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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 4774/2014, CRL.M.A. 17161/2014, CRL.M.A. 3129/2016,
CRL.M.A. 962/2019

ABHISHEK VERMA

..... Petitioner

Through: Mr.Maninder Singh, Sr.Adv along
with Mr.Dinhar Takial, Ms.Aekta
Vats and Ms.Smriti Asmita,
Advocates.

versus

CBI

..... Respondent

Through: Mr.Rajesh Kumar, SPP for CBI and
Ms.Mishika Pandita, Advocate.

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Date of Decision:10th April, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present petition has been filed with the following prayers:

*a. Pass an order setting aside the order dated 04.07.2014
passed by the Ld. Spl. Judge, (CBI) Patiala House Court, New*

Delhi in RC No: AC1 2012 A0011 U/S: 120B, 420 & 511 of IPC. Section 66A (b)(c) of IT Act, 2000 & Section 8 of P.C Act; b. Pass an order summoning the above-mentioned persons as accused more specifically mentioned under Para G of the grounds of this Petition to face trial for the offences committed by them;

2. The learned senior counsel for the petitioner submits that the application under Section 319 Cr. P.C. for summoning Mr. C. Edmonds Allen was rejected by the Court vide the impugned order dated 04.07.2014.
3. Learned Senior counsel submits that the learned Trial Court while dismissing the application has *inter alia* taken a view that the petitioner had not pointed out any evidence on the record to show the necessity to summon Mr. C. Edmonds Allen. However, it has been stated that another Crl. M.C. bearing no. 10/2021, this Court has vide order dated 08.02.2023 permitted the examination and cross-examination of Mr C. Edmonds Allen as the witness in this present case. Learned senior counsel submits that in pursuance to this order, the learned Trial Court has fixed 13/14.04.2023 for examination and cross-examination of the said witness. The confirmation in this regard has already been received from Consulate General. Learned senior counsel submits that he would be satisfied if he is given the liberty to move a fresh application under Section 319 Cr. P.C. for summoning Mr. C. Edmonds Allen as an accused in view of the fact that now entire prosecution evidence has been led.
4. Learned senior counsel thus submits that the present petition may be disposed of with the liberty to the petitioner to move a proper application under Section 319 Cr. P.C. before the learned Trial Court for summoning Mr. C. Edmonds Allen on the basis of the new evidence/material on record.
5. Sh. Rajesh Kumar, SPP for the CBI submits that the impugned order may not be set aside as setting aside this order and moving a fresh

application under Section 319 Cr. P.C. would cause inordinate delay in the proceedings.

6. Learned Senior counsel in response to the above undertakes that he is conscious of the time limit laid down by the Hon'ble Supreme Court and will not take any adjournment for the disposal of this application on his part.
7. I have considered the submissions of both the parties.
8. Section 319 Cr. P.C. is an important provision in the code of procedure the basic purpose of which is that if in the course of any inquiry, or trial, it appears from the evidence that any person who has not been named as an accused has committed any offence and can be tried together, the court may proceed against such person for the offence which he appears to have committed. The bare perusal of the provision makes it clear that the intention of the legislature is that if there is evidence on record against someone then the said person should not scot free. The duty is also imposed upon the Court to see that if there is material on record to show that an individual has committed an offence he should be dealt with accordingly under the relevant provisions of law. The purpose of the law is the final adjudication of the matter after taking into account the entire evidence.
9. In this regard, it is important to take into account the judgement of the Hon'ble Supreme Court in ***Sukhpal Singh Khaira v. State of Punjab*** (2023) 1 SCC 289 wherein it was *inter alia* held as under:

“33. In that view of the matter, if the court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section

319 CrPC can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion. While arriving at such conclusion what is also to be kept in view is the requirement of sub-section (4) to Section 319 CrPC. From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused. In a case where the learned Sessions Judge exercises the power under Section 319 CrPC after recording the evidence of the witnesses or after pronouncing the judgment of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of Section 273 CrPC. As against the accused who has been summoned subsequently a fresh trial is to be held. However while considering the application under Section 319 CrPC, if the decision by the learned Sessions Judge is to summon the additional accused before passing the judgment of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgment is required to be withheld and the application under Section 319 CrPC is required to be disposed of and only then the conclusion of the judgment, either to convict the other accused who were before the Court and to sentence them can be proceeded with. This is so since the power under Section 319 CrPC can be exercised only before the conclusion of the trial by passing the judgment of conviction and sentence.

34. Though Section 319 CrPC provides that such person summoned as per sub-section (1) thereto could be jointly tried together with the other accused, keeping in view the power available to the court under Section 223 CrPC to hold a joint

trial, it would also be open to the learned Sessions Judge at the point of considering the application under Section 319 CrPC and deciding to summon the additional accused, to also take a decision as to whether a joint trial is to be held after summoning such accused by deferring the judgment being passed against the tried accused. If a conclusion is reached that the fresh trial to be conducted against the newly added accused could be separately tried, in such event it would be open for the learned Sessions Judge to order so and proceed to pass the judgment and conclude the trial insofar as the accused against whom it had originally proceeded and thereafter proceed in the case of the newly added accused. However, what is important is that the decision to summon an additional accused either suo motu by the court or on an application under Section 319 CrPC shall in all eventuality be considered and disposed of before the judgment of conviction and sentence is pronounced, as otherwise, the trial would get concluded and the court will get divested of the power under Section 319 CrPC. Since a power is available to the court to decide as to whether a joint trial is required to be held or not, this Court was justified in holding the phrase, "could be tried together with the accused" as contained in Section 319(1) CrPC, to be directory as held in Shashikant Singh which in our opinion is the correct view."

10. In view of the submissions made the impugned order dated 04.07.2014 is set aside, the present petition stands disposed of with the liberty to the petitioner that he may move an application under Section 319 Cr. P.C. to summon Mr. C. Edmonds Allen in accordance with the law. The learned Trial Court shall dispose of the application in accordance with the law after taking into account the spirit and intention of Section 319 Cr. P.C. However, it is clarified that this

Court has not gone into the merits of the case and any expression made herein shall not tantamount to be an expression on the merits of the case. Both parties are at liberty to take rival contentions before the learned Trial Court.

11. Order *dasti*.

DINESH KUMAR SHARMA, J

APRIL 10, 2023

Pallavi

