



PROVISIONS REGARDING SECURING THE PRESENCE AND TRIAL OF ADDITIONAL ACCUSED UNDER CRIMINAL LAW

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Abstract:

Chapter XXIV of the Code of Criminal Procedure deals with General provisions as to Inquiries and Trial. It shows that it applies to all the courts including a sessions court and hence all the courts have powers to add any person as accused. There are cases where after the production of evidence, the court reasonably believes that a person other than the accused has committed the offence. In such cases, the court has the power under Section 319 of the Code of Criminal Procedure to summon, detain or arrest such a person after service of notice. Section 319 deals with the power of the court to proceed against other persons appearing to be guilty of such an offence for which the accused is prosecuted. The object of section 311 is that the whole case against all known suspects should be proceeded expeditiously and hence cognizance against the left over accused should be taken in the same manner as against the earlier accused. Therefore, this section talks about additional prosecution, when during the trial it appears to the court that a person who has not been joined as accused in the case has committed the offence, then in such a case, the person can be tried along with the accused. Section 319 of the CrPC ensures justice and takes into account the convenience of both the parties i.e. Prosecution and Defence by taking cognizance of the additional accused in the case already proceeded on. The code also takes into consideration the interests of the person who has been joined as accused via Section 319(4).

Keywords: Double Jeopardy, Additional Accused, Committal of Case, Cognizance of Offence, Criminal Justice System

Introduction:

Section 319 is based on the doctrine *Judex Damnatur cum nocens absolvitor* means *Judge is condemned when guilty is acquitted* which makes it responsibility of the court to add the person as additional accused if so appears. In **Joginder Singh v State of Punjab, 1979**^[1] it was observed by Hon'ble Court that under Section 193 read with Section 209 when a case is committed to the court of session in respect of an offence the Court of Session takes cognizance of the offence and not of the accused and once the Sessions Court is properly seized of the case as a result of committal order against the accused the power under Section 319(1) comes into play any person can be added as accused. The bench of Justices KM Joseph and PS Narasimha reiterated the findings of **Babu Bhai Bhimabhai Bokhiria & Anr. v State of Gujarat & Ors.**^[2] The power under Section 319 CrPC cannot be exercised in a casual and cavalier manner. It should be exercised only when strong and cogent evidence



occurs against a person. The Section also elaborates the DOCTRINE OF DOUBLE JEOPARDY which has been enshrined in Article 20(3) of the Indian Constitution as well as under Section 300 of the Code. The Supreme Court in **Manjeet Singh v. State of Haryana, 2021**^[3] reiterates that once the accused has been acquitted, he cannot be summoned as an additional accused. It is based on the principle that the culprit must not be acquitted and the accused must not be punished. By the discussion we find that the Section deals specifically with additional prosecution. It mandates the court to add any such person to the trial with the accused against whom strong evidence has been presented. Such a person against whom sufficient evidence has been produced and the court is satisfied as to his involvement in the case becomes an accused on the date when the order has been passed by the court. The magistrate has ample powers at any stage of inquiry or trial to take cognizance and add any such person against whom prima facie evidence has been given. Even if the complaint has been dismissed under Section 203 CrPC after the inquiry is completed, it does not bar the court from initiating the proceedings under section 319. The court can exercise this power against any person who has not been accused in a case before it. This does not include a person against whom such court has issued summons but includes persons against whom the police investigation was dropped but evidence shows prima facie involvement. However, if a person has been discharged, no proceedings can be initiated against him unless under Section 300(5) CrPC or any higher court decides to try him. The question of whether a person who has not been named in the charge sheet can be prosecuted under this section has been answered by the courts in the affirmative. Even if such a person was accused in the FIR but the police couldn't collect cogent evidence against him, still he can be added as an accused. Moreover, the accused against whom proceedings have been quashed can also be prosecuted under this section. The precedent set by the Court in **Rajindra Singh v. the State of UP (1959)**^[4] clarified the documents which could be relied upon for summoning a person under Section 319. It held that the material evidence which has been laid before the court has to be taken into consideration and not the case diary or charge sheet or affidavits or statement recorded under Section 161 CrPC. Moreover, it was held that adding an accused merely on the suspicion of a witness would be a travesty of justice because hearsay evidence cannot be made admissible in the court of law.

