



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 64 OF 2025

Ritesh Ashok Deshmukh And Another

.. Appellants

Versus

The State Of Maharashtra And Another

.. Respondents

Mr. Nikhil S. Biyani, Advocate for the Appellants.

Smt. A. S. Deshmukh, APP for Respondent No. 1.

Mr. R. M. Gaikwad, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATE : 18th JULY, 2025.

PER COURT :-

. Heard the parties.

2. The appellants have challenged an order passed by the learned Additional Sessions Judge in Special Case No. 106/2020 thereby issuing summons to the present appellants by invoking powers under Section 319 of the Code of Criminal Procedure (for short "Cr.P.C.") dated 26.09.2024. FIR was lodged against the father of the appellants and present appellants by the informant. While filing the charge-sheet, the Police filed charge-sheet only against Rajabhau Digambar Deshmukh and Ashok Babruwan

Deshmukh i.e. only against two persons. In the charge-sheet itself, it is stated that, there is no sufficient material against these two appellants. In the trial, in deposition of PW-2 he mentioned that the present appellants also assaulted the informant and his wife. There were abuses given to the wife of the informant. On the basis of such evidence, prosecution filed an application (Exh. 59) for adding the present appellants as accused. On that application the learned Additional Sessions Judge passed an order and issued summons against the appellants. The appellants are, therefore, before this Court.

3. This Court has heard learned advocate for the appellants, learned A.P.P. for State and learned advocate for respondent No. 2.

4. It is the case of the appellants that, merely because the names of the appellants are mentioned in the evidence cannot be taken to be sufficient to issue notice by invoking powers under Section 319 of the Cr.P.C. In the present case, in the FIR four accused persons were named. On investigation, however, the Police found that there is material only against two persons. The names of these two appellants were specifically dropped and no

charge-sheet was filed against them. Now, in the evidence only their presence is shown. There is only one statement recorded in which the names of the appellants mentioned by PW-2 that itself cannot be said to be sufficient. The learned advocate relies upon the judgment in the case of Brijendra Singh and others Vs. State of Rajsthan reported in (2017) 7 SCC 706. He specifically relies on paragraph No. 12 of the said judgment. He thus prays for quashing and setting aside the impugned order.

5. The learned A.P.P. vehemently opposes the appeal. She submits that, in the evidence of PW-2 not only the names of the appellants are appearing, but specific role is also shown saying that they assaulted the PW-2 and his wife. They also abused his wife in filthy language. In addition, she submits that, in fact, during the investigation also their names were revealed. In a statement of Arun Gulab Dhale specific role is attributed to the appellants. Their names and the role are stated even in the statements of Karan Sonwane and Shatrughna Sonwane. Thus, there was sufficient material. She prays for rejection of the appeal.

6. The learned advocate for respondent No. 2 also vehemently opposes the petition. He submits that, merely because previous enmity is shown, is no reason to set aside the order.

7. This Court has heard the parties. Entire thrust of the argument in the appeal is that, because of the previous enmity the names of these two appellants are mentioned in the evidence by PW-2. He has taken this Court to various statements and the cross-examination of other witnesses showing that there is previous enmity. However, this is not a stage to appreciate the evidence by this Court. The trial is still pending. The Trial Court would certainly appreciate the evidence by considering the arguments of the appellants.

8. In the case of Brijendra Singh and others (*supra*), paragraph No. 12 reads as under :

“12. The moot question, however, is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by the Constitution Bench in *Hardeep Singh's case* and answered in the following manner :

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. *Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter.* A two-Judge Bench of this Court in *Vikas v. State of Rajasthan [(2014) 3 SCC 321]*, held that on the *objective satisfaction* of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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105. *Power under Section 319 CrPC 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 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.

(emphasis supplied)”

9. This Court has considered the said judgment. This Court finds that, in the present case the said judgment is not applicable as in the present case there is specific role alleged against the present appellants.

10. In the present case, it is seen that there is specific role attributed to the appellants by the witness in his evidence. This Court does not find any perversity or illegality in the order passed by the learned Additional Sessions Judge. This Court does not find any reason to interfere with the impugned order. The writ petition, therefore, stands dismissed.

(KISHORE C. SANT, J.)

PS.B.