

IIIRD JUDICIAL OFFICERS WORKSHOP.

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SECTION 319 OF THE CODE OF CRIMINAL PROCEDURE, 2016.

This provision empowers the Court to add any person, not being the accused before it, but against whom there appears, during trial, sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused.

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.

However, it is not enough that the court entertained some doubt from the evidence about the involvement of another person in the offence, The court must have reasonable satisfaction from the evidence already collected regarding two aspects

A somewhat similar provision was contained in section 351(1) of the Code of Criminal Procedure, 1898, under which it was provided that any person attending a criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be

- ❑ In its 41st Report, the Law Commission noted that the power conferred upon a criminal Court under section 351 (of the old Code) could be exercised only if such person happened to be attending the Court and he could then be detained and proceeded against, but there was no express provision for summoning such a person if he was not present in the Court.
- ❑ It was recommended that a comprehensive provision be enacted so that the whole case against all known suspects could be proceeded expeditiously and that cognizance against the newly added accused should be taken in the same

- ❖ The policy of the Code is that the offence can be taken cognizance of once only and not repeatedly upon discovery of further particulars.
- ❖ In a given case the complainant may not even know the names and other particulars of the offenders and it would therefore be sufficient for him to lodge a complaint making persons who are known offenders as the accused. When such a trial proceeds against the known accused, of the evidence led in the trial discloses offences committed by other persons who could be tried along with the accused, then this section comes into play.
- ❖ The power of summoning under S. 319 is not to be exercised in a routine and mechanical manner. The

- ✓ *Power under section 319 of the Code can be exercised by the Court suo motu or on an application by someone, including the accused already before it. If it is satisfied that any person other than the accused has committed an offence, he is to be tried together with the accused. (Brindaban Das v. State of West Bengal, AIR 2009 SC 1248)*
- ✓ *The word 'evidence' in section 319 contemplates the evidence of witnesses given in Court. Under sub clause (4) (b) of section 319 it is specifically made clear that it will be presumed that the newly added person had been an accused, when the Court took cognizance of the offence upon which the inquiry or trial was commenced. Thus a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned. (Hardeep Singh v. State of Punjab, (2014) 3 SCC 92)*

- ❖ An order under section 319 Cr.P.C. should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s).
- ❖ Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere *ipse dixit* would not serve the purpose.
- ❖ Such an evidence must be convincing one at least for the purpose of exercise of extraordinary jurisdiction.

(Babubhai Bhimbai Bokhiria v. State of Gujarat, AIR 2014 SC 2228)

Sub-section (4) of Section 319 envisages that once a person is added as an accused, then the proceedings against him are required to be commenced afresh. At that stage, he would have full opportunity of testing the evidence of witness by cross-examination. Prior to summoning such person to face trial, there would not be any question of calling him to cross-examine the witness. (Rakesh and Anr. vs. State of Haryana, AIR 2001 SC 2521).

Therefore, there is no question of cross-examining the witness prior to adding such person as accused. Section does not contemplate an additional stage of first summoning the person and giving him an opportunity of cross-examining the witness who has deposed against him and thereafter deciding whether such person is to be added as accused or not

A magistrate has no powers to summon new accused at the stage of committal. It was observed that the power under Section 209 Cr.P.C. to summon a new offender was not vested with a Magistrate on the plain reading of the text. The proceedings before the magistrate at the stage of committal are not in the nature of an 'inquiry' and material before him is not 'evidence'. Thus, the stage for employment of Section 319 Cr.P.C. did not arrive. Since the Magistrate has no such power to add a person as accused under Section 310

The constitution bench of the Hon'ble Supreme Court in the case of Hardeep Singh v. State of Punjab, (2014) 3 SCC 92, dealt extensively with the power of the court under section 319 of the Cr.P.C. At the outset the court posed certain questions the answers to which it summed up as follows:

QUESTIONS 1 & 3

What is the stage at which power under Section 319 Code of Criminal Procedure can be exercised?

And

Whether the word "evidence" used in Section 319(1) Code of Criminal Procedure has been used in a comprehensive sense and includes the evidence collected during investigation or

In **Dharam Pal's** case (2004) 13 SCC 9, the Constitution Bench has 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 investigation.

Section 319 Code of Criminal Procedure, 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, 202 Code of Criminal Procedure; and under Section 398 Code of Criminal Procedure are species of the inquiry contemplated by Section 319 Code of Criminal Procedure. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Code of Criminal Procedure, and also to add an accused whose name has been shown in Column 2 of the charge sheet.

QUESTION II

Whether the word "evidence" used in Section 319(1) Code of Criminal Procedure 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. Considering the fact that under Section 319 Code of Criminal Procedure a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Code of Criminal Procedure the proceeding against such person

QUESTION IV

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

ANSWER. Though under Section 319(4)(b) Code of Criminal Procedure the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Code of Criminal Procedure would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial-therefore the degree of satisfaction for summoning the accused

QUESTION 5

Does the power under Section 319 Code of Criminal Procedure extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

ANSWER. 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 Code of Criminal Procedure provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Code of Criminal Procedure has to be complied with before he can be summoned afresh.

SOME WELL-SETTLED PRINCIPLES

1. The power conferred under Section 319(1) of the Code is applicable to all courts including a Sessions Court. (*Joginder Singh and Another v. State of Punjab and Another*, AIR 1979 SC 339)
2. The prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. this power is extraordinary which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance

3. The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. (Shashikant Singh v. Tarkeshwar Singh and Another, AIR 2002 SC 2031)
4. The phrase any person not being the accused occurring in Section 319 does not exclude from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the charge-sheet. In other words, the said expression covers any person who is not being tried already by the court and would

5. The court while exercising its power under Section 319 of the Code must keep in view full conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then.
6. An order for addition of an accused made after considering the evidence cannot be undone by coming to the conclusion that there is no sufficient ground for proceeding against the accused without appreciation of evidence. The accused summoned under Section 319 of the Cr.P.C., are entitled to invoke remedy under law against an illegal or improper exercise of the power under Section 319, but cannot have the effect of the order undone by seeking a discharge under Section 227 of the Cr.P.C. (Ajay Kumar Parmar v. State of Rajasthan, (2012) 12 SCC 406).

8. A person who is named in the First Information Report or complaint with the allegation that he/she has committed any particular crime or offence, but against whom the police does not launch prosecution or file charge-sheet or drops the case, can be proceeded against under section 319 Cr.P.C., if from the evidence collected/ produced in the course of any inquiry into or trial of an offence, the Court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused.
9. Process issued against an accused under section 319 Cr.P.C. cannot be quashed only on the ground that even though she was

CONCLUSION

Section 319 of the Code confers power on the trial court to find out whether a person who ought to have been added as an accused has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial.

The degree of satisfaction for invoking power Under Section 319 of the Code is much higher than which is required that the stage of taking cognizance.

The power under section 319 Code of Criminal Procedure is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where