REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1720 OF 2017
(ARISING OUT OF SLP (CRL.) NO. 5308 OF 2017)

S. MOHAMMED ISPAHANI .....APPELLANT(S)

VERSUS

YOGENDRA CHANDAK AND OTHERS .....RESPONDENT(S)

W I T H

CRIMINAL APPEAL NO. 1721 OF 2017
(ARISING OUT OF SLP (CRL.) NO. 5392 OF 2017)

A N D

CRIMINAL APPEAL NO. 1722 OF 2017
(ARISING OUT OF SLP (CRL.) NO. 5411 OF 2017)

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

2) Girdharilal Chandak, father of Respondent no. 1 (hereinafter referred to as "*de facto* complainant") lodged complaint against many persons, including the four appellants in these appeals, on

April 27, 2007 with the Inspector of Police, CBCID-Metro Wing, Egmore, Chennai. The allegations were that at about 12.30 pm, 50-60 rowdy elements armed with deadly weapons entered the premises of the *de facto* complainant and threatened his staff. They started damaging all the valuables like laptops, computers and other antique valuable articles. They threw out those articles on the road and took away laptops, computers and other antiques valuable articles which were lying in the premises, known as Door No. 35, New Door No. 9, Anna Salai, Chennari-2. It may be mentioned here that the appellants, Mehdi Ispahani, Ali Ispahani and S. Mohammed Ispahani are the landlords of the aforesaid premises of which the *de facto* complainant was a tenant. The landlords have initiated eviction proceedings against the *de facto* complainant in which eviction orders were passed on February 26, 2007 and appeal was preferred by the *de facto* complainant against the order of eviction which was pending before the VII, Small Causes Court, Chennai. However, no stay of the eviction order was granted by the Appellate Court and this refusal to grant the interim stay was upheld till this Court. According the appellants/landlords, they had obtained warrants of possession from the executing Court and the bailiff of the Court, namely, I. Jayaraman, who is the fourth appellant, had gone to the tenanted

premises on July 24, 2007 for executing the decree and to take possession thereby.

3) The police initially refused to register case on the complaint of the *de facto* complainant. However, by orders dated October 12, 2007 passed by the High Court in Criminal O.P. 29386 of 2007 filed by the *de facto* complainant, the CBCID was directed to register the case. Accordingly, Crime Case No. 3 of 2008 was registered by the police. Ultimately, charge sheet under Sections 379, 427, 341 read with Section 34 of IPC and Section 3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992 was filed. In this charge sheet appellants were not named. During the trial, the *de facto* complainant died. His son appeared as PW-1 and in his deposition, he named the appellants, i.e., all the three landlords and bailiff as well. Thereafter, application under Section 319 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') was filed through Special Public Prosecutor for summoning these appellants as well, as accused persons. The Chief Metropolitan Magistrate dismissed the said application vide orders dated August 17, 2015. Against that order of dismissal, son of the *de facto* complainant (hereinafter referred to as the "complainant") filed revision petition in the High Court. By

impugned order dated November 29, 2016, the High Court has allowed the said revision petition, thereby setting aside the order of the Chief Metropolitan Magistrate and directed him to implicate the appellants herein as accused in the case pending before him. It is this order which is under challenge before us.

4) For better understanding of the matter, we may mention the events chronologically, with necessary details.

5) The *de facto* complainant – Girdharilal Chandak was a tenant in the premises belonging to the appellant and his family. On an eviction proceeding (RCOP No. 311 of 2006) initiated against the *de facto* complainant, the Small Causes Court, Chennai directed his eviction vide order dated February 26, 2007. On an Execution Petition filed by the appellant and other owners, the Small Causes Court, Chennai vide order dated April 27, 2007 appointed a bailiff and directed the delivery of possession of the tenanted premises. Bailiff visited the premises on April 27, 2007 and after evicting the *de facto* complainant put the landlords in possession of the premises.

6) Against the order of eviction, the *de facto* complainant filed the appeal. It is a matter of record that the tenant/*de facto*

complainant had also filed an application for stay of the execution proceedings which was dismissed by the Small Causes Court, Chennai. Against non-grant of stay, he filed the Civil Revision Petition in the High Court of Judicature at Madras which also came to be dismissed on October 25, 2007. The tenant/*de facto* complainant then preferred a Special Leave Petition before this Court against the order dated October 25, 2007, but was unsuccessful in getting stay order as his special leave petition was also dismissed by this Court on April 07, 2008.