Exercise of power by Court-whether suo motu or on application?

This power conferred by Section 319 CrPC can be exercised by the courts. It can be exercised either *suo moto* or upon application by any person including the accused. This power is discretionary and must be exercised judicially by the courts. The court enjoys extraordinary powers under this section and it must be used sparingly only if evidence compels the court to initiate the proceedings against that person. The trial court can take *suo moto* cognizance only when there is evidence recorded during the trial which involves the persons to be added as accused and the evidence recorded during the investigation should not be relied upon. The power of the court of taking suo moto cognizance cannot be interfered with by the revisional



court only if the court gave cogent reasons while giving such an order. Such order must be given only when the first informant or one of the witnesses seeks to implicate a person other than the accused. When the court rejects the application more than once on the ground that no prima facie case has been made out, then the revisional court must hear the applicant under Section 401(2) CrPC, and if satisfied the High Court can exercise its powers under Section 397 CrPC by invoking inherent powers under Section 482 CrPC. This power ordinarily cannot be exercised by the court of sessions according to Section 193 CrPC but with the aid of Section 209 CrPC such a bar is lifted and the court of sessions has complete and unfettered original jurisdiction to take cognizance of the offence which includes the power to summon a person.

Various Stages in Case to Summon the Person as Accused:

The power to call the additional accused must be exercised at the trial or inquiry stage. The trial begins once the charges have been framed in the cases where the charge sheet is filed, whereas when the police file a final report, an inquiry by the court takes place. Trial means determination of innocence or guilt of the accused by examining witnesses and documents. Whereas an inquiry commences after the police files a final report dropping all the charges against the accused person. In such cases, the court may initiate a further inquiry into the matter if it thinks it fit or if the other party files a protest petition. The question as to whether the court of the session has the power under Section 319 to summon the additional accused before the stage of recording evidence has been considered by the Supreme Court in *Ranjit Singh v. State of Punjab* (1998), in which it observed that once the sessions court has taken cognizance, the power to add any person as an accused can be exercised only after reaching the stage of evidence collection and not before that.

The powers under Section 319 cease to exist with the end of trial i.e. pronouncement of judgment. Although a witness must be cross-examined before implicating him, under Section 319 prima facie evidence is sufficient to implicate a person and initiate proceedings against him. Cross-examination is not a prerequisite to summoning an accused under Section 319. These powers could be exercised by the court upon completion of an examination in chief. The Court in a case^[5] has held that a plea of alibi does not discharge the person and he can still be summoned under this section. The Court in *Hardeep Singh v. State of Punjab, 2014* has put a restriction on the power of the magistrate provided under Section 319. It clarified that the magistrate is forbidden to exercise its powers when the case is at the stage mentioned in Section 207 CrPC to Section 209 CrPC. The magistrate cannot take cognizance at this stage of the proceedings. As a general rule, criminal courts are bound to issue a notice of summons for the appearance of a person in the court. The court must issue such notice for adding the person as an accused only when it is satisfied that the evidence implicates the accused. He must be given the opportunity of being heard, only after which the order under section 319 can be passed by the court.



The courts have also clarified their position in cases where the trial court has already taken cognizance within the limitation period but the application under Section 319 has not been passed for 3 years, even then the limitation provisions won't apply to the procedure laid under Section 319. The Court's powers under Section 319 are not bound by the limitation period.

