

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No.444 of 2017

Order Reserved on : 16.2.2018

Order Passed on : 15.5.2018

1. Vijay Saraswat, S/o Girdhari Saraswat, aged about 56 years, Statistics Officer, Nagar Nigam, Jaipur, Rajasthan
2. Smt. Manju Saraswat, W/o Vijay Saraswat, aged about 53 years,
Both above R/o Flat No.101-C/42, Shree Nidhi Apartment, Tarun Marg, Tilak Nagar, Jaipur, Rajasthan
3. Pawan Sharma, S/o Late Omprakash Sharma, aged about 47 years, R/o Vaishali Nagar, Jaipur, Rajasthan

---- Applicants

versus

Smt. Richa Ojha Saraswat, W/o Gourav Saraswat, R/o Flat No.101-C/42, Shree Nidhi Apartment, Tarun Marg, Tilak Nagar, Jaipur, Rajasthan, at present, D/o R.C. Ojha, R/o C-316, Babu Balaneej House, Priyadarshaniya Nagar, Raipur, District Raipur, Chhattisgarh

--- Respondent

For Applicants	:	Shri Manoj Paranjape, Advocate
For Respondent	:	Shri Virendra Verma, Advocate

Hon'ble Shri Justice Arvind Singh Chandel

C.A.V. ORDER

1. By the instant revision, the Applicants have challenged the legality, validity and propriety of the order dated 31.3.2017 passed by the 4th Additional Sessions Judge, Bilaspur in Criminal Revision No.96 of 2014 by which the Revisional Court/Additional Sessions Judge has allowed Criminal Revision No.96 of 2014 preferred by the present Respondent, set aside the order dated 20.3.2014 passed by the Judicial Magistrate First Class, Bilaspur in Criminal Case No.111 of 2013 and directed the Trial Court/Judicial Magistrate

First Class to add the present Applicants as accused and to issue them summons.

2. Facts of the case, in brief, are that a private complaint was filed by the present Respondent before the Chief Judicial Magistrate, Bilaspur against her husband Gourav Saraswat and the present Applicants for offence punishable under Sections 498A/34, 506B, 323, 34 of the Indian Penal Code. She further moved an application under Section 156(3) of the Code of Criminal Procedure before the Chief Judicial Magistrate, Bilaspur. The said application was filed by her with the allegation *inter alia* that she got married with Gourav Saraswat at Rajasthan on 8.12.2010. Present Applicant No.1, Vijay Saraswat is father-in-law of the Respondent, Applicant No.2, Smt. Manju Saraswat is mother-in-law of the Respondent and Applicant No.3, Pawan Sharma is maternal uncle of husband of the Respondent. It was alleged in the said application that they used to harass and illtreat the Respondent for demand of dowry. Police investigated the matter and recored statements of the Respondent and other witnesses and on completion of the investigation, filed a charge-sheet only against the husband of the Respondent under Section 498A of the Indian Penal Code on 2.5.2013. On 9.7.2013, charge was framed against the husband of the Respondent under Section 498A of the Indian Penal Code and the case was fixed for evidence of the prosecution. At that stage, the Respondent/wife moved an application for adding the present Applicants as accused which was rejected by the Judicial Magistrate First Class, Bilaspur vide the order dated 20.3.2014 holding that on the basis of the investigation carried out by the police and the material collected during the course of investigation, the allegations levelled against

the present Applicants are not made out at this stage. Being aggrieved by the order dated 20.3.2014, the Respondent/wife filed a revision, being Criminal Revision No.96 of 2014 before the Court of Session at Bilaspur. The 4th Additional Sessions Judge, Bilaspur, vide the impugned order dated 31.3.2017, has allowed the revision and directed the Judicial Magistrate First Class to add the present Applicants as accused and take cognizance against them. Hence, this revision.

