

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.3280 OF 2024

Chandan Suraj Jaiswar & Anr.	...Petitioners
<i>Versus</i>	
The State of Maharashtra & Ors.	...Respondents

Mr. Mahesh Vaswani a/w. Ms. Shreya Tiwari, Ms. Aishwarya Kadam i/b. Ms. Lakshita Fatnani, for the Petitioners.
Mr. S. H. Yadav, APP, for the Respondent No.1-State.
Mr. Sachin Tambe, MIDC Police Station, Mumbai, present.

CORAM: MADHAV J. JAMDAR, J.
DATED : 30th JUNE 2025

JUDGMENT:

1. Heard Mr. Vaswani, learned Counsel appearing for the Petitioners and Mr. Yadav, learned APP appearing for the Respondent No.1-State.

2. This Writ Petition is filed by Chandan Suraj Jaiswar i.e. accused No.1 and Suraj Vishwanath Jaiswar i.e. father of the accused No.1. The challenge in this Writ Petition is to the order dated 31st August 2023 passed by the learned Additional Sessions Judge, City Civil & Sessions Court, Greater Mumbai below Exhibit-121 in Sessions Case No.316 of 2014. By the impugned order, the

said Application bearing Exhibit-121 has been rejected. The Petitioner No.1 - Accused No.1 has sought the following reliefs in said Application bearing Exhibit-121:

*“A) **This Hon’ble Court be pleased to allow this application u/s. 319 of Criminal Procedure Code, 1973 and summon and try the PW1/Mrs. Karuna Jitendra Yadav and her husband PW2/Mr. Jitendra Ramkhilavan Yadav as accused in the above matter for the offence of extortion.***

B) This Hon’ble Court be pleased to issue directions under section 156(3) of Cr.P.C. to the Investigating Officer in the above case to investigate the role of the proposed accused PW-1/Complainant, Mrs. Karuna Jitendra Yadav, and Pw-2/Complainant’s husband, Mr. Jitendra Yadav, and to summon and verify the voice recordings of concerned including of the DW-2/Applicant’s father, Mr. Suraj Jaiswar, including voice samples of newly proposed accused as may be needed by the Investigating Officer of this case or as may be considered proper by this Hon’ble Court.

C) This Hon’ble Court be pleased to direct the Investigating Officer in the above matter to record and voice samples of PW-1/Complainant and PW-2/Complainant’s husband and DW-2/Applicant’s father.

D) This Hon’ble Court be pleased to direct the Investigating Officer to investigate the above matter and file a report.

E) This Hon'ble Court be pleased to grant liberty to the Applicant to make further application in regard with further prayers as may be essential to assist this Hon'ble Court to arrive at a just decision of the case."

(Emphasis added)

3. The said Application has been rejected by the learned Trial Court by the impugned order dated 31st August 2023 on the ground that under Section 319 of the Code of Criminal Procedure, 1973, ("Cr.P.C."), the Court can proceed against any person not being the accused for any offence for which such person could be tried together with the accused. Learned Trial Court has also taken into consideration Section 223 of the Cr.P.C., which makes provisions regarding the persons who can be charged and tried together. The learned Trial Court further observed that the allegations which are part of the Application bearing Exhibit-121 shows that the said instances have taken place after FIR was lodged against the accused and accused has raised the defence of extortion against the Informant and her husband. It has been further observed that these witnesses are not the accused persons in the FIR and that it is not part of the same transaction. On the

other hand, the Informant is victim and her husband is witness of the prosecution.

4. The learned Trial Court has also observed that the prosecution has completed the evidence in the year 2018 and thereafter, accused filed application for examination of the defence witnesses and since last five years, accused is examining the defence witnesses. It has been further observed that the victim and her husband cannot be prosecuted in this case and even the said allegations are not part of the offence, for which the accused are facing trial.

5. In view of the above reasoning recorded by the learned Trial Court, it is the contention of Mr. Vaswani, learned Counsel appearing for the Petitioners that for the purpose of Section 319 of the Cr.PC., it is not necessary that same allegations should be there against the accused and such person contemplated under Section 319 of the Cr.PC.. Learned Counsel submitted that under Section 319 of the Cr.PC. 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.

