

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 777 of 2013**

1. Chokhelal Chandrakar, S/o Late Hulsingh Chandrakar, aged about 55 years.
2. Vijay Chandrakar, S/o Late Hulsingh Chandrakar, aged about 52 years.

Both are R/o Village Amlidih, P.S.- New Rajendra Nagar, Civil & Revenue Distt.- Raipur, Chhattisgarh.

---- Petitioners

Versus

1. Prakash Kalash S/o Late Sukhdev Singh Kalash, R/o V.I. Road, Raipur, P.S.- New Rajendra Nagar, Civil & Revenue Distt. Raipur, Chhattisgarh.
2. Nitin Shah S/o Late Madanlal Shah, R/o Shyam Nagarm Road, Katora Talab, Raipur, P.S.- Civil Line, Civil & Revenue Distt. Raipur, Chhattisgarh.
3. Sunil Singh S/o Bansi Singh, R/o 6115 D.L.F. City Gurgaon, Civil & Revenue Haryana.
4. The Collector Raipur, through State of Chhattisgarh, Raipur, Distt. Raipur, Chhattisgarh.

--- Respondents

For Petitioners	:	Mr. Awadh Tripathi, Advocate
For Respondents No. 1 & 2	:	Mr. A.K. Prasad, Advocate
For State/Respondent No. 4	:	Mr. Anant Bajpai, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03.04.2019

1. This criminal miscellaneous petition under Section 482 of Cr.P.C. is directed against the order dated 23/07/2013 passed in Criminal Revision No. 112/2012 whereby learned Fourth Additional Sessions Judge, Raipur has affirmed the order dated 29/03/2012 passed by learned Judicial Magistrate First Class, Raipur in Criminal Complaint case No. 206/2011 in which the said Court, by exercising the power under Section 319 of the Cr.P.C., has directed to add the present petitioners as accused for offence under Section 420 read with Section 34 of the IPC.
2. In the application under Section 156 (3) of Cr.P.C. filed by respondents No. 1 & 2, learned trial Court converted the said application under Section 200 of the Cr.P.C. and directed registration of offence against respondent No. 3 i.e. Sunil Singh and one Shiv Narayan for offence under Section 420 read with Section 34 of the IPC vide order dated 28/03/2011. Thereafter, no further and additional evidence could be recorded as case was not fixed for recording evidence. In the meanwhile, respondents No. 1 & 2 filed an application stating that cognizance be also taken against the present petitioners as they have also committed offence along with respondent No. 3 and Shiv Narayan as their names were inadvertently omitted from getting mentioned in the complaint, which the trial Court has allowed vide order dated 29/03/2012 holding that their involvement is also *prima facie* apparent from the material evidence on record and therefore, they also be added as accused persons. It was challenged in the revision petition but they remained unsuccessful.
3. Mr. Awadh Tripathi, learned counsel for the petitioners submits that trial Court is absolutely unjustified in directing the registration of

offence and taking cognizance against the petitioners under Section 420 read with Section 34 of the IPC. After registration of offence against respondent No. 3 & Shiv Narayan vide order dated 28/03/2011, no further evidence was recorded and therefore, Section 319 of the Cr.P.C. could not have been exercised by learned Judicial Magistrate. He further submits that learned Sessions Judge perpetuated illegality by affirming the said order of the learned Judicial Magistrate. As such, the order dated 23/07/2013 is liable to be set aside.

4. Mr. A.K. Prasad, learned counsel for respondents No. 1 & 2 submits that *prima facie* material was already available which remained unnoticed by learned Judicial Magistrate while cognizance was taken against Respondent No. 3 & Shiv Narayan which was brought to the notice of the learned Judicial Magistrate by filing the application. Learned Judicial Magistrate also finding *prima facie* their involvement, directed for addition of the present petitioners as accused, which is strictly in accordance with law and thus, revisional Court is absolutely justified in rejecting the revision preferred by the petitioners.
5. I have heard learned counsel for the parties, considered their rival submissions made herein and went through the records with utmost circumspection.
6. The Supreme Court in the matter of ***Suman Vs. State of Rajasthan & Anr.***¹ has held as under :-

“16. [Section 319](#) Cr.P.C. applies to all the Courts including the Sessions Court. It empowers the Court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried

¹ (2010) 1 SCC 250

along with other accused. If such person is not attending the Court, he can be arrested or summoned. If he is attending the Court, although not under arrest or upon a summons, he can be detained by such Court for the purpose of inquiry into, or trial of the offence which he appears to have committed. Sub-section (4) lays down that where the Court proceeds against any person under sub-section (1), the proceedings in respect of such person shall be commenced afresh and witnesses are reheard. ”

7. Constitution Bench of the Supreme Court in the matter of ***Hardeep Singh Vs. State of Punjab & Others***² has considered the scope and ambit of Section 319 of the Cr.P.C. and held as under:-

“105. Power under [Section 319](#) Cr.P.C. 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 unrebutted, 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."

8. Reverting to the facts of the present case, it is quite clear that though on material available on record upon the enquiry, learned Judicial Magistrate took cognizance of the offence against respondents No. 3 and Shiv Narayan by order dated 28/03/2011 and thereafter, the matter proceeded but no further evidence was recorded or brought on record. Thereafter, respondents No. 1 and 2 moved the application to the learned Judicial Magistrate that the present petitioners have also committed the offence but their names were inadvertently omitted in the complaint and could not be impleaded as accused therefore, they also be added as accused to which the trial Court has found favour with. Therefore, it is a case where on the basis of evidence which was already available at the time of taking cognizance against respondent No. 3 and one other co-accused namely Shiv Narayan on the same

set of evidence, learned Judicial Magistrate has reviewed the entire evidence already available and decided to take cognizance against the petitioners. As such, no additional evidence was brought by making enquiry. This order of the learned Judicial Magistrate is nothing but review of the earlier order taking cognizance which is barred by Section 362 of the Cr.P.C.

9. In the consequence of the aforesaid legal discussion, the impugned order passed by the learned Additional Sessions Judge dated 23/07/2013 as well as the order passed by learned Judicial Magistrate dated 29/03/2012, both are set aside and the application filed by the respondents No. 1 & 2 is rejected. However, respondents No. 1 & 2 are at liberty to file the application under Section 319 of the Cr.P.C. at appropriate stage, if any.

10. With the aforesaid liberty, this criminal miscellaneous petition under Section 482 of Cr.P.C stands finally disposed off.

Sd/-

(Sanjay K. Agrawal)

Judge