3. Learned Counsel appearing for the Applicants submitted that when the charge-sheet was filed before the Magistrate, he had applied his mind and accepted the charge-sheet and thereafter framed the charge only against the husband of the Respondent/wife. He further submitted that once cognizance has been taken and charge has been framed, only the Trial Court has jurisdiction to exercise the powers under Section 319 of the Code of Criminal Procedure. It was further submitted that the Revisional Court has exceeded its jurisdiction and exercised the power under Section 319 of the Code of Criminal Procedure which are the powers to be exercised only by the Court having original jurisdiction. The Additional Sessions Judge has failed to appreciate that the Magistrate has not rejected the application on merits, meaning thereby the Magistrate has not refused to take cognizance and not refused to order on an application under Section 319 of the Code of Criminal Procedure. The Magistrate has turned down the prayer at that stage because that was not the stage of exercising the power under Section 319 of the Code of Criminal Procedure. If the Additional Sessions Judge is of the opinion that the order passed by the Magistrate is not sustainable in the eyes of law, he has a power to remand the matter to the Magistrate for exercising original jurisdiction under

Section 319 of the Code of Criminal Procedure or under Section 190 of the Code of Criminal Procedure. The Additional Sessions Judge has failed to appreciate the law laid down by the Supreme Court in **(2014) 3 SCC 306 (Dharam Pal v. State of Haryana)** in its correct perspective which has resulted into the erroneous order. In fact, the Additional Sessions Judge misinterpreted the law laid down by the Supreme Court in its said judgment. The Additional Sessions Judge has failed to appreciate that the facts of **Dharam Pal case** (supra) are entirely different from the case in hand. Reliance has further been placed on **(2014) 3 SCC 92 (Hardeep Singh v. State of Punjab)**.

4. Per contra, Learned Counsel appearing for the Respondent/wife supported the impugned order passed by the Additional Sessions Judge and submitted that the order is in accordance with law.
5. I have heard Learned Counsel appearing for the parties and perused the material available with due care.
6. There is no dispute that after investigation, the police filed the charge-sheet before the Chief Judicial Magistrate on 2.5.2013, charge was framed on 9.7.2013 and the case was fixed for evidence of the prosecution. At that stage, an application was filed by the Respondent/wife for adding the names of the present Applicants as accused. Once the Magistrate had taken cognizance of the offence and framed the charge, thereafter, for adding any person as an accused, power under Section 319 of the Code of Criminal Procedure can only be exercised. Section 319 of the Code of Criminal Procedure runs thus:

“319. Power to proceed against other persons appearing to be guilty of offence.–(1) Where, in the

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

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

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

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

(a) the proceedings in respect of such person shall be commenced afresh, and 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.”

7. Vide the impugned order dated 31.3.2017, the 4th Additional Sessions Judge, Bilaspur has exercised the power under Section 319 of the Code of Criminal Procedure and directed the Magistrate to take cognizance against the present Applicants, but the power under Section 319 of the Code of Criminal Procedure can be exercised by the Trial Court only and not by the Revisional Court/ Additional Sessions Judge in original jurisdiction. The Additional Sessions Judge has power to take cognizance only under Section 193 of the Code of Criminal Procedure.

8. In **Hardeep Singh case** (supra), while answering Questions No.(i), (ii) and (iii), it was held by the Supreme Court as under:

“Question No.(i) – What is the stage at which power under Section 319 Cr.P.C. can be exercised?”

25. The stage of inquiry and trial upon cognizance being taken of an offence, has been considered by a large number of decisions of this Court and that it may be useful to extract the same hereunder for proper appreciation of the stage of invoking of the powers under Section 319 Cr.P.C. to understand the meaning that can be attributed to the word ‘inquiry’ and ‘trial’ as used under the Section.

26. In *Raghubans Dubey v. State of Bihar*, AIR 1967 SC 1167, this Court held: (AIR p. 1169, para 9)

“9. ...once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence.”

27. 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.”

28. In *State of U.P. v. Lakshmi Brahman*, AIR 1983 SC 439, this Court held that from the stage of filing of charge-sheet to ensuring the compliance of provision of Section 207 Cr.P.C., the court is only at the stage of inquiry and no trial can be said to have commenced. The above view has been held to be per incurium in *Raj Kishore Prasad v. State of Bihar*, AIR 1996 SC 1931, wherein this Court while observing that Section 319 (1) Cr.P.C. operates in an ongoing inquiry into, or trial of, an offence, held that at the stage of Section 209 Cr.P.C., the court is neither at the stage of inquiry nor at the stage of trial. Even at the stage of ensuring

compliance of Sections 207 and 208 Cr.P.C., it cannot be said that the court is at the stage of inquiry because there is no judicial application of mind and all that the Magistrate is required to do is to make the case ready to be heard by the Court of Session.

29. 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 v. State of Kerala*, (2004) 4 SCC 584, 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.

