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A.F.R.

Court No. - 13

Case :- APPLICATION U/S 482 No. - 5465 of 2024

Applicant :- Asad Ali @ Munna And Others

**Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And
Another**

**Counsel for Applicant :- Anand Mani Tripathi, Pragati Tiwari, Yugal
Kishor Tripathi**

Counsel for Opposite Party :- G.A., Anand Prakash Singh

Hon'ble Saurabh Lavania, J.

1. Heard Sri A. M. Tripathi and Sri Yugal Kishor Tripathi, learned counsel for the applicants, and Sri S. P. Tiwari, learned A.G.A. for the State and Sri Anand Prakash Singh, learned counsel for opposite party No. 2.

2. By means of the present application u/s 482 CrPC, the applicants have assailed the order dated 23.05.2024, passed by Additional Sessions Judge, Court No.1, Pratapgarh (in short 'trial court'), in Sessions Trial No. 486 of 2019 (State Vs. Ashraf and Ors), arising out of Case Crime No. 306 of 2018, under Section 147, 148, 149, 302, IPC, Police Station- Antu, District- Pratapgarh. The order under challenge dated 23.05.2024 has been passed by the trial court in exercise of power under Section 319 CrPC.

3. Brief facts of the case are to the effect that an F.I.R. was lodged by the informant/eye-witness/opposite party No. 2 namely Chandan Singh (PW-1) on 14.08.2018, which was registered as Case Crime No. 306 of 2018, under Section 147, 148, 149, 302 IPC. As per the allegations levelled in the F.I.R., the deceased, father of the opposite party No. 2, was assaulted by Asad Ali @ Munna, Bablu, Mahroj, Awadhesh Kumar, and an unknown person. The deceased namely Harishchandra Singh succumbed to the gunshot injury. As per the F.I.R., the incident is of 14.08.2018 at about 09:00 a.m..

4. After the aforesaid, the Investigating Officer (in short "I.O.") carried out the investigation and the I.O., after due investigation, submitted the charge sheet against Ashraf, Imran Khan, Kalam, Segu @ Mujib and Irfan under Section 302, & 120-B IPC.

5. The trial court, taking note of the evidence available on record, framed the charges against the above named accused persons, in relation to which the charge sheet prepared on 30.11.2018 was submitted by the I.O. and additional charge sheet prepared on 03.02.2019 was also submitted and on thereafter the charges were framed on 22.03.2021/23.03.2021, as appears from the impugned order dated 23.05.2024, and upon denial of charges, the accused namely Ashraf, Imran Khan, Kalam, Segu @ Mujib and Irfan were put to trial.

6. Before the trial court, the statement(s) of Chandan Singh (PW-1)/informant/eye witness/opposite party No. 2, Suneel Ranjak (PW-2), Vahid Khan (PW-3), Dharendra Yadav (PW-4) and Anuj Singh (PW-5) were recorded.

7. On the basis of the evidence/ statements of above-named witnesses, an application under Section 319 CrPC dated 12.01.2024 was preferred from the side of the prosecution.

8. The trial court, after considering the evidence/ statement of informant/eye witness/opposite party No. 2 namely Chandan Singh, allowed the application under Section 319 CrPC dated 12.01.2024 vide order dated 23.05.2024, under challenge, and summoned the accused namely Asad Ali @ Munna, Akhtar Ali @ Bablu, Mahroj and Awadh Kumar Mishra to face the trial under Sections 147, 148, 149 and 302 IPC, in regard to whom the I.O. had submitted the report dated 11.09.2018 under Section 169 Cr.P.C.. The relevant portion of the order 23.05.2024 is extracted herein-under:

"3. Heard and perused the records. First information report in this case i.e. case crime no. 306/2018 was lodged on 14.08.2018 at 11.05 by informant Chandan against accused persons Asad Ali @ Munna, Akhtar Ali @ Bablu, Mahroj and Awadh Kumar Mishra and one unknown with the averment that on 14.08.2018 at about 9 A.M. informant and his father Harish Chandra had come to Chaukhad Pure Anti by motorcycle and when they were returning by making some payment to Raju Pradhan and when they reached near Chaukhad Pure Anti primary school then suddenly assailants came on two motor cycle and they sho: at the father of the informant and caused his death and after that assailants left the scene. Informant has also narrated in the first information report that there is one case pending in the court against accused Asad ali for attempting to murder of the father of the informant and in that case Asad ali was pressurizing the father of informant to compromise and when father of the informant did not get ready to compromise then the named accused persons have committed this offence. After the registration of the F.I.R. this case was investigated and investigating officer submitted report u/s 169 Cr.P.C. against accused persons Asad Ali @Munna, Bablu, Mahroj and Awadh Kumar Mishra in the first information report and submitted charge sheet against accused persons Asraf, Imran Khan, Kalam, Sebu @ Mujeeb and Irfaan u/s 302, 120B, P.S. Antoo, district Pratapgarh.

4. After submission of the charge sheet against above named accused persons learned Special Judge SC/ST Act, Pratapgarh framed charges against them on 02.02.2021/23.03.2021 and proceeded for trial. During trial prosecution examined informant Chandan Singh as PW-1, witness Suneel Ranjak PW-2, Vahid Khan

PW-3, Dharendra Yadav PW-4, Anuj Singh PW-5 and on the basis of the evidence of these witnesses moved an application dated 12.01.2024 u/s 319 Cr.P.C. Informant PW-1 Chandan Singh has given statement in his examination-in-chief that accused persons Awadh Kumar, Asad ali, Mahroj and Bablu are the real culprits and they have committed the offence of the murder of the informant's father. Witness PW-1 has named the accused persons, above named, in his examination in chief and has given the testimony that the accused persons Awadh Kumar, Bablu, Mahroj and Asad, came at the place of incident and they open fired there and Asad Ali shot dead the father of the informant in his chest and by that way committed the offence of murder with the assistance of the other co-accused persons. At the time of the incidence Awadh Kumar and Asad ali fired at the father of the informant and their bullet hit the father of the informant and accused persons Bablu and Mahroj were there on their motorcycle and they were intimidating the others for not to come near them and after commission of the crime all the accused persons fled away on their motorcycles. Thus PW-1 has supported its Tehreer in his evidence. PW-1 has been cross-examined in length by the accused persons but he has not made otherwise statement in his cross-examination which could disown the accused persons named in the application u/s 319 Cr.P.C.

