IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 16th OF APRIL, 2024

CRIMINAL REVISION No. 2356 of 2023

BETWEEN:-

1. **JEEVAN S/O CHAUPSINGH, AGED ABOUT 21 YEARS, OCCUPATION: LABOUR LUNHERA BUJURG, TEHSIL MANAWAR, DISTRICT DHAR (MADHYA PRADESH)**
2. **ARVIND S/O KAILASH NIGWAL BHILALA, AGED ABOUT 20 YEARS, OCCUPATION: AGRICULTURIST GWALIYAKHEDI, TEH. DHARAMPURI, DISTT. DHAR (MADHYA PRADESH)**
3. **BABLU S/O JUWANSINGH NIGWAL, AGED ABOUT 36 YEARS, OCCUPATION: AGRICULTURIST GWALIYAKHEDI, TEH. DHARAMPURI, DISTT. DHAR (MADHYA PRADESH)**
4. **RADHESHYAM S/O RUKHDIYA CHOUHAN, AGED ABOUT 35 YEARS, OCCUPATION: AGRICULTURIST GWALIYAKHEDI, TEH. DHARAMPURI, DISTT. DHAR (MADHYA PRADESH)**

.....PETITIONERS

(BY SHRI SHIVENDRA SINGH RAWAT, ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH STATION HOUSE OFFICER THROUGH POLICE STATION DHARAMPURI, DISTRICT DHAR (MADHYA PRADESH)**
2. **AJAY S/O RAMSINGH BHILALA, AGED ABOUT 28 YEARS, OCCUPATION: AGRICULTURIST BAYKHEDA, DHARAMPURI, DISTT. DHAR (MADHYA PRADESH)**
3. **ANKIT S/O RAMESH BHILALA, AGED ABOUT 25 YEARS, OCCUPATION: BUSINESS LUNHERA BUJURG, DHARAMPURI,**

DISTT. DHAR (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI V.S. PANWAR, PANEL LAWYER FOR THE RESPONDENT/STATE SHRI ADITYA CHIOUDHARY, ADVOCATE FOR THE RES.NO. 2 & 3)

…….

This revision coming on for order this day, the court passed the following:

ORDER

01. This revision has been filed by the petitioners under Section 397 read with 401 of the Criminal Procedure Code, 1973, against the order dated 02.03.2023, passed in S.T. 15/2023 by the Additional Sessions Judge, Dharampuri, District-Dhar whereby, the application filed by the petitioners/accused persons under Section 319 of the Cr.P.C. for taking cognizance of offence against the respondents no.2 and 3, has been rejected.

02. In brief, the facts of the case are that *Dehati Nalishi* was initially lodged by the complainant-Pratap Singh informing the police about the death of his nephew Ajay s/o Rumalsingh and also informing that in the night, his nephew Ajay s/o Rumalsingh (deceased), Ajay s/o Ramsingh Bhilala / the respondent No.2, Ankit s/o Ramesh Bhilala/the respondent No.3 and Ajay s/o Choupsingh had partied together, and thereafter, his nephew slept in the shop of Ankit s/o Ramesh Bhilala. However, in the morning, he found that the other three persons had returned but, his nephew was missing, and when he searched for him, his body was found near a pond. Thus, on the basis of the *Dehati Nalshi*, the FIR was also lodged on

01.06.2022, against the aforesaid three persons viz; Ajay s/o Ramsingh Bhilala, Ajay s/o Choupsingh and Ankit s/o Ramesh Bhilala. However, the charge sheet was filed only against the present petitioners. Whereas Ankit s/o Ramesh Bhilala and Ajay s/o Ramsingh were given clean chit by the Investigating Officer stating that no incriminating material has been found against them.

03. Counsel for the petitioners has submitted that so far as the present petitioners are concerned, they are the accused persons. However, according to the complainant-Pratap Singh, the present respondent nos.2 and 3 also had a motive to murder the deceased, which is also mentioned in the FIR itself that respondent no.2-Ajay s/o Ramsingh had threatened his nephew a couple of days ago that he would kill him after a dispute arose between them regarding motorcycle.

04. Shri Shivendra Singh Rawat, Counsel for the petitioner has also drawn attention of this Court to the deposition of the complainant-Pratap Singh in which also, he has clearly stated in the trial court that the present respondents No.2 & 3 Ajay s/o Ramsigh Bhilala and Ankit s/o Ramesh Bhilala respectively were also involved in the case.

05. In support of his submissions, Shri Rawat has also relied upon the decision rendered by the Supreme Court in the case of ***Suman vs. State of Rajasthan and another*** reported in (2010) 1 SCC 250.

06. Thus, it is submitted that the impugned order be set aside, and the cognizance may be taken against the respondents No.2 & 3.

07. Shri Aditya Choudhary, counsel appearing for the respondents No.2 & 3 has submitted that no illegality has been committed by the learned Judge of the trial court in rejecting the application filed under Section 319 of the Cr.P.C., despite the fact that the names of the present respondents No.2 & 3 were reflected in the FIR, as during the investigation, the police have found a different motive on the basis of which, the deceased was murdered by the other co-accused persons.

