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Reserved on : 14.07.2025

Delivered on : 28.07.2025

Court No. - 80

Case :- APPLICATION U/S 482 No. - 22726 of 2016

Applicant :- Amit Kumar Singh @ Babloo And 2 Others

Opposite Party :- State of U.P.

Counsel for Applicant :- Rishi Kant Rai, Satya Priya Upadhyay

Counsel for Opposite Party :- G.A.

Hon'ble Rajeev Misra, J.

1. Heard Mr. Rishi Kant Rai, the learned counsel for applicants and the learned A.G.A. for State-opposite party-1.

2. Perused the record.

3. Applicant- Amit Kumar Singh @ Babloo And 2 Others, who are neither named in the FIR nor charge sheeted nor cognizance was taken against them by Jurisdictional Magistrate at the time of taking cognizance in terms of Section 190(1)(b) Cr.P.C. or by the Sessions Judge in exercise of jurisdiction under Section 193 Cr.P.C. as explained by the Constitution Bench judgment of the Supreme Court in **Dharampal Vs. State of Haryana, (2014) 3 SCC 306**, have approached this Court by means of present application under Section 482 Cr.P.C.

4. Applicants have come up with the following prayer by means of present application under Section 482 Cr.P.C.:-

“It is therefore most respectfully prayed that this Hon'ble court may graciously be pleased to quash the entire Criminal proceeding arising out of summoning order dated 19.03.2016 registered as Session Trial No. 296-B of 2010 State Vs Rajveer

Singh and others under section 302, 149 I.P.C., P.S. Maniar District Ballia, pending before the Additional Session Judge, Court No.2 Ballia against the applicants, to secure the ends of justice.

It is further prayed that this Hon'ble Court may graciously be pleased to set aside judgment and order dated 15.03.2016 passed by the Additional Session Judge F.T.C.-2 Ballia in Session Trial No. 296 of 2010 State Vs Kamlesh Rajbhar alias Babloo alias KK, only extent to the finding recorded against the applicants and taken cognizance at the stage of pronouncement of judgment and directed for criminal trial against the applicants having without jurisdiction and without evidence on record in violation of the statutory provision which amount to abuse of process.

It is further prayed that this Hon'ble Court may graciously be pleased to stay the entire Criminal proceeding arising out of summoning order dated 19.03.2016 registered as Session Trial No. 296-B of 2010 State Vs Rajveer Singh and others under section 302, 149 I.P.C., P.S. Maniar District Ballia, pending before the Additional Session Judge, Court No.2 Ballia against the applicants, to secure the ends of justice, otherwise applicants shall be suffer irreparable loss and injury.”

5. Instant application came up for admission on 11.08.2016 and this Court passed the following order;-

“Heard the learned counsel for the applicants and the learned A.G.A.

This petition has been filed for quashing the cognizance taken by the Additional Sessions Judge/F.T.C, Court No. 2 Ballia while deciding the Sessions Trial No. 296 of 2010- State Versus Kamlesh Rajbhar alias Babloo alias KK.

It is further prayed that the entire proceedings arising out of summoning order dated 15.3.2016 in S.T. No. 296-B/10 State Versus Rajveer Singh and other under sections 302,149 I.P.C. P.S. Manihar district Ballia pending before the Additional Sessions Judge, Court No. 2 Ballia, be stayed.

It is submitted by the learned counsel that an FIR was lodged by Smt. Baby Khatoon on 1.8.2009 as case crime no. 129 of 2009 under section 302 I.P.C. against unknown persons. During investigation the complicity of two persons namely Kamlesh Rajbhar and Satish Singh was found. After release on bail Satish Singh absconded. However, the case of Kamlesh Rajbhar was committed and registered as S.T. No. 296 of 2010 and after conclusion of the trial, he was convicted under section 302/34I.P.C.