5. Section 319 Cr.P.C. provides as under:-

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.*

6. Section 319 provides the trial court, if evidence against any person whose name is not included in the charge sheet comes before the court, may summon that person as accused to face the trial. In the case in hand the proposed accused persons named in the application u/s 319 Cr.P.C. are named in the first information report and informant is the eye-witness of the case. As per the prosecution case informant was accompanied with his father on motorcycle and the proposed accused persons murdered the father of the informant by firing fire arms at him.

7. *It is well entrenched law that for summoning a person u/s 319 Cr.P.C. as accused court has to consider two points, firstly that whether the prima facie evidence against that person is of graver nature then framing of the charge or not and secondly whether the material available on records, if not rebutted, then whether those material will be sufficient to convict the persons.*

8. *Hon'ble Supreme Court has held in **Hardeep Singh Vs. State of Punjab [(2014) 3 SCC 92]** that for summoning a persons u/s 319 Cr.P.C. the nature of the evidence should be of greater quality than what is required for framing of the charge and secondly court has to consider that whether the quality of the evidence is such that if not rebutted then the accused might be convicted only on the basis of those evidences.*

9. *Hon'ble Supreme Court has held in **Labhuji Amritji Thakor and ors. Vs. State of Gujarat [Crl. Appeal no. 1349/23018 decided on 13.11.2018]** that for summoning a person u/s 319 Cr.P.C. court must be satisfied that there must be an evidence on the record which is, if unrebutted, sufficient to convict the accused persons.*

10. *Hon'ble Supreme Court has recently held in **Juhur and ors. Vs. Kareem and ors. [Crl. Appeal no. 549/2023 decided on 21.02.2023]** that for summoning a person as accused u/s 319 Cr.P.C. court has to consider on the evidence on the records only on that basis court has to decide that whether the proposed accused can be summoned as accused in the case or not.*

11. *In the case in hand informant has named the proposed accused persons in the first information report and has given the trustworthy evidence before the court in his examination in chief and in the cross-examination that the proposed accused persons are the real culprits and they have committed the murder of the father of the informant.*

12. At this stage the evidence of PW-1 is such that if the evidence of PW-1 is not rebutted by the proposed accused persons that will be sufficient to convict proposed accused persons, the informant is the eye-witness of this case and it has also been brought on the record that another case of attempt to murder of the father of the informant was already pending against the proposed accused Asad Ali at the time of incident. Thus, the eye account of the whole case has been candidly laid down by the informant before the court and the motive for the offence is also associated against proposed accused person Asad Ali. The other co-accused Awadh, Bablu and Mahroj were present at the place of incidence at the

time of the commission of the crime and they also have actively participated in the commission of the crime.

Hence on the basis of above discussions court is satisfied that proposed accused persons Asad Ali @ Munna, Akhtar Ali @ Bablu, Mahroj and Awadh Kumar Mishra should be summoned for the trial u/s 147,148,149,302 I.P.C.

ORDER

Hence application u/s 319 Cr.P.C. dated 12.01.2024 is allowed. Proposed accused persons Asad Ali @ Munna, Akhtar Ali @ Bablu, Mahroj and Awadh Kumar Mishra are hereby summoned as accused u/s 319 Cr.P.C. to face trial u/s 147, 148, 149, 302 I.P.C.

It is to be noted here that the trial of these newly summoned accused persons named above shall be conducted separately under another case number and they will not be tried with the S.T. 486/2019 as this S.T. has proceeded far away and if these newly accused will be clubbed with the old case then the already running S.T. 486/2019 will retreat back to its initial stage and that will cause the delay of justice to the accused persons whose trial is going on under S.T. 486/2019.

The newly summoned accused persons Asad Ali @ Munna, Akhtar Ali @ Bablu, Mahroj and Awadh Kumar Mishra are directed to appear before the court on 04.06.2024. Office is directed to separate records for them and issue summon against them."

9. A perusal of the above extracted/ quoted portion of the order under challenge dated 23.05.2024 reflects that the trial court for the purposes of summoning the accused, named above, considered and relied upon the evidence/ statements of eye witness/PW-1 made before the it and also the contents of the F.I.R. lodged by this witness.

10. In the aforesaid background of the case, the present application has been filed.

11. Challenging the order dated 23.05.2024, Sri Tripathi, learned counsel for the applicants, in nutshell, made following submissions:

(i) As per the story narrated in the F.I.R., the informant and deceased both were on the same motorcycle and this story was improved by PW-1 while making the statement before the trial court as according to the statement before the trial court the deceased and informant/PW-1 were on different motorcycles and while passing the order under challenge dated 23.05.2024 on an application preferred by the prosecution under Section 319 CrPC, the trial court has not considered this aspect of the case.

(ii) The I.O. after due investigation collected the evidence i.e. CCTV footage, the certificate/letter from the company, attendance sheet and Call Detail Report (C.D.R.) and based upon the same, the I.O. was of the view that the applicants were not present at the place/ situs of crime and therefore the I.O. submitted the report in terms of Section 169 CrPC exonerating the applicants and all these evidence were ignored by the trial court while passing the order dated 23.05.2024 on an application preferred under Section 319 CrPC. Thus, the trial court erred in fact and law both.

(iii) According to the judgment(s) of the Constitution Bench of the Hon'ble Apex Court in the case of **Hardeep Singh Vs. State of Punjab**, reported in (2014) 3 SCC 92, and **Brijendra Singh and Others Vs. State of Rajasthan**, reported in (2017) 7 SCC 706, the trial court should record its subjective satisfaction while passing the order under Section 319 CrPC and the trial court is under obligation to take note of evidence which includes the entire evidence collected by the I.O. during investigation.

(iv) PW-5 is the real brother of Chandan Singh (PW-1/informant-eye witness) and thus he is an interested witness and his testimony

should be considered in terms of the principles settled by the Hon'ble Apex Court in this regard and further PW-5 appears to be a planted witness and his presence at the place of crime, as he indicated before the trial court while making statement, is doubtful because as per his statement recorded during the course of investigation in terms of Section 161 CrPC, he was informed on phone and thereafter he reached the place/ situs of crime.

12. The relevant para(s) of the affidavit filed in support of application, under consideration, referred in regard to the aforesaid, are reproduced herein-under:

"13. That thereafter, the investigating officer, during investigation recorded the necessary information at that time, post mortem conducted, the several applications/tehrir has been prepared by the complainant, due to which the matter required proper investigation. A copy of relevant C.D. parcha is being annexed herewith as Annexure No.8, to this petition.