30. A three-Judge Bench of this Court in *The State of Bihar v. Ram Naresh Pandey*, AIR 1957 SC 389 held: (AIR p. 394, para 6)

“6. 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.”

31. In *Ratilal Bhanji Mithani v. State of Maharashtra*, (1979) 2 SCC 179, this Court held: (SCC p. 189, para 28)

“28. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it the proceedings are only an inquiry. After the framing of charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end.”

32. In *V.C. Shukla v. State*, 1980 Supp. SCC 92, this Court held: (SCC p. 126, para 39)

“39. ...the proceedings starting with Section 238 of the Code including any discharge or framing of charges under Section 239 or 240 amount to a trial.”

33. In *Union of India v. Madan Lal Yadav*, (1996) 4 SCC 127, a three-Judge Bench while dealing with the proceedings in General Court Martial under the provisions of the Army Act 1950, applied legal maxim “*nullus commodum capere potest de injuria sua propria*” (no one can take advantage of his own wrong), and referred to various dictionary meanings of the word ‘trial’ and came to the conclusion: (SCC pp. 136 & 141-42, paras 19 & 27)

“19. It would, therefore, be clear that trial means act of proving or judicial examination or determination of the issues including its own jurisdiction or authority in accordance with law or adjudging guilt or innocence of the accused including all steps necessary thereto. The trial commences with the performance of the first act or steps necessary or essential to proceed with the trial.

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27. Our conclusion further gets fortified by the scheme of the trial of a criminal case under the Code of Criminal Procedure, 1973, viz., Chapter XIV “Conditions requisite for initiation of proceedings” containing Sections 190 to 210, Chapter XVIII containing Sections 225 to 235 and dealing with “trial before a Court of Sessions” pursuant to committal order under Section 209 and in Chapter XIX “trial of warrant cases by Magistrates” containing Sections 238 to 250 etc. It is settled law that under the said Code trial commences the moment cognizance of the offence is taken and process is issued to the accused for his appearance etc. Equally, at a sessions trial, the court considers the committal order under Section 209 by the Magistrate and proceeds further. It takes cognizance of the offence from that stage and proceeds with the trial. The trial begins with the taking of the cognizance of the offence and taking further steps to conduct the

trial.”

34. In *Common Cause v. Union of India*, (1996) 6 SCC 775, this Court while dealing with the issue held: (SCC p. 776, para 1)

“1.II(i) In case of trials before Sessions Court the trials shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure, 1973 in the concerned cases.

ii) In cases of trials of warrant cases by Magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973, while in trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the concerned accused under Section 246 of the Code of Criminal Procedure, 1973.

iii) In cases of trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked under Section 251 whether they plead guilty or have any defence to make.”

35. In *Raj Kishore Prasad v. State of Bihar*, (1996) 4 SCC 495, this Court said that as soon as the prosecutor is present before the court and that court hears the parties on framing of charges and discharge, trial is said to have commenced and that there is no intermediate stage between committal of case and framing of charge.

36. In *Narayanaswamy Naidu v. Emperor*, ILR (1909) 32 Mad 220, a Full Bench of the Madras High Court held that: (ILR p. 234)

“..... Trial begins when the accused is charged and called on to answer and then the question before the Court is whether the accused is to be acquitted or convicted and not whether the complaint is to be dismissed or the accused discharged.”

A similar view has been taken by Madras High Court subsequently in *T. Sriramulu v. K.*

Veerasalingam, ILR (1915) 38 Mad 585.

37. However, the Bombay High Court in *Dagdu Govindshet Wani v. Punja Vedu Wani*, (1936) 38 Bom.L.R. 1189 referring to *Sriramulu* (supra) held: (Bom.L.R. p. 1191)

“..... There is no doubt that the Court did take the view that in a warrant case the trial only commences from the framing of the charge But, according to my experience of the administration of criminal justice in this Presidency, which is not inconsiderable, the Courts here have always accepted the definition of trial which has been given in *Gomer Sirda v. Queen-Empress*, ILR (1898) 25 Cal 863, that is to say, 'trial' has always been understood to mean the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock and the representatives of the prosecution and, defence, if the accused be defended, present in Court for the hearing of the case.”

