

(2021) 08 UK CK 0398

In the Uttarakhand High Court

Case No : Criminal Miscellaneous Application No. 552 Of 2021

Payal Paul

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 25-08-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 207, 319, 482
Indian Penal Code, 1860 — Section 304A

Citation : (2021) 08 UK CK 0398

Hon'ble Judges : R.C. Khulbe, J

Bench : Single Bench

Advocate : Arvind Vashistha, Tajhar Qayyum, Sachin Panwar, Manisha Bhandari, P.C. Petshali, Naveen Bisht

Final Decision : Dismissed

Judgement

R.C. Khulbe, J

1. This application is filed under Section 482 Cr.P.C. seeking to quash the order dated 20.01.2020 passed by the Chief Judicial Magistrate, Nainital, in

Criminal Case No.2505 of 2015, â??State Vs. Amandeep Sandhu and othersâ?? as well as order dated 22.02.2021 passed by the 1st Addl. Sessions

Judge, Nainital, in Criminal Revision No.10 of 2020, â??Payal Paul vs. Stateâ??.

2. The brief facts of the case are that, an FIR was lodged with P.S. Nainital, under Section 304A IPC against Amandeep Sandhu, Ravi Kumar and

Payal Paul. After investigation, charge-sheet No.8 of 2015 was submitted under Section 304A IPC. Accordingly, after compliance with the provision

of Section 207 Cr.P.C.; the concerned trial court took the cognizance.

3. The prosecution produced PW1-Neena Shreshtha, PW2- K.P Singh, PW3- Dr. M.C. Joshi, PW4-Yash Jhunjunwala, PW5- Dr. S.K. Mishra,

WP6-Dr. Rahul Verma, PW7- Dr. D.K. Gangola, PW8- M.S. Rawat, PW9- Ganesh, PW10- Dinesh Kumar Singh, PW11-Dr. Paramjeet Singh,

PW12-Inspector S.K. Pandey, PW13-Shweta Chaubey, PW14- S.P. City, Kamlesh Upadhyay and PW15-Udai Singh Rana.

4. Thereafter, an application was moved by the applicant under Section 319 Cr.P.C. for summoning the respondent nos.3 and 4 (Dr. M.C. Joshi and

Dr. Sailendra Kumar Mishra); the said application was rejected. Aggrieved by it, the applicant preferred a revision, which was also dismissed.

Aggrieved by both the above orders, this instant application is filed by the applicant under Section 482 Cr.P.C.

5. Section 319 of Cr.P.C. reads as under:

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-

(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.

6. The Honâ??ble Apex Court in a recent case in Criminal Appeal No.875 of 2021, Manjeet Singh vs. State of Haryana & Ors have considered,

in detail, the provisions of Section 319 Cr.P.C. The relevant paragraphs of the judgment are extracted hereinafter:-

â??105. Power under Section 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 led 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 led before the court, not necessarily tested on

the anvil of cross-examination, it requires much stronger evidence than mere 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

under Section 319 CrPC. In Section 319 CrPC the purpose of providing if it appears from the evidence that any person not being the

accused has committed any offence is clear from the words for which such person could be tried together with the accused. The

words used are not for which such person could be convicted. There is, therefore, no scope for the court acting under Section 319

CrPC to form any opinion as to the guilt of the accused.

7. In the present matter, no application was moved either on behalf of the prosecution or on behalf of the informant under Section 319 Cr.P.C. The

above application is moved on behalf of the applicant-Payal Paul, who is the accused and facing the trial before the trial court.

8. It is the only submission of learned Sr. Counsel for the applicant that the deceased, who was the student of Sherwood College, Nainital, was

suffering from some illness. He was rushed to the college dispensary on 12.11.2014, his condition was not fit; accordingly, he was shifted at Bombay

Hospital, Haldwani for the better treatment; thereafter, he was advised to shift at Delhi for his better treatment, but unfortunately, he passed away on

the way of Delhi. It is also submitted that the attending Doctor of the Bombay Hospital did not treat the deceased properly; it was a medical

negligence on the part of the respondent nos.3 and 4.

5 From the perusal of the record, the respondent no.3-Dr. M.C. Joshi was produced as PW-3 by the prosecution before the trial court while the

respondent no.4.-Dr. Sheilendra Kumar Mishra was produced as PW-5 before the trial court. For invoking the provision of Section 319 Cr.P.C. there

must be better evidence before the trial court.

10. From the perusal of the evidence produced by the prosecution before the trial court, it is clear that there is no evidence on record against the

respondent nos. 3 and 4; there is no, â??prima facieâ?? evidence on record which shows that the death of the student caused due to negligence on

the part of respondent nos.3 and 4. Admittedly, the death of the child took place during the way of Delhi, not at the Bombay Hospital, Haldwani; there

is no evidence on record that the attending Doctor treated the child negligently. Although, the settled principle of law is that the proposed accused can

be summoned at any stage before signing of the judgment. No doubt the application under Section 319 Cr.P.C., can be submitted before the signing of

the judgment by any party, but before invoking the provision of Section 319 Cr.P.C., there must be strong and cogent evidence before the trial court

while in the present matter, even no prima facie evidence on record against the respondent nos. 3 and 4, even the learned counsel for the informant

and learned counsel for the State fairly submitted that there is no evidence to summon the respondent nos.3 and 4.

11. Considering the facts and circumstances of the case, the misc. application is liable to be dismissed. Accordingly, the instant misc. application is dismissed.

12. Pending application, if any, also stands disposed of.