

Court No. - 49

Case :- CRIMINAL REVISION No. - 1703 of 1998

**Revisionist :-** Brij Pal

**Opposite Party :-** State of U.P. and Another

**Counsel for Revisionist :-** Onkar Singh

**Counsel for Opposite Party :-** Govt. Advocate, Manav Chaurasia, Pramod Kumar Srivastava, S.S. Malik

**alongwith**

Case :- CRIMINAL REVISION No. - 2034 of 1998

**Revisionist :-** Dharam Pal Singh And Others

**Opposite Party :-** State of U.P. and Another

**Counsel for Revisionist :-** Onkar Singh

**Counsel for Opposite Party :-** Govt. Advocate, Manav Chaurasia, Pramod Kumar Srivastava

**Hon'ble Vivek Agarwal, J.**

1. Heard Sri Onkar Singh, learned counsel for revisionists and Sri Shiv Singh, learned counsel for opposite party.
2. Sri Onkar Singh submits that impugned order has been passed only upon taking evidence of a solitary witnesses whereas as per the provisions contained in Section 202(2), it is provided that if it appears to the Magistrate that the offence complained of, is triable exclusively by the Court of Sessions, he shall call upon the complainant to produce all his witnesses and examine them on oath.
3. Reading impugned order dated 05.09.1998, it is submitted that as per the evidence of PW2, cognizance has been taken whereas fact of the matter is that there are as many as nine witnesses, as is evident from Annexure-7 to the revision and they all should have been examined in terms of the Proviso below Sub-Section 2 of Section 202 Cr.P.C.
4. After hearing learned counsel for the revisionists and going through the record so also the available case law on the subject, it is evident that in case of ***Satyadeo Pandey & Others vs. State of U.P. & Another, 1987 (1) Crimes 637***, it is held that the meaning of words "All his witnesses" is to be understood in the light of the fact that word 'His' is adjective according to grammar qualifying word 'Witnesses'. 'His' means of himself, or belonging to him, or associated with him. According to the

Websters, third new internal dictionary, the word 'His' connotes, associated or connected with, of relating to him, that he is capable of. In the present context, the words "All his witnesses" connotes that all the witnesses of the complainant associated or connected with his interest and those witnesses who are material and relevant to prove prosecution case. The words "All his witnesses" under the proviso to this Section do not refer literally to all the prosecution witnesses in number, rather to all his witnesses (i.e., of the complainant) and to whom he considers material to prove his case.

5. In case of ***Dudh Nath Mishra vs. State of U.P., 2003 Allahabad Law Journal 55*** so also in case of ***Chhotey Lal s/o Parmanand vs. State of U.P. & Smt. Rati Basor w/o Hasmukh Basoi, 2006 Cr.L.J. 2265***, it is held that it is not necessary to examine all the witnesses named in the complaint petition. In fact, it is the discretion of the complainant to examine some witnesses and to give up rest of the witnesses. He is not required to examine even those persons whom he/she does not want to place reliance.

6. In case of ***Abdul Hamidkhan Pathan & Others vs. State of Gujarat & Others, 1989 Cr.L.J. 468 (Guj. DB)***, it is held that non examination of all the witnesses named in the complaint case exclusively triable by the court of sessions, the order of issuing process to the accused is not illegal.

7. Thus, the legal position is well settled as has been laid down in case of Satyadev Pandey (supra), Dudh Nath Mishra (supra), Chhote Lal (supra) by the Allahabad High Court and also in case of Abdul Hamidkhan Pathan (supra) by the Gujarat High Court and so also in case of ***Kishor Singh & Etc. vs. Sudama Prasad & Others, 2002 Cr.L.J. 802 (MP)***, wherein it is held that it is not mandatory for the complainant to examine all the witnesses named in complaint, he has choice in the matter and, therefore, this issue being already settled by several pronouncements of this High Court and other High Courts, is to be answered accordingly that there is no need to examine all the witnesses in terms of the Proviso below Sub-Section 2 of Section 202 Cr.P.C., if a case is triable by sessions court especially having regard to the import and meaning of word 'His' used in the proviso.

8. Accordingly, criminal revisions fail and are ***dismissed***.

**Order Date :- 15.9.2021**

Ravi/-