The learned trial court in his internal page 7 of the judgement observed as follows:

"The available evidence on records and particularly, the statements of P.W.9 Sri Dhirendra Pratap Singh patently reveals the presence of officer of police station Maniar Shri Rajbir Singh alongwith other police personnels namely, constables Shiv Muni Yadav, Brijesh Singh, Ram Shankar Yadav, Awadhesh Yadav, Lallan Yadav, Krishn Mohan Singh, Ashique Hussain and Sub Inspector Lal Dhar Singh Kushwaha. This suggests that a prima facie case of offence under Ss. 302/149 of IPC is clearly made out against all these police personnels including Vinay alias Meeter Singh, Amit alias Babloo, and Rupesh alias Pintu. Therefore, the cognizance of offence under section 302/149 of IPC is hereby taken in respect of all these accused persons. They shall accordingly be summoned for the offence committed by them U/Ss. 302/149 of IPC and in this respect a separate case shall be registered." Accordingly the applicants were summoned to face the trial. It is further submitted that summoning order is without jurisdiction and merely on the basis of suspicion order under section 319 Cr.P.C. cannot be passed. It is an extraordinary power which should be used sparingly and if there is likelihood of conviction only then be summoned.

It is further stated by the learned counsel that on the basis of statement recorded under section 161 Cr.P.C. and on the basis of the statement of P.W. 9, who recorded the statement under section 161 Cr.P.C. order has been passed.

The order of the trial court was passed on the basis of the statement of P.W. 9 Sri Dhirendra Pratap Singh, seems to be prima facie erroneous. P.W. 9 Dhirendra Pratap Singh during investigation took the statement of certain persons but those witnesses were not produced before the court. Merely, on the basis of the statement P.W.9, who was not present at the time of incident, it was assumed by the court that complicity of the applicant is also there.

Section 319 Cr.P.C. empowers the court to summon any person where in the course of an enquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused, has committed any offence. Probably, the trial court has taken into account the evidence that has been gathered during the enquiry, but the crux of using section 319 Cr.P.C. is not being observed wherein it is provided that any person not being the accused, if 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.

In the circumstances, it can be inferred that if any person under section 319 Cr.P.C. is being summoned, he should be summoned to be tried together with the accused who is facing trial. This point is disputed whether while passing judgement such

order can be passed or the trial to be undertaken separately.

In the circumstances, learned A.G.A. is directed to file counter affidavit within four weeks from today. Re-joinder affidavit, if any, may be filed within two weeks thereafter.

List on 28.9.2016.

Meanwhile, proceedings in S.T. No. 296-B of 2010 State Versus Rajveer Singh and other under sections 302,149 I.P.C. P.S. Maniar district Ballia pending in the court of Additional Sessions Judge,Court No. 2 Ballia, shall remain stayed.”

6. In spite of the order dated 11.08.2016 passed by this Court and the fact that a period of more than 8 years has rolled by since then, no counter affidavit has been filed by the learned A.G.A. in opposition to this application. The learned A.G.A. has supplied the photo copy of the judgment dated 11.03.2016 and order dated 15.03.2016 in Court, which were taken on record.

7. It transpires from record that in respect of an incident, which is alleged to have occurred on 01.08.2009, a prompt FIR dated 01.08.2009 was lodged by first informant Smt. Baby Khatoon and was registered as Case Crime No. 121 of 2009, under Section 302 IPC, Police Station-Maniyar, District-Ballia. In the aforesaid FIR, two unknown persons were arraigned as accused.

8. After above-mentioned F.I.R. was lodged, Investigating Officer proceeded with statutory investigation of concerned crime number in terms of Chapter-XII Cr.P.C. On the basis of material collected by him during course of investigation, he came to the conclusion that complicity of two persons namely Kamlesh Rajbhar and Babloo @ Satish Singh is established in the crime in question. He, accordingly, submitted the charge sheet/police report dated 12.12.2009 under Section 173 (2) Cr.P.C., whereby and whereunder, aforementioned not named accused were charge sheeted under Section 302 IPC.

9. After submission of aforementioned charge sheet/police report, cognizance was taken upon same by the Jurisdictional Magistrate, in

exercise of jurisdiction under Section 190(1)(b) Cr.P.C. Accordingly, the Jurisdictional Magistrate summoned the charge sheeted accused. Since offence complained of is triable exclusively by the Court of Sessions, consequently, the Jurisdictional Magistrate, in line with Section 207 Cr.P.C. i.e. supply of documents, relied upon by the prosecution to the accused and as per the mandate of Section 209 Cr.P.C. committed the case to the Court of Sessions.

