

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No.835 of 2016**

Mr. Vikram Meghwani S/o Dilip Kumar Meghwani, Aged about 25 years, R/o Plot No.5, Block No.3, North Vasundhra Nagar, Bhilai-3, District Durg (CG).

---- Petitioner

Versus

1. State of Chhattisgarh Through Police Station Basantpur, District Rajnandgaon (CG).
2. Mr. Shanawaz Khan S/o Matluv Khan, Aged about 35 years, R/o Adarsh Nagar, Kurud, Road No.19, Kumhari, District Durg (CG).

---- Respondents

For Petitioner	Dr. Shailesh Ahuja, Advocate.
For respondent/State	Shri Bhaskar Pyasi, Panel Lawyer.
For respondent No.2	Shri Rajesh Kumar Sharma, Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order on Board**

15.12.2016

1. Instant revision under Section 397 read with Section 401 CrPC has been preferred by the complainant assailing the order dated 22.06.2015 passed by the Judicial Magistrate First Class, Rajnandgaon, in Criminal Case No.888/2015 whereby the application under Section 319 CrPC filed by the prosecution was rejected. The petitioner also intends to challenge the order dated 12.05.2016 passed by the Additional Sessions Judge (Atrocities), Rajnandgaon in Criminal Revision No.53/2015 whereby the revision preferred against the order of JMFC, Rajnandgaon, dated 22.06.2015 also got rejected.
2. The brief facts relevant for adjudication of the present petition is that, a complaint was lodged by the present petitioner in respect of an act of

cheating and fraud played by the respondent No.2 before the police Station, Basantpur, District Rajnandgaon, in Crime No.40 of 2015. The offence registered against the respondent No.2 was under Sections 381,406 and 420 IPC. In due course of time, charge sheet was filed before the concerned court on 07.04.2015 and charges were also framed on 02.12.2015. Thereafter, the matter has been proceeded for recording of prosecution evidence.

3. Pending the trial, an application under Section 319 CrPC was filed by the prosecution on 28.05.2015 seeking for impleading the wife and son of the respondent No.2 as accused persons. The said application of the prosecution was on the basis of materials in the charge sheet and memorandum statement of respondent No.2-accused who has in his memorandum, admitted commission of offence by him. He has also stated that money received by him on account of his fraudulent act that he has committed has been credited to his account and some portion of the amount has also been credited in the name of his wife and son.
4. The said application moved by the prosecution got rejected on 22.06.2015. Against rejection of said application, the prosecution preferred a revision before the revisional court i.e. Additional Sessions Judge (Atrocities), Rajnandgaon wherein the case was registered as Criminal Revision No.53/2015. The revisional court also vide order dated 12.05.2016 has rejected the revision petition upholding the order of JMFC, Rajnandgaon. However, though the application and revision petition preferred by the prosecution side has been rejected, but the prosecution did not think it proper for further assailing the two orders.

Subsequently, the present Criminal Revision has been preferred on 31.08.2016 by the complainant. The complainant has now moved this petition for the first time before this court under Section 397 CrPC assailing the two orders.

5. Learned counsel appearing for the petitioner submits that it is a case where in the contents of the charge-sheet itself it was evidently clear that the wife and son of the respondent No.2 were also beneficiaries from the act which has been committed by the respondent No.2, and therefore, since they were also beneficiaries and have got the fruit of illegal transaction made by the respondent No.2, they also ought to have been made accused persons. It is further submitted that it is a case where the application for impleading the wife and son of respondent No.2 moved by the prosecution was filed much before the charge was framed. Therefore, the court below ought to have entertained and allowed the said application for impleading the two persons also as accused along with respondent No.2.
6. It was further contended by the petitioner that both the courts below have failed to appreciate the fact that application under Section 319 CrPC could have been entertained at any stage of trial. All that the court has to look into is, whether there are sufficient materials available before the court for entertaining such application or not. The fact that there is memorandum statement of the accused respondent No.2 itself was sufficient for the court to have accepted the contention of the prosecution and should have allowed the same. Having not done so, the orders passed by the two courts below are not

sustainable and deserve to be set aside and the wife and son of respondent No.2 be also made as accused persons in the said case.