7) On the day when delivery of possession was taken in terms of the orders dated April 27, 2007 passed by the Executing Court, the *de facto* complainant submitted a written complaint to the police, alleging that 50-60 rowdy elements accompanied by K.R. Ashok (an employee of the appellants/landlords) and one man in civil dress claiming to be a police official, armed with deadly weapons, entered the tenanted premises. They threatened the staff and damaged the valuable articles and took away the laptop, computers and the antique valuable articles. It was also alleged that these people took the law into their hands and attempted to evict him and his sub-tenants without even filing an execution petition.

8) The police did not register a case on the basis of the written complaint of the *de facto* complainant as in relation to the same alleged incident on a complaint by a sub-tenant a case was already registered and was being investigated in which *de facto* complainant was included as a witness. In this regard, an opinion was also given by the Deputy Director of Prosecution, Chennai City on May 16, 2007 wherein it was opined that no case can be registered on the basis of the complaint by *de facto* complainant as the matter was already investigated and it was found that the allegations by *de facto* complainant are exaggerated. Subsequently, on July 25, 2007 the case was handed over to Crime Branch CID, Metro for further investigation on the orders of the Director General of Police, Tamil Nadu. However, later as the said FIR was quashed by the High Court of Madras, *de facto* complainant filed Crl. O.P. No. 29386 of 2007 before the High Court, seeking direction to register case against the appellant and others. The High Court on October 12, 2007 directed the police to make an enquiry and register the case in terms of Section 154 of the Cr.P.C. Accordingly, on July 30, 2008, the Inspector of Police, CBCID, Metro Wing, after conducting an enquiry registered the FIR (No. 3/2008) on the basis of the written

complaint dated April 28, 2007. The landlords, i.e., the three appellants and one, K.R. Ashok were also named as accused in the said FIR for offences under Section 379, IPC.

9) The CBCID, Metro Wing, Chennai after examining the witnesses and on completion of investigation in FIR No. 3/2008 filed the charge sheet against 15 persons before the II Metropolitan Magistrate Court. The appellants' names were not included in the said charge sheet. However, K.R. Ashok, who is the manager of the landlords, was named as Accused No. 1 and he is facing trial. The case was then transferred to XI Metropolitan Magistrate, Chennai and then to the Chief Metropolitan Magistrate, Chennai where it was taken on the file as C.C. No. 4108/2013. On September 19, 2013, the Chief Metropolitan Magistrate, Chennai framed charges against the said 15 persons for offences under Section 379, 427, 341, 379 read with Section 34, IPC and Section 3(1) of the Tamil Nadu Property Prevention of Damage and Loss Act, 1992 in C.C. No. 4108 of 2013.

10) As the *de facto* complainant passed away, his son – Respondent no. 1 (Complainant) was examined as PW1 and 5 other witnesses were examined and cross-examined. PW1's evidence was concluded on April 24, 2014 and PW-6's evidence

was concluded on September 30, 2014. After the prosecution evidence stood closed, the complaint filed an application under Section 319, Cr.P.C. (Crl. MP No. 420 of 2015) through the Public Prosecutor to implicate the landlords and the bailiff as accused persons in the case.

11) The Chief Metropolitan Magistrate, Chennai vide order dated August 17, 2015 dismissed the application filed under Section 319 Cr.P.C. The Chief Metropolitan Magistrate noted that no protest petition was filed at the time of filing of the charge sheet when the names of the landlords who were named in the FIR were dropped. Further, after considering the material available on record, he concluded that there was no sufficient evidence to proceed against the proposed accused, *inter alia*, recording as under:

> "As already discussed above in this case, so far 6 witnesses have been examined on the said of petitioner/prosecution. PW2, Tr. Shahul Hameed, at the time of occurrence, worked in PW1's company namely World Wide Impex Pvt. Ltd., in part time, PW3 Tmt. Chandra, worked as office assistant in the said PW1's company, PW4 Tr. Akshay Kumar, was working as Manager in PW'1 company, PW5 Mr. Anand, relative of PW1 and PW6 Mr. Muthuramalingam, was running a Tiffin shop, have not spoken anything with regard to the respondents 2 to 5. Further in this case, the son of the *de facto* complainant Mr. Yogendra Chandak examined as PW1. He also in his Chief Examination, has not spoken anything with regard to the alleged conspiracy alleged to have been done by

> the respondents 2 to 5 as alleged in the petition by the petitioner. There is no other documentary evidence also produced. Therefore, a perusal of the available evidence on the side of the prosecution, the same is not sufficient to implead the respondents 2 to 5/proposed accused as accused in this case."

