

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1439 OF 2021  
(@ SLP(CrI) No. 3416/2021)

ANIL KUMAR TIWARI

Appellant(s)

VERSUS

STATE OF UTTAR PRADESH & ANR.

Respondent(s)

O R D E R

Leave granted.

We have heard learned counsel for the parties.

In our opinion Additional District Judge, Hardoi, Uttar Pradesh was justified and correct in allowing the application filed under Section 319 of the Code of Criminal Procedure, 1973, (for short, "Code") thereby summoning Satya Pal Singh for trial. The order dated 03.03.2020, passed by the Additional District Judge, has duly and rightly applied the law and noticed the evidence that has come on record.

The High Court in the impugned order did not consider the evidence in the form of deposition recorded by the trial court, *albeit* observed that the order should not have been passed merely on the statements of the complainant(s) or those witnesses who had given the statements under Section 161 of the Code, which the Investigating Officer did not find credible and cogent.

It is the opinion of the Court and not the Investigating Officer which is determinative. Evidence and deposition in the court of law, are relevant for the purpose of Section 319 of the Code.

The Investigating Officer had relied on call record details, which in our opinion, would be the aspect that has to be considered in light of the testimony of prosecution witness PW-2 (Basant). Call record details would indicate location of the phone at a particular time, but not necessarily indicate the person in possession of the phone instrument.

We clarify that the aforesaid observations are only for disposal of the present appeal and would not be treated as binding or authoritative finding. The Trial Court would examine and evaluate the facts independently and as per the Evidence Act.

Recording the aforesaid, we allow the present appeal and set aside the impugned order dated 17.03.2021 passed by the High Court. As a result, the summoning order dated 03.03.2020 passed by the Additional District Judge is restored.

All pending applications stand disposed of.

.....J.  
[SANJIV KHANNA)

.....J.  
[ BELA M. TRIVEDI)

NEW DELHI  
22ND NOVEMBER, 2021

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 3416/2021  
(Arising out of impugned final judgment and order dated 17-03-2021  
in CRLR No. 428/2020 passed by the High Court of Judicature at  
Allahabad, Lucknow Bench)

ANIL KUMAR TIWARI

Petitioner(s)

VERSUS

STATE OF UTTAR PRADESH & ANR.

Respondent(s)

(FOR ADMISSION and I.R. and IA No.57638/2021-EXEMPTION FROM FILING  
O.T.

IA No. 57638/2021 - EXEMPTION FROM FILING O.T.)

Date : 22-11-2021 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. A. P. Mohanty, AOR  
Ms. Vijay Lakshmi, Adv.

For Respondent(s) Mr. V K Shukla Sr.Adv.  
Mr. Adarsh Upadhyay, AOR  
Mr. Abhishek Chaudhary, Adv.  
Mr. Amol Chitravanshi, Adv.  
  
Dr. A.P. Singh, Adv.  
Mr. V.P. Singh, Adv.  
Ms. Geeta Chauhan, Adv.  
Mr. Jai Gopal Saboo, Adv.  
Mr. Sharwan Kumar Goyal, Adv.  
Mr. Sadashiv, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The Criminal Appeal is allowed in terms of the Signed  
Order.

All pending applications stand disposed of.

(SONIA BHASIN)  
COURT MASTER (SH)

(ANITA RANI AHUJA)  
ASSISTANT REGISTRAR

[Signed Order is placed on the file]