

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 335 of 2019**

- Madhukar Kumbhare, S/o Shri Vitthalrao Kumbhare, working as Executive Engineer in Water Resources Department, Korba Division, aged about 58 years, R/o Block D-1, Shriram Towers, Vyapar Vihar (Bilaspur) C.G.

----Applicant**Versus**

1. State of Chhattisgarh Through : Station House Officer, Police Station Darri, Jamnipali, District Korba (C.G.)
2. Manish Rathore, S/o Mevalal Rathore, R/o SE-557, CSEB Colony, Korba East, District Korba (C.G.)

---- Respondent**And****CRR No. 337 of 2019**

- Narayan Ranjan Choudhary S/o P.c. Choudhary, working as Sub-Engineer in Water Resources Department, Korba Division, aged about 51 years, R/o B-10 Power Emperia Sharda Vihar, Korba, Thana - Kotwali Thana, District - Korba (C.G.)

----Applicant**Versus**

1. State of Chhattisgarh Through : Station House Officer, Police Station Darri, Jamnipali, District Korba (C.G.)
2. Manish Rathore, S/o Mevalal Rathore, R/o SE-557, CSEB Colony, Korba East, District Korba (C.G.)

---- Respondents**And****CRR No. 336 of 2019**

- Amarjeet Singh, S/o Shri Narendra Kumar Singh, aged about 38 years, R/o B-30, Vikas Nagar Kusmunda Police Station, Korba, District Korba (C.G.)

----Applicant**Versus**

1. State of Chhattisgarh Through : Station House Officer, Police Station Darri, Jamnipali, District Korba (C.G.)
2. Manish Rathore, S/o Mevalal Rathore, R/o SE-557, CSEB

Colony, Korba East, District Korba (C.G.)-

---- Respondents

For Applicants	:	Dr. N.K. Shukla, Sr. Advocate with Shri Vikram Sharma, Adv
For Respondent/State	:	Shri Rahul Mishra, Dy. G.A.
For Respondent No.2	:	Shri Tarun Dadsena, Adv.

Hon'ble Smt. Justice Rajani Dubey

C A V ORDER

18/07/2019

1. Since the aforesaid three revisions arise out of the common order dated 05.02.2019, they are being disposed of together by this common order.

2. Being aggrieved by the order dated 05.02.2019 passed by the Additional Sessions Judge, Katghora, District Korba, in Sessions Trial No.48/2017, whereby the applicants have been summoned under Section 319 of Cr.P.C. for facing the trial under Sections 307, 329 and 294 IPC, the applicants have come-up before this Court by way of these revisions.

03. The learned Sessions Judge took stock of the evidence which was led during the trial and came to the conclusion that the petitioners' name was in the First Information Report but they were not charge sheeted. The learned Additional Sessions Judge, relying upon the evidence of complainant Manish Rathore (PW/1), allowed the application for summoning the petitioners, in exercise of power conferred under Section 319 of Cr.P.C.

04. Before the trial Court, the facts are that FIR was lodged

by complainant Manish Rathore and, after usual investigation, police submitted charge sheet before the Court of Judicial Magistrate First class, Katghora, which was registered as Criminal Case No.76/2016 and after committal of case to the Court of Sessions, the case was registered as Sessions Trial No.48/2017 and that after lapse of more than four years, on 22.10.2018, an application under Section 319 of Cr.P.C. has been filed by the public prosecutor and the learned Sessions Judge allowed the application and summoned the petitioners as accused. Hence these revisions.

05. Learned counsel for the applicants submit that the application filed by the prosecution was not on the basis of fresh evidence or material found during the trial but was made on the material already existing on the date of FIR and statement under Section 161 Cr.P.C. was recorded. However, during the course of trial, none of the witnesses supported the version of the complainant that the present petitioners instigated the offence and, therefore, the charge sheet was filed only against the person, who, according to the Investigating Officer, was guilty of offence. He would further submit that if the language of Section 319 Cr.P.C. is analyzed thoroughly, it will be clear that power to proceed against the person appearing to be guilty of offence can be exercised only during the course of trial, or any inquiry, if 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 offences which he appears to have committed, but in the present case, the learned Sessions Judge by invoking provisions of Section 319 Cr.P.C. has acted not upon the new material or evidence brought before him, but on the evidence made by the complainant under the examination-in-chief, which was nothing but the reflection of the statement under Section 161 Cr.P.C.. He would also submit that the power to exercise powers invested upon under Section 319 of Cr.P.C. is to be used only where strong and cogent evidence occurs against a person and not in casual and cavalier manner. It has been further held that such “evidence” is required to be brought before the Court during trial and material/evidence collected by the investigating agencies could only be used for corroboration and to support the evidence recorded and examined during trial by the court to invoke the power i.e. it was clearly held by the Apex Court that only and only if strong and cogent evidence occurs then power vested under Section 319 of the Cr.P.C. can be invoked. In the present case, there is no such material available before the learned Court and no such material has been produced during the trial against the applicants, other than the statement made by the complainant himself in examination-in-chief, and therefore, the learned Sessions Judge has no power to invoke Section 319 of Cr.P.C. It has been further submitted that the material which was present at the time of

taking cognizance by the learned Court and, thereafter, at the time of the committal order made by judicial magistrate and at the time of framing charges by learned Additional Sessions Judge against the co-accused, has been the foundation of invoking Section 319 of Cr.P.C. Those material which are already in existence and apparent on the face of the charge sheet was only reiterated from the mouth of complainant during the course of the trial. The present petitioners have been arrayed as co-accused only to delay the trial because in other connected counter case the prosecution witnesses are closed. Therefore, the order passed by the learned Sessions Judge is bad in law as the same has been passed without any new material evidence. Learned counsel for the applicants placed reliance on the decisions of Apex Court in the matter of **Kailash V. State of Rajasthan and anr.** reported in **2008 CRI.L.J. 1914**, **Lal Suraj alias Suraj Singh and anr. V. State of Jharkhand** reported in **AIR 2008 SC (Supp) 1114**, **Michael Machado and another V. Central Bureau of Investigation and another** reported in **Air 200 SC 1127** and the decision of Punjab and Haryana High Court in the matter of **Jarnail Kaur V. State of Punjab** reported in **2004 CRI.L.J. 3143**.

06. On the other hand, learned State counsel supported the impugned order of the learned Sessions Judge.

07. Heard learned counsel for the parties and perused the material on record.

08. Section 319 Cr.P.C. prescribes the procedure to proceed against the person appearing to be guilty of offence, which reads 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 for 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.”

08. The Constitutional Bench of Hon'ble the Apex Court in

the matter of **Hardeep Singh and Ors. V. State of Punjab and Ors** reported in **AIR 2014 SC 1400**, held as under:-

A. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 Code of Criminal Procedure provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Code of Criminal Procedure has to be complied with before he can be summoned afresh."

09. Thus, in view of the aforesaid judicial pronouncement of the Supreme Court, and considering the fact that the names of the applicants were already in the FIR, but no charge sheet was filed against them, and further considering that the names of applicants were taken by the complainant Manoj Rathore (PW/1) in examination-in-chief and the trial has not been completed yet, the trial Court has power to summon such person and they can be tried along with the accused already facing trial. The trial Court has not committed any error in summoning the applicants. This court do not find any illegality or perversity in the order impugned warranting interference by this Court.

10. The aforesaid criminal revision petitions are liable to be dismissed and are hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE