

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.3226 OF 2019

Mr. Ashik R. Shah & Ors. ... Petitioners
Vs
Metal Rolling Works Ltd.
& Anr. ... Respondents

...

Mr. Rajendra A. Shirodkar, Sr. Adv. for the Petitioners.

Mr. Vineet Naik i/by Mr. Sumanth Anchan for
Respondent No.1.

Mr. A.R. Patil , APP for the Respondent No.2-State.

CORAM : SANDEEP K. SHINDE J.
DATE : OCTOBER 11, 2021.

JUDGMENT :

Rule.

2 Rule made returnable forthwith. With consent
of the parties, the petition is taken up for final hearing.

3 This Petition under Article 227 of the Constitution of India challenges the order purportedly passed in exercise of power under Section 319 of the Code of Criminal Procedure, 1973 ('Cr.P.C.' for short) by the learned Magistrate in CC No.181/SW/09.

4 Pending trial, the complainant moved an application for impleadment of the petitioners as accused in terms of Section 319 of the Cr.P.C. The impugned order reads as under:

"Issue notice to proposed accused named in the application".

5 Feeling aggrieved by this order, petitioners have moved this Court.

6 Heard Mr. Shirodkar, the learned Senior Counsel for the petitioners and Mr. Naik, the learned Senior Counsel

for the respondent no.1.

7 Mr. Shirodkar submitted that Section 319 of the Cr.P.C. does not contemplate issuance of notice to the proposed accused. He would submit that failure of the Court to pass a reasoned or speaking order in exercise of the powers while adding a person, who is not an accused, as an accused by invoking the provisions of Section 319 of the Cr.P.C. is illegal and cannot be sustained. On these two grounds, Mr. Shirodkar seeks to quash the impugned order.

8 Mr. Naik the learned counsel appearing for the respondent no.1 contended that since provisions of Section 319(1) does not mandate that 'Speaking Order' should be passed by the Court while adding a person, who is not implicated in the case and, therefore, the order cannot be said to be illegal or vitiated for want of 'reasoned order'.

9 Section 319 of the Cr.P.C. reads as under:

“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. “

Although the provisions of Section 319(1) of the Cr.P.C. do not in terms mandate the passing of a 'Speaking Order', the powers of the Court are to be exercised only in the compelling reasons and, therefore, it is required to record elaborate reasons since when matters are carried to the higher Courts, reasons recorded facilitate the higher Courts to understand as to what weighed with the learned Judge while passing the impugned order. Herein, the learned trial Judge has issued notice to the proposed accused, which is not contemplated under Section 319 of the Cr.P.C. Plain reading of Section 319 of the Cr.P.C. imply that if it appears from the 'evidence', that any person not being the accused, has committed an offence for which such person would be tried together with the accused, the Court is empowered to try such persons for the offence which, he appears to have committed. Therefore, Sub-section (1) of Section 319 contemplates that while exercising the powers complicity of other person in the offence is visible from the evidence. In

the case of **Manjeet Singh v. State of Haryana and Ors.**
2021 SCC OnLine SC 632, the Hon'ble Supreme Court in
paragraph 83 held thus:

"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 utilise 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." (emphasis supplied)

10 The above observations were made while answering the question, Whether the word "(Evidence)" used in Section 319(1) Cr.P.C. could only mean evidence tested by the prosecution or the Court can exercise the

powers under the said provision, even on the basis of statement made in the examination-in-chief of the witnesses. These observations imply that while adding a person not being an accused in the case, the Court should record the reasons before issuing summons to any such person.

11 For the reasons stated, the impugned order is quashed and set aside. In consequence, the learned Judge shall pass an appropriate reasoned order in exercise of the powers under Section 319 of the Cr.P.C. on an application moved by the complainant.

12 Petition is allowed in the aforesaid terms.

13 Rule is discharged.

(SANDEEP K. SHINDE, J.)