

MANJEET SINGH

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v.

STATE OF HARYANA & ORS.

(Criminal Appeal No.875 of 2021)

AUGUST 24, 2021

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**[DR. DHANANJAYA Y. CHANDRACHUD AND
M. R. SHAH, JJ.]**

Code of Criminal Procedure, 1973 – s.319 – Summoning of additional accused – An FIR was registered on the basis of the statement of the original complainant regarding death of his son and injuries suffered by his nephew-appellant – As per his statement his son and his nephew were attacked by one 'S' and four accused persons/private respondents armed with weapons while they were on their way back home after purchasing the pesticides meant for paddy in their car – There was indiscriminate firing from 'S' which led to death of his son and his nephew was injured – A cross-case was also registered against the complainant side – The matter was investigated and after investigation, a final report was filed only against 'S' – That during the trial, appellant-nephew was examined as PW1 – In the deposition, he reiterated the allegations made in the FIR including the allegations made against the four private respondents and reiterated what was stated in the FIR – He came to be cross-examined partly and during the cross-examination, an application u/s. 319 CrPC was given on behalf of the complainant for summoning of four private respondents as additional accused – The trial Court dismissed the application u/s. 319 CrPC – The High Court confirmed the order passed by the trial Court – On appeal, held: It is required to be noted that in the FIR all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them – It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the car in a manner which blocks the entire road and they were armed with the weapons – The evidence of an injured eye witness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly – While exercising the powers u/s. 319 CrPC the Court has not to wait till the cross-examination and on the basis of the

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- A *examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial u/s. 319 CrPC – The trial Court as well as the High Court have materially erred in dismissing the application u/s.319 CrPC and refusing to summon the private respondents herein to face the trial in exercising the powers u/s. 319 CrPC.*
- B *Code of Criminal Procedure, 1973 – s.319 – The High Court while dismissing the application filed u/s.319 CrPC went into the merits of the case – Held: At the stage of exercising the powers u/s. 319 CrPC, the Court is not required to appreciate and/or enter on the merits of the allegations of the case.*
- C *Code of Criminal Procedure, 1973 – s.319 – Exercise of power under – Held: Powers u/s. 319 CrPC can be exercised at any stage from commencing of the trial and recording of evidence/ deposition and before the conclusion of the trial at any stage.*
- D **Allowing the appeal, the Court**
 - HELD: 1. The ratio of the various Supreme Court decisions on the scope and ambit of the powers of the Court under Section 319 CrPC can be summarized as under:**
 - (i) **That while exercising the powers under Section 319 CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;**
 - (ii) **for the empowerment of the courts to ensure that the criminal administration of justice works properly;**
 - (iii) **the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;**
 - (iv) **to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;**
 - (v) **where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;**
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(vi) Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it; A

(vii) 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; B

(viii) Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial; C

(ix) the power under Section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage intended to put the process into motion; D

(x) the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence; E

(xi) the word “evidence” in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents; F

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation; F

(xiii) 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); G

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319 CrPC can be exercised; H

- A (xv) that power under Section 319 CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;
- (xvi) even in a case where the stage of giving opportunity
- B to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);
- (xvii) while exercising the powers under Section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial. [Para 13][884-A-H; 885-A-H]
- 2. Applying the law laid down in the various decisions to the facts of the case on hand this Court is of the opinion that the trial Court as well as the High Court have materially erred in dismissing the application under Section 319 CrPC and refusing to summon the private respondents herein to face the trial in exercising the powers under Section 319 CrPC. It is required to be noted that in the FIR No.477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, a car was standing on the road which belongs to accused persons. All the five accused persons were armed with lathi, gandsi, danda and a revolver. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the car in a manner which blocks the entire road and they were armed with the weapons. Despite the above specific allegations, when the charge-sheet/final report came to be filed only two persons came to be charge-sheeted and the private respondents herein though named in the FIR were put/kept in column no.2. Entire discussion

in the charge-sheet/final report is against 'S' only. So far as the private respondents are concerned only thing which is stated is "During the investigation of the present case, HPS, DSP Assandh and HPS, DSP Indri found four accused, residents of Bandrala innocent and accordingly Sections 148, 149 and 341 of the IPC were deleted in the case and they were kept in column no.2, whereas challan against accused 'S' has been presented in the Court." [Para 14][886-A-H; 887-A]