12) Aggrieved by the order dated August 17, 2015 passed by the Chief Metropolitan Magistrate, Chennai the complainant filed a revision petition under Section 397 read with Section 401 Cr.P.C. before the High Court being Criminal Revision Case No. 628 of 2016.

13) As stated, the High Court has, by impugned orders, allowed the revision petition thereby directing the Chief Metropolitan Magistrate to summon the appellants herein and to face the trial in the said case. The reasons which persuaded the High Court to allow the revision are captured by it in the following paragraphs:

> "10. Perusal of evidence of P.W. 1 would show that the complaint has been lodged against the respondents 1 to 4 and the first information report has also been registered against the respondents 1 to 4. However, after investigation, the names of the respondents 1 to 4 herein did not find place, in the charge sheet. After framing of charges and during the trial only, the prosecution has filed the petition under Section 319 of Cr.P.C. to implicate the respondents 1 to 4 as accused in this case. Perusal of the evidence of P.W. 1, who is the petitioner herein has clearly spoken about the offence committed by the respondents 1 to 4 and Ex.PI would also clearly show the involvement of the respondents 1 to 4 in the commission of offence as mentioned in the petition.

> 11. Considering all the above facts and circumstances of the case, I am of the view that the learned trial Judge has not considered all the aspects in a proper manner and mechanically dismissed the application filed under Section 319 of Cr.P.C. and therefore, the order dated 17.08.2015 made in Crl.M.P. No. 4420 of 2015 in C.C. No. 4108 of 2013 on the file of the Chief Metropolitan Magistrate, Chennai is liable to be set aside."

14) Discussing the salient features from the aforesaid narration and the manner in which the case proceeded, Mr. Sidharth Luthra, learned senior counsel appearing for the three appellants/landlords, submitted that these appellants as landlords of the premises in-question had obtained the decree of eviction against *de facto* complainant and had taken steps to get the said decree executed by adopting lawful means. For this purpose, they had filed the execution petition in which warrants of possession were given in their favour by the executing court and the bailiff was appointed for visiting the premises in-question to execute the warrants of possession. He emphasised that though *de facto* complaint had filed the appeal against the order of eviction but he was unsuccessful in getting the stay of the execution as his attempts in this behalf up to this Court had failed. Therefore, argued the learned senior counsel, the steps taken by the appellants/landlords were perfectly legal and in accordance

with the lawful procedure. Without admitting the incident of July 24, 2007, as alleged by the *de facto* complainant, Mr. Luthra further submitted that even the *de facto* complainant or complainant were not present at the spot at the time of the incident and were away to the High Court which fact has been admitted by them in the FIR No. 3/2008. Likewise, it was also an admitted position that all the three appellants/landlords were not present at the spot. Further, a comprehensive investigation was carried out by the police wherein no involvement of the appellants was found and, therefore, they were not charge sheeted. He further pointed out that when the charge sheet was filed without implicating the appellants, there was no protest petition filed by the *de facto* complainant or the complainant, who were well aware of the contents of the charge sheet. In these circumstances, argued the learned senior counsel, that the trial court rightly dismissed the application under Section 319 of the Cr.P.C. which was a belated attempt on the part of the complainant to implicate the appellants, inasmuch as that application was filed much after the complainant was examined as PW-1, and by that time the prosecution had even closed its evidence.

15) Questioning the rationale of the reasoning given by the High Court, it is argued that the High Court has been influenced by a mere fact that the names of the appellants were mentioned in the FIR by the *de facto* complainant and the complainant in his deposition as PW-1 again repeated the names of these appellants alleging that it was at their instance that the property of the *de facto* complainant was damaged and stolen away. He submitted that on these facts, no case was made out for summoning the appellants under Section 319 of Cr.P.C. He referred to the Constitution Bench judgment of this Court in ***Hardeep Singh v. State of Punjab***[1] wherein it is held that the test is to be applied that at the stage of charge and for investigation material not to be looked at but only the evidence which surfaced during the trial has to be taken into consideration. He also referred a recent judgment of this Court in ***Bijendra Singh and others*** v. ***State of Rajasthan***[2].

