

**(2023) 03 SC CK 0052**

**In the Supreme Court Of India**

**Case No : Criminal Appeal No. 738 Of 2023**

Meenu Prakash Bhantu

APPELLANT

Vs

State Of Uttar Pradesh & Anr.

RESPONDENT

**Date of Decision : 16-03-2023**

**Acts Referred:**

Code Of Criminal Procedure, 1973 — Section 319, 482

**Citation : (2023) 3 JT 143**

**Hon'ble Judges : Abhay S. Oka, J;Rajesh Bindal, J**

**Bench : Division Bench**

**Advocate : Ashwani Garg, Sameer Garg, Vijay Kumar, Shashank Shekhar Singh, Reena Pandey, Anurag Pandey**

**Final Decision : Allowed**

## Judgement

Rajesh Bindal, J

1. The Order dated 12th October, 2017 passed by the High Court for Judicature at Allahabad is under challenge before this Court. Vide the aforesaid order, the Criminal Miscellaneous Application filed by the appellant under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC") for quashing of the orders dated 4th July, 2017 passed by the Sessions Judge, Aligarh in Criminal Revision No.306 of 2017 and the order dated 29th August, 2017 passed by the Additional Chief Judicial Magistrate, Aligarh, was disposed of by the impugned order.

2. While examining the issue in detail, a brief narration of the facts of the case would be relevant:

The Respondent No.2/complainant lodged FIR bearing Case Crime No.170/2014 dated 20th June, 2014 at Police Station Gonda, District Aligarh, Uttar Pradesh. It was with the allegation that Rs. 55,20,000/- (Rupees fifty five lakhs twenty thousand only) were embezzled from his account. A perusal of the contents of the FIR shows that no one was named as an accused therein. He merely stated therein that there were certain unauthorized withdrawals from his bank account.

He had never requested for issuance of a new cheque book, however, still a new cheque book was issued. It was sent by registered post to the complainant but was not delivered to him. Some unauthorized person collected the same. Though earlier the complainant was receiving SMS from the bank for all the transactions but suddenly it got stopped. He came to know about the cheating when on 19th June, 2014 he got entries done in his pass book. After investigation, charge sheet was filed against Jagpal Singh, s/o Ghasiram, Clerk (Assistant) SBI Branch, Gonda district, Aligarh and Ajeet Kumar Sharma s/o Bhupendra Sharma, SBI Branch Gonda. During the course of trial, the appellant got his statement recorded. He reiterated the stand taken by him in complaint filed to the police on the basis of which FIR was registered. He stated that the cheating has been done in connivance with the employees of the bank and the Post Office. He admitted in his cross-examination that the amount of Rs. 55,20,000/- (Rupees fifty five lakhs twenty thousand only) which was withdrawn from his bank account has been returned to him by the bank.

3. On the basis of the statement made by the complainant which was in line with the complaint filed to the police, an application was filed under Section 319 Cr.PC by the prosecution for summoning the present appellant, Accountant S.D.Sharma and Bank Manager M.L.Verma, State Bank of India and the then Post Master of Post Office, Gonda. The same was rejected by the Additional Chief Judicial Magistrate vide order dated 6th May, 2017 finding that sufficient material was not available to summon the accused. The order was challenged by the prosecution by filing revision. The learned Sessions Judge vide order dated 4th July, 2017 allowed the Revision Petition and remitted the matter to the Trial Court for disposal afresh after affording opportunity of hearing to the parties. Thereafter, vide order dated 29th August, 2017 the learned Additional Chief Judicial Magistrate, Aligarh allowed the application and directed for summoning of the present appellant, Accountant S.D. Sharma and Bank Manager M.L. Verma and the then Post Master of Gonda Post Office.

4. In the aforesaid order, no reasons were assigned except stating that for the reasons stating by the Sessions Judge in his order by which the matter was remitted back for consideration afresh, the application is allowed and the present appellant, Accountant S.D.Sharma, Bank Manager M.L.Verma and the then Post Master of Gonda Post Office were directed to be summoned. The appellant being aggrieved by the aforesaid order approached the High Court at Allahabad. The High Court vide the impugned order dismissed the Criminal Miscellaneous Application filed under Section 482 CrPC only with general observations and without noticing the facts of the case. The impugned order merely mentioned that no illegality or impropriety was found in the order which could persuade the High Court to interfere. The order reflects non-application of judicial mind. The order is under challenge before this Court.

5. Learned counsel appearing for the appellant submitted that the appellant was merely working as a Miscellaneous Clerk in State Bank of India, Gonda Branch,

District Aligarh, Uttar Pradesh. If there was any fraudulent withdrawal from the account of the complainant, the appellant cannot be held responsible for the same. The only allegation against the appellant is that once he had supplied printout of the statement of account of the complainant which according to him was not legible or there was some mis-printing. The appellant cannot be held responsible for treating his part of the crime. The High Court had failed to appreciate the contentions and it merely passed a general order without discussing the facts of the case. The order passed by the Additional Chief Judicial Magistrate which again was totally non-speaking. He merely referred to the order passed by the Sessions Judge challenging an earlier order passed by the Additional Chief Judicial Magistrate dated 6th May, 2017. The Sessions Judge had accepted the Revision Petition with certain observations and remitted the matter back to the Trial Court for passing fresh orders and the matter was required to be considered on its own merits by the Trial Court.

6. In support of the arguments, reliance was placed upon the Constitution Bench judgment in the case of Hardeep Singh and Ors. Vs. State of Punjab & Ors., (2014) 3 SCC 92.

7. On the other hand, learned counsel for the respondents submitted that it is a case in which there was fraudulent withdrawal of Rs. 55,20,000/- (Rupees fifty five lakhs twenty thousand only). The role of the appellant is clearly established. When the complainant received a message regarding dispatch of a cheque book of his account, he immediately approached the bank as he had never requested for issuance of a cheque book. However, no satisfactory reply was given by the bank. When the complainant requested for a copy of the statement of his account with the bank, statement supplied was either illegible or there was mis-printing and as a result of which the complainant could not make out as to what transactions had been done from his account. The appellant being the person responsible for supplying copies of the account, he is equally responsible in playing fraud.

8. Heard the learned counsel for the parties and perused the relevant material placed on record.

9. The parameters on which additional accused could be summoned in an application filed under Section 319 CrPC are well settled in the case of Hardeep Singh and Ors.'s case (supra) which are as under:

"105. Power u/s 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 laid before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus we hold that though only a prima facie case is to be established from

the evidence laid before the court, not necessarily tested on the anvil of cross-examination, it requires much strong evidence that near probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power u/S 319 CrPC.”

(emphasis supplied)

10. In Sagar vs. State of U.P. & Anr. (2022) 6 SCC 389, it is stated as under:

“9. The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as notice above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction....”

11. If the case in hand is examined on the parameters laid down in the aforesaid judgments, in our opinion, no case is made out against the appellant at this stage for his summoning as an additional accused merely because he once had supplied a copy of the statement of account to the complainant which was either dim or mis-printed. Based on this material, opinion cannot be formed that he was in connivance with the accused who allegedly indulged in cheating the complainant by fraudulent withdrawal from his account. He is not authorized either to approve withdrawal or to deal with the account of the complainant.

12. For the reasons stated aforesaid, the present appeal is allowed. The impugned order dated 12th October, 2017 passed by the High Court is set aside and the application filed by the prosecution for summoning the present appellant as an additional accused is dismissed.