A similar view has been taken by the Lahore High Court in *Sahib Din v. Crown*, ILR (1922) 3 Lah. 115, wherein it was held that for the purposes of Section 350 of the Code, a trial cannot be said to commence only when a charge is framed. The trial covers the whole of the proceedings in a warrant case. This case was followed in *Fakhruddin v. Crown*, ILR (1924) 6 Lah. 176 and in *Labhsing v. Emperor*, (1934) 35 Cri.L. J. 1261 (JCC).

38. In view of the above, the law can be summarised to the effect that as ‘trial’ means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the ‘trial’ commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken.

39. Section 2(g) Cr.P.C. and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under Cr.P.C. by the Magistrate or the court. The word ‘inquiry’ is, therefore, not any inquiry relating to the investigation of the case by the

investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial.

40. Even the word “course” occurring in Section 319 Cr.P.C., clearly indicates that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial and the trial stage. The word “course” therefore, allows the court to invoke this power to proceed against any person from the initial stage of inquiry upto the stage of the conclusion of the trial. The court does not become *functus officio* even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused. The word “course” ordinarily conveys a meaning of a continuous progress from one point to the next in time and conveys the idea of a period of time; duration and not a fixed point of time. (See *CIT v. East West Import & Export (P) Ltd.*, (1989) 1 SCC 760)

41. In a somewhat similar manner, it has been attributed to word “course” the meaning of being a gradual and continuous flow advanced by journey or passage from one place to another with reference to period of time when the movement is in progress. (See *State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory*, AIR 1953 SC 333).

42. To say that powers under Section 319 Cr.P.C. can be exercised only during trial would be reducing the impact of the word ‘inquiry’ by the court. It is a settled principle of law that an interpretation which leads to the conclusion that a word used by the legislature is redundant, should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim *a verbis legis non est recedendum* which means, “from the words of law, there must be no departure” has to be kept in mind.

43. The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise

counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot re-write, recast or reframe the legislation for the reason that it has no power to legislate.

44. No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely. While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the Statute. By construction, a provision should not be reduced to a “dead letter” or “useless lumber”. An interpretation which renders a provision an otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in “an exercise in futility” and the product came as a “purposeless piece” of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was “most unwarranted besides being uncharitable.” (Vide *Patel Chunibhai Dajibha v. Narayanrao Khanderao Jambekar*, AIR 1965 SC 1457, *Martin Burn Ltd. v. Corporation of Calcutta*, AIR 1966 SC 529, *M.V. Elisabeth v. Harwan Investment & Trading (P) Ltd.*, 1993 Supp (2) SCC 433, *Sulatana Begum v. Prem Chand Jain*, (1997) 1 SCC 373, *State of Bihar v. Bihar Distillery Ltd.*, (1997) 2 SCC 453, *Institute of Chartered Accountants of India v. Price Waterhouse*, (1997) 6 SCC 312 and *South Central Railway Employees Coop. Credit Society Employees' Union v. Registrar of Coop. Societies*, (1998) 2 SCC 580.

45. This Court in *Rohitash Kumar v. Om Prakash Sharma*, (2013) 11 SCC 451, after placing reliance on various earlier judgments of this Court held: (SCC pp. 460-61 paras 27-29)

“27. The Court has to keep in mind the fact that, while interpreting the provisions of a Statute, it can neither add, nor subtract even a single word... A section is to be interpreted by reading all of its parts together, and it is not permissible, to omit any part thereof. The Court cannot proceed with the assumption that the legislature, while enacting the Statute has committed a mistake; it must proceed on the

footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act.....

28. The Statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The Courts have to administer the law as they find it, and it is not permissible for the Court to twist the clear language of the enactment, in order to avoid any real, or imaginary hardship which such literal interpretation may cause

29.under the garb of interpreting the provision, the Court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation.”

46. Thus, by no means it can be said that provisions of Section 319 Cr.P.C. cannot be pressed into service during the course of ‘inquiry’. The word ‘inquiry’ is not surplussage in the said provision.

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) Cr.P.C. can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Section 207/208 Cr.P.C., 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 of Sections 207 and 208 Cr.P.C., and committing the matter if it is exclusively triable by Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 Cr.P.C. is forbidden, by express provision of Section 319 Cr.P.C., 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.

48. It may be pertinent to refer to the decision in the case of *Raj Kishore Prasad (supra)* where, in order to avoid any delay in trial, the court emphasised that such a power should be exercised keeping in view the context in which the words “inquiry” and “trial” have been used under Section 319 Cr.P.C. and came to the conclusion that such a power is not available at the pre-trial stage and should be invoked only at the stage of inquiry or after evidence is recorded.