16) Mr. Sanjay R. Hegde, learned senior counsel appearing for appellant/bailiff argued virtually on the same lines. He additionally submitted that the appellant was only discharging his official duties as bailiff and did not take the law in his hands and after

1 (2014) 3 SCC 92
2 (2017) 7 SCC 706

proper and thorough investigation, it was found to be so by the police as well.

17) We may mention that at the time of arguments, it got revealed that a departmental enquiry was conducted against the bailiff. In these circumstances, this Court directed Mr. Hegde to place on record a copy of the charge sheet in the disciplinary proceeding as well as enquiry report. The said documents have been filed with a note wherein it is stated that when the appellant/bailiff went to the said suit premises to execute the warrant, one Mr. Akshay Kumar (Manager of the complainant) was present in the premises and he voluntarily handed over the possession.

18) The document filed discloses that the *de facto* complainant had lodged a complaint against the appellant/bailiff before the Registrar, Small Causes Court, Chennai stating that he had committed unlawful eviction while execution of warrant on April 26, 2007. It was also complained that the appellant/bailiff acted allegedly utilizing rowdy elements and armed with deadly weapons, trespassed into the premises broke all the furniture's and removed all the valuable articles. Based on the complaint lodged by the *de facto* complainant, an inquiry was conducted by

the VII Judge, Court of Small Causes, Chennai, on the following two charges framed against the appellant:

a) Whether the delinquent is guilty of dereliction of duty?

b) Whether the delinquent's charges have been proved or not?

After the enquiry, the VII Judge, Court of Small Causes, Chennai found the appellant's explanations not being satisfactory and held that the 1st charge against the appellant/bailiff had been proved. Insofar as this charge of dereliction of duty is concerned, the report of the Inquiry Officer reveals that he referred to the provisions of Order XXI Rule 35 of the Code of Civil Procedure, 1908, as amended by the High Court. The amended provision, in the form of sub-rule (4) of Rule 35, stipulates that where delivery of possession of a house is to be given and it is found to be locked, orders of the court shall be taken for breaking upon the lock and for delivery of possession of the same to the decree holder. This sub-rule also states that at the time of delivery if movables are found in the house and the judgment debtor is absent, or if present, does not immediately remove the same, the officer entrusted with the warrant of delivery shall make an inventory of the articles so found with their probable values in the presence of respectable persons on the spot, have the same

attested by them and leave the movables in the custody of the decree holder after taking a bond from him for keeping the articles in safe custody pending orders of the Court for disposal of the same. Taking note of this provision, the Inquiry Officer went into the report that was submitted by the appellant/bailiff after the execution of the warrants of possession and concluded that the appellant/bailiff had not followed the aforesaid procedure and simply handed over the property to the agent of the decree holder and, therefore, he was guilty of dereliction of duty.

As far as the second charge is concerned, it was based on the allegation of the *de facto* complainant to the effect that the bailiff had come with 50-60 rowdy persons, armed with weapons, and had ransacked the premises of the complainant and threw away the articles (it can be seen that this allegation is the same which is the basis of the FIR as well). However, according to the Inquiry Officer, this charge was not proved in the inquiry. The Inquiry Officer noted in his report that the complainant was not an eye-witness to the alleged incident. Two witnesses who were examined had not spoken about any facts relating to the alleged illegal activities committed by the bailiff.

19) From the aforesaid, it is clear that only the charge of

dereliction of duty, i.e. not executing the warrants in accordance with the provisions of Order XXI Rule 35 CPC has been proved. The appellant/bailiff has submitted a reply to the said inquiry report dated February 19, 2013. In his explanation, the bailiff has explained that Order XXI Rule 35(4) CPC is not applicable to the presence for the reason that the premises were not locked at the time of execution of warrant. During investigation, the challenge to the execution proceeding by the deceased tenant has been dismissed by this Court in SLP(C) Nos. 7977-7978 of 2008 by an order dated April 07, 2008.

20) After the submission of the reply in the year 2013, no action has been taken against the appellant till date, by his employer.

