Court No. - 66
Case :- CRIMINAL REVISION No. - 2173 of 2022
Revisionist :- Rameshwar And Another
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- Ravi Sahu,Ram Chandra
Counsel for Opposite Party :- G.A.

Hon'ble Vikas Budhwar,J.

1. Heard Sri Ravi Sahu, learned counsel for the revisionists as well as Sri Munne Lal, learned A.G.A.

2. This is a revision under Sections 397/401 CrPC filed by the revisionists herein, wherein challenge has been raised to the order dated 2.11.2020 passed by the Court of Sessions Judge, Mahoba in Sessions Trial No. 16 of 2019, I.A. No.01/2019, (State of U.P. Versus Khem Chandra @ Phullu & others), arising out of Case Crime no. 249 of 2018, under Sections 304, 201 IPC, P.S. Panwari, District Mahoba.

3. Learned counsel for the revisionist has argued that a FIR has been lodged on 16.11.2018 by O.P. no.2 / Complainant before P.S. Panwari, Mohaba, being FIR no. 0249 under Section 302 IPC, relatable to the commission of the offence on 14.11.2018 against the revisionist, who are two in number with an allegation that the brother of the complainant being Dharmendra Sen son of Lakhan Lal aged about 32 years was working under the revisionists herein, who happened to be the contractor. Certain dispute arose regarding payment of the remuneration, which occasioned in commission of alleged offence, pursuant whereto the dead body of the brother of the complainant was found. Learned counsel for the revisionists has drawn the attention towards Annexure-2 which happens to be post mortem report as well as statement of the complainant, which is at page-62 of the paper-book as well as of Smt. Poonam, wife of the deceased, so as to contend that the revisionists have been falsely implicated in the case in question. Learned counsel for the revisionists has further drawn the attention of this Court towards the fact that the police report, which is in the shape of final report has been submitted in favour of the revisionists, whereby their names have been expunged. However, according to the revisionist, an application under Section 319 CrPC has been filed for summoning of the revisionists, which even infact is nothing but the grossest misuse of the process of the law at the behest of O.P. no.2/ complainant. Learned counsel for the revisionist in the confessional statement of one of the accused, though he was not named in the FIR against whom charge sheet has been submitted, linkage of the revisionists vis-a-vis commission of the crime does

not surface at all. According to learned counsel for the revisionists the entire exercise so undertaken is illegal, revisionists have not committed the aforesaid offence, and even otherwise, the law laid down by the Hon'ble Apex Court in the case of Hardeep Puri as followed in subsequent judgment, has suitably mandated that while exercising the powers under Section 319 CrPC, there should be sufficient evidence that should be more than the prima facie in order to summon the so called accused and the said exercise cannot be taken in a routine, mechanical and light manner.

4. Sri Munne Lal, the learned A.G.A, on the other hand, argued that from the narration of the allegation contained in the FIR vis-a-vis, the statement of PW Nos. 1 Arvind Sen, 2-Smt. Poonam, and 3- Moorat Dhwaj, the name of the revisionists have been pin pointed and further there was sufficient evidence on record to exercise power under Section 319 CrPC and he has been rightly did so.

5. For the ready reference section 319 of the Cr.P.C. 1973 is quoted hereinunder.

> *"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."*

6. The issue with respect to the scope and ambit of the powers so conferred upon the Magistrate u/s 319 Cr.P.C. 1973 is no more res integra as the Constitutional Bench of the Hon'ble Supreme Court in the case of ***Hardeep Singh Vs. State of Punjab*** reported in **2014 (3) SCC 92** has observed as under:-

"*8. The Constitutional mandate under Articles 20 and 21 of the Constitution of India, 1950 (hereinafter referred to as the 'Constitution') provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to the society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under the* Cr.P.C. *indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.*

9. The presumption of innocence is the general law of the land as every man is presumed to be innocent unless proven to be guilty. Alternatively, certain statutory presumptions in relation to certain class of offences have been raised against the accused whereby the presumption of guilt prevails till the accused discharges his burden upon an onus being cast upon him under the law to prove himself to be innocent. These competing theories have been kept in mind by the legislature. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. This is also a part of fair trial and in our opinion, in order to achieve this very end that the legislature thought of incorporating provisions of Section 319 Cr.P.C. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the above mentioned avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is subject matter of trial.

