2025 INSC 860

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 3008 OF 2025
(Arising out of SLP(Crl.)No.3993 of 2025)

SHIV BARAN …APPELLANT(S)

VERSUS

STATE OF U.P. & ANR. ….RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave Granted

2. The instant appeal preferred by the appellant-complainant, arises out of judgment and order dated 23rd July 2024 passed by the High Court of Judicature at Allahabad in Criminal Revision No.5517 of 2023, quashing the summons issued against Rajendra Prasad Yadav, Respondent No.2 herein, under Section 319 of the Code of Criminal Procedure, 1973[1] *vide* order dated 28th September 2023 passed by the Additional

1 Hereinafter 'CrPC

Sessions Judge, Kaushambi[2] in Sessions Trial No.109 of 2018, arising out of Case Crime No.303 of 2017.

3. Brief facts giving rise to the present appeal are :

(i) Two FIRs were lodged in respect of an incident which allegedly took place on 29th November 2017. First FIR[3] was registered by the appellant-complainant, namely, Shiv Baran[4], under Sections 302, 307, 504 and 506 of the Indian Penal Code, 1860[5] against four persons, namely, Rahul, Dinesh, Rajendra and Shiv Moorat[6], alleging the said accused of having, with the common intention, entered his house and assaulted his brother, who, when taken to the Hospital, succumbed to the injuries.

(ii) Second FIR[7] was lodged by one Suresh Kumar under Sections 452, 323, 504, 506 and 325 of IPC, alleging that the accused persons entered his house, hurled abuses, and assaulted the first informant and his wife. Here, we may clarify that the matter pertains only to the first FIR.

2 Hereinafter "Trial Court"
3 Case Crime No. 303 of 2017
4 The first informant
5 Hereinafter 'IPC'
6 Moorat and Murat are referred for the same person in the record.
7 Case Crime No.315 of 2017

(iii) The Investigating Officer, based on the material collected during the course of investigation, concluded that the accused, Rajendra Prasad, not to have played any role in the alleged crime and, as such, in connection with the first FIR, submitted a chargesheet dated 24th February 2018 only with respect to accused persons, *viz.*, Dinesh Yadav and Shiv Murat Yadav, in relation to offences committed under Sections 302, 307, 504 and 506 read with Section 34 of the IPC.

(iv) During the course of the said trial, finding witnesses PW1 - Shiv Baran Yadav, PW2 - Raj Baran and PW3 - Subhash Yadav, to have deposed about the role of accused Rajendra Prasad Yadav, the complainant moved an application under Section 319 CrPC praying therein to add his name as co-accused, which application, though initially stood rejected by the Sessions Court *vide* order dated 31st January 2022 but on remand by the High Court, was eventually allowed by the Trial Court *vide* order dated 28th September 2023.

(v) In a petition preferred by Rajendra Prasad Yadav, the High Court while setting aside the said order of summoning passed by the Trial Court, *inter alia*

observed that PW-1 had not ascribed any role to the accused and that the testimonies of PWs 2 and 3 could not be said to be implicating the said accused, for there being no specific reference with regard to the description and the manner of occurrence of the incident. Further, they had not ascribed any motive to the crime. Unless and until there is evidence of a strong motive, a person cannot be summoned as an accused. In the absence of any cogent material *prima facie* indicating complicity of the said accused, the Trial Court committed an error in passing the order impugned.

(vi) Challenging this order of the High Court, the complainant/first informant is before us.

4. Heard learned counsel for the parties and perused the record.

5. Here only, it would be pertinent to extract the relevant provision of CrPC :

> "319 Power to proceed against other persons appearing to be guilty of offence - (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

> (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
> (3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
> (4) Where the Court proceeds against any person under sub-section (1) then—
> (*a*) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;
> (*b*) subject to the provisions of clause (*a*), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."
>
> (Emphasis supplied)

6. A perusal of the said section would reveal it to be an enabling provision, empowering the Court to proceed against any person, even if not cited as an accused, based on the evidence collected during the inquiry or trial, revealing the complicity of such a person to be arrayed as an accused. The object is to ensure that no guilty person should be allowed to escape the process of law, which is based on the doctrine of *judex damnatur cum nocens absolviture* (Judge is condemned when guilty is acquitted). The provision casts duty upon the Court to ensure that the real culprit does not get away unpunished, for the same to be part of a fair trial. However, the power under the said Section has to be invoked only upon the satisfaction of cogent material brought on record, necessitating such impleadment. The power to be exercised, needless to add,

is to be with utmost caution and not in a casual, callous or cavalier manner – for the same is only to advance the cause of justice and not be a tool to harass the individual or result into an abuse of the process of law.