6. Mr. Vaswani, learned Counsel, relied on the decision of the Supreme Court in the case of *Hardeep Singh vs. State of Punjab & Ors.*¹ and more particularly, on paragraph 117 of the same where the Supreme Court has summarized the conclusions with respect to interpretation of Section 319 of the Cr.P.C.. Mr. Vaswani, learned Counsel also relied on the decision of the Supreme Court in the case of *Amitbhai Anilchandra Shah vs. Central Bureau of Investigation & Anr.*² and he pointed out the factual position as set out in paragraph 15 of the said decision and also pointed out paragraph 58 which records summary of conclusions.

7. Mr. Vaswani, learned Counsel also pointed out cross-examination of PW 1 i.e. victim and PW 2 i.e. husband of the victim and submitted that the said evidence clearly shows the involvement of PW 1 and PW 2 in the crime of extortion. He therefore, submitted that the learned Trial Court has committed

1 (2014) 3 SCC 92

2 (2013) 6 SCC 348

grave illegality and irregularity in rejecting the said Application bearing Exhibit-121 filed under Section 319 of the Cr.P.C..

8. On the other hand, Mr. Yadav, learned APP submitted that on 28th January 2014 the First Informant has lodged FIR alleging that the Petitioner No.1 i.e. accused No.1 and co-accused i.e. accused No.2 have committed rape on her and therefore, FIR has been lodged under Sections 376, 377, 307, 392, 452, 342 r/w 34 of the Indian Penal Code, 1860 (“**IPC**”). Learned APP submitted that the allegation in the said Application bearing Exhibit-121 is that PW 1- victim and PW 2- husband of the victim have started demanding money and they assured the accused that if monies are paid to them, PW 1 would not give evidence against the accused. Learned APP submitted that both these offences are different, distinct and separate and therefore, by exercising power under Section 319 of the Cr.P.C., both these persons i.e. PW 1-victim and PW 2-husband of the victim cannot be tried together along with the accused who are facing serious charges of rape.

9. Before proceeding further, it is necessary to set out the prosecution case as reflected in the FIR and also particularly

reflected in the evidence of PW 1- victim. The PW 1-victim has stated in her deposition that on 28th January 2014 at about 03:30 p.m. to 04:00 p.m., accused Chandan Jaiswal and accused Mohd Ali Shaikh had knocked the door. Accused-Chandan Jaiswar told her that he wants to examine the receipt of gas cylinder and after checking the papers, she informed the Petitioner No.1 i.e. accused No.1-Chandan Jaiswar that the receipt of gas cylinder was not traceable. Thereafter, both the accused entered inside the house and told her that they would check the receipt. At that time said accused-Chandan Jaiswar took out the regulator of cylinder and made signal to accused No.2-Mohd. Ali Shaikh. She has further stated that as she was doubting them, she told them to go out and that she would search for the receipt. However, the accused forcibly closed her mouth by his hand and pushed her towards wall. Thereafter, the Petitioner No.1 i.e. accused No.1-Chandan Jaiswar told the PW 1 to remove her clothes and thereafter threats were given that she would be killed and thereafter, both the accused have committed rape on the victim. PW 1 has stated that she waited for her husband to come and thereafter, the FIR was lodged on 28th January 2014 at 04:30 p.m.

10. In this background of the matter, it is required to note the contention which has been raised by the Petitioner No.1 i.e. accused No.1 in the said Application bearing Exhibit-121. Paragraph No.3 of the said Application is relevant, which reads as under:

“3) The Applicant further states that there were multiple instances between 05/02/2016 to 14/03/2016, where the Complainant and her husband have made extortion demands from the Applicant’s father, Suraj Jaiswar for Rs.5,00,000/- and the Applicant’s father has also the voice recordings of these extortion demands which are already on record of this Hon’ble Court and have been played and marked exhibited also. The Complainant and her husband had also demanded money in the court while hearing of the above matter on 14/03/2016. The Applicant states that the extortion demands were made by the Complainant and her husband for Rs.5,00,000/- assuring that the Complainant will not depose a word against the Applicant if the demand of Rs.5,00,000/- is complied with and if the amount demanded is not paid by the Applicant’s father, the same shall lead to consequences where the Complainant stated of deposing against the Applicant and making sure that the Applicant is sentenced to death. The Applicant’s father has already made a written Police Complaint dated 04/04/2016 to the Senior Police Inspector of MIDC Police Station, Mumbai and also sent letter to superior police officers and to the Hon’ble Chief Minister, Maharashtra against the Complainant and her husband in respect of extortion demands and has recorded his statement also on 06/04/2016 at MIDC Police Station, Mumbai and the Applicant’s

*father's Suraj Jaiswar's statement is also on record of this Hon'ble Court and marked as **EXHIBIT-107** on 21/10/2021."*

(Emphasis added)

Thus, what is sought to be contended by the Petitioner No.1 i.e. accused No.1 is that there were multiple instances between 05/02/2016 to 14/03/2016 where the Complainant and her husband have demanded from the accused's father Rs.5,00,000/- and the accused's father is having voice recordings of this extortion calls and therefore, PW1- victim and PW 2- husband of the victim should be tried for the offence of extortion along with the present Petitioner No.1 i.e. accused No.1 and co-accused.