14. That the investigating officer also recorded the statement of alleged eye witness namely Mohd. Mahfooz son of Koshib and alleged eye witness Mohd. Rizwan son of Altaf, they have given proper statement to the investigating officer. A copy of statements of eye witness namely Mohd. Mahfooz and Mohd. Rizwan are being collectively annexed herewith as Annexure No.9, to this petition.

15. That the investigating officer, during the investigation has come to the knowledge that one accused Imran Khan son of Rizwan, who is in jail in Crime No.324/2019 and Crime No. 326/2018 and has full knowledge about the alleged occurrence, then the investigating officer recorded his statement in jail and disclosed the correct prosecution story and arrested one co-accused Ashraf son of Mohd. Azeez, who has giving their statement on 20.08.2018. A copy of statement of Imran Khan and statement of co-accused Ashraf are being annexed herewith as Annexure No.10 and 11, to this petition.

16. That thereafter, the investigating officer reached the correct facts of the alleged occurrence and fairly examine the statement of

co-accused Ashraf and found correct then also recorded the statement of further witnesses.

17. That the investigating officer also recorded the statement of witness namely Mohd. Aslam son of Mohd. Habib and Arif Ali son of Safeek and also recorded the statement of independent witness Dharendra Yadav and Shrawan Kumar Pandey and Mahfooz Khan, in which they are clearly stated that the applicants/petitioners are falsely implicated in the matter and they have not committed any crime. The copy of statement of witnesses namely Mohd. Aslam, Arif Ali and independent witnesses namely Dharendra Yadav and Shrawan Kumar Pandey and Mahfooz Khan are being collectively annexed herewith as Annexure No.12, to this petition.

18. That thereafter investigating officer come to the conclusion at the time of alleged occurrence, the petitioners are not present, they are falsely implicated in the present case, due to old enmity, then he further recorded the statement of witnesses namely Rafeek Ahmad son of Tafeek, Arif Ali son of Safeek and Ubedullah son of Abibullah and Ahmad Ali son of Nazab Ali and Mohd. Aslam son of Mohd. Habib and Rafeek Ahmad son of Abdul Hameed, in which they are clearly given their statement that the petitioners/applicants are falsely implicated due to village party bandi and old enmity. The copy of statement of witnesses namely Rafeek Ahmad son of Tafeek, Arif Ali son of Safeek and Ubedullah son of Abibullah and Ahmad Ali son of Nazab Ali and Mohd. Aslam son of Mohd. Habib and Rafeek Ahmad son of Abdul Hameed are being collectively annexed herewith as Annexure No.13, to this petition.

19. That thereafter, the investigating officer visited the house of applicant Asad Ali @ Munna and recorded the statement of his wife Qamrul Nisha and wife of Babloo, Rehana Bano and daughter Sama Parveen, in which, they are clearly stated that at the time of alleged occurrence, the petitioner no.3 Mafroz present in Gurgaon city, then the investigating officer collect the CCTV footage from Gurgaon city and also taking evidence from company Manager, in which the petitioner no.3 doing job at Gurgaon.

The aforesaid facts mentioned in CD parcha No.11 and CD No.28. A copy of CD parcha No.11 and CD parcha no.28 alongwith letter-pad of the company with attendance sheet and CCTV footage are being collectively annexed herewith as Annexure No.14, to this petition.

20. That the investigating officer during the investigation collected the call details at the time of alleged occurrence of all concerned

persons, in which it has been found the location and details of applicants are different from the alleged occurrence place. A copy of report of P.S. Antu alongwith call details parcha and details of location are being collectively annexed herewith as Annexure No.15, to this petition.

21. That the investigating officer during investigation found that the four persons namely Asad Ali @ Munna, Bablu @ Akhtar Ali, Mafroz son of Asad Ali and Awadhesh Kumar Mishra falsely implicated in the alleged occurrence, in which the Asad Ali @ Munna is in jail, then he sent report to concerned Magistrate, under section 169 Cr.P.C. on 11.09.2018. A copy of report dated 11.09.2018 is being annexed herewith as Annexure No.16, to this petition.

22. That on the basis of report dated 11.09.2018, under section 169 Cr.P.C., the petitioner no.1 Asad Ali @ Munna falsely implicated, then the concerned Magistrate accepted the report and passed released order on 11.09.2018. A copy of release order dated 11.09.2018 is being annexed herewith Annexure No.17, to this petition.

23. That thereafter, the investigating officer prepared the charge-sheet against the accused persons namely Ashraf, Imran Khan and Kalam on 30.11.2018, under section 302, 120-B IPC. A copy of charge-sheet dated 30.11.2018 is being annexed herewith as Annexure No.18, to this petition.

24. That the investigating officer filed supplementary charge-sheet against two accused persons namely Shebu @ Mujeeb Ahmad and Irfan on 03.02.2019. Thereafter the investigating officer completed the investigation on 07.12.2020 by CD Parcha No.12, in which, no allegations against the petitioners. A copy of supplementary charge-sheet and CD Parcha No.12 are being collectively annexed herewith as Annexure No.19, to this petition.

33. That the investigating officer by perusal of CCTV footage certificate issued by the concerned company and by perusal of the call details and location and also considering the statement of eye witnesses submitted the charge-sheet, in which the name of the petitioners were not found at the time of occurrence and the matter proceed for trial.

34. That the opp. party no.2 with the malafide intention, only harass the petitioners after taking legal advice due to old enmity and village party bandi moved application under section 319

Cr.P.C., despite the facts the P.W.2 namely Sunil Razzak, P.W.3 namely Wahid Khan and P.W.4 namely Dharendra Yadav not supported the version of the prosecution and the charge-sheet submitted by the investigating officer in fair and proper manner."

13. Opposing the present application, learned A.G.A. Shri S. P. Tiwari and Shri Anand Prakash Singh, Advocate, learned counsel for the opposite party no. 2 stated that the trial court has not committed any illegality or irregularity in passing the order under Section 319 CrPC. It is stated that the trial court in terms of the various pronouncements on the issue is under obligation to consider the evidence led before it and not the evidence collected by the investigating officer during investigation. In the instant case, the trial court took note of the contents of the F.I.R. and the evidence/ statement of PW-1, an informant and eye-witness, and after considering the statement of PW-1 and contents of F.I.R., the trial court observed that if the evidence/ statement of PW-1 is not rebutted, then it would be a case of conviction, which is the requirement of law, and accordingly, no interference in the order under challenge dated 23.05.2024 is required by this Court. It would be apt to indicate that the cause of death is gunshot injury and this is not in issue.