49. A two-Judge Bench of this Court in *SWIL Ltd. v. State of Delhi*, (2001) 6 SCC 670 held that once the process has been issued, power under Section 319 Cr.P.C. cannot be exercised as at that stage, since it is neither an inquiry nor a trial.

50. In *Ranjit Singh v. State of Punjab*, (1998) 7 SCC 149, the Court held: (SCC p. 156, paras 19-20)

“19. So from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 of the Code, that court can deal with only the accused referred to in Section 209 of the Code. There is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused.

20. Thus, once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under Section 319 of the Code can be invoked.”

51. In *Kishun Singh v. State of Bihar*, (1993) 2 SCC 16, the Court while considering the provision of the old Code, the Law Commission’s Recommendation and the provisions in the Cr.P.C., held that Section 319 Cr.P.C. is an improved provision upon the earlier one. It has removed the difficulty of taking cognizance as cognizance against the added person would be deemed to have been taken as originally against the other co-accused. Therefore, on Magistrate committing the case under Section 209 Cr.P.C. to the Court of Sessions, the bar of Section 193 Cr.P.C. gets lifted thereby investing the Court of Sessions complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be

gathered from the material available on record, though who is not an accused before the court.

52. In *Dharam Pal v. State of Haryana*, (2014) 3 SCC 306, the Constitution Bench approved the decision in *Kishun Singh* (supra) that the Sessions Judge has original power to summon accused holding that: (SCC p. 319, paras 37 & 38)

“37. the Sessions Judge was entitled to issue summons under Section 193 Code of Criminal Procedure upon the case being committed to him by the Magistrate.

38. The key words in Section 193 are that "no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code." The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said Section”

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 Cr.P.C. cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in *Dharam Pal* (CB). The dispute therein was resolved visualizing a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 Cr.P.C. is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193 Cr.P.C. confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor the legislature could 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 Cr.P.C.

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 hereinabove.

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 are 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.

Question No.(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?

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 Cr.P.C., 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 comes 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 Cr.P.C. 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 statements are called documentary evidence;

60. According to Tomlin's Law Dictionary, Evidence is "the means from which an inference may logically be drawn as to the existence of a fact. It consists of proof by testimony of witnesses, on oath; or by writing or records."

61. Bentham defines 'evidence' as

"any matter of fact, the effect, tendency or design of which presented to mind, is to produce in the mind a persuasion concerning the existence of some other matter of fact- a persuasion either affirmative or disaffirmative of its existence. Of the two facts so connected, the latter may be distinguished as the principal fact, and the former as the evidentiary fact."

62. According to Wigmore on Evidence, evidence represents:

"any knowable fact or group of facts, not a legal or a logical principle, considered with a view to its being offered before a legal tribunal for the purpose of producing a persuasion, positive or negative, on the part of the tribunal, as to the truth of a proposition, not of law, or of logic, on which the determination of the tribunal is to be asked."

63. The provision and the above-mentioned definitions clearly suggest that it is an exhaustive definition. Wherever the words "means and include" are used, it is an indication of the fact that the definition 'is a hard and fast definition', and no other meaning can be assigned to the expression that is put down in the definition. It indicates an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expression. (Vide Mahalakshmi Oil Mills v. State of A.P., (1989) 1 SCC 164, Punjab Land Development and Reclamation Corporation Ltd. v. Labour Court, (1990) 3 SCC 682, P.

Kasilingam v. P.S.G. College of Technology, 1995 Supp. (2) SCC 348, Hamdard (Wakf) Laboratories v. Labour Commissioner, (2007) 5 SCC 281 and Ponds India Ltd. v. CTT, (2008) 8 SCC 369).

64. In *Feroze N. Dotivala v. P.M. Wadhwani*, (2003) 1 SCC 433, dealing with a similar issue, this Court observed as under: (SCC p. 443, para 14)

“14. Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition. Unless there are compelling reasons to do so, meaning of a restrictive and exhaustive definition would not be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined.”

65. We, therefore proceed to examine the matter further on the premise that the definition of word “evidence” under the Evidence Act is exhaustive.

