[2025] 3 S.C.R. 1407 : 2025 INSC 420

Yadwinder Singh
v.
Lakhi Alias Lakhwinder Singh & Anr. Etc.

(Criminal Appeal No(s). 1713-1720 of 2025)

26 March 2025

[Ahsanuddin Amanullah* and Prashant Kumar Mishra,* JJ.]

Issue for Consideration

Whether the High Court was justified in setting aside the order of the Trial Court issuing summons u/s.319, CrPC against the private respondents.

Headnotes†

Code of Criminal Procedure, 1973 – s.319 – Power to proceed against other persons appearing to be guilty of offence – Murder of the appellant-informant's brother, political rivalry alleged – FIR filed – SIT set up, no evidence found against the private respondents – Trial Court issued summons to the private respondents – High Court set aside the summons issued – Interference with:

Held: Though, the SIT found no evidence against the private respondents however, this by itself puts no fetters on the powers conferred u/s.319 – Moreover, eye-witnesses named the private respondents as persons present on the site of occurrence – Absolving the private respondents based on the SIT's findings alone is not in the interests of justice – A case is made out to summon the private respondents – On facts, discretion exercised by the Trial Court neither capricious, nor arbitrary or mechanical – Impugned order set aside – Trial Court to issue fresh summons. [Paras 16-18]

Code of Criminal Procedure, 1973 – s.319 – Power to proceed against other persons appearing to be guilty of offence – Exercise of – Scope and ambit, discussed. [Paras 11-15]

Case Law Cited

Hardeep Singh v. State of Punjab **[2014] 2 SCR 1 : (2014) 3 SCC 92;** *Ramesh Chandra Srivastava v. State of Uttar Pradesh* **[2021]**

* Author

6 SCR 219 : (2021) 12 SCC 608; *Sukhpal Singh Khaira v. State of Punjab* **[2022] 10 SCR 156 : (2023) 1 SCC 289;** *Ramkrishna Forgings Limited v. Ravindra Loonkar* **[2023] 16 SCR 672 : (2024) 2 SCC 122 – relied on.**

Brijendra Singh v. State of Rajasthan **[2017] 3 SCR 374 : (2017) 7 SCC 706;** *Jamin v. State of Uttar Pradesh,* **2025 SCC OnLine SC 506;** *Shishupal Singh v. State of Uttar Pradesh* **(2019) 8 SCC 682;** *Yashodhan Singh v. State of Uttar Pradesh* **[2023] 10 SCR 1196 : (2023) 9 SCC 108 – referred to.**

List of Acts

Code of Criminal Procedure, 1973.

List of Keywords

Section 319 of Code of Criminal Procedure, 1973; Murder; Issuance of summons; Other persons appearing to be guilty of offence; Special Investigation Team (SIT); Political rivalry; Sitting Sarpanch; Additional accused; Persons present on the site of occurrence; Doctrine *judex damnatur cum nocens absolvitor*.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 1713-1720 of 2025

From the Judgment and Order dated 18.07.2024 of the High Court of Punjab & Haryana at Chandigarh in CRMM Nos. 44097, 20532 and 25310 of 2022 and CRR Nos. 1204, 1474, 1513, 1558 and 1695 of 2022

Appearances for Parties

Advs. for the Appellant:
Jitesh Malik, Ms. Anisha Dahiya, Jatin Hooda, Ms. Anjana Sharma, Abhay Singh, Satish Kumar.

Advs. for the Respondents:
Gopal Sankaranarayanan, Sr. Adv., Saurabh Singh Chauhan, Rajeev Kumar Dubey, Diggaj Pathak, Ms. Shweta Sharma, Naveen Gaur, Ms. Vaibhavi Pathak, B. Abishek, Pradyut Kashyap, Ms. Shreya Nair, Shivam Harsana, Karan Kapoor, Manik Kapoor, Shrey Kapoor.

Judgment / Order of the Supreme Court

Judgment

Ahsanuddin Amanullah & Prashant Kumar Mishra, JJ.

Leave granted. By way of extraordinary indulgence to the respondents, we have taken up the matter(s) *de novo*. The instant Judgment be, therefore, read and contextualised in conjunction with our Order dated 19.03.2025.

2. Heard learned counsel and learned senior counsel for the parties.

3. The present appeals are directed against the Impugned Order dated 18.07.2024 [2024 SCC OnLine P&H 11673] passed by a learned Single Bench of the High Court of Punjab and Haryana at Chandigarh by which summons issued under Section 319[1] of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') by the learned Trial Court against the private respondents in connection with First Information Report No.50 of 2020 (hereinafter referred to as 'FIR') registered at Police Station Passiana, District Patiala, Punjab were set aside.

APPELLANT'S SUBMISSIONS:

4. Learned counsel for the appellant, Mr Jitesh Malik, submits that the appellant is the complainant/informant and his brother had died. It was submitted that in the FIR itself, all the respondents/accused were identified '*in the light of the car*'[2] and it was a brutal murder where

1 '***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.*

(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 the 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.'

2 We take it that this means that the identity of the accused was discernible to the appellant-complainant despite it being 8.30pm in the night.

the deceased was pulled out from the car and then done to death. Learned counsel submitted that the issuance of summons was on the basis of the tentative view formed by the Trial Court, being that of likely involvement of the private respondents in the crime and ought not to have been interfered with by the High Court at such a preliminary stage, especially when the Trial Court had found sufficient material to summon the private respondents/accused. Prayer was made to allow the appeals.

PRIVATE RESPONDENTS' SUBMISSIONS:

5. *Per contra,* the private respondents led by Mr. Gopal Sankaranarayanan, learned senior counsel, submit that the instant is not a fit case where this Court should interfere. It was contended that power to summon a person as accused under Section 319 of the Code, though exists on the statute-book but is to be sparingly used and under very fitting circumstances. It was submitted that the Courts have consistently held that the test would be higher than at the stage of framing of charge and just short of holding a person guilty of the charge. It was submitted that in the present case, as per the allegation in the FIR itself, 24 persons had come on three different vehicles, which, to begin with, was highly improbable and impractical. Further, it was submitted that the complainant's initial version is that he along with the deceased were travelling in the car, whereas in his deposition before the Court, it is stated that three persons were travelling in the car i.e., PW1 (who is the informant himself) alongwith the deceased and their other brother i.e., PW2. It was urged that this was not a minor and natural variation but a clear building-up of a case against others and to get additional eye-witnesses created, since there was no other independent corroboration of the incident in question.

6. Learned senior counsel submitted that in the present case, after the lodging of the FIR, a Special Investigation Team (hereinafter referred to as 'SIT') was set up to verify the facts because of the sensitive nature of the incident. It was advanced that the SIT found that the respondents could not have been at the place of occurrence for cogent reasons both on the basis of witnesses supporting their presence at some other place(s) and also on the basis of CCTV[3]

3 Abbreviation for Closed Circuit Television.

footage, which is electronic evidence. Learned senior counsel submitted that the fall-out was due to political rivalry as the deceased was a sitting *Sarpanch*. In support of his contentions, he relied upon *Brijendra Singh v State of Rajasthan*, (2017) 7 SCC 706 to contend that the power to summon under Section 319 of the Code has been circumscribed by the conditions laid down by this Court from time-to-time. Going by the same, in the present case where only two prosecution witnesses, that too close relatives of the deceased, have been examined, without being subjected to any cross-examination, the repetition of the version in the FIR with the addition that the other eye-witness *viz*. PW-2 has been introduced as being present in the car in which the deceased and PW1/informant were travelling was not sufficient to fulfil the requirement for invoking power under Section 319 of the Code. In the present case, learned senior counsel contended that from Paragraph 15 of *Brijendra Singh* (*supra*), the following law emerges, which was a case where witnesses had been examined and after that summons under Section 319 of the Code were issued, and the Court held:

> '*15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record*

> *was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.*'

7. The private respondents also cited *Jamin v State of Uttar Pradesh*, 2025 SCC OnLine SC 506. The private respondents, collectively, sought dismissal of these appeals.

APPELLANT'S REJOINDER:

8. By way of rejoinder, learned counsel for the appellant submits that though there has been consistency in the stand of the appellant with regard to presence of all the private persons concerned i.e., that they came in three cars and that their presence has also been supported by two eye-witnesses, including the appellant, the SIT for obvious reasons, as the case has a political nature, shielded the private respondents. It was submitted that during trial, when in deposition, persons claiming to be eye-witnesses take the name of the private respondents as being present on the spot, it is always in the interest of justice that at the earliest point of time possible, they are called upon, so that the trial does not linger or has to revert back to an early stage, to enable the persons so summoned to go through the paraphernalia of cross-examining all the witnesses, which has to be in their presence. It was submitted that in the recent judgment in *Jamin* (*supra*), the foundational facts were different inasmuch as the persons who were summoned under Section 319 of the Code were still under investigation by the police. Thus, in that view, the Court held there was no occasion for the Court to jump the gun and issue summons under Section 319 of the Code.

STATE IN *ABSENTIA*:

9. Regrettably, despite service of notice, none appeared for the State of Punjab. In this case, before the High Court, the stand of the State was that the private respondents '*have rightly been declared innocent.*' The State should not forget that in criminal matters, it acts as investigator and prosecutor and must be available to assist the Courts when called upon so to do. Let a copy of this Judgment be

despatched to the Legal Remembrancer and Principal Secretary, Department of Legal and Legislative Affairs, Government of Punjab by the Registry, for information and appropriate remedial steps.

ANALYSIS, REASONING AND CONCLUSION:

10. Having thoughtfully considered the submissions of learned counsel for the parties and upon going through the materials available on record, we find that the order impugned requires interference. Let us first survey the legal position pertaining to Section 319 of the Code.

11. In *Hardeep Singh v State of Punjab*, (2014) 3 SCC 92, a 5-Judge Bench explained:

> '*12. Section 319 CrPC springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.*
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> *13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC*?
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> *16. It is at this stage that the comparison of the words used under Section 319 CrPC has to be understood distinctively from the words used under Section 2(g) defining an inquiry other than the trial by a Magistrate or a court. Here the legislature has used two words, namely, the Magistrate or court, whereas under Section 319 CrPC, as indicated above, only the word "court" has been recited. This has been done by the legislature to emphasise that the power under Section 319 CrPC is exercisable only by the court and not by any officer not acting as a court. Thus, the Magistrate not functioning or exercising powers as a court can make an inquiry in a particular proceeding other than a trial but the material so collected would not be by a court*

during the course of an inquiry or a trial. The conclusion therefore, in short, is that in order to invoke the power under Section 319 CrPC, it is only a Court of Session or a Court of Magistrate performing the duties as a court under CrPC that can utilise the material before it for the purpose of the said section.

17. Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the charge-sheet filed under Section 173 CrPC or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot-free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

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55. Accordingly, we hold that the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove.

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78. It is, therefore, clear that the word "evidence" in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation.

79. The inquiry by the court is neither attributable to the investigation nor the prosecution, but by the court itself for collecting information to draw back a curtain that hides something material. It is the duty of the court to do so and therefore the power to perform this duty is provided under CrPC.

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83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. This would harmonise such material with the word "evidence" as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.

84. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 CrPC. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

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89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.

90. As held in Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889: AIR 2007 SC 1899] and Harbhajan Singh [(2009) 13 SCC 608: (2010) 1 SCC (Cri) 1135], all that is required for the exercise of the power under Section 319 CrPC is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words "such person could be tried"

instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

91. Further, in our opinion, there does not seem to be any logic behind waiting till the cross-examination of the witness is over. It is to be kept in mind that at the time of exercise of power under Section 319 CrPC, the person sought to be arraigned as an accused, is in no way participating in the trial. Even if the cross-examination is to be taken into consideration, the person sought to be arraigned as an accused cannot cross-examine the witness(es) prior to passing of an order under Section 319 CrPC, as such a procedure is not contemplated by CrPC. Secondly, invariably the State would not oppose or object to naming of more persons as an accused as it would only help the prosecution in completing the chain of evidence, unless the witness(es) is obliterating the role of persons already facing trial. More so, Section 299 CrPC enables the court to record evidence in absence of the accused in the circumstances mentioned therein.

92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-

examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

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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 unrebutted, 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.

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116. Thus, it is evident that power under Section 319 CrPC can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the charge-

sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 CrPC without taking recourse to provisions of Section 300(5) read with Section 398 CrPC.

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117.3. In view of the above position the word "evidence" in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii)—Whether the word "evidence" used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv)—What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer

117.5. Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge. The difference in the

degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v)—Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

117.6. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh.'

(emphasis supplied)

12. In *Brijendra Singh* (*supra*), the Court reiterated, *inter alia*:

'13. … However, since it is a discretionary power given to the court under Section 319 CrPC and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.'

(emphasis supplied)

13. In *Ramesh Chandra Srivastava v State of Uttar Pradesh*, (2021) 12 SCC 608, a 2-Judge Bench noted:

> '*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 319CrPC inter alia includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319CrPC 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.*
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> *11. It will all depend upon the evidence which is tendered in a given case as to whether there is a strong ground within the meaning of para 105.'*
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> (emphasis supplied)

14. In *Sukhpal Singh Khaira v State of Punjab*, (2023) 1 SCC 289, another 5-Judge Bench elucidated:

> '*15. At the outset, having noted the provision, it is amply clear that the power bestowed on the court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the court, if it appears to the court that such evidence points to any person other than the accused who are being tried before the court to have committed any offence and such accused has been excluded in the charge-sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.*
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> *23. A close perusal of Section 319CrPC indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would*

be open for the court to summon such a person so that he could be tried together with the accused and such power is exclusively of the court. Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation "conclusion of trial" in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92: (2014) 2 SCC (Cri) 86] since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the court.

