



2026:AHC:20695

A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 201 of 2026

Jai Nath Prajapati

.....Revisionist(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Revisionist(s)	: Jagannath Singh, Shree Prakash Giri
Counsel for Opposite Party(s)	: G.A., Vivek Kumar Singh

Court No. - 87

HON'BLE ABDUL SHAHID, J.

1. Heard learned counsel for the revisionist and learned A.G.A. for the State.
2. The brief genesis of the present case is as follows:-
3. The incident occurred on 29.05.2021 at about 7:50 p.m., whereas the F.I.R. was lodged on 30.05.2021 at 10:44 a.m. The F.I.R. has been registered under Sections 147, 148, 149, and 302 of the Indian Penal Code. The F.I.R. has been lodged against the named accused persons, namely: 1. Ravi Gautam, Bhim Gautam, 3. Jai Nath Prajapati (revisionist) and 4. Mohd. Usman and 5. several other unknown persons. The opposite party no. 2, i.e., the complainant, stated in her F.I.R. that the incident took place on 29.05.2021 at about 7:50 p.m. The husband of the complainant, Faujdar Prajapati, runs a small medicine clinic. After closing the clinic, he was returning home on his Super Splendor motorcycle bearing registration no. UP62 AY 6657. As soon as he reached near Sangeeta Farm House, approximately 250 meters away from his residence, due to previous enmity and pursuant to a systematic conspiracy, the accused persons—Ravi Gautam and Bhim Gautam (sons of Nandlal Gautam), Jai Nath Prajapati (revisionist, son of Bhulai Ram), Mohd. Usman (son of Ataullah), and several unknown persons—stopped the husband of the complainant and fired at him. Due to the said injuries, the husband of the complainant died on the spot. Upon hearing the noise, several persons, including the complainant and her family

members, reached the place of occurrence, whereupon the aforesaid accused persons fled from the spot after showing their pistols. On the advice of the villagers, the deceased was taken to the Community Health Centre, Badlapur, where the doctor declared Faujdar Prajapati dead. The condition of the complainant was not proper at that time; therefore, she came to the police station on the next day and submitted the report. Hence, the F.I.R. was lodged on 30.05.2021.

4. After investigation, no charge sheet has been filed against the revisionist/Jai Nath Prajapati. After recording the statement of the P.W.-1 Raj Kumari/informant, P.W.-2 Nagendra Ram Prajapati and P.W.-3 Harendra Pratap Prajapati, the revisionist had been summoned under section 319 Cr.P.C. (corresponding section 358 B.N.S.S., 2023).

5. Section 319(1) Cr.P.C. and section 358(1) B.N.S.S., 2023, are produced hereinbelow:

"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."

Section 358. 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."

6. Learned counsel for the revisionist has vehemently argued that the learned trial court has summoned the revisionist, Jai Nath Prajapati, without recording its satisfaction that the evidence against him was sufficient to summon him under Section 319 Cr.P.C. He has further submitted that the impugned order dated 12.11.2025 was passed without proper appreciation of all the evidence collected during the investigation. The learned trial court failed to appreciate that there was no evidence sufficient for summoning the

revisionist under Section 319 Cr.P.C., and despite this, the revisionist was summoned. Learned counsel for the revisionist has relied upon the law laid down by the Hon'ble Supreme Court in **Mehraj Singh v. State of U.P., 1994 (1) SCC (Cri) 1390**. In the said judgment, the Hon'ble Supreme Court decided two appeals under Section 2(a) of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, against the judgment of the Allahabad High Court, whereby the appeal of the respondent State was allowed and the acquittal of the appellants in both the appeals was set aside. It has been submitted that the appreciation of evidence required at the stage of summoning a person under Section 319 Cr.P.C. is not to the same extent as is required for final appreciation of evidence at the conclusion of the trial or while exercising appellate jurisdiction.

7. In view of the aforesaid, the law laid down in **Mehraj Singh (supra)** does not exactly support the contention of the learned counsel for the revisionists in the present criminal revision.