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3. Now thereafter when in the examination-in-chief the appellant herein – victim – injured eye witness has specifically named the private respondents herein with specific role attributed to them, the trial Court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eye-witness. The evidence of an injured eye witness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under Section 319 CrPC the Court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under Section 319 CrPC. [Para 14.1][887-B-D]

4. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the trial Court dismissing the application under Section 319 CrPC is concerned, the High Court entered into the merits of the case. At the stage of exercising the powers under Section 319 CrPC, the Court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149 IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149 IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were

- A **armed with weapons and therefore, they cannot be added as accused is unsustainable. The trial Court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under Section 319 CrPC. [Para 14.2][887-E-H; 888-A-B]**
- B *Sartaj Singh v. State of Haryana* 2021 (4) SCALE 227; *Hardeep Singh v. State of Punjab* (2014) 3 SCC 92 : [2014] 2 SCR 1 – relied on.
Lakshman Singh v. State of Bihar (now Jharkhand) 2021 (8) SCALE 448; *Sukhpal Singh Khaira v. State of Punjab* (2019) 6 SCC 638; *Masalti v. State of U.P* AIR 1965 SC 202 : [1964] SCR 133; *Shambhu Nath Singh and Ors. v. State of Bihar* AIR 1960 SC 725; *Brijendra Singh v. State of Rajasthan* (2017) 7 SCC 706 : [2017] 3 SCR 374; *S. Mohammed Ispahani v. Yogendra Chandak* (2017) 16 SCC 226 : [2017] 10 SCR 29; *Rajesh v. State of Haryana* (2019) 6 SCC 368 : [2019] 8 SCR 187; *State of MP v. Mansingh* (2003) 10 SCC 414 : [2003] 2 Suppl. SCR 460; *Abdul Sayeed v. State of MP* (2010) 10 SCC 259 : [2010] 13 SCR 311; *State of Uttar Pradesh v. Naresh* (2011) 4 SCC 324 : [2011] 4 SCR 1176 – referred to.
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Case Law Reference

	[2014] 2 SCR 1	relied on	Para 8.6
	2021 (8) SCALE 448	referred to	Para 8.7
F	(2019) 6 SCC 638	referred to	Para 8.8
	[1964] SCR 133	referred to	Para 8.10
	AIR 1960 SC 725	referred to	Para 8.10
	[2017] 3 SCR 374	referred to	Para 8.12
G	[2017] 10 SCR 29	referred to	Para 8.13
	[2019] 8 SCR 187	referred to	Para 8.13
	2021 (4) SCALE 227	relied on	Para 8.13
	[2003] 2 Suppl. SCR 460	referred to	Para 14.1
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[2010] 13 SCR 311

referred to

Para 14.1

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[2011] 4 SCR 1176

referred to

Para 14.1

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 875 of 2021.

From the Judgment and Order dated 28.08.2020 of the High Court of Punjab and Haryana at Chandigarh in CRR No.28 of 2018. **B**

Gurinder Singh Gill, Sr. Adv., P.P. Nayak, Kuldeep Singh Kuchaliya, Ms. Aashna Gill, Pratap Singh Gill, Ms. Bhupinder, Ms. Vandana Hooda, Ajay Pal, Advs. for the Appellant.

R. Basant, Sr. Adv., Ankit Raj, Satya Ranjan Swian, Vedansh Anand, Dr. Monika Gusain, Atul Kumar, Abhimanyu Sharma, Ms. Deepali, Pulak Bagchi, Tarun Gupta, Advs. for the Respondents. **C**

The Judgment of the Court was delivered by

M. R. SHAH, J.

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1. Feeling aggrieved and dissatisfied with the impugned Judgment and Order passed by the High Court of Punjab and Haryana at Chandigarh in CRR No.28 of 2018 by which the High Court has dismissed the said Revision Application preferred by the appellant herein and has confirmed the order passed by the Learned Sessions Judge dated 05.09.2017 by which the Additional Sessions Judge dismissed an application under Section 319 CrPC moved by the appellant herein for summoning the Respondent Nos. 2 to 5 herein as additional accused in the case FIR No.477 dated 27.07.2016 for the offences under Sections 302, 307, 341, 148 & 149 IPC registered at Police Station Assandh, the appellant/victim has preferred the present appeal. **E**

2. An FIR No.477 dated 27.07.2016 was registered at Police Station Assandh on the basis of the statement of one Rann Singh, regarding the death of his son Amarjit Singh and the injuries having been suffered by the present appellant – Manjeet Singh. **F**

That as per the statement of Rann Singh his son Amarjit Singh and his nephew Manjeet Singh were attacked by Sartaj Singh, Tejpal Singh and Sukhpal Singh sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat sons of Mohan Sarup while they were on their way back home after purchasing the pesticides meant for paddy in their car. They parked their Mahendra XUV 500 belonging to Sartaj Singh and blocked **G**

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- A the road. They were armed with weapons and when his son Amarjit Singh followed by Manjeet Singh stepped out from his car to get the road cleared, Sartaj Singh fired four shots from his licenced revolver, which hit the left side of the chest, stomach and elbow of Amarjit Singh. Sartaj Singh fired indiscriminately from his licenced revolver, which also hit the nephew Manjeet Singh on the chest near the right shoulder. Amarjit Singh died on spot and Manjeet Singh was admitted in the hospital, as per the statement of Rann Singh.
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2.1 A cross-case was also registered at the behest of Sartaj Singh, the accused in the FIR on 28.07.2016 which was recorded against the complainant side in FIR No.477 dated 27.07.2016. In the cross- case

- C the allegations were made against Manjeet Singh, Narvair Singh and other persons namely Palwinder Singh son of Rann Singh, Satkar Singh son of Rajwant Singh, Rajwant Singh son of Gurcharan Singh and Sukhdeep Singh son of Satnam Singh where it was alleged that all the persons inflicted injuries on his person.

- D 2.2 The matter was investigated and after investigation, a final report was filed only against Sartaj Singh in FIR No.477. All other accused were exonerated and were kept in column no.2. In cross case, one of the accused died and a challan was filed against two persons where four of them namely Palwinder Singh, Rajwant Singh, Sukhdeep Singh and Satkar Singh were kept in column no.2.
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2.3 The case was committed to the Court of Sessions and the trial begin in both the cases namely arising out of FIR No.477 dated 27.07.2016 and the cross case. That during the trial arising out of FIR No.477, appellant herein came to be examined as PW1. In the deposition, he reiterated the allegations made in the FIR including the allegations made

- F against the private respondents herein namely Sukhpal Singh, Tejpal Singh, Parab Sharan and Preet Samrat and reiterated what was stated in the FIR. He came to be cross- examined partly and during the cross-examination, an application under Section 319 CrPC was given on behalf of the complainant for summoning of Sukhpal Singh, Tejpal Singh, Parab Sharan and Preet Samrat as additional accused. Further cross-examination of PW1 came to be deferred. That by order dated 05.09.2017, the Learned trial Court dismissed the application under Section 319 CrPC for summoning Sukhpal Singh, Tejpal Singh, Parab Sharan and Preet Samrat as additional accused to face trial arising out of FIR No.477 of 2016.
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3. In the cross case arising out of the complaint given by Sukhpal Singh recorded on 28.07.2016 (accused in FIR No. 477 dated 27.07.2016) the prosecution examined Sukhpal Singh as PW1, Dr. Mahinder, the Medical Officer as PW2 and one Bhupinder Singh as PW7. That thereafter the said Sartaj Singh filed an application before the Learned trial Court under Section 319 CrPC for summoning Palwinder Singh, Sartaj Singh, Rajwant Singh and Sukhdeep Singh as additional accused. On the basis of the evidence recorded the Learned trial Court after considering the statements of Sartaj Singh and other eye witnesses and the material on record allowed the application under Section 319 CrPC vide order dated 21.04.2018 and directed to issue summons against Palwinder Singh, Satkar Singh, Rajwant Singh and Sukhdeep Singh.

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4. Being aggrieved and dissatisfied with the order dated 05.09.2017 passed by the Learned trial Court rejecting the application under Section 319 CrPC in FIR No.477 and refusing to issue summons against Sukhpal Singh, Tejpal Singh, Parab Sharan and Preet Samrat as additional accused, the appellant herein – Manjeet Singh – victim preferred a revision application before the High Court which was numbered as CRR 28 of 2018.