21) Learned counsel appearing for the complainant put stiff resistance to the arguments advanced by the counsel for the appellants. He reiterated that on the fateful day, the bailiff along with 50-60 rowdy gundas armed with deadly weapons and one police official in civil dress visited the premises of the complainant and ransacked the said premises, even the goods belonging to the complainant were stolen and they have been recovered from the premises of Ispahani Group of Companies, which belonged to the appellants/landlords. According to him, this clearly shows that

the entire offence has been committed in furtherance of a conspiracy hatched/investigation by appellant and other persons arrayed as accused by virtue of the impugned order. They were the ultimate beneficiaries of the said illegal acts and without them sponsoring and conspiring these illegal acts behind the scenes, this incident would not have occurred. The goods stolen from the premises of the complainant were taken to the premises of Ispahani Group of Companies run by the appellant and the same were recovered from the said premises during the investigation and the said facts have duly been reflected in the testimony of the prosecution witnesses, including that of PW1, i.e., complainant herein who have categorically deposed about the role of the appellant and other persons arrayed by virtue of the impugned order in alleged incident.

22) The learned counsel further referred to the statement of PW-4 who has also narrated the whole *modus operandi* of the crime in question. He has deposed in his testimony *"...they lost patience and 20 persons threw all the articles from office. They thrown the articles in the lorry in part front of the building, with an undertaking to send all the articles to our MD residence namely Mr. Yogendra Chandak, subsequently the said articles taken in*

the lorry did not reach in my MD residence. I was forced to sign and paper that handed over vacant possession of the premises though some more articles were there. They threaten and put my signature....""...I was assaulted by a group of people..." "...Subsequently I came to know the said people is not police officials. That people were sent by landlords of the building..."

23) On the aforesaid basis, he argued that in the present case sufficient material has come on record in the testimony of PW1 to PW6 to narrate that the perpetrator of the offence were not only the employees of the appellant but the appellant themselves as it is at their behest and benefit the action took place and not only that after criminal intimidation and ransacking the place, the goods were stolen and/or taken to the premises of the appellant. In these circumstances, the appellant should face the trial, was the plea of the counsel.

24) Responding to the argument predicated on non-filing of the protest petition, he submitted: (a) Fresh evidence during recording of testimony has come implicating the appellant; (b) the fact that the charge-sheet was filed by the prosecution excluding the name of the appellant herein was not brought to the notice of the complainant. Even the Trial Court failed to issue any notice to

the complainant regarding such fact in complete disregard to the judgment of this Court in ***India Carat Pvt. Ltd.*** v. ***State of Karnataka***[3] . He also relied upon the judgment in ***Geeta Ram*** v. ***Vedi Ram and Others***[4] wherein this Court has held that provisions of Section 319 Cr.P.C. can be invoked even where the name of person summoned is in FIR yet no charge sheet has been filed against him and no protest petition thereafter was filed.

25) He also took aid of the judgments of this Court in ***Suman*** v. ***State of Rajasthan and Another***[5] and ***Hardeep Singh's*** case.

26) He, thus, pleaded that the findings of the Hon'ble High Court is according to the settled principles of law and should not be interfered with.

27) 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.

---

3 (1989) 2 SCC 132
4 (2002) 10 SCC 499
5 (2010) 1 SCC 250

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."

28) 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***[6] 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

take 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

of 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.

***

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

> convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."
>
> (emphasis supplied)
>
> 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."

29) Keeping in view the aforesaid scope of Section 319 Cr.P.C., we now proceed to examine the present case.

30) The order of the learned Chief Metropolitan Magistrate reveals that while dismissing the application of the complainant under Section 319 of the Cr.P.C., the Chief Metropolitan

Magistrate was swayed by two considerations:

(a) The complainant (PW-1) in his examination-in-chief had not spoken anything with regard to the alleged conspiracy entered into between the appellants, i..e the landlords and the bailiff. Also other witnesses, i.e. PWs. 2, 3 and 4, who were working in the company of the *de facto* complainant had not spoken anything with regard to the appellants. There was no documentary evidence produced by the complainant. Therefore, the available 'evidence' was not sufficient to implead the appellants/proposed accused as accused in the case.

(b) The Police, after thorough investigation, had filed the charg sheet in which the appellants were not implicated. However, the complainant never filed any protest petition at that stage.

31) Taking the aforesaid grounds as their arguments, learned counsel for the appellants have argued that there is no 'evidence' within the meaning of Section 319 of the Cr.P.C. The argument advanced is that the application filed by the complainant under Section 319 Cr.P.C. was an afterthought and belated effort on the part of the complainant, which was filed much after the recording

of evidence of PW-1, that too when the prosecution evidence had already been concluded.

