

**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.4445 of 2011**

***Nalini Kanta Mohanty and others*** .... ***Petitioner***

*versus-*

***State of Orissa*** .... ***Opposite Party***

**CORAM: JUSTICE S. PUJAHARI**

**ORDER**

**28.03.2022**

**Order**  
**No.**

02.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioners with a prayer to set aside the order dated 15<sup>th</sup> November, 2010 passed by the learned Additional Sessions Judge, Jagatsinghpur in S.T. Case No.220/73 of 2007 wherein the petition filed by the prosecution to array the Petitioners as accused persons in the case has been allowed.
3. Heard the learned counsel for the parties.
4. As it appears, from the impugned order, the learned trial court have arrayed the Petitioners as accused, as it was from the evidence tendered satisfied of the fact that if they are tried together with the accused persons already on record there is possibility of the conviction of those persons, sought to be added under Section 319 of Cr.P.C.

5. No doubt, in this case trial court has arrayed the Petitioners as an accused also taken note of the F.I.R. allegations, which are not germane for the purpose, but besides the trial court taking note of the evidence of the witnesses examined and that evidence if would go un rebutted, the same would result in conviction of them, decided to proceed against them under Section 319 of Cr.P.C.

6. In the case of ***Hardeep Singh v. State of Punjab and Ors., reported in (2014) 3 SCC 92***, the Apex Court at paragraph-106 have held as follows:-

*“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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused.”*

7. In view of such authoritative pronouncement of a constitution Bench of the Apex Court with regard to satisfaction that is required to be recorded to array someone as accused, who has been left out, in

exercise of power under Section 319 of Cr.P.C., which is more than a mere prima facie case but less than, i.e., required for conviction, when the trial court recording a satisfaction of higher standard, i.e., if the evidence adduced goes unrebutted that would end in conviction, decided to proceed against the Petitioner under Section 319 of Cr.P.C., this Court finds no reason much less any good reasons to interfere with the order impugned.

8. Accordingly, this petition is devoid of merit and, as such, the same stands dismissed.

9. However, on appearance of the Petitioners, if not already appeared, before the Court in seisin over the matter within six weeks hence and make a motion for bail, the Court in seisin over the matter shall release them on bail in connection with the aforesaid case on such terms and conditions as it may deem just and proper.

**(S. Pujahari)**  
**Judge**

*DA*