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Against the order passed by the Learned trial Court dated 21.04.2018 by which an application under Section 319 CrPC filed by Sartaj Singh in a cross case summoning Palwinder Singh, Satkar Singh, Rajwant Singh and Sukhdeep Singh came to be allowed, Satkar Singh and others filed a revision application before the High Court being CRR No.3238 of 2018.

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5. By the impugned Judgment and Order dated 28.08.2020 the High Court dismissed CRR No.28 of 2018 filed by Manjeet Singh. It was filed challenging the order passed by Learned trial Court dated 05.09.2017 rejecting the application under Section 319 CrPC for summoning Sukhpal Singh, Tejpal Singh, Parab Sharan and Preet Samrat as additional accused to face the trial arising out of FIR No.477 of 2016. By the very common judgment and order, the High Court allowed CRR No. 3238 of 2018 filed by Satkar Singh and others and quashed and set aside the order passed by the Learned trial Court dated 21.04.2018 arising out of cross case by which Palwinder Singh, Satkar Singh, Rajwant Singh and Sukhdeep Singh were summoned to face the trial, the application which was given by Sartaj Singh under Section 319 CrPC.

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- A 6. Sartaj Singh feeling aggrieved and dissatisfied with the judgment and order passed by the High Court in CRR 3238 of 2018 by which the High Court set aside the order passed by the trial Court dated 28.07.2016 summoning Palwinder Singh, Satkar Singh, Rajwant Singh and Sukhdeep Singh under Section 319 CrPC, approached this Court vide Criminal Appeal No.298-299 of 2021. By detailed judgment and order this very Bench vide judgment and order dated 15.03.2021 allowed the said appeal and set aside the order passed by the High Court passed in CRR No.3238 of 2018 and restored the order passed by the Learned trial Court arising out of a cross case given by Sartaj Singh dated 28.07.2016.
- B 7. That thereafter the present appellant herein Manjeet Singh has preferred the present appeal challenging the order passed by the High Court passed in CRR 28 of 2018 by which the High Court has confirmed the order passed by the Learned trial Court dismissing an application under Section 319 CrPC to summon private respondents herein as additional accused and to face the trial arising out of FIR No.477 of 2016 dated 27.07.2016
- C 8. Shri G.S. Gill, Learned Senior Advocate has appeared on behalf of Manjeet Singh and Shri Ankit Raj, Learned Advocate has appeared on behalf of the respondent – State and Shri R. Basant, Learned Senior Advocate has appeared on behalf of private respondents herein.
- D 8.1 Shri Gill, Learned Counsel appearing on behalf of Manjeet Singh has vehemently submitted that in the facts and circumstances of the case, both, the Learned trial Court as well as the High Court have committed a grave error in rejecting the application under Section 319 CrPC to summon the private respondents herein to face the trial arising out of FIR No. 477 dated 27.07.2016.
- E 8.2 It is submitted that while rejecting the application under Section 319 CrPC, the Learned trial Court as well as the High Court have not properly appreciated and considered the scope, ambit and powers under Section 319 CrPC.
- F 8.3 It is submitted that by not allowing the application under Section 319 CrPC and not summoning the private respondents herein as additional accused, both, the Learned trial Court as well as the High Court have not exercised the powers vested under Section 319 CrPC.
- G 8.4 Learned Counsel appearing on behalf of the appellant has submitted that even the reasons assigned by the High Court while

dismissing the revision application and confirming the order passed by the High Court refusing to summon the private respondent as additional accused are not sustainable in law and on facts.

8.5 It is further submitted that while passing the impugned order, the High Court has not appreciated the fact that all the private respondents herein who were sought to be arraigned as additional accused were specifically named in the FIR No.477. It is submitted that even in the deposition the appellant herein – PW1 has also specifically named the private respondents herein with their specific role. It is submitted that therefore the Learned trial Court ought to have exercised the powers under Section 319 CrPC and ought to have summoned the private respondents as additional accused.

8.6 It is submitted that as held by this Court in catena of decisions and more particularly in **Hardeep Singh v. State of Punjab** (2014) 3 SCC 92, even on the basis of the statement made in the examination-in-chief of the witnesses concerned the Court can in exercise of powers under Section 319 CrPC summon the persons even named in the examination-in-chief as additional accused and to face the trial. It is submitted that in the present case not only the names of the private respondents have been disclosed in the examination-in-chief of the appellant – victim but they were named in the FIR also with specific role.