66. In *Kalyan Kumar Gogoi v. Ashutosh Agnihotri*, (2011) 2 SCC 532, while dealing with the issue this Court held: (SCC p. 544, para 33)

“33. The word “evidence” is used in common parlance in three different senses: (a) as equivalent to relevant, (b) as equivalent to proof, and (c) as equivalent to the material, on the basis of which courts come to a conclusion about the existence or non-existence of disputed facts. Though, in the definition of the word “evidence” given in Section 3 of the Evidence Act one finds only oral and documentary evidence, this word is also used in phrases such as best evidence, circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc.”

67. In relation to a Civil Case, this court in *Ameer*

Trading Corporation Ltd. v. Shapoorji Data Processing Ltd., (2004) 1 SCC 702, held that the examination of a witness would include evidence-in-chief, cross-examination or re-examination. In Omkar Namdeo Jadhao v. Second Additional Sessions Judge Buldana, (1996) 7 SCC 498 and Ram Swaroop v. State of Rajasthan, (2004) 13 SCC 134, this Court held that the statements recorded under Section 161 Cr.P.C. during the investigation are not evidence. Such statements can be used at the trial only for contradictions or omissions when the witness is examined in the court. (See also Pedda Narayana v. State of A.P., (1975) 4 SCC 153, Sat Paul v. Delhi Administration, (1976) 1 SCC 727 and State (Delhi Administration) v. Laxman Kumar, (1985) 4 SCC 476).

68. In Lok Ram v. Nihal Singh, (2006) 10 SCC 192, it was held that it is evident that a person, even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added as an accused to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence. (SCC p. 196, para 10)

69. The majority view of the Constitution Bench in Ramnarayan Mor v. State of Maharashtra, AIR 1964 SC 949 has been as under: (AIR p. 953, para 9)

“9. It was urged in the alternative by counsel for the appellants that even if the expression “evidence” may include documents, such documents would only be those which are duly proved at the enquiry for commitment, because what may be used in a trial, civil or criminal, to support the judgment of a Court is evidence duly proved according to law. But by the Evidence Act which applies to the trial of all criminal cases, the expression “evidence” is defined in Section 3 as meaning and including all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry and documents produced for the inspection of the Court. There is no restriction in this definition to documents which are duly proved by evidence.”

70. Similarly, this Court in *Sunil Mehta v. State of Gujarat*, (2013) 9 SCC 209, held that: (SCC p. 217, para 16)

“16. It is trite that evidence within the meaning of the Evidence Act and so also within the meaning of Section 244 of the Cr.P.C. is what is recorded in the manner stipulated under Section 138 in the case of oral evidence. Documentary evidence would similarly be evidence only if the documents are proved in the manner recognised and provided for under the Evidence Act unless of course a statutory provision makes the document admissible as evidence without any formal proof thereof.”

71. In *Guriya v. State of Bihar*, (2007) 8 SCC 224, this Court held that in exercise of the powers under Section 319 Cr.P.C., the court can add a new accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge sheet or the case diary.

72. In *Kishun Singh* (supra), this Court held: (SCC p. 27, paras 11-12)

“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. Therefore, this sub-section contemplates existence of some evidence appearing in the course of trial wherefrom the court can prima facie conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police. Even a person who has earlier been discharged would fall within the sweep of the power conferred by S. 319 of the Code. Therefore, stricto sensu, Section 319 of the Code cannot be invoked in a case like the present one where no evidence has been led at a trial wherefrom it can be said that the appellants appear to have been involved in the commission of the crime along with those already sent up for trial by the

prosecution.

12. But then it must be conceded that Section 319 covers the post-cognizance stage where in the course of an inquiry or trial the involvement or complicity of a person or persons not named by the investigating agency has surfaced which necessitates the exercise of the discretionary power conferred by the said provision.”

73. A similar view has been taken by this Court in *Raj Kishore Prasad* (supra), wherein it was held that: (SCC p. 499, para 8)

“8. In order to apply Section 319 Cr.P.C., it is essential that the need to proceed against the person other than the accused appearing to be guilty of offence arises only on evidence recorded in the course of an inquiry or trial.”

74. In *Lal Suraj v. State of Jharkhand*, (2009) 2 SCC 696, a two-Judge Bench of this Court held that: (SCC p. 701, para 16)

“16. A court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 Cr.P.C., the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction.”

