HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 10266/2022
CNR: RJHC020931032022 | URN: CRLMP / 18047U / 2022

Prahlad Arya S/o Sua Lal Arya, R/o Village Bhunawas Tehsil Pawta Distt. Jaipur.

----Complainant/Petitioner

Versus

1. State Of Rajasthan, Through Its Public Prosecutor.
2. Nitin Khatik (Aswal) S/o Shri Shubhash Aswal R/o Village Bhaunawas, PS Pragpura Distt. Jaipur.
3. Naresh @ Bablu S/o Shivpal Khatik R/o Village Bhaunawas, PS Pragpura Distt. Jaipur.
4. Akash Aswal S/o Sant Lal Aswal R/o Village Bhaunawas, PS Pragpura Distt. Jaipur.

----Respondent

For Petitioner(s)	:	Mr.Ram Rakh Sharma
For Respondent(s)	:	Mr.Manvendra Singh Choudhary, PP

JUSTICE ANOOP KUMAR DHAND

Order

02/09/2026

1. The instant writ petition has been preferred by counsel for the petitioner against the impugned order dated 08.08.2022 passed by Special Judge, POCSO Cases, Jaipur District in Sessions Case No.67/2021 by which the application submitted by the petitioner under Sections 216 & 319 Cr.P.C. for taking cognizance against the additional accused has been rejected.

2. At the very outset, it has been apprised to this Court that one accused-Nitin Khatik was charge-sheeted before the Sub-ordinate Court and during pendency of the trial against him, the instant application was submitted for taking cognizance against

the additional co-accused Akash and Bablu, but the said applicatin has been rejected.

3. It has been apprised at Bar that during pendency of the present petition, the accused Nitin Khatik has been found guilty and he has been sentenced to undergo imprisonment for the offences committed by him.

4. The Hon'ble Apex Court in the case of **Yadwinder Singh Vs. Lakhi Alias Lakhwinder Singh & Anr. etc.** reported in **2025 SCC OnLine SC 686** has held that the power under Section 319 Cr.P.C. must be invoked and exercised before pronouncement of the judgment of sentence or acquittal, it cannot be exercised after conclusion of the trial.

5. Similar view has been taken by the Hon'ble Apex Court on earlier occasion by the Five Judge Constitutional Bench in the case of **Sukhpal Singh Khaira Vs. State of Punjab** reported in **(2023) 1 SCC 289** and it has been held as under:-

> ‘15. At the outset, having noted the provision, it is amply clear that the power bestowed on the court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the court, if it appears to the court that such evidence points to any person other than the accused who are being tried before the court to have committed any offence and such accused has been excluded in the charge-sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.
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> 23. A close perusal of Section 319CrPC indicates that the power bestowed on the

court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the court to summon such a person so that he could be tried together with the accused and such power is exclusively of the court. Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation "conclusion of trial" in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before pronouncement of the judgment as already held in Hardeep Singh **[Hardeep Singh v. State of Punjab, (2014) 3 SCC 92: (2014) 2 SCC (Cri) 86]** since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the court.

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33. In that view of the matter, if the court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319CrPC can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion. While arriving at such conclusion what is also to be kept in view is the requirement of sub-section (4) to Section 319CrPC. From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused. In a case where the learned Sessions Judge exercises the power under Section 319CrPC after recording the evidence of the witnesses or after pronouncing

the judgment of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of Section 273CrPC. As against the accused who has been summoned subsequently a fresh trial is to be held. However while considering the application under Section 319CrPC, if the decision by the learned Sessions Judge is to summon the additional accused before passing the judgment of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgment is required to be withheld and the application under Section 319CrPC is required to be disposed of and only then the conclusion of the judgment, either to convict the other accused who were before the Court and to sentence them can be proceeded with. This is so since the power under Section 319CrPC can be exercised only before the conclusion of the trial by passing the judgment of conviction and sentence.

34. Though Section 319CrPC provides that such person summoned as per sub-section (1) thereto could be jointly tried together with the other accused, keeping in view the power available to the court under Section 223CrPC to hold a joint trial, it would also be open to the learned Sessions Judge at the point of considering the application under Section 319CrPC and deciding to summon the additional accused, to also take a decision as to whether a joint trial is to be held after summoning such accused by deferring the judgment being passed against the tried accused. If a conclusion is reached that the fresh trial to be conducted against the newly added accused could be separately tried, in such event it would be open for the learned Sessions Judge to order so and proceed to pass the judgment and conclude the trial insofar as the accused against whom it had originally proceeded and thereafter proceed in the case of the newly added accused. However, what is important is that the decision

to summon an additional accused either suo motu by the court or on an application under Section 319CrPC shall in all eventuality be considered and disposed of before the judgment of conviction and sentence is pronounced, as otherwise, the trial would get concluded and the court will get divested of the power under Section 319CrPC. Since a power is available to the court to decide as to whether a joint trial is required to be held or not, this Court was justified in holding the phrase, "could be tried together with the accused" as contained in Section 319(1)CrPC, to be directory as held in Shashikant Singh **[Shashikant Singh vs. Tarkeshwar Singh, (2002) 5 SCC 738:2002 SCC (Cri) 1203]** which in our opinion is the correct view.

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38. For all the reasons stated above, we answer the questions referred as hereunder.

39.(I) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order? The power under Section 319CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

40.(II) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial in respect of

certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

41.(III) What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?

41.1. If the competent court finds evidence or if application under Section 319CrPC 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.