8.7 It is submitted that even the accused can be convicted on the basis of the evidence of a single witness. It is submitted that in the present case the appellant is the injured eye witness and as observed and held by this Court in the recent decision **Lakshman Singh vs. State of Bihar** (now Jharkhand) (Criminal Appeal No.606 of 2021) decided on 23rd July, 2021 unless there are compelling circumstances and reasons normally and by and large the injured eye-witness should be believed. It is submitted that even otherwise the appellant is subjected to cross-examination. It is submitted that therefore merely because there may be one witness and/or statement of only one person, is no ground not to summon the additional accused in exercise of powers under Section 319 CrPC.

8.8 It is further submitted that at this stage the High Court was not justified in appreciating the deposition/evidence of the appellant on merits. It is submitted that the things which are required to be done

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- A during the trial, have been done by the High Court at this stage of summoning the additional accused in exercise of powers under Section 319 CrPC. It is submitted that the aforesaid is wholly impermissible at the stage of considering an application under Section 319 CrPC. It is vehemently submitted that as held by this Court in the case of ***Hardeep Singh (Supra); Sukhpal Singh Khaira v. State of Punjab*** (2019) 6 SCC 638 and in other subsequent decisions at the stage of considering the application under Section 319 CrPC the High Court is not justified in entering into the merits and/or appreciation of the evidence on merits, which is required to be considered at the stage of trial.
- B 8.9 It is submitted that even the reasoning given by the High Court dismissing the revision application while confirming the order passed by the Learned trial Court dismissing the application under Section 319 CrPC are not sustainable in law. It is submitted that while passing the impugned judgment and order, the High Court is not justified in entering into the allegations and the evidence on merits which is wholly impermissible at this stage as held by this Court in the aforesaid decisions and other decisions.
- C 8.10 It is submitted that the High Court has failed to notice that the allegations against the original accused as well as the private respondents herein are for the aforesaid offences under Sections 148 & 149 IPC also. It is submitted that as per the settled law while considering the charge under Section 149 IPC the individual role and overt act by each accused is not relevant and/or material and it is sufficient that accused is a part of the unlawful assembly. (See ***Masalti v. State of U.P***, AIR 1965 SC 202 & ***Shambhu Nath Singh And Ors. v. State Of Bihar***, AIR 1960 SC 725). It is submitted that therefore when the High Court has observed that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore they cannot be arrayed as additional accused, is unsustainable and contrary to the law laid down by this Court in catena of decisions on Section 149 of IPC.
- D 8.11 It is submitted that even the observations made by the High Court that it cannot be said that the private respondents had any common intention or there was meeting of mind that Sartaj Singh would be firing are unwarranted at this stage. It is submitted that at this stage the Court is not required to enter into the merits of the allegations and/or the evidence. It is submitted that therefore while making above observations

while rejecting the application under Section 319 CrPC the High Court A has not exercised its powers vested under Section 319 CrPC.

8.12 It is submitted that even in the facts and circumstances of the case the High Court has committed a grave error in relying upon the decision of this Court in the case of **Brijendra Singh vs. State of Rajasthan**, (2017) 7 SCC 706. It is submitted that in the present case if we go through and consider the final report by which the private respondents herein were to be in column no. 2 there do not seem to be any evidence discussed and/or specific allegations considered against the private respondents herein. It is submitted that the private respondents herein are put at column no.2. on the basis of the reports of HC Baljinder Singh, HPS, DSP Assandh and Shri Kushal Pal, HPS, DSP Indri, who as such are not even the Investigating Officer and even the reports if any, are part of the charge-sheet nor the aforesaid officers are cited as witnesses. It is submitted therefore as such no proper investigation has been carried out against the private respondents herein and without discussing the specific allegations against the private respondents herein which have been made in the FIR, the private respondents herein are kept in column no.2. It is submitted that therefore the decision in the case of **Brijendra Singh** (Supra), would not be applicable to the facts of the case on hand.