7. The question whether the word 'evidence' used in Section 319(1) CrPC means only evidence tested by cross-examination or the statements made in the examination-in-chief would be sufficient for exercising the power under this Section, has been answered by the Constitution Bench of this Court in ***Hardeep Singh v. State of Punjab***[8] in the following manner **:**

> **"89.** … Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.
>
> **90.** As held in *Mohd. Shafi* [*Mohd. Shafi* v. *Mohd. Rafiq*, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899] and *Harbhajan Singh* [(2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] , all that is required for the exercise of the power under Section 319 CrPC is that, it must *appear* to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no

8 (2014) 3 SCC 92

straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words "such person *could* be tried" instead of *should* be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the *court is satisfied* that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

…

92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for 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 the trial in the offence.

…

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

8. This Court in ***Labhuji Amratji Thakor v. State of Gujarat***[9] reiterated the test of satisfaction laid down in ***Hardeep Singh*** (supra) to be the one that is more than a *prima facie* case required at the time of framing of charges, but less than the satisfaction that would warrant conviction :

> "9. Answering Issue (iv) as noticed above in Hardeep Singh [**Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86**], in paras 105 and 106 of the judgment, the following was laid down by the Constitution Bench:
>
> > "105...
> >
> > 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

9 (2019) 12 SCC 644

> providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "*for which such person could be tried together with the accused*". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."
>
> (Emphasis supplied)

9. This Court, in ***Ramesh Chandra Srivastava v. State of U.P.***[10] reiterated that the power under Section 319 CrPC should only be exercised when strong and cogent evidence is presented against a person and the test to be applied is one that is more than a *prima facie* case, as applied at the time of framing of charges.

10. The Court, under this Section, can also proceed against a person who, though named in FIR, is not implicated by the Investigating Officer in the chargesheet, provided the statutory mandates are fulfilled. In ***S. Mohammed Ispahani v. Yogendra Chandak***[11], it was observed :

> **"35.** 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

10 (2021) 12 SCC 608
11 (2017) 16 SCC 226

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 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

(Emphasis supplied)

[See also ***Hardeep Singh*** (supra); and ***Labhuji Amratji Thakor*** (supra)]

11. Most recently, this Court in ***Omi v. State of M.P.***[12], summarized the principles that need to be kept in mind for the summoning of additional accused :

"**19.** The principles of law as regards Section 319CrPC may be summarised as under:
19.1. On a careful reading of Section 319CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.
19.2. 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.

12 (2025) 2 SCC 621

> **19.3.** The power of the court under Section 319CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the charge-sheet by the police against the person concerned. As regards the contention that the phrase "any person not being the accused" occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the charge-sheet, the contention has merely to be stated to be rejected. The said expression clearly covers <u>any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) 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.</u>
>
> **19.4.** It would not be proper for the trial court to reject the application for addition of new accused by considering records of the investigating officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the investigating officer hardly matters. If satisfaction of investigating officer is to be treated as determinative then the purpose of Section 319 would be frustrated."
>
> (Emphasis supplied)

12. We may emphasize that this Court in ***S. Mohammed Ispahani*** (supra) has already observed that the 'evidence' led before the Court has to be considered, and statements recorded under 161 CrPC could only be treated as corroborative material and not as independent evidence.

13. In ***Brijendra Singh v. State of Rajasthan***[13], this Court observed that 'evidence' recorded during the trial was nothing

13 (2017) 7 SCC 706

more than the statements which were already there under Section 161 CrPC; the Trial Court ought to have looked into the evidence collected during the investigation which suggested otherwise and to see whether much stronger evidence than the mere possibility of complicity of accused person has come on record.

OUR VIEW

14. The foregoing discussion would reveal the following statutory requisites for summoning any person not being the accused:

(a) such person has committed an offence; (b) his complicity is revealed from the evidence collected during inquiry or trial; and (c) for such offence, he can be tried together with the accused already facing trial.

15. The principles that the Trial Court ought to follow while exercising power under this Section are :

(a) This provision is a facet of that area of law which gives protection to victims and society at large, ensuring that the perpetrators of crime should not escape the force of law;

(b) It is the duty cast upon the Court not to let the guilty get away unpunished;

(c) The Trial Court has broad but not unbridled power as this power can be exercised only on the basis of evidence

adduced before it and not any other material collected during investigation;

(d) The Trial Court is not powerless to summon a person who is not named in the FIR or Chargesheet; they can be impleaded if the evidence adduced inculpates him;

(e) This power is not to be exercised in a regular or cavalier manner, but only when strong or cogent evidence is available than the mere probability of complicity;

(f) The degree of satisfaction required is much stricter than the *prima facie* case, which is needed at the time of framing of charge(s);

(g) The Court should not conduct a mini-trial at this stage as the expression used is 'such person *could* be tried' and not '*should* be tried'.