08. Counsel for the respondents No. 2 & 3 has also drawn attention of this Court to the various memos prepared under Section 27 of the Evidence Act recorded at the instance of the other accused persons to submit that the deceased was harassing the cousin of accused Ajay s/o Choupsingh, who is also named in the FIR, and thus, Ajay and his family members were keeping a grudge against the deceased, and they took him from the shop of the respondent No.3/Ankit s/o Ramesh Bhilala and thereafter murdered him in their field near the pond. Counsel has also submitted that incriminating materials have also been seized from the possession of the other co-accused persons, and the F.S.L. report is also against the co-accused persons viz. Jeevan, Bablu, Arvind, Radheshyam and Ajay. Thus, it is submitted that the respondents No.2 & 3 having nothing do with the aforesaid

dispute, have been falsely implicated in the offence only on conjunctures of the complainant.

09. Counsel has further submitted that almost all the witnesses have already been examined in the trial court and only the Investigating Officer remains to be examined. In such circumstances, the invocation of Section 319 of the Cr.P.C. is not at all required**.**

10. Counsel for the respondent No.1/State has also opposed the prayer and it is submitted that there are two stories and two different motives. One, attributed to the present respondents No.2 & 3 and another, to the accused persons/petitioners, who have been named in the final report and the incriminating materials?? have also been seized from the accused persons

11. Heard the counsel for the parties and also perused the record.

12. From the record, it is apparent that the *Dehati Nalishi* was lodged on 01.01.2022, at 10.a.m. in which, the names of the respondent No.2/Ajay S/o Ramsingh Bhilala, the respondent No.3/Ankit S/o Ramesh Bhilala and Ajay S/o Choupsingh were mentioned, on the basis of which, the FIR was lodged on 01.01.2022 itself at 16:15, again mentioning the names of Ajay S/o Choupsingh, Ajay S/o Ramesingh Bhilala, and Ankit S/o Ramesh Bhilala. As per the FIR, the complainant-Pratapsingh, his nephew

Ajay S/o Rumalsingh (deceased) had an altercation with the accused Ajay S/o Ramsingh and he had threatened them of dire consequences and had threatened that he would finish Ajay within two-three days.

13. During the investigation a different story has surfaced that the deceased used to harass the cousin sister of Ajay S/o Choupsingh, who is also named in the FIR, which led him and the other accused persons viz., Jeevan, Bablu, Arvind and Radheshyam to commit murder of Ajay.

14. The accused persons were arrested and various articles were also seized from them, including their clothes, and as per the FSL report, human blood has also been found on them. In such circumstances, it is apparent that there is a corroborative material evidence available on record in support of the second story of the prosecution i.e., relating to the present petitioner, and in the charge sheet, there is no other material available to suggest that the respondent No.2 Ajay S/o Ramsingh Bhilala and the respondent No.3 Ankit S/o Ramesh Bhilala were also involved in any manner except the narrative as surmised by the complainant.

15. Further, considering the fact that in the case where, out of total 43 witnesses cited by the prosecution, all the witnesses have already been examined in the trial court except the Investigating Officer, in such circumstances, it would not be expedient to initiate

the trial afresh against the respondents Nos. 2 & 3 against whom also, there is no material available on record.

16. At this juncture, it would also be apt to refer to the decision rendered by the Supreme Court in the case of ***Michael Machado And Another vs. Central Bureau of Investigation and Another,*** reported in ***2000 (2) Crimes 23 (SC)*****,** the relevant paras of the same read as under:-

> **"10.** Powers under Section 319 of the Code can be invoked in appropriate situations. This section is extracted below:
>
> "319. *Power to proceed against other persons appearing to be guilty of offence.*—(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such person for the offence which he appears to have committed.
>
> (2) Where such person is not attending the court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
>
> (3) Any person attending the court, although not under arrest or upon a summons, may be detained by such court for the 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—
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> (*a*) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;
>
> (*b*) subject to the provisions of clause (*a*), the case may proceed as if such person had been an accused person when the court took cognizance of the offence upon which the inquiry or trial was commenced."
>
> **11.** The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that

other person could as well be tried along with the already arraigned accused.

12. But even then, what is conferred on the court is only a discretion as could be discerned from the words "the court may proceed against such person". The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that other person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons.

13. In *Municipal Corpn. of Delhi* v. *Ram Kishan Rohtagi* [(1983) 1 SCC 1:1983 SCC (Cri) 115] this Court has struck a note of caution, while considering whether the prosecution can produce evidence to satisfy the court that the other accused against whom proceedings have been quashed or those who have not been arrayed as accused, have also committed an offence in order to enable the court to take cognisance against them and try them along with the other accused. This was how learned Judges then cautioned: (SCC p. 8, para 19)

> "But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognisance against the other person against whom action has not been taken."

14. The court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub-section (4), that proceedings in respect of newly-added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be recommenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite large in number the court must seriously consider whether the objects sought to be achieved by such exercise are worth wasting the whole labour already undertaken. Unless the court is hopeful that there is a reasonable prospect of the case as against the newly-brought accused ending in being convicted of the offence concerned we would say that the court should refrain from adopting such a course of action."

(***emphasis supplied***)

17. Thus, if the facts of the case on hand, tested on the anvil of

the aforesaid dictum of the Supreme Court, it leaves no manner of doubt that it would not be expedient to initiate the trial afresh against the respondent no.2 and 3, against whom there is absolutely no material available on record except the apprehension of the complainant.

18. So far as the decision relied upon by the counsel for the petitioner in the case of ***Suman (supra)*** is concerned, the same is distinguishable on facts as in that case no such two narratives are present, and the subsequent narrative which has surfaced during the investigation, has been found to be substantiated by the evidence collected during the course of the investigation. Thus, the aforesaid decision is clearly distinguishable and is of no avail to the petitioner.

19. Resultantly, the revision being devoid of merit is hereby ***dismissed.***

(SUBODH ABHYANKAR)
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