14. Considered the aforesaid and perused the record.

15. Before proceedings, on merits of the case, it would be apt to indicate that the principles related to dealing with an application under Section 319 Cr.P.C. or exercising power under Section 319 Cr.P.C. have already been settled in various pronouncements by the Hon'ble Apex Court and accordingly, this Court is not inclined to refer the judgments passed by this Court.

16. In the case of **Hardeep Singh (supra)**, the Hon'ble Apex Court on the issue involved herein observed as under:

“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.”

Subsequently, the Hon'ble Apex Court in the case of **Brijendra Singh (supra)** considered the expression 'evidence' and after considering the language couched under Section 319 Cr.P.C. as also the expression 'evidence', the Hon'ble Apex Court observed as under:

“13. In order to answer the question, some of the principles enunciated in Hardeep Singh case may be recapitulated: power under Section 319 CrPC can be exercised by the trial court at any stage during the trial i.e. before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some

"evidence" against such a person on the basis of which evidence it can be gathered that he appears to be guilty of the offence. The "evidence" herein means the material that is brought before the court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. 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.

14. When we translate the aforesaid principles with their application to the facts of this case, we gather an impression that the trial court acted in a casual and cavalier manner in passing the summoning order against the appellants. The appellants were named in the FIR. Investigation was carried out by the police. On the basis of material collected during investigation, which has been referred to by us above, the IO found that these appellants were in Jaipur city when the incident took place in Kanaur, at a distance of 175 km. The complainant and others who supported the version in the FIR regarding alleged presence of the appellants at the place of incident had also made statements under Section 161 CrPC to the same effect. Notwithstanding the same, the police investigation revealed that the statements of these persons regarding the presence of the appellants at the place of occurrence was doubtful and did not inspire confidence, in view of the documentary and other evidence collected during the investigation, which depicted another story and clinchingly showed that the appellants' plea of alibi was correct.

15. This record was before the trial court. Notwithstanding the same, the trial court went by the depositions of the 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 were already there under Section 161 CrPC 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 a 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 the agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.”

17. In the case of **Rajesh and Others Vs. State of Haryana**, reported in **(2019) 6 SCC 368**, the Hon’ble Apex Court considered the observations made in the cases of **Hardeep Singh (surpa)** and **Brijendra Singh (supra)** as also the expression ‘evidence’ and also various other pronouncements on the issues related to summoning the accused in exercise of power under Section 319 Cr.P.C., which is apparent from the following portion of the report:

"3.5. Relying upon the decision of this Court in Brijendra Singh v. State of Rajasthan [Brijendra Singh v. State of Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] , it is vehemently submitted by Shri Basant, learned Senior Advocate appearing on behalf of the appellants that, as observed by this Court, merely on the basis of the deposition of the complainant and some other persons, with no other material to support their so-called verbal/ocular version, no person can be arrayed as an accused in exercise of powers under Section 319 CrPC. It is submitted by the learned Senior Advocate appearing on behalf of the appellants that, as observed by this Court in the aforesaid decision, such an “evidence” recorded during the trial is nothing more than the

statements which was already there under Section 161 CrPC recorded at the time of investigation of the case. Relying upon the aforesaid decision, it is vehemently submitted by the learned Senior Advocate appearing on behalf of the appellants that, in any case, the learned Magistrate was bound to look into the evidence collected by the investigating officer during investigation which suggested that the accused were not present at the time of commission of the offence. It is submitted that, in the present case, the learned Magistrate on the applications submitted by the SHO in fact discharged the appellant-accused herein and allowed the applications submitted by the SHO in which it was categorically stated that the appellants are innocent and that they were not present at the time of the incident. It is submitted that therefore the High Court has erred in dismissing the revision petition and confirming the order passed by the learned Magistrate in summoning the appellant-accused herein to face the trial for the offences under Sections 148, 149, 323, 324, 325, 302, 307 and 506 IPC, which was passed in exercise of powers under Section 319 CrPC.

6. While considering the aforesaid question/issue, few decisions of this Court are required to be referred to and considered.

6.1. The first decision which is required to be considered is a decision of the Constitution Bench of this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] which has been consistently followed by this Court in subsequent decisions.

6.2. In Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , this Court had the occasion to consider in detail the scope and ambit of the powers of the Magistrate under Section 319 CrPC the object and purpose of Section 319 CrPC, etc. In the said case, the following five questions fell for consideration before this Court : (SCC p. 112, para 6)

“6. ... 6.1.(i) What is the stage at which power under Section 319 CrPC can be exercised?

6.2.(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?

6.3.(iii) Whether the word “evidence” used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial?

6.4.(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?

6.5.(v) Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?”

6.3. While considering the aforesaid questions, this Court observed and held as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 114-17, 123 & 125-26, paras 12-14, 17-19, 22, 47 & 53-56)

“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.

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?

14. The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of CrPC and the judgments that have been relied on for the said purpose. The controversy centres around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.

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.

22. In our opinion, Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial.

47. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to

apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 CrPC cannot be exercised. ...

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC.

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.

56. ... What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 CrPC acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 CrPC is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 CrPC at the stage of trial in a

complaint case when the evidence of the complainant as well as his witnesses are being recorded.”

6.4. While answering Question (iii), namely, whether the word “evidence” used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial, this Court, in the aforesaid decision has observed and held as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 126-27 & 131-32, paras 58-59, 78 & 82-85)

“58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers under Section 319 CrPC, the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that come up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 CrPC indicate that the material has to be “where ... it appears from the evidence” before the court.

59. Before we answer this issue, let us examine the meaning of the word “evidence”. According to Section 3 of the Evidence Act, “evidence” means and includes:

‘(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the court; such documents are called documentary evidence.’

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.

82. *This pre-trial stage is a stage where no adjudication on the evidence of the offences involved takes place and therefore, after the material along with the charge-sheet has been brought before the court, the same can be inquired into in order to effectively proceed with framing of charges. After the charges are framed, the prosecution is asked to lead evidence and till that is done, there is no evidence available in the strict legal sense of Section 3 of the Evidence Act. The actual trial of the offence by bringing the accused before the court has still not begun. What is available is the material that has been submitted before the court along with the charge-sheet. In such situation, the court only has the preparatory material that has been placed before the court for its consideration in order to proceed with the trial by framing of charges.*

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. ...*

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.*

85. *In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to*

support the evidence recorded by the court to invoke the power under Section 319 CrPC. The “evidence” is thus, limited to the evidence recorded during trial.”