11. In view of the said contention, it is necessary to set out Section 319 of the Cr.P.C., which 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 the 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.”

(Emphasis added)

Thus, Section 319 of the Cr.P.C. contemplates that 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 same can be done by exercising power under Section 319 of the Cr.P.C..

12. In view of the above requirement of Section 319 of the Cr.P.C., the learned Trial Court has considered the said request by examining Section 223 of the Cr.P.C.. Section 223 of the Cr.P.C. is

concerning persons who can be charged and tried together. Section 223 of the Cr.P.C. is as under:

“223. What persons may be charged jointly.—The following persons may be charged and tried together, namely:—

(a) persons accused of the same offence committed in the course of the same transaction;

(b) persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) persons accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such lastnamed offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating

to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the [Magistrate or Court of Session] may, if such persons by an application in writing, so desire, and [if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.”

(Emphasis added)

Thus, what is *inter alia* contemplated by Section 223 of the Cr.P.C. is that persons accused of same offence committed in the course of the same transaction, persons accused of an offence and persons accused of abetment of, or attempt to commit, such offence, persons accused of more than one offence of the same kind within the meaning of section 219 committed by them jointly within the period of twelve months and persons accused of different offences committed in the course of the same transaction can be tried together.

13. Mr. Vaswani, learned Counsel has laid more emphasis on Section 223(d) of the Cr.P.C., which contemplates that persons

accused of different offences committed in the course of the same transaction can be tried together. Learned Trial Court after analyzing the material on record has held that the FIR has been lodged by the PW 1 on 28th January 2014 is concerning the incident of rape which has taken place on 28th January 2014 in the house of the victim. Whereas, the Application bearing Exhibit-121 is concerning multiple instances which had taken place between 5th February 2016 to 14th March 2016 where, as per the contention of the Petitioner, the complainant and her husband made demands and therefore committed offence of extortion. Perusal of the record clearly shows that both these offences are different, distinct and separate offences. They are not part of the same transaction. As far as the offence of the rape is concerned, the same took place on 28th January 2014 and completed on the same day accordingly, the FIR has been registered. As far as the allegation of extortion demands made between 5th February 2016 to 14th March 2016 the same is totally different transaction.

14. Mr. Vaswani, learned Counsel may be right in contending that the extortion is for the purpose of not giving evidence against the Petitioner No.1 i.e. accused No.1. However, power under

Section 319 of the Cr.P.C. has to be exercised when original accused and such persons can be tried together. It is also relevant to note that Section 223 of the Cr.P.C. contemplates that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in Section 223 of the Cr.P.C. and if such persons by an application in writing, so desire, and if the learned Court is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, to try all such persons together then the said power can be exercised. Thus what is required for exercise of power under Section 319 r/w Section 223 of the Cr.P.C. and where the case do not fall in any of the categories specified in Section 223 of Cr.P.C., such person who is charged for different offences has to file application and such application to be allowed if such persons are not prejudicially affected. In this case the PW1 i.e. victim and PW2 i.e. husband of the victim has not filed any such application. In any case, if the same is permitted, then the subject Sessions Case will be prejudicially affected.

15. Mr. Vaswani, learned Counsel has relied on the decision in the case of *Amitbhai Anilchandra Shah* (supra) and more

particularly, summary which has been recorded from paragraph 58.1 to 58.10. However, it is required to be noted that what is held by the Supreme Court in that case is that officer-in-charge of a police station has to commence investigation as provided in Section 156 or 157 of the Code on the basis of entry of the first information report, on coming to know of the commission of cognizable offence. On completion of investigation and on the basis of the evidence collected, the investigating officer has to form an opinion under Section 169 or 170 of the Code and forward his report to the Magistrate concerned under Section 173(2) of the Code. It is further held that even after filing of such a report, if he comes into possession of further information or material, there is no need to register a fresh FIR, he is empowered to make further investigation normally with the leave of the court and where during further investigation, he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports which is evident from sub-section (8) of Section 173 of the Code. In view of the above law laid down by the Supreme Court, it is very relevant to note that it not the contention of the Petitioner that the initial FIR has been lodged for extortion. What is the contention of the Petitioner is that after FIR has been

lodged for offence of rape on 28th January 2014, during the period of 5th February 2016 to 14th March 2016, PW 1-victim and PW-2-husband of the victim have made extortion demands from the Petitioner's father. Mr. Vaswani, learned Counsel has more particularly relied on Paragraph No.58.4 of ***Amitbhai Anilchandra Shah*** (supra), which reads as under:

“58.4. Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the station house diary, the officer in charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report(s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.”

(Emphasis added)

Even by examining the facts of this case in the light of the law laid down by the Supreme Court in the case of ***Amitbhai Anilchandra Shah*** (supra), it cannot be said that the FIR dated 28th January 2014, which has been filed by the PW 1-victim alleging that the Petitioner No.1 i.e. accused No.1 and co-accused had committed rape on her is nothing to do with the contention which is sought to be raised in the Application bearing Exhibit-121 filed under Section 319 of the Cr.P.C.. By no stretch of imagination it can be said that the same are out of the same transactions.

16. Mr. Vaswani, learned Counsel has also relied on the decision of the Supreme Court in the case of ***Hardeep Singh*** (supra), wherein Section 319 of the Cr.P.C. analyzed. The relevant paragraph 117 on which Mr. Vaswani, learned Counsel has relied, reads as under:

“117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

— What is the stage at which power under Section 319 CrPC can be exercised?

AND

— *Whether the word “evidence” used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial?*

Answer

117.1. In Dharam Pal case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till “evidence” under Section 319 CrPC becomes available for summoning an additional accused.

117.2. Section 319 CrPC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word “evidence” in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question (ii)—Whether the word “evidence” used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on

the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question (iv)—What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer

117.5. Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge [Ed.: The conclusion of law as stated in para 106, p. 138c-d, may be compared: “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”. See also especially in para 100 at p. 136f-g.] . The difference in the degree of

satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v)—Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

117.6. A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh.”

(Emphasis added)

17. The conclusion which is recorded in paragraph 117.5 of *Hardeep Singh* (supra) is very relevant. What the Supreme Court has held that under Section 319(4)(b) of Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence and that the degree of satisfaction that will be required for summoning

a person under Section 319 Cr.P.C. would be the same as for framing a charge. Thus, what is important is that such person would be treated as accused if he had been an accused when the Court initially took cognizance of the same. It is also important to note that the provision of Section 319, provides that such person has to be tried together with the original accused. In the facts and circumstances it can not be said that the original accused i.e. the Petitioner and the PW1-victim and PW2 – husband of the victim can be tried together i.e. the Petitioner for offence of rape which has taken place on 28th January 2014 and alleged offence of extortion against PW1-victim and her husband which has allegedly taken place on multiple occasions between 5th February 2016 and 14th March 2016. Thus, there is no substance in any of the contentions raised by Mr. Vaswani, learned Counsel.

18. Before parting with this order, it is required to note the observations of the learned Trial Court in the impugned order in paragraph 14, which reads as under:

“14. In this matter, prosecution has completed their evidence in the year 2018 and thereafter, accused filed application for examination of the defence witnesses and since last five years, accused is

examining the defence witnesses. The accused filing the application for seeking various reliefs and has not concluded his defence evidence. The intention of the accused can be gathered by the applications and a prolonged defence evidence since last six years. This application is also a same attempt, so that trial will not be concluded.”

The learned Trial Court has observed that the prosecution has completed the evidence in the year 2018 and thereafter, accused filed application for examination of the defence witnesses and since last five years(as the impugned order is dated 31st August 2023), accused is examining the defence witnesses and accused is filing Application seeking various reliefs and has not concluded his defence and it has been further observed that intention of the accused can be gathered by the applications and a prolonged defence evidence since last six years. Thus, in the facts and circumstances, the learned Trial Court is requested to conclude the trial expeditiously.

19. At this stage, Mr. Vaswani, learned Counsel states that he will file a separate Application under Section 156(3) of the Cr.PC.. If such Application is filed, the concerned Court is requested to consider the same on its own merits. All contentions in that behalf are expressly kept open.

20. The Writ Petition is dismissed, however, with no order as to costs.

[MADHAV J. JAMDAR, J.]