7. Counsel for the petitioner relied upon the decision of Supreme Court in case of Hardeep Singh Vs. State of Punjab & Others, reported in 2014 (3) SCC 92. According to petitioner, the Supreme Court in the said case has held that application under Section 319 CrPC could have been allowed at any stage of trial and thus, the court below has not followed the dictum laid down by the constitutional Bench of Supreme Court in Hardeep Singh (Supra).
8. Learned counsel for the State and respondent No.2-accused however opposes the petition on the ground that firstly the petitioner does not have any locus to file present revision as it is a case where the petitioner has not moved the application under Section 319 CrPC before the court below. It was the application of the State which got rejected by the court below. Therefore, if at all, if any person could be aggrieved with the orders, it would be the State and not the present petitioner and the State should have preferred the present revision and it cannot be delegated to the present petitioner.
9. It is further contended by the State and respondent No.2 that the order of the Magistrate as well as revisional court is neither bad in law nor is required to be interfered with in view of decision of Supreme Court in case of Hardeep Singh (Surpa). According to state counsel, the appropriate stage for moving application under Section 319 CrPC would be only after the evidence is recorded and based on evidence if there are corroborative materials in the charge sheet, then the

application could be entertained and not otherwise. Such stage has not reached for moving the application under Section 319 CrPC as the evidence has not commenced till now and it is listed for the evidence of the prosecution.

10. Having considered the contentions put forth on either side and on perusal of the record, it is relevant at this juncture to mention that this court very recently while deciding CrMP No.218 of 2016 on 05.12.2016 (Kapil Nirmalkar & Ors. Vs. State of Chhattisgarh & Anr.) has relied upon the constitution Bench decision of Supreme Court in case of Hardeep Singh (Supra) and in paragraph 19 it has been held that, having crossed the stage of filing of charge sheet, the only stage on which now the application under Section 319 CrPC could be moved or entertained is during the course of recording of evidence on behalf of the prosecution and in case during the course of recording of evidence if there would be some incriminating statement against the proposed accused persons by the prosecution witness, the stage for entertaining the application under Section 319 CrPC would arise.
11. The stand of this court in the said case was also based on the decision of Supreme Court in case of Hardeep Singh (Supra). In paragraphs 23, 24 and 25 this court had held as under :

“23. To carry forward the same principles the Supreme Court again recently in a Five Judges Bench judgment in the case of **Hardeep Singh v. State of Punjab & Others, AIR 2014 SC 1400**, while deciding the bunch of criminal appeals, discussed the stage of inquiry and the stage of trial. In paragraph 25 while considering the stage of inquiry, it was held as under :

“25. The stage of inquiry commences, insofar as the court is concerned, with the filing of the charge-sheet and the consideration of the material collected by the prosecution, that is

mentioned in the charge-sheet for the purpose of trying the accused. This has to be understood in terms of Section 2(g) Cr.P.C., which defines an inquiry as follows:

“2(g) “inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.””

In paragraph 27 dealing with the issue of trial it held as under :

“**27.** Trial is distinct from an inquiry and must necessarily succeed it. The purpose of the trial is to fasten the responsibility upon a person on the basis of facts presented and evidence led in this behalf. [In Moly & Anr. v. State of Kerala](#), AIR 2004 SC 1890, this Court observed that though the word ‘trial’ is not defined in the Code, it is clearly distinguishable from inquiry. Inquiry must always be a forerunner to the trial. A three-Judge Bench of this Court in [The State of Bihar v. Ram Naresh Pandey & Anr.](#), AIR 1957 SC 389 held:

“The words ‘tried’ and ‘trial’ appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words ‘tried’ and ‘trial’ have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration.” (Emphasis added)”

Again in paragraph 65 referring to a old decision, it has been

held as follows :

“**65.** In *Kishun Singh* (1993 AIR SCW 771) (supra), this Court held :

“11. On a plain reading of sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of any inquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused. This power (under Section 319(1)), it seems clear to us, can be exercised only if it so appears from the evidence at the trial and not otherwise...”