(emphasis in original)

6.5. While answering Question (ii), namely, whether the word “evidence” used in Section 319(1) CrPC means as arising in examination-in-chief or also together with cross-examination, in the aforesaid decision, this Court has observed and held as under : (Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 132-34, paras 86-92)

“86. The second question referred to herein is in relation to the word “evidence” as used under Section 319 CrPC, which leaves no room for doubt that the evidence as understood under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In Rakesh [Rakesh v. State of Haryana, (2001) 6 SCC 248 : 2001 SCC (Cri) 1090] , it was held that : (SCC p. 252, para 10)

‘10. ... It is true that finally at the time of trial the accused is to be given an opportunity to cross-examine the witness to test its truthfulness. But that stage would not arise while exercising the court's power under Section 319 CrPC. Once the deposition is recorded, no doubt there being no cross-examination, it would be a prima facie material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not.’

87. In Ranjit Singh [Ranjit Singh v. State of Punjab, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554] , this Court held that : (SCC p. 156, para 20)

‘20. ... it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers.’

88. In Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889] , it was held that the prerequisite for exercise of power under Section 319 CrPC is the satisfaction of the court to proceed against a person who is not an accused but against whom evidence occurs, for which the court can even wait

till the cross-examination is over and that there would be no illegality in doing so. A similar view has been taken by a two-Judge Bench in *Harbhajan Singh v. State of Punjab* [*Harbhajan Singh v. State of Punjab*, (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] . This Court in *Hardeep Singh* [*Hardeep Singh v. State of Punjab*, (2009) 16 SCC 785 : (2010) 2 SCC (Cri) 355] seems to have misread the judgment in *Mohd. Shafi* [*Mohd. Shafi v. Mohd. Rafiq*, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889] , as it construed that the said judgment laid down that for the exercise of power under Section 319 CrPC, the court has to necessarily wait till the witness is cross-examined and on complete appreciation of evidence, come to the conclusion whether there is a need to proceed under Section 319 CrPC.

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] and *Harbhajan Singh* [*Harbhajan Singh v. State of Punjab*, (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.”

(emphasis in original)

6.6. While answering Question (iv), namely, what is the degree of satisfaction required for invoking the power under Section 319 CrPC, this Court after considering various earlier decisions on the point, has observed and held as under : (Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC p. 138, paras 105-06)

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.”

(emphasis in original)

6.7. While answering Question (v), namely, in what situations can the power under Section 319 CrPC be exercised : named in the FIR, but not charge-sheeted or has been discharged, this Court has observed and held as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 139 & 141, paras 112 & 116)

“112. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is

not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 CrPC without resorting to the provision of Section 319 CrPC directly.

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.”

6.8. Considering the law laid down by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) 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 (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

6.9. In S. Mohammed Ispahani v. Yogendra Chandak [S. Mohammed Ispahani v. Yogendra Chandak, (2017) 16 SCC 226 :

(2018) 2 SCC (Cri) 138] , SCC para 35, this Court has observed and held as under : (SCC p. 243)

“35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.”

6.10. Thus, even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in the FIR but not implicated in the charge-sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.

7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that, in the facts and circumstances of the case, neither the learned trial court nor the High Court have committed any error in summoning the appellants herein to face the trial along with other co-accused. As observed hereinabove, the appellants herein were also named in the FIR. However, they were not shown as accused in the challan/charge-sheet. As observed hereinabove, nothing is on record whether at any point of time the complainant was given an opportunity to submit the protest application against non-filing of the charge-sheet against the appellants. In the deposition before the Court, PW 1 and PW 2 have specifically stated against the appellants herein and the specific role is attributed to the appellant-accused herein. Thus, the statement of PW 1 and PW 2 before the Court can be said to be “evidence” during the trial and, therefore, on the basis of the same and as held by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , the persons

against whom no charge-sheet is filed can be summoned to face the trial. Therefore, we are of the opinion that no error has been committed by the courts below to summon the appellants herein to face the trial in exercise of power under Section 319 CrPC.”

18. In the case of **Manjeet Singh Vs. State of Haryana & Ors.**, reported in **(2021) 18 SCC 321**, after considering the various pronouncements on issues related to exercising the powers under Section 319 Cr.P.C. including the judgments passed in the case of **Hardeep Singh (supra)** and **Brijendra Singh (supra)**, concluded as under:

"15. The ratio of the aforesaid decisions on the scope and ambit of the powers of the court under Section 319CrPC can be summarised as under:

15.1. That while exercising the powers under Section 319CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished.

15.2. For the empowerment of the courts to ensure that the criminal administration of justice works properly.

15.3. The law has been properly codified and modified by the legislature under CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law.

15.4. To discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished.

15.5. 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.

15.6. Section 319CrPC allows the court to proceed against any person who is not an accused in a case before it.

15.7. 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.

15.8. Section 319CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person

not being an accused for also having committed the offence under trial.

15.9. The power under Section 319(1)CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208CrPC, committal, etc. which is only a pre-trial stage intended to put the process into motion.

15.10. The court can exercise the power under Section 319CrPC only after the trial proceeds and commences with the recording of the evidence.

15.11. The word “evidence” in Section 319CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents.

15.12. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319CrPC is to be exercised and not on the basis of material collected during the investigation.

15.13. If the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319CrPC and can proceed against such other person(s).

15.14. That if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319CrPC can be exercised.

15.15. That power under Section 319CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not to wait till the said evidence is tested on cross-examination.

15.16. Even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses).

15.17. While exercising the powers under Section 319CrPC the court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

16. Applying the law laid down in the aforesaid decisions to the facts of the case on hand we are of the opinion that the learned

trial court as well as the High Court have materially erred in dismissing the application under Section 319CrPC and refusing to summon the private respondents herein to face the trial in exercising the powers under Section 319CrPC. It is required to be noted that in FIR No. 477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, Mahindra XUV bearing no. HR 40A 4352 was standing on the road which belongs to Sartaj Singh and Sukhpal. Tejpal, Parab Sharan Singh, Preet Samrat and Sartaj were standing. Parab Sharan was having lathi in his hand, Tejpal was having a gandasi, Sukhpal was having a danda, Sartaj was having a revolver and Preet Singh was sitting in the jeep. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the Mahindra XUV HR 40A 4352 in a manner which blocks the entire road and they were armed with the weapons.

