
(2019) 09 UK CK 0070

Uttarakhand High Court

Case No: Criminal Revision No. 521 Of 2019

Sumit Singh Panwar

APPELLANT

Vs

State Of Uttarakhand &
Others

RESPONDENT

Date of Decision: Sept. 12, 2019

Acts Referred:

- Code Of Criminal Procedure, 1973 - Section 319, 319(2), 376, 376(ka)(kha), 397, 401
- Protection Of Children From Sexual Offences Act, 2012 - Section 5(da), 5(tha), 6
- Indian Penal Code, 1860 - Section 376(2)(jha)

Hon'ble Judges: Sharad Kumar Sharma, J

Bench: Single Bench

Advocate: Abhishek Verma, P.S. Bohra, Siddhartha Bisht

Final Decision: Dismissed

Judgement

Sharad Kumar Sharma, J

1. The present revision has been preferred by the revisionist, questioning the propriety of the order dated 02.08.2019, as passed by the

F.T.C./Additional Session Judge Special Judge, POCSO, Haridwar in Special Session Trial No. 18 of 2019 *State vs. Sanjeev Kumar*,

whereby, the revisionist has been summoned by the Court while exercising its powers under Section 319 of Cr.P.C.

2. The brief facts, which emerges for consideration before this Court are that for the purposes of dealing with the propriety of the impugned order

dated 02.08.2019 in question, whereby, the revisionist has been summoned by the Trial Court, by allowing the application paper no. 40(kha) as

preferred under Section 319 of the Cr.P.C. summoning the named person therein, for commission of an offence under Section 376(ka) (kha) and

Section 5 (tha)/6 of the POCSO Act. The brief facts of the case as involved are that respondent no. 2, i.e. the complainant, who is the principal of the

school in which the victim is studying in Class-4, she has registered an FIR No. 530/2016 on 11.10.2018, as against Mr. Sanjeev Kumar, who happens

to be the father and natural guardian of the victim, who has been accused of commission of an offence under Section 376 (2) (jha) of IPC and Section

5 (da)/6 of the POCSO Act.

3. The said FIR, which has been registered as Case Crime No. 530 of 2018, is presently being tried by the Sessions Court, Haridwar. There had been

a medical examination also, which was conducted on the prosecutrix, who is a minor girl of about 10 years of age studying in Class-4, who has leveled

an allegation against her father about the commission of offence under Section 376 as against her. When the trial was proceeded with after

submission of the chargesheet, as against the principal accused person named in the FIR at the stage of the cross-examination, which was recorded

by the Court and which finds place on record as paper no. 22(ka) 1 (Annexure-1), in answer to the questions raised to the prosecutrix in her cross-

examination she has named the present accused person, i.e. the revisionist as to be involved in commission of the offences as mentioned above.

Consequently, considering the aforesaid backdrop, the Court has exercised its powers under Section 319 on considering the application paper no.

40(kha) and he has been summoned to participate in the proceedings of Sessions Trial No. 18 of 2019 *Satte vs. Sanjiv Kumar*

4. Learned counsel for the revisionist has submitted that as far as the powers, which is vested with the Court under Section 319 of Cr.P.C., while

trying an offence it has to be exercised sparingly in exercise of powers under Section 319, court should be slow to order to summon the accused

person, who has not been directly alleged to be involved in commission of offence. The words sparingly, which has been sought to be utilized by the

learned counsel for the revisionist may not be construed in a manner so to provide an immunity to a person from the participation in a trial where there

could be possibility of his involvement, or who is being even remotely on the basis of the statement of the prosecutrix is said to be involved in the

commission of an offence complained of, and that too an offence of a heinous nature of Section 376, that is why legislature under Section 319 has

provided that it is the court when on consideration of the material brought on record before it and when it "appears" to the court that the person

not being an accused person is reportedly guilty of commission of offence, he can always be summoned and the Trial can be proceeded against him

because basic intention of legislatively vesting powers to summon a person not named in the FIR, who is later disclosed during trial to be involved in

the offence, court can always summon the person, because no guilty person of commission of crime may be left escort free.

5. Looking to the aforesaid backdrop under which the present case has arrived at where a challenge is being given to the impugned order dated

02.08.2019, by virtue of which the revisionist has been summoned, it shakes the very conscious of a normal human being that a girl studying in Class-

4 and of about 10 years of age only, has been raped by her father, and later on when the minor girl, i.e. victim, has recorded a statement and cross-

examined she has disclosed the name of present revisionist of having committed the offence under Section 376(ka) (kha) to be read with Section 5

(tha)/6 of POCSO Act, it cannot be believed that a minor innocent girl studying in Clases-4 having an age of about 10 years would ever falsely

implicate the revisionist. Apart from it, this is not the stage at which the propriety of the false implications of the revisionist is to be considered by this

Court while exercising its revisional power under Section 397 and 401 of Cr.P.C., but looking to the set of allegation and the backdrop under which the

revisionist has been summoned, this Court does not find any anomaly in the impugned order passed by the learned Sessions Court, there is no misuse

of powers by the Sessions Court under Section 319 of Cr.P.C. while exercising its powers under Section 319 for summoning the accused person

whose name has been disclosed in the cross-examination of the prosecutrix to be involved in commission of the offence.

6. In that view of the matter, this Court does not find any merit in the revision.

Consequently, the revision is dismissed. However, if the revisionist

surrenders before the Court below, the Trial Court would take into consideration the implications of sub-section 2 of Section 319 of Cr.P.C. and pass

an appropriate order.

7. Subject to above observation, revision lacks merit and the same is accordingly dismissed.