

**Jagdish Vs. State and ors.**

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**Court :** Rajasthan

**Decided On :** Jul-03-2006

**Reported in :** 2006CriLJ3538; 2006(4)WLC479

**Judge :** Harbans Lal, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 319, 397 and 401;  
Indian Penal Code (IPC) - Sections 147, 148, 149, 307, 323, 341, 363, 366, 376  
and 452

**Appeal No. :** Crl. Revn. Petn. No. 1084 of 2005

**Appellant :** Jagdish

**Respondent :** State and ors.

**Advocate for Def. :** Arun Sharma, PP and; Rajesh Parashar, Adv.

**Advocate for Pet/Ap. :** Suresh Kumar Gupta, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**Harbans Lal, J.**

1. The instant Cr. Revision Petition under Section 397 r/w. 401, Cr. P.C. is directed against the order dated 19-9-2005 passed by the learned Additional Sessions Judge, Shahpura, District Jaipur in Sessions Case No. 4/2003 whereby, the application of petitioner Jagdish filed Under Section 319, Cr. P.C. has been rejected.

Briefly stated, the relevant facts are that the accused-respondents and others gave beating to the petitioner and his family members after entering into his house on 23-9-2002 at about 6.00 p.m. An FIR being No, 533/2002 was lodged at 8.15 p.m. on the same night about the aforesaid occurrence by one Ramgopal Yadav for offences under Sections 147, 452 and 323, IPC. After investigation, charge-sheet was filed in the Court of A.C.J.M. Shahpura for offences under Sections 341, 323 and 307, IPC against accused Kalu only. The case was committed to the Court of Additional District and Sessions Judge, Shahpura for trial. After hearing both sides and upon a perusal of the materials placed on record, charges were framed against accused Kaluram. The prosecution examined 17 witnesses out of whom. P.W. 1 Goru, P.W. 2 Bhagwan, P.W. 3 Jagdish, P.W. 4 Girdhari, P.W. 12 Bhagirath Prasad and P.W. 13 have turned hostile. They did not support the prosecution story. Other witnesses simply named the other accused persons. They did not specify any overt act on their part.

2. Petitioner submitted an application under Section 319, Cr. P.C. on 16-4-2005 stating that from the materials and evidence on record which has been recorded during trial, offences under Sections 147, 148, 149, 323, 341, 307 and 452, IPC are clearly made out against the accused persons. So, they may also be arraigned as additional accused. After hearing both the sides and upon scrutiny of the evidence on record, the learned trial Court declined to arraign the non-petitioner Nos. 2 to 7 as the additional accused. It has been observed that arraigning non-petitioner Nos. 2 to 7 as additional accused would tantamount to abuse of the process of the Court. Accordingly, the application filed under Section 319, Cr. P.C. was rejected. Hence, this revision petition.

3. I have heard learned Counsel for the parties as well as learned Public Prosecutor for the State and have also perused the relevant record.

4. It is contended on the basis of *Rakesh v. State of Haryana* : 2001 CriLJ3511 that the Hon'ble Apex Court has held that although power under Section 319, Cr. P.C. should be sparingly exercised but where prosecution witnesses name certain persons as having been involved in a serious crime, their addition as accused in exercise of power would not be unwarranted.

5. In the said case, father of the prosecutrix lodged an FIR alleging commission of offences under Sections 363, 366 and 376, IPC by the appellants and one P. According to the complainant, three persons had taken away his daughter due to previous enmity with the object of committing rape upon her. The girl and P were found in Noida. The police found that the appellants were not involved in the case, therefore, charges were framed against only P. After examination of P.W. 1 to P.W. 3 and the prosecutrix, Public Prosecutor filed an application under Section 319, Cr. P.C. for arraigning the appellants as additional accused. The trial Court allowed the application and summoned them as additional accused to stand trial. Revision filed was also dismissed by the High Court. While dismissing the appeal the Hon'ble Apex Court has held that evidence of the witnesses even without cross-examination would be prima facie material which would enable the Sessions Court to decide whether powers under Section 319, Cr. P.C. are to be exercised or not.

6. It is further contended on the basis of *Vipin Anand v. State of Rajasthan* 2005 (2) Raj Cri C 667, that where there is no chance of conviction on the materials available there shall be no reason for interference in the order of the trial Court.

7. The power under Section 319, Cr. P.C. is discretionary power of the trial Court. The discretion exercised by the trial Court should not be lightly interfered with, unless it shows that the order refusing to implead the accused has been made mechanically or it is arbitrary or perverse. In the instant case the trial Court while refusing to arraign the additional accused has taken into account every aspect of the matter and entire material placed before it; more particularly the chances of conviction of petitioner who have been sought to be impleaded as additional accused. The trial Court has found case of the complainant full of contradictions on material points. The statements of the witnesses are not duly corroborated by

the medical evidence. The trial Court has further found that chances of their conviction in the case are remote and bleak,

8. In *Michael Machado v. Central Bureau of Investigation* : 2000 CriLJ1706 , the Hon'ble Supreme Court has held that the power Under Section 319, Cr. P.C. is discretionary and should be exercised only to achieve the criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another person also with the offence. It was further held that the 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. The Apex Court has further held that the Court, while examining an application under Section 319, Cr. P.C. has also to bear in mind that there is no compelling duty of the Court to proceed against other persons. In a nutshell, it means that for exercise of discretion under Section 319, Cr. P.C. all relevant factors have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence has come on record implicating the persons sought to be added as accused.

9. In *Krishnappa v. State of Karnataka* AIR 2004 SCW 4809 : 2004 Cri LJ 4185, the Hon'ble Supreme Court, while examining the case on identical facts and applying the test of the ratio laid down in *Michael Machado* 2000 Cri LJ 1706 (supra), held that the trial Court is right in rejecting the application. The Apex Court set aside the order of the High Court and restored that of the Magistrate by which the application seeking Implement of the persons sought to be arraigned as accused was rejected. The Apex Court has dealt with object of revisional jurisdiction in the case of *Jagannath Choudhary v. Ramayan Singh* : 2002 CriLJ2945 and has observed that object of revisional jurisdiction is conferred upon superior criminal Courts a kind of paternal or supervisory jurisdiction in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precaution or apparent harshness of treatment, which has resulted on the one hand in some injury to the maintenance of law and on the other hand, in some undeserved hardship to the Individuals. Where the Court concerned does not appear to have committed any error or material irregularity or

Impropriety in passing the impugned judgment and order, the revision cannot succeed.

10. The learned trial Court has by a detailed and well speaking order dismissed the application filed by the complainant-petitioner under Section 319, Cr. P.C. The learned trial Court has considered the statements of the various prosecution witnesses and has arrived at the conclusion that from the oral evidence it cannot be said that the non-petitioners had indulged in the alleged offences and there are remote chances of their conviction on the evidence on record.

11. In view of the law laid down by the Hon'ble Apex Court in Harihar Chakraverty v. State of West Bengal : AIR 1954 SC266 , the revisional jurisdiction is not to be lightly exercised when it is invoked by a private complainant.

12. In view of the foregoing discussion, I am of the well-considered view that the approach of the learned Court below is well reasoned and based on the guidelines and law laid down by the Hon'ble Apex Court: In the face of the materials on record, no fault can be found with the order passed by the learned trial Court rejecting the application under Section 319, Cr. P.C.

13. Consequently, there being no pith and substance in this petition, the same deserves to be and is, hereby dismissed.

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