17. Despite the above specific allegations, when the charge-sheet/final report came to be filed only two persons came to be charge-sheeted and the private respondents herein, though named in the FIR, were put/kept in Column 2. It is the case on behalf of the private respondents herein that four different DSPs inquired into the matter and thereafter when no evidence was found against them the private respondents herein were put in Column 2 and therefore the same is to be given much weightage rather than considering/believing the examination-in-chief of the appellant herein. Heavy reliance is placed on Brijendra Singh [Brijendra Singh v. State of Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] .

18. However none of DSPs and/or their reports, if any, are part of the charge-sheet. None of the DSPs are shown as witnesses. None of the DSPs are investigating officer. Even on considering the final report/charge-sheet as a whole there does not appear to be any consideration on the specific allegations qua the accused, the private respondents herein, who are kept in Column 2. Entire discussion in the charge-sheet/final report is against Sartaj Singh only.

19. So far as the private respondents are concerned only thing which is stated is: "During the investigation of the present case, Shri Baljinder Singh, HPS, DSP Assandh and Shri Kushalpal, HPS, DSP Indri found accused Tejpal Singh, Sukhpal Singh, sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of

Mohan Sarup Singh caste Jat Sikh, residents of Bandrala innocent and accordingly Sections 148, 149 and 341IPC were deleted in the case and they were kept in Column 2, whereas challan against accused Sartaj has been presented in the Court.”

20. Now thereafter when in the examination-in-chief the appellant herein — victim — injured eyewitness has specifically named the private respondents herein with specific role attributed to them, the learned trial court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eyewitness. As observed by this Court in State of M.P. v. Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390] (para 9); Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] ; State of U.P. v. Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] , the evidence of an injured eyewitness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under Section 319CrPC the court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under Section 319CrPC.

21. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the learned trial court dismissing the application under Section 319CrPC is concerned, the High Court itself has observed that PW 1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received firearm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except that they were armed with weapons and the injuries concerned are attributed only to Sartaj Singh, even for the sake of arguments if someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all.

22. At the stage of exercising the powers under Section 319CrPC, the court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the

fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The learned trial court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under Section 319CrPC.

23. Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in *Satkar Singh v. State of Haryana* [CRR No. 3238 of 2018 reported as *Manjeet Singh v. State of Haryana*, 2020 SCC OnLine P&H 2782 sub nom *Satkar Singh v. State of Haryana*] at that stage the appellant herein did not prefer appeal against the impugned judgment and order passed by the High Court in *Manjeet Singh v. State of Haryana* [*Manjeet Singh v. State of Haryana*, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] and therefore this Court may not exercise the powers under Article 136 of the Constitution is concerned the aforesaid has no substance. Once it is found that the learned trial court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order in *Satkar Singh v. State of Haryana* [CRR No. 3238 of 2018 reported as *Manjeet Singh v. State of Haryana*, 2020 SCC OnLine P&H 2782 sub nom *Satkar Singh v. State of Haryana*] cannot be a ground not to direct to summon the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be summoned to face the trial.

24. Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in Column 2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in *Rajesh* [*Rajesh v. State of Haryana*, (2019) 6 SCC 368 : (2019) 2 SCC (Cri) 801] . This Court in the aforesaid decision has specifically observed that even in a case where the stage of giving

opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC.

25. Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and order passed by the High Court there is much progress in the trial and therefore at this stage power under Section 319CrPC may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled proposition of law and as observed by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , the powers under Section 319CrPC can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under Section 319CrPC was given only one witness was examined and examination-in-chief of PW 1 was recorded and while the cross-examination of PW 1 was going on, application under Section 319CrPC was given which came to be rejected by the learned trial court. The order passed by the learned trial court is held to be unsustainable. If the learned trial court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may, as observed herein powers under Section 319CrPC can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

26. In view of the above and for the reasons stated above, the impugned judgment and order [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] passed by the High Court and that of the learned trial court dismissing the application under Section 319CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the learned trial court is directed to summon the private respondents herein to face the trial arising out of FIR No. 477 dated 27-7-2016 in Sessions Case No. 362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149IPC."

19. The Constitution Bench of the Hon'ble Apex Court in the case of **Sukhpal Singh Khaira Vs. State of Punjab**, reported in (2023) 1 SCC 289, decided on 05.12.2022, answered the questions on the subject in issue in following paras which read as under:

“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 319 of Code of Criminal Procedure 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 319 of Code of Criminal Procedure 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 319 of the Code of Criminal Procedure 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 319 Code of Criminal Procedure?”

41.1. If the competent court finds evidence or if application Under Section 319 of Code of Criminal Procedure 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 319 of Code of Criminal Procedure 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 (i) 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 319 of Code of Criminal Procedure 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 319 of Code of Criminal Procedure, 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.”

20. After the aforesaid judgment, the issue was again considered by the Hon'ble Supreme Court in the case of **Yashodhan Singh and Others Vs. State of U. P. and Others**, reported in **(2023) LiveLaw (SC) 576 : 2023 INSC 652**.

21. It would be apt to indicate that before this Court at Allahabad, **Yashodhan Singh and Others** preferred a **Criminal Revision No. 4235 of 2022 (Yashodhan Singh and 6 Others Vs. State of U. P. and Others)** challenging the order passed by the trial court in exercise of power under Section 319 Cr.P.C. The order was challenged, in nutshell, on the ground that the trial court did not considered the evidence collected by the I.O. during investigation based upon which the I.O. exonerated them. In this case also, the reliance was placed on the judgment passed by the Hon'ble Apex Court in the case of **Brijendra Singh (supra)**. This Court dismissed the petition vide order dated 03.01.2023.

22. The order dated 03.01.2023 was assailed by **Yashodhan Singh and Others** before the Hon'ble Apex Court. Before the Hon'ble Apex

Court also, the reliance was placed on the judgment of **Brijendra Singh (supra)**.

23. The Hon'ble Apex Court considered the various pronouncements including the judgment passed in the case of **Hardeep Singh (supra)**, **Brijendra Singh (supra)**, **Sukhpal Singh Khair (supra)** and **Jogendra and Others Vs. State of Bihar and Anr.**, reported in **(2015) 9 SCC 244**, wherein the Hon'ble Apex Court observed that opportunity to the proposed accused is required, and thereafter dismissed appeal filed by **Yashodhan Singh and Others**. The relevant paras as referred are reproduced hereinunder:

“22. The relevant paragraphs in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] can be crystallised as under:

22.1. The Constitution Bench of this Court was concerned with three aspects : firstly, the stage at which powers under Section 319CrPC can be invoked; secondly, the materials on the basis whereof the invoking of powers under Section 319CrPC can be justified; and thirdly, the manner in which powers under Section 319CrPC have to be exercised. While answering the five questions referred to the Constitution Bench in para 117, it was concluded as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 141-42)

“117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

— What is the stage at which power under Section 319CrPC can be exercised?