10. In order to answer the aforesaid questions posed, it will be appropriate to refer to Section 351 *of the Criminal Procedure Code, 1898 (hereinafter referred to as `Old Code'), where an analogous provision existed, empowering the court to summon any person other than the accused if he is found to be connected with the commission of the offence. However, when the new* Cr.P.C. *was being drafted, regard was had to 41st Report of the Law Commission where in the paragraphs 24.80 and 24.81 recommendations were made to make this provision more comprehensive. The said recommendations read:*

"24.80 It happens sometimes, though not very often, that a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in a connected offence. It is proper that Magistrate should have the power to call and join him in proceedings. Section 351 *provides for such a situation, but only if that person happens to be attending the Court. He can then be detained and proceeded against. There is no express provision in* Section 351 *for summoning such a person if he is not present in court. Such a*

provision would make Section 351 *fairly comprehensive, and we think it proper to expressly provide for that situation.*

24.81 Section 351 *assumes that the Magistrate proceeding under it has the power of taking cognizance of the new case. It does not, however, say in what manner cognizance is taken by the Magistrate. The modes of taking cognizance are mentioned in Section 190, and are apparently exhaustive. The question is, whether against the newly added accused, cognizance will be supposed to have been taken on the Magistrates own information under Section 190(1), or only in the manner in which cognizance was first taken of the offence against the accused. The question is important, because the methods of inquiry and trial in the two cases differ. About the true position under the existing law, there has been difference of opinion, and we think it should be made clear. It seems to us that the main purpose of this particular provision is that the whole case against all known suspects should be proceeded with expeditiously and convenience requires that cognizance against the newly added accused should be taken in the same manner against the other accused. We, therefore, propose to recast Section 351 making it comprehensive and providing that there will be no difference in the mode of taking cognizance if a new person is added as an accused during the proceedings. It is, of course, necessary (as is already provided) that in such a situation the evidence must he reheard in the presence of the newly added accused."*

11. Section 319 Cr.P.C. as it exists today, is quoted hereunder:

> *"319* Cr.P.C. *-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."*

12. Section 319 Cr.P.C. springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C.

13. It is the duty of the Court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Cr.P.C.?

14. The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of Cr.P.C. and the judgments that have been relied on for the said purpose. The controversy centers around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.

15. It would be necessary to put on record that the power conferred under Section 319 *Cr.P.C. is only on the court. This has to be understood in the context that* Section 319 *Cr.P.C. empowers only the court to proceed against such person. The word "court" in our hierarchy of criminal courts has been defined under* Section 6 *Cr.P.C., which includes the Courts of Sessions, Judicial Magistrates, Metropolitan Magistrates as well as Executive Magistrates. The Court of Sessions is defined in* Section 9 *Cr.P.C. and the Courts of Judicial Magistrates has been defined under* Section 11 *thereof. The Courts of Metropolitan Magistrates has been defined under* Section 16 *Cr.P.C. The courts which can try offences committed under* the Indian Penal Code, *1860 or any offence under any other law, have been specified under* Section 26 *Cr.P.C. read with First Schedule. The explanatory note (2) under the heading of "Classification of Offences" under the First Schedule specifies the expression 'magistrate of first class' and 'any magistrate' to include Metropolitan Magistrates who are empowered to try the offences under the said Schedule but excludes Executive Magistrates.*

16. It is at this stage the comparison of the words used under Section 319 *Cr.P.C. has to be understood distinctively from the word used under* Section 2(g) *defining an inquiry other than the trial by a magistrate or a court. Here the legislature has used two words, namely the magistrate or court, whereas under* Section 319 *Cr.P.C., as indicated above, only the word "court" has been recited. This has been done by the legislature to emphasise that the power under* Section 319 *Cr.P.C. is exercisable only by the court and not by any officer not acting as a court. Thus, the magistrate not functioning or exercising powers as a court can make an inquiry in particular proceeding other than a trial but the material so collected would not be by a court during the course of an inquiry or a trial. The conclusion therefore, in short, is that in order to invoke the power under* Section 319 *Cr.P.C., it is only a*

Court of Sessions or a Court of Magistrate performing the duties as a court under the Cr.P.C. *that can utilise the material before it for the purpose of the said Section.*

17. Section 319 *Cr.P.C. allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the chargesheet filed under* Section 173 *Cr.P.C. or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.*

18. The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot free by being not arraigned in the trial in spite of possibility of his complicity which can be gathered from the documents presented by the prosecution."

7. The judgment in the case of **Hardeep Singh (Supra)** has also been considered and taken note in the judgment in the case of **S. Mohammad Ispahani Vs. Yogendra Chandak and Others** reported in (**2017) 16 SCC 226** wherein paragraph nos. 28 and 29 the Hon'ble Apex Court has observed as under.

"28) Insofar as power of the Court under Section 319 of the Cr.P.C. to summon even those persons who are not named in the charge sheet to appear and face trial is concerned, the same is unquestionable. Section 319 of the Cr.P.C. is meant to rope in even those persons who were not implicated when the charge sheet was filed but during the trial the Court finds that sufficient evidence has come on record to summon them and face the trial. In Hardeep Singh's case, the Constitution Bench of this Court has settled the law in this behalf with authoritative pronouncement, thereby removing the cobweb which had been created while interpreting this provision earlier. As far as object behind Section 319 of the Cr.P.C. is concerned, the Court had highlighted the same as under:

"The court is sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

29) At the same time, the Constitution Bench has clarified that the power under Section 319 of the Cr.P.C. can only be exercised on 'evidence' recorded in the Court and not material gathered at the investigation stage, which has already been tested at the stage under Section 190 of the Cr.P.C. and issue of process under Section 204 of the Cr.P.C. This principle laid down in Hardeep Singh's case has been explained in Brjendra Singh and Others v. State of Rajasthan in the following manner:

> *"10. It also goes without saying that Section 319 CrPC, which is an enabling provision empowering the Court to 6 (2017) 7 SCC 706 Criminal Appeal No. 1720 of 2017 & Ors. appropriate steps for proceeding against any person, not being an accused, can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment, except during the stage of Sections 207/208 CrPC, the committal, etc. which is only a pre-trial stage intended to put the process into motion.*
>
> *11. In Hardeep Singh case , the Constitution Bench has also settled the controversy on the issue as to whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and indicates the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial. It is held that it is that material, after cognizance is taken by the court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court. The word "evidence" has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, this Court cautioned that the duty and obligation of the court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that " evidence" under Section 319 CrPC could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the court which can be gathered from the reasons recorded by the court in respect of complicity of some other person(s) not facing trial in the offence.*
>
> *12. The moot question, however, is the degree of satisfaction that is required for invoking the powers under Section 319 CrPC 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 case and answered in the following manner: (SCC pp. 135 & 138, paras 95 & 105-106)

"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 Criminal Appeal No. 1720 of 2017 & Ors. this Court in Vikas v. State of Rajasthan [Vikas v. State of Rajasthan, (2014) 3 SCC 321 : (2014) 2 SCC (Cri) 172] , held that on the [Ed.: The words between two asterisks have been emphasised in original.] objective satisfaction [Ed.: The words between two asterisks have been emphasised in original.] 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 unrebutted, 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 " [Ed.: The words between two asterisks have been emphasised in original.] for which such person could be tried together with the accused [Ed.: The words between two asterisks have been emphasised in original.] ". The words used are not "for which such person could be

> *Criminal Appeal No. 1720 of 2017 & Ors. ". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."*
>
> *13. In order to answer the question, some of the principles enunciated in Hardeep Singh case may be recapitulated: power under Section 319 CrPC can be exercised by the trial court at any stage during the trial i.e. before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some "evidence" against such a person on the basis of which evidence it can be gathered that he appears to be guilty of the offence. The "evidence" herein means the material that is brought before the court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the court under Section 319 CrPC and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrant. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity." (emphasis supplied)*

8. The legislature was quite conscious while engrafting section 319 Cr.P.C. while employing the words "in the course of any inquiry into, or trial of, an offence, it appears from the evidence". The aforesaid words so employed under section 319 Cr.P.C. itself shows that degree of satisfaction has to be accorded by the Magistrate while exercising powers u/s 319 Cr.P.C.

9. Obviously, degree of satisfaction defers from case to case and according to the degree of satisfaction the test to be applied as one should be more than prima facie case at the stage of framing of charges. The Hon'ble Supreme Court in the case of **Hardeep Singh (Supra)** has observed as under:-

"93. Section 319(1) Cr.P.C. empowers the court to proceed against other persons who appear to be guilty of offence, though not an accused before the court. The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof.

94. In Pyare Lal Bhargava v. The State of Rajasthan, AIR 1963 SC 1094, a four-Judge Bench of this Court was concerned with the meaning of the word 'appear'. The court held that the appropriate meaning of the word 'appears' is 'seems'. It imports a lesser degree of probability than proof. In Ram Singh & Ors. v. Ram Niwas & Anr., (2009) 14 SCC 25, a two-Judge Bench of this Court was again required to examine the importance of the word 'appear' as appearing in the Section. The Court held that for the fulfillment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as an accused in the case.

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 Cr.P.C., 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, 2013 (11) SCALE 23, 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.

96. In Rajendra Singh (Supra), the Court observed:

> *"Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion not to proceed, since the expression used is "may" and not "shall". The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression "appears" indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not."*

97. In Mohd. Shafi (Supra), this Court held that it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 Cr.P.C., it must arrive at a satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted.

98. In Sarabjit Singh & Anr. v. State of Punjab & Anr., AIR 2009 SC 2792, while explaining the scope of Section 319 Cr.P.C., a two-Judge Bench of this Court observed:

> *"….For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned……*
>
> *Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction.*
>
> *Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied." (Emphasis added)*

99. In Brindaban Das & Ors. v. State of Bengal, AIR 2009 SC 1248, a two-Judge Bench of this Court took a similar view observing that the court is required to consider whether such evidence would be sufficient to convict the person being summoned. Since issuance of summons under Section 319 Cr.P.C. entails a de novo trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay the trial, the trial court has to exercise such discretion with great care and perspicacity.

A similar view has been re-iterated by this Court in Michael Machado & Anr. v. Central Bureau of Investigation & Ors., AIR 2000 SC 1127.

100. However, there is a series of cases wherein this Court while dealing with the provisions of Section 227, 228, 239, 240, 241, 242 and 245 Cr.P.C., has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The Court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (Vide: State of Karnataka v. L. Munishwamy & Ors., AIR 1977 SC 1489; All India Bank Officers' Confederation etc. v. Union of India & Ors., AIR 1989 SC 2045; Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989)

1 SCC 715; State of M.P. v. Dr. Krishna Chandra Saksena, (1996) 11 SCC 439; and State of M.P. v. Mohan Lal Soni.

101.In Dilawar Babu Kurane v. State of Maharashtra AIR 2002 SC 564, this Court while dealing with the provisions of Section 227 and 228 Cr.P.C., placed a very heavy reliance on the earlier judgment of this Court in Union of India v. Prafulla Kumar Samal & Anr., AIR 1979 SC 366 and held that while considering the question of framing the charges, the court may weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and whether the materials placed before this Court disclose grave suspicion against the accused which has not been properly explained. In such an eventuality, the court is justified in framing the charges and proceeding with the trial. The court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but court should not make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial.

102 In Suresh v. State of Maharashtra, AIR 2001 SC 1375, this Court after taking note of the earlier judgments in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, AIR 1990 SC 1962 and State of Maharashtra v. Priya Sharan Maharaj, AIR 1997 SC 2041, held as under:

> *"9.……at the stage of Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction." (Emphasis supplied)*

103. Similarly in State of Bihar v. Ramesh Singh, AIR 1977 SC 2018, while dealing with the issue, this Court held:

> *"……If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial….."*

104. In Palanisamy Gounder & Anr. v. State, represented by Inspector of Police, (2005) 12 SCC 327, this Court deprecated the practice of invoking the power under Section 319 Cr.P.C. just to conduct a fishing inquiry, as in that case, the trial court exercised that power just to find out the real

truth, though there was no valid ground to proceed against the person summoned by the court.

105. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused."

10. The Hon'ble Apex court in the case of **Hardeep Singh (Supra)** has also analysed the contingencies in what situation can the power u/s 319 Cr.P.C. be exercised in the cases when a persons is not named in the FIR though named in the FIR but not charge sheeted or has been discharged. The Hon'ble Apex Court has observed as under:-

"107. In Joginder Singh & Anr. v. State of Punjab & Anr., AIR 1979 SC 339, a three-Judge Bench of this Court held that as regards the contention that the phrase "any person not being the accused" occurring in Section 319 Cr.P.C. excludes from its operation an accused who has been released by the police under Section 169 Cr.P.C. and has been shown in Column 2 of the charge-sheet, the contention has merely to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319 (1) Cr.P.C. clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court, are included in the said expression.

108. In Anju Chaudhary v. Sate of U.P. & Anr., (2013) 6 SCC 384, a two-Judge Bench of this Court held that even in the cases where report under

Section 173(2) Cr.P.C. is filed in the court and investigation records the name of a person in Column 2, or even does not name the person as an accused at all, the court in exercise of its powers vested under Section 319 Cr.P.C. can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.

109. In Suman v. State of Rajasthan & Anr., AIR 2010 SC 518, a two-Judge Bench of this Court observed that there is nothing in the language of this sub-section from which it can be inferred that a person who is named in the FIR or complaint, but against whom charge- sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence, the court finds that such person has committed an offence for which he could be tried together with the other accused.

110.In Lal Suraj (supra), a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been charge-sheeted, he may come within the purview of the description of such a person as contained in Section 319 Cr.P.C. A similar view had been taken in Lok Ram (Supra), wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

111. Even the Constitution Bench in Dharam Pal (CB) has held that the Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the chargesheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the chargesheet or whose name appears in the FIR and not in the main part of the chargesheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 319 Cr.P.C. can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled.

112. However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation; the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The Court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does

exist evidence to proceed against the person so discharged, it may take steps but only in accordance with section 398 Cr.P.C. without resorting to the provision of Section 319 Cr.P.C. directly.

113. In Sohan Lal & Ors. v. State of Rajasthan, (1990) 4 SCC 580, a two-Judge Bench of this Court held that once an accused has been discharged, the procedure for enquiry envisaged under Section 398 Cr.P.C. cannot be circumvented by prescribing to procedure under Section 319 Cr.P.C.

114. In Municipal Corporation of Dehli v. Ram Kishan Rohtagi & Ors., AIR 1983 SC 67, this Court held that if the prosecution can at any stage produce evidence which satisfies the court that those who have not been arraigned as accused or against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them under Section 319 Cr.P.C. and try them along with the other accused.

115. Power under Section 398 Cr.P.C. is in the nature of revisional power which can be exercised only by the High Court or the Sessions Judge, as the case may be. According to Section 300 (5) Cr.P.C., a person discharged under Section 258 Cr.P.C. shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first-mentioned Court is subordinate. Further, Section 398 Cr.P.C. provides that the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make an inquiry into the case against any person who has already been discharged. Both these provisions contemplate an inquiry to be conducted before any person, who has already been discharged, is asked to again face trial if some evidence appears against him. As held earlier, Section 319 Cr.P.C. can also be invoked at the stage of inquiry. We do not see any reason why inquiry as contemplated by Section 300(5) Cr.P.C. and Section 398 Cr.P.C. cannot be an inquiry under Section 319 Cr.P.C. Accordingly, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Section 300(5) and 398 Cr.P.C. If during or after such inquiry, there appears to be an evidence against such person, power under Section 319Cr.P.C. can be exercised. We may clarify that the word 'trial' under Section 319 Cr.P.C. would be eclipsed by virtue of above provisions and the same cannot be invoked so far as a person discharged is concerned, but no more.

116. Thus, it is evident that power under Section 319 Cr.P.C. can be exercised against a person not subjected to investigation, or a person placed in the Column 2 of the Charge-Sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 Cr.P.C. without taking recourse to provisions of Section 300(5) read with Section 398 Cr.P.C."

11. The Constitutional Bench in the matter of **Hardeep Singh (Supra)** has also considered the scope, ambit and the importance of the word evidence and had analysed the same and held as under:-

> *"58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers under Section 319 Cr.P.C., the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that comes up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 Cr.P.C. indicate that the material has to be "where ….it appears from the evidence" before the court.*
>
> *59. Before we answer this issue, let us examine the meaning of the word 'evidence'. According to Section 3 of the Evidence Act, 'evidence' means and includes:*
>
> > *(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;*
> >
> > *(2) all documents including electronic records produced for the inspection of the Court, such statements are called documentary evidence;*
>
> *60. According to Tomlin's Law Dictionary, Evidence is "the means from which an inference may logically be drawn as to the existence of a fact. It consists of proof by testimony of witnesses, on oath; or by writing or records."*
>
> *61. Bentham defines 'evidence' as "any matter of fact, the effect, tendency or design of which presented to mind, is to produce in the mind a persuasion concerning the existence of some other matter of fact- a persuasion either affirmative or disaffirmative of its existence. Of the two facts so connected, the latter may be distinguished as the principal fact, and the former as the evidentiary fact."*
>
> *62. According to Wigmore on Evidence, evidence represents "any knowable fact or group of facts, not a legal or a logical principle, considered with a view to its being offered before a legal tribunal for the purpose of producing a persuasion, positive or negative, on the part of the tribunal, as to the truth of a proposition, not of law, or of logic, on which the determination of the tribunal is to be asked."*

63. The provision and the above-mentioned definitions clearly suggest that it is an exhaustive definition. Wherever the words "means and include" are used, it is an indication of the fact that the definition 'is a hard and fast definition', and no other meaning can be assigned to the expression that is put down in the definition. It indicates an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expression. (Vide: ***M/S. Mahalakshmi Oil Mills v. Stare of A.P. AIR 1989 SC 335****;* ***Punjab Land Development and Reclamation Corporation Ltd. Chandigarh v. Presiding Officer, Labour Court, Chandigarh & Ors.****, (1990) 3 SCC 682;* ***P. Kasilingam & Ors. v. P.S.G. collage of Technology & Ors****, AIR 1995 SC 1395;* ***Hamdard (Wakf) Laboratories v. Dy. Labour Commissioner & Ors.****, AIR 2008 SC 968; and* ***Ponds India Ltd. (merged with H.L. Limited) v. Commissioner of Trade Tax, Lucknow****, (2008) 8 SCC 369).*

64. ***In Feroze N. Dotivala v. P.M. Wadhwani & Ors****, (2003) 1 SCC 433, dealing with a similar issue, this Court observed as under:*

> *"Generally, ordinary meaning is to be assigned to any word or phrase used or defined in a statute. Therefore, unless there is any vagueness or ambiguity, no occasion will arise to interpret the term in a manner which may add something to the meaning of the word which ordinarily does not so mean by the definition itself, more particularly, where it is a restrictive definition. Unless there are compelling reasons to do so, meaning of a restrictive and exhaustive definition would not be expanded or made extensive to embrace things which are strictly not within the meaning of the word as defined.*

65. We, therefore proceed to examine the matter further on the premise that the definition of word "evidence" under the Evidence Act is exhaustive.

66. In Kalyan Kumar Gogoi v. Ashutosh Agnihotri & Anr., AIR 2011 SC 760, while dealing with the issue this Court held :

> *"18. The word "evidence" is used in common parlance in three different senses: (a) as equivalent to relevant, (b) as equivalent to proof, and (c) as equivalent to the material, on the basis of which courts come to a conclusion about the existence or non-existence of disputed facts. Though, in the definition of the word "evidence" given in Section 3 of the Evidence Act one finds only oral and documentary evidence, this word is also used in phrases such as best evidence, circumstantial evidence, corroborative evidence, derivative evidence, direct evidence, documentary evidence, hearsay evidence, indirect evidence, oral evidence, original evidence, presumptive evidence, primary evidence, real evidence, secondary evidence, substantive evidence, testimonial evidence, etc."*

67. In relation to a Civil Case, this court in Ameer Trading Corporation Ltd. v. Shapoorji Data Processing Ltd., AIR 2004 SC 355, held that the

examination of a witness would include evidence-in- chief, cross-examination or re-examination. In Omkar Namdeo Jadhao & Ors v. Second Additional Sessions Judge Buldana & Anr., AIR 1997 SC 331; and Ram Swaroop & Ors. v. State of Rajasthan, AIR 2004 SC 2943, this Court held that statements recorded under Section 161 Cr.P.C. during the investigation are not evidence. Such statements can be used at the trial only for contradictions or omissions when the witness is examined in the court.

*(See also: **Podda Narayana & Ors. v. State of A.P.,** AIR 1975 SC 1252; **Sat Paul v. Delhi Administration**, AIR 1976 SC 294; and **State (Delhi Administration) v. Laxman Kumar & Ors**., AIR 1986 SC 250).*

68. In Lok Ram v. Nihal Singh & Anr., AIR 2006 SC 1892, it was held that it is evident that a person, even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added as an accused to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge- sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence.

*69. The majority view of the Constitution Bench in **Ramnarayan Mor & Anr. v. The State of Maharashtra**, AIR 1964 SC 949 has been as under:*

> *"9. It was urged in the alternative by counsel for the appellants that even if the expression "evidence" may include documents, such documents would only be those which are duly proved at the enquiry for commitment, because what may be used in a trial, civil or criminal, to support the judgment of a Court is evidence duly proved according to law. But by the **Evidence Act** which applies to the trial of all criminal cases, the expression "evidence" is defined in Section 3 as meaning and including all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under enquiry and documents produced for the inspection of the Court. There is no restriction in this definition to documents which are duly proved by evidence." (Emphasis added)*

*70. Similarly, this Court in Sunil Mehta & Anr. v. State of Gujarat & Anr., JT 2013 (3) SC 328, held that "It is trite that evidence within the meaning of the **Evidence Act** and so also within the meaning of Section 244 of the Cr.P.C. is what is recorded in the manner stipulated under **Section 138** in the case of oral evidence. Documentary evidence would similarly be evidence only if the documents are proved in the manner recognised and provided for under the Evidence Act unless of course a statutory provision makes the document admissible as evidence without any formal proof thereof."*

71. In Guriya @ Tabassum Tauquir & Ors. v. State of Bihar & Anr., AIR 2008 SC 95, this Court held that in exercise of the powers under Section 319 Cr.P.C., the court can add a new accused only on the basis of

evidence adduced before it and not on the basis of materials available in the charge sheet or the case diary.