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33. In that view of the matter, if the court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319CrPC can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion. While arriving at such conclusion what is also to be kept in view is the requirement of sub-section (4) to Section 319CrPC. From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused. In a case where the learned Sessions Judge exercises the power under Section 319CrPC after recording the evidence of the witnesses or after pronouncing the judgment of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of Section 273CrPC. As against the accused who has been summoned subsequently a fresh trial is to be held. However while considering the application under Section 319CrPC, if the decision by the learned Sessions Judge is to summon the additional

accused before passing the judgment of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgment is required to be withheld and the application under Section 319CrPC is required to be disposed of and only then the conclusion of the judgment, either to convict the other accused who were before the Court and to sentence them can be proceeded with. This is so since the power under Section 319CrPC can be exercised only before the conclusion of the trial by passing the judgment of conviction and sentence.

34. Though Section 319CrPC provides that such person summoned as per sub-section (1) thereto could be jointly tried together with the other accused, keeping in view the power available to the court under Section 223CrPC to hold a joint trial, it would also be open to the learned Sessions Judge at the point of considering the application under Section 319CrPC and deciding to summon the additional accused, to also take a decision as to whether a joint trial is to be held after summoning such accused by deferring the judgment being passed against the tried accused. If a conclusion is reached that the fresh trial to be conducted against the newly added accused could be separately tried, in such event it would be open for the learned Sessions Judge to order so and proceed to pass the judgment and conclude the trial insofar as the accused against whom it had originally proceeded and thereafter proceed in the case of the newly added accused. However, what is important is that the decision to summon an additional accused either suo motu by the court or on an application under Section 319CrPC shall in all eventuality be considered and disposed of before the judgment of conviction and sentence is pronounced, as otherwise, the trial would get concluded and the court will get divested of the power under Section 319CrPC. Since a power is available to the court to decide as to whether a joint trial is required to be held or not, this Court was justified in holding the phrase, "could be tried together with the accused" as contained in Section 319(1)CrPC, to be directory as held in Shashikant Singh [Shashikant

Singh v. Tarkeshwar Singh, (2002) 5 SCC 738: 2002 SCC (Cri) 1203] which in our opinion is the correct view.

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38. For all the reasons stated above, we answer the questions referred as hereunder.

39.(I) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

40.(II) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

41.(III) What are the guidelines that the competent court must follow while exercising power under Section 319CrPC?

41.1. If the competent court finds evidence or if application under Section 319CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

41.2. The court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

41.3. If the decision of the court is to exercise the power under Section 319CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

41.4. If the summoning order of additional accused is passed, depending on the stage at which it is passed, the court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

41.5. If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

41.6. If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the court to continue and conclude the trial against the accused who were being proceeded with.

41.7. If the proceeding paused as in para 41.1 above, is in a case where the accused who were tried are to be acquitted, and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

41.8. If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319CrPC can be invoked or

exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated) trial.

41.9. If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319CrPC, the appropriate course for the court is to set it down for re-hearing.

41.10. On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

41.11. Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

41.12. If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier:

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.'

(emphasis supplied)

15. We are cognizant of the observations in *Shishupal Singh v State of Uttar Pradesh*, (2019) 8 SCC 682 and *Yashodhan Singh v State of Uttar Pradesh*, (2023) 9 SCC 108. A Coordinate Bench, recently in *Jamin* (*supra*), has stated, *inter alia*:

'115. We summarise our findings on the issues framed for consideration as follows:

a. The High Court in exercise of its revisional jurisdiction was justified in setting aside the order passed by the Trial Court rejecting the second application preferred by respondent no. 2 under Section 319 of the CrPC as the

same was found to have been passed contrary to the settled position of law, suffering from a patent illegality, thus, leading to serious miscarriage of justice.

b. Once a superior court deems fit to interfere with an order passed by a subordinate court, then any rectifications to such order passed in exercise of revisional powers under Section 401 read with Section 397 of the CrPC must be treated on the same footing as rectifications made by an appellate court and as a result would relate back to the time the original order was passed.

c. By virtue of relating back of the order passed by the High Court in a revision petition, the summoning order passed by the Trial Court in compliance with the order of the High Court would also relate back to the initial order rejecting the second application under Section 319, and therefore could be said to have been passed before the conclusion of the trial.