10. The concerned Sessions Judge upon committal of the case, took cognizance which is in line with Section 193 Cr.P.C. Accordingly, Sessions Trial No. 296 of 2010 (State Vs. Kamlesh Rajbhar) arising out of Case Crime No. 121 of 2009, under Section 302 IPC, Police Station-Maniyar, District-Ballia came to be registered in the Court of Additional Sessions Judge, F.T.C. Ballia.

11. Ultimately, aforementioned Sessions Trial came to be decided by Court below vide judgment dated 11.03.2016. Charge sheeted accused Kamlesh Rajbhar was convicted under Section 302 IPC. However, by means of the aforesaid judgment, as is evident from the recital occurring at internal page 7 of the impugned judgment, Court below took cognizance for an offence under Section 302/149 IPC against applicants. Thereafter vide order dtd 15.03.2016, court below has sentenced the convicted accused.

12. Consequently, applicants were summoned by Court below, vide summoning order dated 19.03.2016 passed by Additional Sessions Judge/ F.T.C. Ballia in Sessions Trial No. 296B of 2010 (State Vs. Rajveer Singh and Others), under Sections 302/149 IPC, Police Station-Manihar, District-Ballia.

13. Thus, feeling aggrieved by the above, applicants have now approached this Court by means of present application under Section 482 Cr.P.C.

14. Mr. Rishi Kant Rai, the learned counsel for applicants submits that

conclusion drawn by Court below against applicants in the impugned judgment is not only illegal but in excess of jurisdiction also. As such, the same as well as the consequential summoning order are liable to be quashed by this Court.

15. In furtherance of aforesaid submission, the learned counsel for applicants submitted that the Jurisdictional Magistrate at the time of taking cognizance in terms of Section 190(1)(b) Cr.P.C. upon the charge sheet/police report submitted by the Investigating Officer is not bound by the opinion expressed by the Investigating Officer in the charge sheet/police report submitted in terms of Section 173(2) Cr.P.C. The Jurisdictional Magistrate can look into the papers accompanying the police report and on basis thereof, if he finds that complicity of other/others is evident from the same then he shall be well within his jurisdiction to take cognizance against such non charge sheeted accused and summon him/them to face trial, irrespective of the fact whether any protest petition has been filed by the first informant to the police report in the light of the law laid down by the Apex Court in **Bhagwant Singh Vs. Commissioner of Police And Another, (1985) 2 SCC 537**.

16. However, in the present case, neither any protest petition was filed by the first informant against the charge sheet/police report dated 12.12.2009 before the Jurisdictional Magistrate nor cognizance was taken by the Jurisdictional Magistrate against applicants at the stage of taking cognizance.

17. It was next contended by the learned counsel for applicants that irrespective of above, a non charge sheeted accused can still be summoned by the Court of Sessions at the time of taking cognizance in the light of the provisions contained in Section 193 Cr.P.C. as explained by the Apex Court in the Constitution Bench judgment in **Dharampal (Supra)**. However, in the present case, no cognizance was taken by the Court of Sessions against applicants at that stage of the proceedings either.

18. On the above premise, the learned counsel for applicants submitted that applicants could have been summoned by Court below to stand their trial in aforementioned Sessions Trial by exercising jurisdiction under Section 319 Cr.P.C. but only during the pendency of trial and not upon conclusion of trial. To buttress his submission, he referred to Section 319 Cr.P.C. For ready reference, the same is reproduced herein under:-

“Section 319 Cr.P.C.- Power to proceed against other persons appearing to be guilty of offence -

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under Sub-Section (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

19. Elaborating his aforesaid submission, the learned counsel for applicants submits that a Five Judges Bench of Supreme Court in **Dharam Pal (Supra)** considered the provisions of Sections 193, 190, 319, 209, 173(2) and 200 to 204 Cr.P.C. and held that Sessions Judge has power to summon a non charge sheeted accused after the case has been committed to Court of Sessions under section 193 Cr.P.C and for this purpose need not wait for evidence to be recorded so that non charge sheeted accused could be summoned under

section 319 Cr.P.C.