8. Learned counsel for the revisionist has further relied upon the law laid down by the Hon'ble Supreme Court in **Sagar v. State of U.P. and Another, 2022 (6) SCC 389**. He has placed reliance on paragraph no. 9 of the said judgment, wherein the Constitution Bench has cautioned that the 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. It has further been observed that the crucial test as noticed 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 the satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. Learned Single Judge of the High Court has even failed to consider the basic principles laid down by this Court while invoking section 319 of the Code, which has been considered by the learned trial judge under its order dated 30.01.2018.

9. Learned counsel for the revisionists has further relied upon the law laid down by the **Hon'ble Supreme Court in Ramesh Chandra Srivastava v. State of U.P. and Another, 2021 (12) SCC 608**. In paragraph 10, it has been observed as follows:

"10. We say this for the following reason: The test as laid down by the Constitution Bench of this Court for invoking power under

Section 319 Cr.P.C. inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 Cr.P.C. should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this Court, is one which is more than prima facie case which is applied at the time of framing of charges."

10. Learned counsel for the revisionists has vehemently relied upon the evidence and the statements collected and recorded under Section 161 Cr.P.C. He has submitted that the F.I.R. was lodged with a delay of 15 hours and, therefore, the F.I.R. was lodged after due consultation.

11. However, it is to be seen in the facts and circumstances of the case that the complainant is the wife of the deceased, and she has clearly stated in her F.I.R. that after the incident her condition was not normal; hence, she came on the next day to lodge the F.I.R. The delay in lodging the F.I.R. is not fatal if a proper explanation exists. Since the husband of the complainant was brutally murdered, her mental condition could not be expected to be normal. In such circumstances, the first priority would naturally be to arrange medical assistance and to reach a medical centre. Therefore, the delay in lodging the F.I.R. appears to be reasonable.

12. Learned counsel for the revisionists has further submitted that the complainant herself stated that the deceased died on the spot without any medical consultation. However, it has to be viewed holistically that after the deceased was hit by firearm injuries, he was taken by the complainant and co-villagers to the Community Health Centre, where he was declared brought dead. The F.I.R. was lodged thereafter. Hence, the presumption of the complainant that her husband died on the spot has substance. Nevertheless, confirmation of death or provision of treatment to a grievously injured or apparently dead person must be made by an established medical practitioner. Ordinarily, every effort is made to seek medical consultation even when, prima facie, it appears that the person has died due to firearm injuries.

13. Learned counsel for the revisionists has also relied upon the statement of the complainant/opposite party no. 2 recorded during investigation under Section 161 Cr.P.C., contending that there are serious contradictions in her statement, which are not sufficient for summoning the revisionists. He has

further objected to the statements of the alleged eyewitness Sri Nagendra Ram Prajapati and the additional statement of the complainant.

14. Learned counsel for the revisionists has additionally submitted that there are contradictions in the statement of Harendra Pratap Prajapati and no sufficient evidence was found against the revisionists during the investigation, as a result of which their names were exonerated; despite this, they have been summoned under Section 319 Cr.P.C.

15. Learned counsel for the revisionists has further submitted that there are material improvements in the statements recorded before the court during the trial of P.W.-1, P.W.-2, and P.W.-3. Such improvements are not permissible in law and have not been properly appreciated. The learned trial court had not recorded the satisfaction prior to summoning the revisionist under Section 319 Cr.P.C.

16. It is settled law held by the Hon'ble Supreme Court in **Hardeep Singh Versus State of Punjab, (2014) (3) SCC 902** that the word "evidence" used under section 319(1) Cr.P.C. indicates, the word "evidence" is limited to the evidence recorded during trial.

17. Learned counsel for the revisionist has further relied upon section 2(g) of Cr.P.C., 1973 as follows-"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court. The present matter pertains to section 319 Cr.P.C. where the matter has to be considered of the evidences regarding trial because that constitute as evidence as held in **Hardeep Singh** (supra).