72. In Kishun Singh (Supra), this Court held :

> *"11. On a plain reading of sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of any inquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused. This power (under Section 319(1)), it seems clear to us, can be exercised only if it so appears from the evidence at the trial and not otherwise. Therefore, this sub-section contemplates existence of some evidence appearing in the course of trial wherefrom the court can prima facie conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police. Even a person who has earlier been discharged would fall within the sweep of the power conferred by S. 319 of the Code. Therefore, stricto sensu, Section 319 of the Code cannot be invoked in a case like the present one where no evidence has been led at a trial wherefrom it can be said that the appellants appear to have been involved in the commission of the crime along with those already sent up for trial by the prosecution.*
>
> *12. But then it must be conceded that Section 319 covers the post-cognizance stage where in the course of an inquiry or trial the involvement or complicity of a person or persons not named by the investigating agency has surfaced which necessitates the exercise of the discretionary power conferred by the said provision….."*

73. A similar view has been taken by this Court in Raj Kishore Prasad (Supra), wherein it was held that in order to apply Section 319 Cr.P.C., it is essential that the need to proceed against the person other than the accused appearing to be guilty of offence arises only on evidence recorded in the course of an inquiry or trial.

74. In ***Lal Suraj @ Suraj Singh & Anr. v. State of Jharkhand****, (2009) 2 SCC 696, a two-Judge Bench of this Court held that "a court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under Section 319 Cr.P.C., the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction."*

75. A similar view has been reiterated by this Court in Rajendra Singh v. State of U.P. & Anr., AIR 2007 SC 2786, observing that court should not exercise the power under Section 319 Cr.P.C. on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence. The word 'evidence' in Section 319 Cr.P.C. contemplates the evidence of witnesses given in the court.

76. Ordinarily, it is only after the charges are framed that the stage of recording of evidence is reached. A bare perusal of Section 227 Cr.P.C. would show that the legislature has used the terms "record of the case" and the "documents submitted therewith". It is in this context that the word 'evidence' as appearing in Section 319 Cr.P.C. has to be read and understood. The material collected at the stage of investigation can at best be used for a limited purpose as provided under Section 157 of the Evidence Act i.e. to corroborate or contradict the statements of the witnesses recorded before the court. Therefore, for the exercise of power under Section 319 Cr.P.C., the use of word `evidence' means material that has come before the court during an inquiry or trial by it and not otherwise. If from the evidence led in the trial the court is of the opinion that a person not accused before it has also committed the offence, it may summon such person under Section 319 Cr.P.C.

77. With respect to documentary evidence, it is sufficient, as can be seen from a bare perusal of Section 3 of the Evidence Act as well as the decision of the Constitution Bench, that a document is required to be produced and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial.

78. It is, therefore, clear that the word "evidence" in Section 319 Cr.P.C. means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether power under Section 319 Cr.P.C. is to be exercised and not on the basis of material collected during investigation.

79. The inquiry by the court is neither attributable to the investigation nor the prosecution, but by the court itself for collecting information to draw back a curtain that hides something material. It is the duty of the court to do so and therefore the power to perform this duty is provided under the Cr.P.C.

80. The unveiling of facts other than the material collected during investigation before the magistrate or court before trial actually commences is part of the process of inquiry. Such facts when recorded during trial are evidence. It is evidence only on the basis whereof trial can be held, but can the same definition be extended for any other material collected during inquiry by the magistrate or court for the purpose of Section 319 Cr.P.C.?

81. An inquiry can be conducted by the magistrate or court at any stage during the proceedings before the court. This power is preserved with the court and has to be read and understood accordingly. The outcome of any such exercise should not be an impediment in the speedy trial of the case. Though the facts so received by the magistrate or the court may not be evidence, yet it is some material that makes things clear and unfolds concealed or deliberately suppressed material that may facilitate the trial. In the context of Section 319 Cr.P.C. it is an information of complicity. Such material therefore, can be used even though not an

evidence in stricto sensuo, but an information on record collected by the court during inquiry itself, as a prima facie satisfaction for exercising the powers as presently involved.