20. Subsequently, in **Hardeep Singh Vs. State of Punjab and Others, (2014) 3 SCC 92**, another Five Judges Bench of the Supreme Court considered the parameters for exercise of jurisdiction under section 319 Cr.P.C. The Bench upon consideration of various provisions of the Evidence Act, Code of Criminal Procedure as well as the underlying principles of Section 319 Cr.P.C. framed five questions for defining the parameters for exercise of jurisdiction under Section 319 Cr.P.C. Thereafter, the Bench held as under in paragraphs 4, 5, 6, 6.5, 7, 11, 55, 56, 57, 85, 92, 105, 106, 116, 117.1 to 117.6 of the report:-

“4. Reference made in the case of [Dharam Pal](#) (Supra) came to be answered in relation to the power of a Court of Sessions to invoke [Section 319](#) Cr.P.C. at the stage of committal of the case to a Court of Sessions. The said reference was answered by the Constitution Bench in the case of [Dharam Pal & Ors. v. State of Haryana & Anr.](#), AIR 2013 SC 3018 [hereinafter called ‘Dharam Pal (CB)’], wherein it was held that a Court of Sessions can with the aid of [Section 193](#) Cr.P.C. proceed to array any other person and summon him for being tried even if the provisions of [Section 319](#) Cr.P.C. could not be pressed in service at the stage of committal.

5. Thus, after the reference was made by a three-Judge Bench in the present case, the powers so far as the Court of Sessions is concerned, to invoke [Section 319](#) Cr.P.C. at the stage of committal, stood answered finally in the aforesaid background.

6. On the consideration of the submissions raised and in view of what has been noted above, the following questions are to be answered by this Bench:

6.1 (i) What is the stage at which power under Section 319 Cr.P.C. can be exercised

6.2 (ii) Whether the word "evidence" used in Section 319(1) Cr.P.C. 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) Cr.P.C. 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 Cr.P.C. to arraign an accused? Whether the power under Section 319(1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood convicted?

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

7. In this reference what we are primarily concerned with, is the stage at which such powers can be invoked and, secondly, the material on the basis whereof the invoking of such powers can be justified. To add as a corollary to the same, thirdly, the manner in which such power has to be exercised, also has to be considered.

11. Section 319 Cr.P.C. as it exists today, is quoted hereunder:

"319 Cr.P.C. -Power to proceed against other persons appearing to be guilty of offence:-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then

(5) (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

55. Accordingly, we hold that the court can exercise the power under Section

319 Cr.P.C. only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained herein above.

56. There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 Cr.P.C. i.e. provisions of Sections 200, 201, 202, etc. Cr.P.C. applicable in the case of Complaint Cases. As has been discussed herein, evidence means evidence adduced before the court. Complaint Cases is a distinct category of criminal trial where some sort of evidence in the strict legal sense of Section 3 of the Evidence Act 1872, (hereinafter referred to as the 'Evidence Act') comes before the court. There does not seem to be any restriction in the provisions of Section 319 Cr.P.C. so as to preclude such evidence as coming before the court in Complaint Cases even before charges have been framed or the process has been issued. But at that stage as there is no accused before the Court, such evidence can be used only to corroborate the evidence recorded during the trial for the purpose of Section 319 Cr.P.C., if so required. 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 Cr.P.C. acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 Cr.P.C. 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 Cr.P.C. at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses is being recorded.

57. Thus, the application of the provisions of Section 319 Cr.P.C., at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 Cr.P.C. can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge sheet or any other person who might be an accomplice.

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 Cr.P.C. The 'evidence' is thus, limited to the evidence recorded during trial.

92. Thus, in view of the above, we hold that power under Section 319 Cr.P.C. can be exercised at the stage of completion of examination in chief and 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.

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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused.

116. Thus, it is evident that power under Section 319 Cr.P.C. can be exercised against a person not subjected to investigation, or a person placed in the 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 Cr.P.C. without taking recourse to provisions of Section 300(5) read with Section 398 Cr.P.C.

117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

- What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

- Whether the word "evidence" used in Section 319(1) Cr.P.C. 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, 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 investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till 'evidence' under Section 319 Cr.P.C. becomes available for summoning an additional accused.

117.2. Section 319 Cr.P.C., 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 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. 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 Cr.P.C., 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 319 Cr.P.C. 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) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

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

Question (iv)- What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. 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) Cr.P.C. 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 Cr.P.C. would be the same as for ? framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

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

Answer

117.6. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. 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 Cr.P.C. has to be complied with before he can be summoned afresh."

