this Court passed in **CRR No.2034/2023 [Lalit Agarwal vs. State of Madhya Pradesh] decided on 28.06.2023** wherein this Court has considered the similar point and set aside the proceedings issued against the petitioner there in under Section 319 of Cr.P.C.

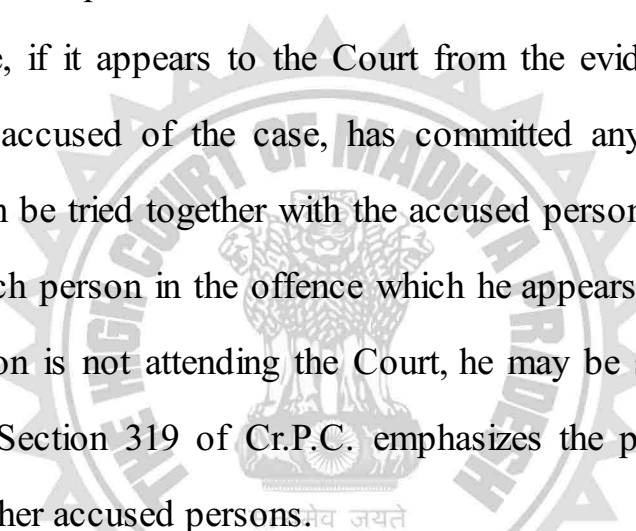
7. Learned counsel for the State has remonstrated the contentions of the petitioners and submitted that the findings of the learned trial Court regarding issuance of notice to the petitioners is based on correct assumptions. Therefore, the said finding does not warrant any interference. Learned counsel for the State has also submitted that if the petitioners has not played any active role in the said crime, they will surely be acquitted after completion of trial, but

anyway, they should not be eschewed to face the regular trial. Hence, revision petition may be dismissed.

8. In view of the aforesaid submissions and arguments advanced by counsels for the parties, the following points are required to be considered:

(i) Whether the learned trial Court has correctly used the power of summoning the additional accused on the date of judgement or not?

(ii) Whether in view of the facts of the case the learned trial court has arrayed the petitioner as accused by summoning him correctly or not?

9. At the outset, the technical arguments of learned counsel for the petitioners is required to be ruminated. In the course of any enquiry or trial of an offence, if it appears to the Court from the evidence that any person, not being the accused of the case, has committed any offence for which, such person can be tried together with the accused persons, the Court may proceed against such person in the offence which he appears to have committed and if such person is not attending the Court, he may be summoned or arrested. In this way, Section 319 of Cr.P.C. emphasizes the principle of trying together with the other accused persons. 

10. So far as the separate trial is concerned, nevertheless, when a person is emerged as an accused at belated stage of trial, a separate trial can be initiated. The learned trial Court while relying upon the judgment passed by a Constitutional Bench of Hon'ble the Apex court in the case of **Sukhpal Singh (supra)**, passed this order under Section 319 of Cr.P.C. In this regard, following extracts of the aforesaid judgment be reads as under:

"The power under Section 319 is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning

order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable."

11. Now, the question is, as to whether the learned trial Court has applied the aforesaid law in passing the impugned order under Section 319 of Cr.P.C. In this case, 07 of the accused have been acquitted and remaining two have been convicted. As such, this is a case of joint result; i.e. acquittal and conviction, both. Hence, in my considered opinion, the learned trial Court should pass the order under Section 319 of Cr.P.C. before passing the order of acquittal of Nahru, Raja @ Muzaffar, Juber, Jafar, Firoz, Mohd. Yusuf and Sadab. Since, the learned trial court has passed the impugned order under Section 319 of Cr.P.C. against the petitioners after acquitting the accused persons rather than preceding their acquittal, the order passed by the learned trial Court cannot be said to be in accordance with the settled law laid down by Hon'ble Apex Court in the case of **Sukhpal Singh (supra)**. Therefore, on the basis of this sole reason, this order of learned trial Court is not sustainable in the eyes of law.

12. Now, turning to merits of the case, I have gone through the record and it is found that the petitioners were earlier implicated in the matter, but due to non-availability of the evidence, the police authorities have closed their case under Section 178(3) of Cr.P.C. while submitting final report.

13. Now, the question whether any person can be impleaded as accused only on the basis of suspicion, in this regarding, the view of Hon'ble Apex

Court in the **Brindaban das & others vs. State of West Benga: (2009) 3 SCC 329**; is as under:

"25. The common thread in most matters where the use of discretion is in issue is the in the exercise of such discretion each case has to be considered on its own set of facts and circumstances. In matters relating to invocation of powers under Section 319, the Court is not merely required to take note of the fact that the name of a person who has not been named as an accused in the FIR has surfaced during the trial, but the court is also required to consider whether such evidence would be sufficient to convict the person being summoned. Since issuance of summons under Section 319 of Cr.P.C entails a de novo trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay in the trial, the trial Court has to exercise such discretion with great care and perspicacity."

14. Further, Hon'ble the Apex Court in the case of **Hardeep Singh vs. State of Punajab reported in (2014) 3 SCC 92**, in para no.12 has held as under:

"Section 319 of Cr.P.C springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining t h e ambit and the spirit underlying the enactment of Section 319 Cr.P.C".

15. Further, Hon'ble the Apex Court in the case of **Vikas vs. State of Rajasthan [2017 Law Suit (SC) 2839]**, has ordained as under:

"105. Power under Section 319 Cr.P.C 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."

16. In a recent judgment in the case of **Juhru and others vs. Karim and Another AIR 2023 SCC 1160**, Hon'ble the Apex court has further reiterated that the power of summoning under Section 319 of Cr.P.C. should not be exercised routinely, and the existence of more than a *prima facie* case is *sine qua non* for summoning an additional accused.

17. In view of the aforesaid facts and settled propositions of law, this Court is of the considered opinion that a person can only be summoned as an accused, when the trial Court, after analyzing the evidence available on record strongly feels that there is sufficient and overwhelming evidence available on record and it is expedient for justice to summon him as accused. Only in such situation, the trial Court, using its extraordinary jurisdiction, may summon a person as an accused in the interest of justice.

18. In the case at hand, the learned trial Court, without assigning sufficient ground for substratum of constituting the said offence, has wrongly observed that the role of the petitioners is suspicious. No specific or cogent reasons have been assigned by the learned trial as to how the petitioners are involved in the said offence. The reasoning that the police authority is deliberately trying to save the petitioners from the allegations of the offence, is having no merit. Virtually, such type of vague and obscure finding is not sufficient to implead any person as an accused and to direct them for facing a separate trial.

19. In conspectus of the aforesaid analysis and settled proposition of law, the finding of the learned trial Court to summon the petitioners under Section 319 of Cr.P.C. cannot be sustained in the eyes of law, therefore, the petition is allowed and the finding recorded in para nos.73 to 75 of the

impugned judgement being incorrect and improper *qua* the petitioners, is liable to be and is hereby set aside.

20. The criminal revision is allowed and disposed off.

Certified copy, as per rules.

(PREM NARAYAN SINGH)
JUDGE

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