82. This pre-trial stage is a stage where no adjudication on the evidence of the offences involved takes place and therefore, after the material alongwith the charge-sheet has been brought before the court, the same can be inquired into in order to effectively proceed with framing of charges. After the charges are framed, the prosecution is asked to lead evidence and till that is done, there is no evidence available in the strict legal sense of Section 3 of the Evidence Act. The actual trial of the offence by bringing the accused before the court has still not begun. What is available is the material that has been submitted before the court along with the charge-sheet. In such situation, the court only has the preparatory material that has been placed before the court for its consideration in order to proceed with the trial by framing of charges.

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 utilize 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.

84. The word "evidence" therefore has to be understood in its wider sense both at the stage of trial and, as discussed earlier, even at the stage of inquiry, as used under Section 319 Cr.P.C. The court, therefore, should be understood to have the power to proceed against any person after summoning him on the basis of any such material as brought forth before it. The duty and obligation of the court becomes more onerous to invoke such powers cautiously on such material after evidence has been led during trial.

85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 Cr.P.C. The 'evidence' is thus, limited to the evidence recorded during trial."

12. The proposition of law culled out by the Hon'ble Apex Court itself makes it clear that u/s 319 Cr.P.C. discretion has been bestowed upon the

Magistrate to exercise the powers while looking into the facts and the circumstances of a particular case before it while according degree of satisfaction so imperative for invocation of the powers u/s 319 Cr.P.C. The Hon'ble Apex Court has repeatedly cautioned the Courts to exercise the powers under section 319 Cr.P.C. in such a manner that it does not permit an accused to walk away free on the strength of any lacuna attributed by the Investigating Officer. In nutshell, it can be very well said that once the Magistrate finds that there was sufficient material available on record before it to summon a person in the trial which is proposed to be undertaken then the powers u/s 319 Cr.P.C. are to be invoked.

13. Nonetheless, the powers under section 319 Cr.P.C. to summon those persons who are not named in the charge sheet to appear and face trial is unquestionable as the very object of engrafting section 319 Cr.P.C. is that to allow a person who deserves to be tried not to go scot-free.

14. The stage which is contemplated under section 319 Cr.P.C. 1973 is a stage before the conclusion of the trial and thus, only one conclusion can be drawn that the Magistrate must be prima facie of the opinion that there are sufficient material and cause for summoning the culprit who is either not named in the FIR or if named, he has not been charge sheeted or discharged.

15. The issue can also be seen from another point of angle that during the course of the inquiry into, or trial of, an offence, it appears from the evidence that any person not being accused has committed the offence or he has not been charge sheeted but there are sufficient material available on record which has not been taken into consideration by the Investigating Officer then the Magistrate in exercise of powers can always summon him in that regard. Sub section (1) of section 319 Cr.P.C. has consciously used the word "during the course of any inquiry into, or trial of" meaning thereby that the powers can be exercised under section 319 Cr.P.C. when there are certain material available on record during the course of inquiry or trial.

16. I have heard the submission of learned counsel for the parties, as well as perused the records. The issue with regard to the exercise of the powers under Section 319 of CrPC are no more res integra, as in view of the judgment so cited hereinabove in the body of the present revision, an irresistible conclusion stands drawn that while exercising the powers under Section 319 CrPC, the courts have to not only form a subjective opinion in order to initiate proceedings, but it should be satisfied that the evidence available to it is more than prima facie. Applying the said principles of law, as culled out in the present judgment, the present case is to be decided.

17. This Court finds that in the FIR so sought to be lodged by the complainant, who happens to be the brother of the deceased, revisionists

herein arrayed as accused and more so, in the statement so recorded under Section 161 and 164 CrPC, names of the revisionists find its presence. Nonetheless, in the statement of PW's- 1, 2 and 3, the name of the revisionists also finds place and thus the Court was within its jurisdiction and powers to have summoned the revisionist. So far as the argument so sought to be raised by learned counsel for the revisionists with regard to the fact that they have not committed the offence and the confessional statement of one of the co-accused, who was though not named in the FIR, but against whom, charge sheet was submitted is a matter of defence, which will be available to the revisionists at the time, when the trial gets commence. Accordingly with the net analysis of the factual and legal proposition, this Court finds its inability to subscribe with the argument so raised by the revisionist.

18. Learned counsel for the revisionists has argued that a suitable direction be issued for consideration of the claim of the revisionists for grant of bail.

19. This Court finds that an appropriate remedy is always available to the revisionists which they can take recourse to and raise all contentions in that regard.

20. This Court has no reason to disbelieve that the same will be decided with most expedition after considering each and every aspect of the matter.

21. Resultantly, the present revision is **dismissed** and consigned to record**.**

22. No order as to costs.

Order date:- 03.6.2022

N.S.Rathour