16. Reverting to the facts of the case, it is pertinent to reproduce the relevant extract of the FIR, wherein the name of Respondent No.2 was referred :

> "....I was sitting with my brother Yadunath at my doorstep taking sun bath when Rahul and Dinesh, sons of Hurbalal Rajendra, son of Lallu, Shivamust, son of Kamta, from my own village, came to my door with sticks, batons and axes in their hands with the intention of killing me and started abusing me...."

17. PW1, in his statement recorded before the Trial Court on 21st August 2018, deposed :

> "…I and my brother Yadunath were at the door, we were sitting and taking sunlight. Rahul, Dinesh, Rajesh, Shivmurat of my own village came with sticks and axes and started abusing us…"

18. PW1's statement was again recorded on 10th March 2021 after the consolidation of Case No.146/2018[14] and Session Trial No.109/2018, where he deposed :

> "..I and my brother Yadunath were sitting at the door taking sun. Rajendra, Dinesh, Rahul and Shivmurti of my own village were carrying axes. Dinesh and Rahul were carrying sticks... Rajendra had a baton. They came together and started abusing us…"

19. A perusal of the three extracted statements would reveal four persons being consistently named by this witness; it is only in the statement dated 21st August 2018 that Rajesh, instead of Rajendra, is mentioned. The remaining three names remained the same. Not only is he named, but a specific role is assigned to him, i.e., carrying a baton (weapon of offence).

20. Here, we may clarify, as is evident from our order dated 3rd March 2025, that Rajesh and Rajendra are the same person.

21. PW2 also deposed that when his father and uncle were basking under the sun, '*Rajendra* armed with stick' came to the

14 Against accused-Rahul

door of his house with a common objective and started assaulting him and his family members. PW3 also deposed to the effect that *Rajendra*, who had a stick, started assaulting both his father and grandfather.

22. The evidence from all three alleged eyewitnesses, although *prima facie,* suggests the complicity of Rajendra (Respondent No. 2); a specific role being assigned to him, indicating that he was present at the scene of the occurrence, armed with a stick. The High Court tried to apply the same standard in deciding this application as is ordinarily used at the end of the trial in determining the conviction or otherwise of the accused. Whereas it ought to have considered that the standard of satisfaction required is short of the standard necessary for passing a final judgment after trial.

23. Rajendra, although not charge sheeted, was named in the FIR, and the evidence thus far, leads, *prima facie,* to reveal his role. Therefore, at this stage, there is sufficient material to put him on trial; whether he will ultimately be convicted or not is left to be determined by a full-fledged inquiry at the end of the trial. It would be premature to comment anything on his conviction. The first informant categorically mentioned him as the one who came along with the others, with a common intent, abusing and beating, causing the death of his brother, apart from causing serious injuries to the others.

24. In our considered view, the High Court proceeded to conduct a mini trial solely relying upon the affidavits submitted before the Superintendent of Police *qua* the innocence of Respondent No.2. It erred in giving a categorical finding on the merits of PW1, the injured eyewitness not to have named Respondent No.2, which we find is based on erroneous assumption and contrary to the factual position emerging from the record. The High Court erred in observing that witnesses have stated nothing about the motive of the crime; that the depositions are silent on the aspect of common intention; absence of the manner or sequence of occurrence of the incident; or that it cannot be inferred who is the aggressor. All these questions, amongst others, are relevant or not is a matter to be considered at the stage of final adjudication.

25. It is a settled law that the power under Section 319 CrPC must be exercised sparingly. However, where the evidence reveals the complicity of the prospective accused, it becomes obligatory for the authority to exercise the power provided under the said Section.

26. With the aforesaid observations, the appeal is accordingly allowed. The impugned order dated 23rd July 2024 is set aside, and the summoning order dated 28th September 2023, passed by the Trial Court in Sessions Trial No.109/2018, is restored.

27. Parties are directed to appear before the Trial Court on 28th August, 2025. We direct them to fully co-operate and not take any unnecessary adjournments. The trial is expedited to be positively completed within a period of 18 months.

28. Pending application(s), if any, are disposed of.

……J.
(SANJAY KAROL)

…….J.
(JOYMALYA BAGCHI)

New Delhi;
July 16, 2025.