Essentials of Section 319 CrPC

1. There must be a trial or inquiry of an offence. Section 319(1) makes it mandatory for the courts to exercise their power only during the trial or inquiry of an offence. Section 319(1) gives the court the power to proceed against such a person not being the accused, whom it thinks, from the evidence gathered during the course of inquiry or trial, to have committed the offence. Further, sub clause (2) of the Section also gives additional power to the court to arrest or summon that person if he is not present during the proceedings. In case the person is attending the proceedings, then the court may detain him for the purpose of inquiry under Section 319(3).
2. Court must be satisfied by the evidence presented that any other person other than the accused has committed such an offence. In a recent 2019 Supreme Court case of **Sugreev Kumar v. State of Punjab & Ors (2019)** the Court unequivocally reiterated that to add a person as additional accused under Section 319 of the Code of Criminal Procedure, stronger evidence is required than mere probability of complicity of that person. This is the test that has to be applied while considering an application under section 319. It is settled law that the evidence implicating the person must be cogent evidence and such power must be used by the courts sparingly^[6].
3. A similar view has been observed by in the another case^[7] of 2019. The Division Bench said that the test laid down by the bench in this case for invoking power under Section 319 CrPC includes the principle that only when strong and cogent evidence occurs against a person from the evidence the power under Section 319 CrPC should be exercised. In the present case, the wife of the deceased alleged that Srivastava was accessed and he was not summoned, so the court summoned him. He filed an appeal against this order of the lower court which was rejected by the High Court. Later the Supreme Court allowed the appeal by setting aside the High Court's judgment and directed it to follow the guidelines laid down in *Hardeep Singh v. State of Punjab* 2014.
4. The test which was laid down by the Court was one which is more than a prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if it goes un rebutted, would lead to a conviction. The Court further clarified that the power under this Section is an extraordinary and



discretionary power and has to be used sparingly by the courts. Unless the court is satisfied with the involvement of the person, it should not issue a summons or detain him.

5. Such a person has to be tried together with the accused. He must be tried with the accused simultaneously but according to Section 319 (4)(a), the proceedings against him have to be started *de novo* and the witnesses have to be examined again.

Development by the Court in the field of Section 319 CrPC through Landmark Cases

The most important case which laid down the object of Section 319 was the case of *Hardeep Singh v. the State of Punjab* wherein the Supreme Court held that the cases under this section must not only be disposed of expeditiously but also simultaneously.

The Court clarified in the case of *R.C Kumar v. the State of A.P* (1990) what will be considered as evidence under Section 319. Evidence will include only the statement of witnesses as recorded by the court and not those which are recorded by police under Section 164 CrPC or by a magistrate under Section 202 CrPC. Evidence must be of such nature that it must fulfill all the essentials of the offence for which the accused is presented and enough to make out a prima facie case against the accused person. It is not necessary for such evidence to result in the conviction of the accused but must be sufficient to initiate proceedings against him. The courts have also held that a statement expressing mere apprehension or suspicion about a person that too, is not related to cause of death or transaction leading to death is not sufficient to arraign the appellant as accused in the case.

In *Suman v. State of Rajasthan* (2009), the Supreme Court held that Section 319 permits adding a new person as accused who was named in the FIR but was not included in the charge-sheet. If the court is satisfied by the evidence produced, that such person has committed an offence and must be tried for it then he can proceed under this section. Whereas if the person has been tried before and has been discharged, then cognizance against him cannot be taken under Section 319 even if evidence points towards his involvement in the offence as it would result in double jeopardy.

Although almost all aspects of Section 319 CrPC are well settled, there remains a lacuna in some aspects of it. In a recent case of *Sukhpal Singh Kharia v. State of Punjab* (2019) Criminal appeal 866 of 2019, the Supreme Court pointed out a few points for which no precedents exist. The court emphasized that no guidelines have been laid down for the courts to follow while exercising its power under Section 319 CrPC. Although the power under this Section is discretionary, it must be used sparingly and in the absence of guidelines, it gives room to arbitrariness. Another



lacuna on which the courts stressed on was – although the precedents have laid down that the stage until which a new accused can be joined is only till the trial or inquiry stage but what happens when the trial of the accused is complete and the judgment is pronounced on the same date along with the summoning order of the new accused. There is no precedent affirming or denying this position. These questions still need to be addressed in a court of law.

Parameters regarding exercise of jurisdiction by Courts under Section 319 Cr.P.C have been considered time and again by Supreme Court. The chronology of same is as under:

- (i) Dharam Pal and Others Vs. State of Haryana and Another, (2014) 3 SCC 306 (Constitution Bench)
- (ii) Hardeep Singh Vs. State of Punjab and Others, (2014) 3 SCC 92 (Constitution Bench)
- (iii) Babubhai Bhimabhai Bokhiria and Another Vs. State of Gujarat and Others, (2014) 5 SCC 568
- (iv) Jogendra yadav and Others Vs. State of Bihar and Another, (2015) 9 SCc 244
- (v) Brijendra Singh and Others Vs. State of Rajasthan, (2017) SCC 706
- (vi) S Mohammed Ispahani Vs. Yogendra Chandak and Others, (2017) 16 SCC 226
- (vii) Deepu @ Deepak Vs. State of Madhya Pradesh, (2019) 2 SCC 393
- (viii) Dev Wati and Others Vs. State of Haryana and Another (2019) 4 SCC 329
- (ix) Periyasamai and Others Vs. S.Nallasamy, (2019) 4 SCC 342
- (x) Sunil Kumar Gupta and Others Vs. State of Uttar Pradesh and Others, (2019) 4 SCC 556
- (xi) Rajesh and Others Vs. State of Haryana, (2019) 6 SCC 368
- (xii) Sukhpal Singh Khaira Vs. State of Punjab, (2019) 6 SCC 638
- (xiii) Mani Pushpak Joshi Vs. State of Uttarakhand and Another, (2019) 9 SCC 805
- (xiv) Sugreev Kumar Vs. State of Punjab and Others, (2019) SCC Online Sc 390
- (xv) Labhuji Amratji Thakor Vs. State of Gujarat, (2019) 12 SCC 644



(xvi) Shiv Prakash Mishra Vs. State of Uttar Pradesh and Another, (2019) 7 SCC 806

(xvii) Sartaj Singh Vs. State of Haryana and Another, (2021) 5 SCC 337

(xviii) Manjeet Singh Vs. State of Haryana and Others, 2021 SCC Online SC 632

(xix) Sukhpal Singh Khaira v. State of Punjab, 2022 (SC) 1009

Supreme Court Guidelines about Section 319 of the Code for Summoning the Additional Accused

The most updated judgment of Supreme Court gives an insight about Section 319^[8]. It observed:

- (i) If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.
- (ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.
- (iii) If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.
- (iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.
- (v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.
- (vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.
- (vii) If the proceeding paused as in evidence recorded at any stage in the trial before passing of the order on acquittal or sentence mentioned above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.
- (viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.



- (ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.
- (x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.
- (xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.
- (xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;
 - (a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.
 - (b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

Conclusion

Power under Section 319 of Code of Criminal Procedure, 1973 is conferred on the Court to ensure that Justice is done to the society by bringing to book all those guilty of an offence. One of the aims and purpose of the criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also duty upon the Court to render Justice to the victim of an offence. It is in recognition of this that Cr. P. C as specifically conferred power on the Court to proceed against others not arrayed as accused in the circumstances set out by Section 319 Cr. P. C. It is a salutary power enabling the discharge of a Court's obligation to the society to bring to book all those guilty of a crime and hence should be used wisely. The Supreme Court recently observed that the power of trial court under Section 319 of the Code of Criminal Procedure to proceed against persons who have not been chargesheeted as accused, is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case warrant^[9].



References:

1. AIR 1979 SC 1876, 1979 CriLJ 1406, (1980) 1 SCC 493, 1979 (11) UJ 849 SC
2. AIR 2014 SC 2228: 2014 (2) RCR(Criminal) 915
3. The court relied on a catena of decisions such as *Hardeep Singh v. State of Punjab*, *Lakshman Singh v. State of Bihar*, *S. Mohammed Ispahani v. Yogendra Chandak*, *Mohd. Shafi v. Mohd. Rafiq*, *Rajesh v. State of Haryana*, and reached a consensus.
4. Rajendra Singh And Anr. vs State Of Uttar Pradesh on 29 August, 1959, AIR 1960 All 387, 1960 CriLJ 857 by M Desai.J
5. Saraba Reddy v. Puthur Rani Reddy (2007)
6. In *Hardeep Singh* (supra), the Constitution Bench of this Court has explained the purpose behind this provision, inter alia, in the following:
"19. The court is the 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."
7. *Ramesh Chandra Srivastava v. State of UP*, 2019 SC
8. In *Sukhpal Singh Khaira v. State of Punjab* CrI A. No. 885/2019 Citation: 2022 (SC) 1009
9. *Sagar v. State of Uttar Pradesh and Another*, Criminal Appeal no(s). 397 OF 2022 Arising out of SLP(CrI) Nos.7373 of 2021)