d. Unlike cases where an application under Section 319 is being decided in the first instance by the Trial Court, the conclusion of trial will have no bearing on the adjudication of an application under Section 319 in terms of the directions of the High Court passed in exercise of revisional jurisdiction.

e. The legal effect of the order passed by the High Court relating back to the original order of the Trial Court is that the Trial Court would not be rendered functus officio for the purpose of considering the application under Section 319 after the conclusion of the trial. We say so because the Trial Court, in considering the application under Section 319 after the conclusion of the trial, merely gave effect to a revisional order directing it to consider the application afresh which it had originally rejected.

f. The summoning order dated 21.02.2024 was passed by the Trial Court in pursuance of the directions issued by the High Court vide the revisional order dated 14.09.2021. Therefore, the same should be construed as an extension of the revisional order passed by the High Court. The combined effect of the revisional order passed by the

High Court and the summoning order passed by the Trial Court dated 21.02.2024 would be that the order of the Trial Court dated 19.07.2010 rejecting the second Section 319 application stood replaced and substituted by the summoning order dated 21.02.2024. Thus, although the summoning order in the present case came to be passed on 21.02.2024, that is, after the conclusion of the trial, yet, it would be deemed to have been passed on 19.07.2010 by virtue of the law expounded by this Court in Maru Ram (supra) and Krishnaji Dattatreya Bapat (supra).

g. Section 319 does not contemplate that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial. A right of hearing would accrue only to a person who is already discharged in the very same proceeding prior to the commencement of the trial. This is different from holding that a person who has been summoned as per Section 319 CrPC has a right of being heard in accordance with the principles of natural justice before being added as an accused to be tried along with the other accused. However, after the rejection of an application under Section 319, a right enures in favour of the proposed accused. Thereafter, if in exercise of revisional jurisdiction, the High Court is to pass an order which is prejudicial to the benefit which had already enured in favour of the proposed accused, then the High Court is obligated in law to provide an opportunity of hearing to the proposed accused. This is also the mandate as contained in sub-section (2) of Section 401 of the CrPC.'

(emphasis supplied)

16. The law contemplates and provides for a different outcome under Section 319 of the Code, dependent on the peculiar factual premises of a case. Juxtaposition of the law with the instant factual backdrop reveals as under: It is true that the SIT found no evidence against the private respondents, however such factum by itself puts no fetters on the powers bestowed under Section 319 of the Code. Moreover, eye-witnesses in the Trial Court have named the private respondents as persons present on the site of

occurrence. The hardship, were we to adjudge it at this juncture, could be more if the private respondents are not summoned than opposed to if they are.

17. Be it noted, the private respondents will have all defences open to them before the Trial Court to put forth their version of innocence, including by way of resort to cross-examination. Trial being an exercise to unravel the truth, given the depositions before the Trial Court, to absolve the private respondents based on the SIT's findings alone, to our mind, may not be in the best interests of justice. Indubitably, while an innocent person should not be punished, no guilty person should go scot-free. The Trial Court could have better worded its order through clearer reasoning. Reproduction of a passage from *Ramkrishna Forgings Limited v Ravindra Loonkar*, (2024) 2 SCC 122 is apt:

> '*39. In the recent past, from Kranti Associates (P) Ltd. v. Masood Ahmed Khan [Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496: (2010) 3 SCC (Civ) 852] to Manoj Kumar Khokhar v. State of Rajasthan [Manoj Kumar Khokhar v. State of Rajasthan, (2022) 3 SCC 501: (2022) 2 SCC (Cri) 1], the clear position in law is that a court or even a quasi-judicial authority has a duty to record reasons for its decision. Needless to add, "Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless." [Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212]…*'

18. On an overall conspectus, the discretion exercised by the Trial Court cannot be said to be capricious/arbitrary/mechanical in juxtaposition with the facts, subject to the comment *supra*. But then, this Court cannot be oblivious to the work pressure on the learned Judges manning the District and Trial Courts. When we are satisfied that a case is made out to summon the private respondents, in the totality of the relevant considerations, the order impugned cannot withstand judicial scrutiny and will have to be interdicted. Accordingly, the Impugned Order dated 18.07.2024 passed by the High Court is set aside and the Criminal Appeals are allowed. The Trial Court shall issue fresh summons against the private respondents. If they do not appear, the Trial Court shall make all efforts to secure their appearance and proceed as per law.

19. Observations hereinabove are restricted to the purpose of deciding the challenge to the Impugned Order and shall have no bearing on the merits of the underlying case. All factual and legal contentions are left open to be pressed into service before the Court concerned, at the appropriate stage.

Result of the case: Appeals allowed.

†*Headnotes prepared by:* Divya Pandey