AND

— Whether the word “evidence” used in Section 319(1)CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial?

Answer

117.1. In Dharam Pal case [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159 : AIR 2013 SC 3018] ,

the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193CrPC and the Sessions Judge need not wait till “evidence” under Section 319CrPC becomes available for summoning an additional accused.

117.2. Section 319CrPC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202CrPC, and under Section 398CrPC are species of the inquiry contemplated by Section 319CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word “evidence” in Section 319CrPC 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 319CrPC 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 319CrPC 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 319CrPC would be the same as for framing a charge [Ed. : The conclusion of law as stated in para 106, p. 138 c-d, may be compared:“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”. See also especially in para 100 at p. 136 f-g.] . 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 319CrPC 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 319CrPC 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 398CrPC has to be complied with before he can be summoned afresh.”

22.2. While answering the questions aforesaid, this Court observed in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that if 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 entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. It is with the said object in mind that a constructive and purposive interpretation should be

adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is the subject-matter of trial. It was pertinently observed by this Court that 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.

22.3. While distinguishing a trial from an enquiry, it was observed by this Court that trial follows an inquiry and the purpose of the trial is to fasten the responsibility upon a person on the basis of facts presented and evidence led. Emphasising on the word “course” used in Section 319CrPC, it was observed that the said power can be invoked under the said provision against any person from the initial stage of inquiry by the court up to the stage of conclusion of the trial. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences. Thus, the power under Section 319(1)CrPC can be exercised at any time after the charge-sheet is filed before the pronouncement of judgment, except during the stage of Sections 207/208CrPC, committal, etc.

22.4. Elaborating the nuances of Section 319CrPC, it was further observed in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that what is essential for the purpose of Section 319CrPC is that there should appear some evidence against a person not proceeded against; the stage of the proceedings is irrelevant. Section 319CrPC is an empowering provision particularly where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well.

22.5. It was further observed that circumstances which lead to the inference being drawn up by the court for summoning a person under Section 319 arise out of the availability of the facts and material that come up before the court. The material should disclose complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence.

22.6. It was also observed by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that apart from evidence in the strict legal

sense recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319CrPC. Holding that the expression “evidence” must be given a broad meaning, it was observed 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. Such material would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have been suppressed or had escaped the notice of the court. Therefore, any material brought before the court even prior to the trial can be read within the meaning of the expression “evidence” for the purpose of Section 319CrPC. While considering the evidence that emanates during the trial, it was observed by this Court that evidence recorded by way of examination-in-chief and which is untested by cross-examination is nevertheless evidence which can be considered by the court for the exercise of power under Section 319CrPC so long as, it would appear to the court that some other person who is not facing the trial, may also have been involved in the offence.

22.7. Further, Section 319CrPC also uses the words “such person could be tried”, which means not to have a mini-trial at the stage of Section 319CrPC by having examination and cross-examination and thereafter coming to a prima facie conclusion on the overt act of such person sought to be added. Such a mini-trial will affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all. As under Section 319(4)CrPC, such a person has the right to cross-examine the prosecution witnesses and examine the defence witnesses and advance his arguments. It was further observed that the power under Section 319CrPC can be exercised even after completion of examination-in-chief and the court does not have 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 persons, not facing the trial in the offence.

22.8. 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. Therefore, such satisfaction is sine qua non for exercise of power under Section 319CrPC.

Ultimately, the exercise of power is for the trial of such persons summoned together with the accused already on trial and not for conviction with the accused. Therefore, at that stage, the court need not form any definite opinion as to the guilt of the accused.

22.9. This Court further observed that 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. Hence, the degree of satisfaction for summoning the original accused and the accused summoned subsequently during the course of trial is different.

22.10. It was further observed by this Court that a person, whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193CrPC can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled. However, a person who has already been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Therefore, the court must keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations.

22.11. This Court further observed that it has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398CrPC without resorting to the provision of Section 319CrPC directly. Section 398CrPC is in the nature of a revisional power which can be exercised only by the High Court or the Sessions Judge, as the case may be. However, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Sections 300(5) and 398CrPC. If during

or after such inquiry, there appears to be an evidence against such person, power under Section 319CrPC can be exercised.

23. From the aforesaid observations of the Constitution Bench of this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86], it is noted that an inquiry is contemplated as against a person who has been discharged prior to the commencement of the trial in terms of Section 227CrPC as extracted above but on an inquiry, if it appears that there is evidence against such a discharged person, then power under Section 319CrPC can be exercised against such a discharged person. This clearly would mean that when a person who is not discharged but is to be summoned as per Section 319CrPC on the basis of satisfaction derived by the court on the evidence on record, no inquiry or hearing is contemplated. This would clearly indicate that principle of natural justice and an opportunity of hearing a person summoned under 319 CrPC are not at all contemplated. Such a right of inquiry 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 319CrPC 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 other accused.

24. Further, when a person is summoned as an accused under Section 319CrPC which is based on the satisfaction recorded by the trial court on the evidence that has emerged during the course of trial so as to try the person summoned as an accused along with the other accused, the summoned accused cannot seek discharge. It is necessary to state that discharge as contemplated under Section 227CrPC is at a stage prior to the commencement of the trial and immediately after framing of charge but when power is exercised under Section 319CrPC to summon a person to be added as an accused in the trial to be tried along with other accused, such a person cannot seek discharge as the court would have exercised the power under Section 319CrPC based on a satisfaction derived from the evidence that has emerged during the evidence recorded in the course of trial and such satisfaction is of a higher degree than the satisfaction which is derived by the court at the time of framing of charge.

25. The learned Senior Counsel Shri S. Nagamuthu strenuously contended that a person summoned in exercise of power under Section 319CrPC must be given an opportunity of being heard

before being added as an accused to the trial to be tried along with the other accused and that such person must have an opportunity of filing an application seeking discharge. The same are clearly not envisaged in view of the judgment in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and hence the said contentions are rejected.

26. Moreover, there is no finality attached to Section 319CrPC. It only indicates commencement of trial qua the added accused. The rationale is that a person need not be heard before being added on or arrayed as an accused. Reference to and reliance placed upon opportunity of hearing to a complainant in the form of protest petition when a closure report is filed is wholly misplaced because there is finality in a closure report; therefore the complainant is given an opportunity.