21. The correctness of the aforementioned five Judges Bench judgement in **Hardeep Singh (Supra)** was doubted subsequently by a Two Judges

Bench judgment in **Sukhpal Singh Khaira Vs. State of Punjab, (2019) 6 SCC 638**. Accordingly, the Court formulated the points of reference and made a reference to a larger Bench. The said reference came to be allowed by a Five Judges Bench judgement in **Sukhpal Singh Khaira Vs. State of Punjab, (2023) 1 SCC 289**. In paragraph 7 of the report, Court reproduced the questions referred which are as follows:

“7. In that view, the following substantial questions of law were raised for further consideration and the matters were placed before the Hon'ble the Chief Justice of India for constitution of a Bench of appropriate strength to consider the questions raised. The Hon'ble the Chief Justice has accordingly constituted this Bench to consider the questions raised, which read as hereunder:

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

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

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

22. Thereafter, the Court re-examined the issue regarding the summoning of a non charge sheeted accused. It discussed the same at length and in detail. Ultimately, in paragraph 38 of the report, court answered the questions so referred in the following manner:

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

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

The power under Section 319CrPC is to be invoked and exercised before

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

23. Having answered the questions so referred, Court laid down the following guidelines for exercising power under section 319 Cr.P.C.

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

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

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

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

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

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

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

41.7. If the proceeding paused as in para 41.1 above, is in a case where

the accused who were tried are to be acquitted, and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

41.8. If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated) trial.

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

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

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

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

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

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

24. Having placed the provisions of Section 319 Cr.P.C. and the parameters regarding exercise of jurisdiction by Court under Section 319 Cr.P.C. as explained by the Apex Court from time to time as noted herein above, the learned counsel for applicants would submit that the issue in hand stands answered by the Five Judges Bench judgment of the Supreme Court in **Sukhpal Singh Khaira (Supra)**.

25. According to the learned counsel for applicants, it is evident from the record that the charge sheeted accused i.e. Kamlesh Rajbhar was convicted by Court below, vide judgment dated 11.03.2016. By the same

judgment, the Court took cognizance against applicants for an offence under Section 302/149 IPC. Thus the conviction of charge sheeted accused and taking of cognizance against applicants was simultaneous and on the same day. Thereafter, vide order dated 15.03.2016, the convicted accused was sentenced under Section 302/34 I.P.C. with life imprisonment alongwith fine. The applicants were, however, summoned by Court below subsequently i.e. vide summoning order dated 19.03.2016 i.e. after the conclusion of trial.

26. On the above conspectus, the learned counsel for applicants vehemently contended that the procedure adopted by Court below in summoning the applicants to stand their trial is contrary to the ratio laid down by the Constitution Bench in paragraph 38 of the report in **Sukhpal Singh Khaira (Supra)**. As such the present application is liable to be allowed and the recital occurring at internal page 7 of the impugned judgment insofar as, it is against the applicants i.e. *“The available evidence on records and particularly, the statements of PW-9 Shri Dharendra Pratap Singh patently reveals the presence of station officer of police station Maniar Shri Rajbir Singh along with other police personnels namely, constables Shiv Muni Yadav, Brijesh Singh, Ram Shankar Yadav, Awdhesh Yadav, Lallan Yadav, Krishn Mohan Singh, Ashique Hussain and Sub Inspector Lal Dhar Singh Kushwaha. This suggests that a prima facie case of offence under Ss. 302/149 of IPC is clearly made out against all these police personnels including Vinay @ Meeter Singh, Amit alias Babloo, and Rupesh alias Pintu. Therefore, the cognizance of offence under Section 302/149 of IPC is hereby taken in respect of all these accused persons. They shall accordingly be summoned for the offence committed by them U/Ss. 302/149 of IPC and in this respect a separate case shall be registered”* and the consequential summoning order dated 19.03.2016 are liable to be quashed by this Court.