41.2. The court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

41.3. If the decision of the court is to exercise the power under Section 319CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

41.4. 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.

41.5. If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

41.6. 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.

41.7. If the proceeding paused as in para 41.1 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.

41.8. 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 319CrPC 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.

41.9. 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 319CrPC, the appropriate course for the court is to set it down for re-hearing.

41.10. 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.

41.11. 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.

41.12. 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.' (emphasis supplied)

6. This Court is cognizant of the observations made by the Hon'ble Apex Court in the case of **Shishupal Singh Vs. State of Uttar Pradesh & Anr.** reported in **(2019) 8 SCC 682**; and **Yashodhan Singh & Ors. Vs. State of Uttar Pradesh & Anr.** reported in **(2023) 9 SCC 108**. Recently, the Hon'ble Apex Court in the case of **Jamin & Anr. Vs. State of Uttar Pradesh & Anr.** reported in **2025 SCC OnLine SC 506**, has stated, inter alia:

> '115. We summarise our findings on the issues framed for consideration as follows:
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> a. The High Court in exercise of its revisional jurisdiction was justified in setting aside the order passed by the Trial Court rejecting the second application preferred by respondent no. 2 under Section 319 of the CrPC as the same was found to have been passed contrary to the settled position of law, suffering from a patent illegality, thus, leading to serious miscarriage of justice.
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> b. Once a superior court deems fit to interfere with an order passed by a subordinate court, then any rectifications to such order passed in exercise of revisional powers under Section 401 read with Section 397 of the CrPC must be treated on the same footing as rectifications made by an appellate court and as a result would relate back to the time the original order was passed.
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> c. By virtue of relating back of the order passed by the High Court in a revision petition, the summoning order passed by the Trial Court in compliance with the order of the High Court would also relate back to the initial order rejecting the second application under Section 319, and therefore could be said to

have been passed before the conclusion of the trial.

d. Unlike cases where an application under Section 319 is being decided in the first instance by the Trial Court, the conclusion of trial will have no bearing on the adjudication of an application under Section 319 in terms of the directions of the High Court passed in exercise of revisional jurisdiction.

f. The summoning order dated 21.02.2024 was passed by the Trial Court in pursuance of the directions issued by the High Court vide the revisional order dated 14.09.2021. Therefore, the same should be construed as an extension of the revisional order passed by the High Court. The combined effect of the revisional order passed by the High Court and the summoning order passed by the Trial Court dated 21.02.2024 would be that the order of the Trial Court dated 19.07.2010 rejecting the second Section 319 application stood replaced and substituted by the summoning order dated 21.02.2024. Thus, although the summoning order in the present case came to be passed on 21.02.2024, that is, after the conclusion of the trial, yet, it would be deemed to have been passed on 19.07.2010 by virtue of the law expounded by this Court in Maru Ram (supra) and Krishnaji Dattatreya Bapat (supra).

g. Section 319 does not contemplate that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial. A right of hearing would accrue only to a person who is already discharged in the very same proceeding prior to the commencement of the trial. This is different from holding that a person who has been summoned as per Section 319 CrPC has a right of being heard in accordance with the principles of natural justice before being added as an accused to be tried along with the other accused. However, after the rejection of an application under Section 319, a right enures in favour of

> the proposed accused. Thereafter, if in exercise of revisional jurisdiction, the High Court is to pass an order which is prejudicial to the benefit which had already enured in favour of the proposed accused, then the High Court is obligated in law to provide an opportunity of hearing to the proposed accused. This is also the mandate as contained in sub-section (2) of Section 401 of the CrPC.' (emphasis supplied)

7. Thus, the law contemplates and provides for a different outcome under Section 319 of the Code, dependent on the peculiar factual premises of a case. The eye-witnesses in the Trial Court have named the additional accused as persons present on the site of occurrence. The hardship, were we to adjudge it at this juncture, could be more if the additional accused are not summoned than opposed to if they are.

8. Be it noted, the additional accused will have all defences open to them before the Trial Court to put forth their version of innocence, including by way of resort to cross-examination. Trial being an exercise to unravel the truth, given the depositions before the Trial Court, to absolve the additional accused may not be in the best interests of justice. Indubitably, while an innocent person should not be punished, no guilty person should go scot-free. The Trial Court could have better worded its order through clearer reasoning. Reproduction of a passage from a judgment rendered by the Hon'ble Apex Court in the case of **Ramkrishna Forgings Limited v Ravindra Loonkar, (2024) 2 SCC 122** is apt:

> '39. In the recent past, from **Kranti Associates (P) Ltd. v. Masood Ahmed**

> **Khan [Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496: (2010) 3 SCC (Civ) 852]** to **Manoj Kumar Khokhar v. State of Rajasthan [Manoj Kumar Khokhar v. State of Rajasthan, (2022) 3 SCC 501: (2022) 2 SCC (Cri) 1]**, the clear position in law is that a court or even a quasi-judicial authority has a duty to record reasons for its decision. Needless to add, "Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless." **[Raj Kishore Jha v. State of Bihar, (2003) 11 SCC 519: 2004 SCC (Cri) 212]**...'

9. Since the law on the issue involved in the present petition has already been set at rest that the application under Section 319 Cr.P.C. cannot be taken into count, after conclusion of the trial and the trial has already been concluded in the instant matter, this Court finds no reasons to entertain the present petition, under the changed circumstances. The instant petition is dismissed as having become infructuous.

10. Stay application and all application (pending, if any) also stand dismissed.

(ANOOP KUMAR DHAND),J

1/Aayush Sharma