27. In Sukhpal Singh Khaira [Sukhpal Singh Khaira v. State of Punjab, (2023) 1 SCC 289 : (2023) 1 SCC (Cri) 454] , a Constitution Bench of this Court of which one of us was a member (Nagarathna, J.), adumbrated on the meaning of the expression “conclusion of trial” in the context of Section 319 read with other allied sections of CrPC and after referring to several decisions of this Court including Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] answered the question referred to as under : (Sukhpal Singh Khaira case [Sukhpal Singh Khaira v. State of Punjab, (2023) 1 SCC 289 : (2023) 1 SCC (Cri) 454] , SCC pp. 311-13, paras 39-41)

24. Reverting to the present case. Upon due consideration of the facts of the case indicated in earlier part of this judgment and the observations made in the judgments of the Hon'ble Apex Court, referred above, this Court is of the view that the applicants have no case and no interference by this Court in the order dated 23.05.2024 passed by the trial Court in exercise of power under Section 319 Cr.P.C. is required. It is for the following reasons:

(i) The case of the applicants is based upon the 'evidence' collected by the I.O. during investigation.

(ii) On the aforesaid, the Hon'ble Apex Court in the case of **Hardeep Singh (supra)** in para 78 observed 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".* and thereafter in para 85 it has been observed that *"in view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The "evidence" is thus, limited to the evidence recorded during trial."* and subsequently, in the case of **Rajesh and Others (supra)** in para 6.8 held that *"Considering the law laid down by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) 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 (may be on the basis of the evidence*

collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial." and thereafter, in the case of **Manjeet Singh (supra)** observed as under:

"15.11. 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.

15.12. 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."

(iii) Thus, in view of above, the trial Court has not committed any illegality in not considering the evidence collected by the I.O. during investigation.

(iv) The CCTV footage, the certificate/letter from the company, attendance sheet and Call Detail Report (C.D.R.), the basis of opinion of the I.O. that the applicants were not present at the place of crime and therefore submitted the report in terms of Section 169 Cr.P.C., were rightly not considered by the trial Court in view of aforesaid as also for the reason that the same have not yet been exhibited before the trial Court. It is in view of the fact that in this regard, there is no pleading.

(v) The order dated 23.05.2024, in issue, of the trial Court is based upon the testimony/statement of Chandan Singh (PW-1), an eye witness and informant, as also the contents of the F.I.R. dated 14.08.2018, the basis of pending Session Trial No. 486 of 2019, and as such the submissions for causing interference in the order dated 23.05.2024 on the basis of testimony/statement of other witnesses have no force.

(vi) As per the contents of the F.I.R. dated 14.08.2018 lodged by Chandan Singh (PW-1), the PW-1 was present at the place of crime i.e. near Chaukhad Pure Anti Primay School and accused persons namely Asad Ali @ Munna, Bablu, Mahroj and Awadhesh Kumar (all the applicants herein) came there on two motorcycles and they opened fire and on account of gun shot injuries Harish Chandra, father of PW-1, expired and this witness namely Chandan Singh (PW-1), an informant and eye witness, in his examination-in-chief, with some improvement (which could not be considered at this stage in view of settled proposition that an FIR is not an encyclopedia disclosing all facts and details relating to offense and FIR is not even considered to be a substantive piece of evidence and can be only used to corroborate or contradict the informant's evidence in Court as also that while exercising the powers under Section 319 CrPC the court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial), reiterated the story narrated in the F.I.R. dated 14.08.2018 and in cross-examination also remained intact in this regard. This witness PW-1 in the FIR as also before the Court, after commencement of the trial, in his statement in regard to Asad Ali @ Munna (applicant no. 1 herein) indicated the motive to commit the offense. According to PW-1, in examination-in-chief as also in cross-examination, the accused/applicants opened the fire and caused fire arm injuries. The injuries indicated in post-mortem are extracted herein-under:

"1) Fire arm injury L/w size about 1x1 cm deep to bone present on right arm pit 8 cm lateral from right nipple, wounds margin are inverted and tattoing seen size about 1x1 cm.

2) Fire arm injury L/W size about .5 x .5 cm deep to bone 5 cm below from the previous wound, wound margin are inverted & tattaing seen around the wound.

3) Fire arm injury L/W size about 1 x 1 cm deep to bone present on posterolateral side of right side arm wound margin are inverted, blackening and tattooing seen around the wound size about 1.5 x 1.5cm.

4) L/W size about 1.5 x 1.5 cm deep to bone present on postero medial side of right arm, wound margin are everted.

5) Fire arm injury L/W size about 1 x 1 cm deep to bone 7 cm below the left clavicle wound margin are inverted. Blackening and tattooing seen around the wound size about 1.5 x 1.5 cm.

6) L/W size about 1.2 x 1.2 cm deep to bone 18 cm lateral to left nipple wound margins are everted. As per x-ray shows 2 bullets and one pellet, 1st bullet found at right side of 1st lumbar vertebra and 2nd bullet found at left kidney

(7) 1 pellet found at right upper chest 4 cm below right clavicle.

(vii) So far, the requirement of recording satisfaction while exercising power under Section 319 Cr.P.C. is concerned, in view of above said, this Court is of the view that on this aspect of the case as also the order dated 23.05.2024 is not liable to be interfered by this Court as the trial Court to the view of this Court has recorded its satisfaction as would appear from the following para of the impugned order:

"At this stage the evidence of PW-1 is such that if the evidence of PW-1 is not rebutted by the proposed accused persons that will be sufficient to convict proposed accused persons, the informant is the eye-witness of this case and it has also been brought on the record that another case of attempt to murder of the father of the informant was already pending against the proposed accused Asad Ali at the time of incident. Thus, the eye account of the whole case has been candidly laid down by the informant before the court and the motive for the offence is also associated against proposed accused person Asad Ali. The other co-accused Awadh, Bablu and Mahroj were present at the place of incidence at the time of the commission of the crime and they also have actively participated in the commission of the crime.

(viii) The discrepancies, as alleged, that as per FIR the informant/eye-witness/PW-1 namely Chandan Singh and dead Harish Chandra were on one motorcycle and as per statement of PW-1 before

the trial Court that both were on different motorcycles, is a subject matter of trial. It is for the reason that as per settled view "while exercising the powers under Section 319 CrPC the court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial."

25. For the reasons recorded herein-above, this Court finds no force in the application. It is accordingly **rejected**.

26. Interim order, if any, stands vacated.

Order date: - 09th August, 2024
Mohit Singh/-