27. Reference was also been made to the subsequent judgment of Supreme Court in **Devendra Kumar Pal Vs. State of U.P. 2024 SCC**

OnLine SC 2487. The facts of the present case are almost similar to the facts of above-mentioned case. Paragraph 13 of the aforementioned report is relevant for the issue in hand. Accordingly, the same is reproduced herein under;-

“13. Indisputably, in the present case, on 21st March 2012, the order of conviction in the case of some of the accused and the order of acquittal in the case of the other accused was passed in the first half of the day. In the second half, the Court first passed an order for sentencing of the persons who were convicted and only thereafter passed an order under [Section 319](#) of Cr.P.C. for summoning the present appellant.”

28. Per contra, the learned A.G.A. for State-opposite party-1 vehemently opposed the present application. Learned A.G.A. contended that cognizance has been taken against applicants by Court below for an offence under Section 302/149 IPC. Court below took cognizance against applicants on the ground that as per evidence on record, the presence of present applicants at the time and place of occurrence is established. In view of the aforesaid finding returned by Court below, no good ground exists to quash the judgment dated 15.03.2016 (partially) or the summoning order dated 19.03.2016. Considering the nature and gravity of offence and also the period of punishment provided for the said offence, technicalities should not be allowed to prevail over substantial justice. He, therefore, contended that in view of above, no good ground exists to terminate the trial of applicants. He would thus submit that the present application is liable to be dismissed.

29. Having heard the learned counsel for applicants, the learned A.G.A. for State-opposite party-1 and upon perusal of record, this Court finds that the following facts stand crystallized. Applicants are not named in the FIR dated 01.08.2009 registered as Case Crime No. 121 of 2009, under Section 302 IPC, Police Station-Manihar, District-Ballia. The applicants were not charge sheeted by the Investigating Officer in the charge sheet/police report dated 12.12.2009 submitted by the Investigating Officer in terms of Section 173(2) Cr.P.C. The Jurisdictional Magistrate,

while taking cognizance upon aforesaid charge sheet/police report, in exercise of jurisdiction under Section 190(1)(b) Cr.P.C. did not take cognizance against applicants. The Sessions Judge upon committal in exercise of jurisdiction under Section 193 Cr.P.C. did not summon the applicants. As such, applicants could have been summoned by Court below to face trial only by exercising power under Section 319 Cr.P.C. At what stage, the jurisdiction under Section 319 Cr.P.C. can be exercised by the Court against prospective accused has been answered in paragraph 38 of the Five Judges Bench judgment of Supreme Court in **Sukhpal Singh Khaira (Supra)**. Court below has exercised its jurisdiction contrary to the law laid down by the Apex Court in aforementioned judgment inasmuch as, the conviction of charge sheeted accused was made, vide judgement dated 11.03.2016 and the sentence was awarded to the convicted accused, vide order dated 15.03.2016, whereas the summoning order was passed against applicants on 19.03.2016. Thus the procedure adopted by Court below in summoning the applicants is in clear derogation of the ratio laid down by the Five Judges Bench judgment in **Sukhpal Singh Khaira (Supra) (Paragraph 38 of the report)**.

30. In view of the discussion made above, the present application succeeds and is liable to be allowed.

31. It is, accordingly, allowed.

32. The recital occurring in the impugned judgment at internal page 7 i.e. *“The available evidence on records and particularly, the statements of PW-9 Shri Dhirendra Pratap Singh patently reveals the presence of station officer of police station Maniar Shri Rajbir Singh along with other police personnels namely, constables Shiv Muni Yadav, Brijesh Singh, Ram Shankar Yadav, Awdhesh Yadav, Lallan Yadav, Krishn Mohan Singh, Ashique Hussain and Sub Inspector Lal Dhar Singh Kushwaha. This suggests that a prima facie case of offence under Ss. 302/149 of IPC is clearly made out against all these police personnels including Vinay @ Meeter Singh, Amit alias Babloo, and Rupesh alias*

Pintu. Therefore, the cognizance of offence under Section 302/149 of IPC is hereby taken in respect of all these accused persons. They shall accordingly be summoned for the offence committed by them U/Ss. 302/149 of IPC and in this respect a separate case shall be registered” and the summoning order dated 19.03.2016 passed by Additional Sessions Judge/F.T.C. Ballia in Sessions Trial No. 296B of 2010 (State Vs. Rajveer Singh and Others), under Sections 302/149 IPC, Police Station-Manihar, District-Ballia shall stand quashed.

Order Date :- 28.07.2025
Vinay