32) As against the above, the High Court, in the impugned judgment, has been influenced by the fact that names of the appellants were mentioned in the FIR and even in the statement of witnesses recorded under Section 161 of the Cr.P.C. these appellants were named and such statements under Section 161 Cr.P.C. would constitute 'documents'. In this context, the High Court has observed that 'evidence' within the meaning of Section 319 Cr.P.C. would include the aforesaid statements and, therefore, the appellants could be summoned.

33) The aforesaid reasons given by the High Court do not stand the judicial scrutiny. The High Court has not dealt with the subject matter properly and even in the absence of strong and cogent evidence against the appellant, it has set aside the order of the Chief Metropolitan Magistrate and exercised its discretion in summoning in summoning the appellants as accused persons. No doubt, at one place the Constitution Bench observed in ***Hardeep Singh's*** case that the word 'evidence' has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. In paragraph 105 of the judgment,

however, it is observed that '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. This sentence gives an impression that only that evidence which has been led before the Court is to be seen and not the evidence which was collected at the stage of inquiry. However there is no contradiction between the two observations as the Court also clarified that the 'evidence', on the basis of which an accused is to be summoned to face the trial in an ongoing case, has to be the material that is brought before the Court during trial. The material/evidence collected by the investigating officer at the stage of inquiry can only be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C.

34) It needs to be highlighted that when a person is named in the FIR by the complainant, but Police, after investigation, finds no role of that particular person and files the charge sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge sheet, it can do so. At that stage, chance is given to the

complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge sheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 of the Cr.P.C. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.

35) In view of the above, it was not open to the High Court to rely upon the statements recorded under Section 161 Cr.P.C. as independent evidence. It could only be corroborative material. In the first instance, 'evidence' led before the Court had to be taken into consideration. As far as deposition of PW-1 which was given in the Court is concerned, on going through the said statement, it becomes clear that he has not alleged any conspiracy on the part of the appellants/landlords. In fact, none of the witness has said so. In the absence thereof, along with the important fact that these appellants/landlords were admittedly not present at the site when the alleged incident took place, we do not find any 'evidence' within the meaning of Section 319 Cr.P.C. on the basis of which they could be summoned as accused persons. PW-1 and PW-4 have deposed about the incident that took place at the site and the manner in which the persons who are present

allegedly behaved. In the statement of PW-4, he has alleged that "Subsequently I came to know the said people is not police officials the people was sent by landlords of the building...". That statement may not be enough for roping in the appellants/ landlords to face the charge under those provisions of IPC with which others are charged. The standard of evidence mentioned in ***Hardeep Singh's*** case, namely, 'strong and cogent evidence', is lacking.

36) Insofar as the appellant/bailiff is concerned, there is no specific attribution in the FIR or in the depositions of PWs 1 to 6 in the Court. As far as the departmental inquiry, which was held against the bailiff is concerned, as already noted above, he has been found guilty of dereliction of duty only and not of other charge. Pertinently, in the said inquiry, thought the *de facto* complainant appeared and he also produced another witness, there was no utterance against the appellant/bailiff on these allegations, because of which even the Inquiry Officer has held that such a charge has not been proved. No doubt, that is not a determinative factor as the criminal proceedings are judicial proceedings, totally independent in nature. However, what is relevant is that the Police, during investigation, after the

registration of FIR, did not find anything against the appellant/bailiff and even the department has not found anything against him in the departmental inquiry. Further, as pointed out above, during trial, no 'strong and cogent evidence' has surfaced against the appellant/bailiff on the basis of which he could be summoned.

37) Having regard to the aforesaid discussion, judgment cited by the learned counsel for the complainant would be of no help to him. Decision in ***India Carat Pvt. Ltd.'s*** case was cited to contend that the trial court failed to issue any notice to the complainant at the time of summoning the persons implicated in the charge sheet. However, insofar as issue of initial summoning of the trial court is concerned, whereby the appellants were not summoned, this order was not challenged by the complainant at the stage. At this stage, we are concerned only with the exercise of jurisdiction under Section 319 Cr.P.C. Insofar as judgment in ***Geeta Ram's*** case is concerned, there is no quarrel about the proposition that provisions of Section 319 can be invoked even where the name of the person is in the FIR yet no charge sheet is filed against him. It is again emphasized that the question is as to whether there is a proper exercise of power under Section 319

Cr.P.C. in the instant case.

38) We, accordingly, allow these appeals and set aside the order passed by the High Court and restore that of the Chief Metropolitan Magistrate. There shall, however, be no order as to costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI;
OCTOBER 4, 2017.