18. It is held by the Hon'ble Supreme Court in **Omi Versus State of Madhya Pradesh, (2025) 2 SCC 621** that the trial court can add an individual as accused only on the basis of evidence adduced before it and not on the basis of the materials available in the charge sheet or the case diary because such materials contained in the charge sheet or the case diary do not constitute evidence. It is held by Hon'ble Supreme Court in **Shiv Baran Versus State of U.P., 2025 SCC Online SC 1417** that the trial court can exercise power to summon an additional accused under section 319 Cr.P.C. only on the basis of the evidence adduced before it and not any other material collected during investigation. It is held in **Hardeep Singh** (supra) that summoning of accused under section 319 Cr.P.C. is settled, that this power is an extraordinary power, which should be used sparingly with

circumspection and while passing the summoning order under section 319 Cr.P.C., court must consider whether more than prima facie case made out, or not, mere prima facie case is not sufficient.

19. Learned counsel for the revisionist has further relied upon and discussed the cross-examination of P.W.-1/Raj Kumari, P.W.-2/Nagendra Ram Prajapati, and P.W.-3/Harendra Pratap Prajapati. However, the final appreciation of evidence is to be undertaken by the trial court after considering all the material collected during the trial, whether in examination-in-chief or cross-examination, in a meticulous manner. At the stage of Section 319 Cr.P.C., such final and meticulous appreciation of evidence is neither justified nor permissible.

20. It is settled law that statements recorded under Section 161 Cr.P.C. during investigation do not constitute substantive evidence; they can only be used for the purpose of contradiction of the statements recorded during the trial by prosecution witnesses.

21. Raj Kumari (P.W.-1), in her examination-in-chief, has specifically deposed that the accused Ravi Gautam, Bhim Gautam, Jai Nath Prajapati, Mohd. Usman, and some unknown persons stopped the motorcycle of her husband, fired at him, and thereafter fled from the spot. She further stated that her husband died on the spot. P.W.-2 Nagendra Ram Prajapati, in his examination-in-chief, deposed that there was previous enmity between the deceased and Ravi Gautam, Bhim Gautam, Jai Nath Prajapati, and Mohd. Usman, all of whom are residents of the same village. The enmity was related to a land dispute. He specifically deposed that all four accused persons fired at Faujdar Prajapati, as a result of which he died on the spot. P.W.-3 Harendra Pratap Prajapati, who examined himself as P.W.-3, supported the prosecution version and specifically deposed that Ravi Gautam, Bhim Gautam, Jai Nath Prajapati, and Mohd. Usman, due to previous enmity, committed the murder of Faujdar Prajapati by firing with firearms.

22. The final interpretation or appreciation of the evidence is neither required nor permissible at this stage of the present criminal revision by this Court, as it may cause prejudice to the accused persons.

23. It is held by the Hon'ble Supreme Court in **Asim Akhtar Versus State of West Bengal, 2024 NSC 794** that complicity of any person sought to be

arrayed as an accused can be decided with or without conducting the cross examination of the complainant and other prosecution witnesses, and there is no mandate to decide the application under section 319 Cr.P.C. before cross examination of other witnesses.

24. Hence, the evidence recorded during the trial, along with all the facts and circumstances of the case, clearly establishes that the evidence against the revisionist collected during the trial is more than a prima facie case against the accused/revisionist. Any contradictions in the statements recorded under Section 161 Cr.P.C. during investigation, or any improvements, if at all, noticed during the trial, are matters to be considered by the learned trial court after completion of the entire evidence and at the conclusion of the trial.

25. The evidence available before the learned trial court at the time of summoning the revisionist/accused under Section 319 Cr.P.C. was sufficient for exercising such power. Accordingly, the learned trial court rightly passed the impugned order dated 12.11.2025, summoning the accused/revisionist Jai Nath Prajapati. There is no illegality or irregularity in the impugned order dated 12.11.2025.

26. The criminal revision is liable to be dismissed and it is dismissed accordingly.

January 29, 2026
K.K. Maurya

(Abdul Shahid,J.)