75. A similar view has been reiterated by this Court in *Rajendra Singh v. State of U.P.*, (2007) 7 SCC 378, observing that court should not exercise the power under Section 319 Cr.P.C. on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence. The word ‘evidence’ in Section 319 Cr.P.C. contemplates the evidence of witnesses given in the court.

76. Ordinarily, it is only after the charges are framed that the stage of recording of evidence is reached. A bare perusal of Section 227 Cr.P.C. would show that the legislature has used the terms “record of the case” and the “documents submitted therewith”. It is in this context that the word ‘evidence’ as appearing in Section 319 Cr.P.C. has to be read and understood. The material collected at the stage of investigation can

at best be used for a limited purpose as provided under Section 157 of the Evidence Act i.e. to corroborate or contradict the statements of the witnesses recorded before the court. Therefore, for the exercise of power under Section 319 Cr.P.C., the use of word 'evidence' means material that has come before the court during an inquiry or trial by it and not otherwise. If from the evidence led in the trial the court is of the opinion that a person not accused before it has also committed the offence, it may summon such person under Section 319 Cr.P.C.

77. With respect to documentary evidence, it is sufficient, as can be seen from a bare perusal of Section 3 of the Evidence Act as well as the decision of the Constitution Bench, that a document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial.

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.

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

80. The unveiling of facts other than the material collected during investigation before the magistrate or court before trial actually commences is part of the process of inquiry. Such facts when recorded during trial are evidence. It is evidence only on the basis whereof trial can be held, but can the same definition be extended for any other material collected during inquiry by the magistrate or court for the purpose of Section 319 Cr.P.C.?

81. An inquiry can be conducted by the magistrate or court at any stage during the proceedings before the court. This power is preserved with the court and has

to be read and understood accordingly. The outcome of any such exercise should not be an impediment in the speedy trial of the case. Though the facts so received by the magistrate or the court may not be evidence, yet it is some material that makes things clear and unfolds concealed or deliberately suppressed material that may facilitate the trial. In the context of Section 319 Cr.P.C. it is an information of complicity. Such material therefore, can be used even though not an evidence in stricto sensu, but an information on record collected by the court during inquiry itself, as a prima facie satisfaction for exercising the powers as presently involved.

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 alongwith 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 utilize or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. This would harmonise such material with the word 'evidence' as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.

84. The word “evidence” therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 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.

Q.(ii) Does the word ‘evidence’ in Section 319 Cr.P.C. mean as arising in Examination-in-Chief or also together with Cross-Examination?

86. The second question referred to herein is in relation to the word ‘evidence’ as used under Section 319 Cr.P.C., 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 v. State of Haryana*, (2001) 6 SCC 248, 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 v. State of Punjab*, (1998) 7 SCC 149, 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 v. Mohd. Rafiq*, (2007) 14 SCC 544, it was held that the pre-requisite for exercise of power under Section 319 Cr.P.C. was 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 the case of *Harbhajan Singh v. State of Punjab*. (2009) 13 SCC 608. This Court in *Hardeep Singh* (supra) seems to have misread the judgment in *Mohd. Shafi* (supra), as it construed that the said judgment laid down that for the exercise of power under Section 319 Cr.P.C., 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 Cr.P.C.

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* (supra) and *Harbhajan Singh* (supra), all that is required for the exercise of the power under Section 319 Cr.P.C. 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 pre-requisite 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 straight-jacket 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 Cr.P.C. 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 Cr.P.C., 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 Cr.P.C., 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(s) prior to passing of an order under Section 319 Cr.P.C., as such a procedure is not contemplated by the Cr.P.C. 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(s) is obliterating the role of persons already facing trial. More so, Section 299 Cr.P.C. 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 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.”

9. From the aforesaid principles laid down by the Supreme Court, in the instant case, it is clear that rejection of the Respondent/wife's application vide order dated 20.3.2014 passed by the Judicial Magistrate First Class/Trial Court is in accordance with law. The Revisional Court/Additional Sessions Judge does not have authority to exercise power under Section 319 of the Code of Criminal Procedure and, therefore, the order dated 31.3.2017 passed by the Additional Sessions Judge is liable to be set aside. In case, any evidence is led during trial against an accused who is already not impleaded in the case, the Trial Court is empowered to summon that accused.
10. In the aforestated premises, the instant revision is allowed. The order under challenge dated 31.3.2017 is set aside.

Sd/-

(Arvind Singh Chandel)
JUDGE