Further, in paragraphs 71, 72, 79 and 80, the Supreme Court has reiterated, as under:

“**71.** It is, therefore, clear that the word “evidence” in

Section 319 Cr.P.C. 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 power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation.

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

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79. 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 Cr.P.C. 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.

80. 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.”

24. In view of this aforesaid authoritative decision of the Five Judges Bench of the Supreme Court, nothing further remains to be adjudicated upon. All that is now to be seen in the factual context of the present case is whether the Court below was justified in the instant case in allowing the application under Section 319 of CrPC. As has been stated in the preceding paragraphs while narrating the facts, the statement of the prosecutrix and a whole lot of the witnesses was recorded on 29.10.2015 and none of the witnesses had taken the name of the Petitioners stating them to have played any role in the commission of the alleged offence. The statement of the prosecutrix under Section 164 of CrPC was recorded on 06.11.2015. Charge-sheet was filed after about more than a month's time on 14.12.2015 and the charge was also framed on 21.12.2015 by the Trial Court. However, before the evidence of the prosecution could have started the prosecutrix moved an application under Section 319 of CrPC along with an application under Section 302 seeking permission to assist the prosecution,

and both these applications were allowed leading to the filing of the present petition under Section 482 of CrPC.

25. Thus, when the judicial pronouncements referred to in the preceding paragraphs clearly stipulate that the Court could have only allowed an application under Section 319 only if in the course of recording of evidence there would have been some materials or statements being made against the accused and which were also cogent enough sufficient if not rebutted leading to the conviction of that person. What is also clear from the judicial pronouncements is that the power under Section 319 is a discretionary and extraordinary power. It is to be exercised sparingly and only in case if the situation compels or warrants the Court to allow the same. It is to be used only where strong and cogent evidence is produced during the course of evidence led before the Court that such powers has to be used and not in casual and cavalier manner. The Supreme Court has clearly spelt out that the test which 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 Courts should refrain from exercising the powers under Section 319 of CrPC. Section 319 of CrPC which stipulates that when "it appears from the evidence that any person not being the accused has committed any offence" clearly indicates that such powers can be exercised by the Court only in the course of recording of evidence which in the instant case has not commenced."

12. The Supreme Court in the case of Hardeep Singh (Supra) has also held as under :

"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.

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.

78. It is, therefore, clear that the word "evidence" in Section 319 Cr.P.C. 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 power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation.

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

While concluding the judgment, in paragraphs 117.1 & 117.2, the Supreme Court has further held as under :

"117.1. In Dharam Pal's 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 chargesheet."

- 13.** In view of said findings given by the Supreme Court as also the decision rendered by this court in case of Kapil Nirmalkar & Ors. Vs. State of Chhattisgarh (decided on 05.12.2016), this court is of the opinion that in the instant case also the Magistrate has rightly rejected the application under Section 319 CrPC as not being the appropriate

stage for moving of said application. Therefore, this court does not find any illegality or infirmity on the orders of courts below firstly rejecting the application and secondly the revision petition. However, the reluctance of this court in entertaining the present revision would not preclude the rights of the prosecution in moving the application under Section 319 CrPC at the appropriate stage in case if during the course of evidence sufficient material emanates from the statement of the prosecution witnesses.

14. It is also expected that the court below taking into consideration the peculiar facts and circumstances of the case shall try to conclude the trial as expeditiously as possible. The reason for making such an observation is that, in the instant case the charges were framed on 02.12.2015, however till date not a single witness has been examined which itself is striking the conscious of this court. Therefore, the court below is directed to ensure that necessary instructions and orders are issued for making the witnesses present before the court on the date fixed for it and to ensure that the matter is concluded as early as possible.
15. The petitioner in the instant case is also at liberty to move appropriate application for assisting the prosecution before the court below and thereafter take an appropriate steps/remedy available to him.
16. Petition stands dismissed.

SD/-
(P. Sam Koshy)
Judge