8.13 Making above submissions and relying upon the decisions in the cases of **Hardeep Singh** (Supra); **S. Mohammed Ispahani vs. Yogendra Chandak** (2017) 16 SCC 226; **Rajesh vs. State of Haryana**, (2019) 6 SCC 368 and the recent decision of this Court in the case of **Sartaj Singh vs. State of Haryana**, 2021 (4) Scale 227, which was arising out of the cross case in the very case, it is prayed to allow the present appeal and quash and set aside the order passed by the Learned trial Court as well as the High Court and consequently allow the application under Section 319 CrPC to summon the private respondents herein to face the trial arising out of cross case dated 28.07.2016 for the offences under Sections 302, 307, 341, 148 & 149 IPC.

9. Shri Ankit Raj, Learned Counsel appearing on behalf of the State has surprisingly supported the private respondents herein and had submitted that in the present case, both, the Learned trial Court as well as the High Court have rightly dismissed the application under Section 319 CrPC and have rightly refused to summon the private respondents herein as additional accused.

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- A 10. Present appeal is vehemently opposed by Shri R. Basant, Learned Senior Counsel appearing on behalf of the private respondent herein.
- 10.1 While opposing the present appeal and supporting the impugned judgment and order passed by the trial Court as well as the High Court
- B Shri Basant, Learned Counsel appearing on behalf of private respondents herein has made following submissions:
- C (i) That in the facts and circumstances of the case no error has been committed by the courts below in rejecting the application under Section 319 CrPC and refusing to summon the private respondents herein as additional accused;
- C (ii) That cogent reasons have been given by, both, the Learned trial Court as well as the High Court refusing to summon the private respondents herein as additional accused;
- D (iii) That though a common judgment and order was passed by the High Court in CRR No.28 of 2018 and CRR 3238 of 2018, when Sartaj Singh the original complainant in cross case dated 28.07.2016 approached this Court by way of Criminal Appeal No.298-299 of 2021, at that stage the appellant herein did not challenge the impugned judgment and order passed by the High Court passed in CRR No.28 of 2018. It is submitted that only thereafter when number of witnesses have been examined and the trial is at the fag-end, the present appeal has been preferred. Therefore, it is prayed not to exercise the powers under Article 136;
- E (iv) That in the present case even the inquiry was conducted by four high rank officials and only thereafter the Investigating Officer put/kept the private respondents herein in column no.2. It is submitted that during the course of the investigation and even thereafter in the inquiry four DSPs which were conducting at the instance of the Rann Singh – original complainant and when there was no evidence found the private respondents herein are kept in column no.2;
- F (v) It is submitted that in the case of **Brijendra Singh** (Supra) it is observed by this Court that when the evidence has been collected by the IO during the investigation and thereafter having found no evidence against the accused

named in the FIR and thereafter they are kept in column no.2, the same is required to be considered seriously and/or having greater value than the deposition of the complainant and some other persons in their examination-in-chief;

- (vi) That when initially after investigation the private respondents herein were put/kept in column no.2, though they were having an opportunity on the part of the complainant to submit the protest application, they failed to do so and thereafter after recording the deposition of PW1 – appellant herein when the cross-examination of the said witness was going on, the complainant filed an application under Section 319 CrPC;
- (vii) That except the bare statements of the appellant who himself is an accused in the cross case, there is no further material/evidence on record and therefore, both, the Learned trial Court as well as the High Court have rightly refused to summon the private respondents herein as additional accused.

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10.2 Making above submissions and relying upon the decision of this Court in the case of **Brijendra Singh** (Supra) it is prayed to dismiss the present appeal.

11. Heard Learned Counsels for the respective parties at length.

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12. What is under challenge in the present appeal is the impugned judgment and order passed by the High Court dismissing the revision application preferred by the appellant herein and confirming the order passed by the Learned trial Court rejecting the application under Section 319 CrPC on behalf of the complainant and refusing to summon the private respondents herein as additional accused.

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12.1 While considering the rival submissions the law on the scope and ambit of Section 319 CrPC is required to be considered. In the recent decision in the case of **Sartaj Singh** (Supra) this very Bench has considered in detail the law on the scope and ambit of Section 319 CrPC. In the said decision this court considered the decisions in the cases of **Hardeep Singh** (Supra); **S. Mohammed Ispahani v. Yogendra Chandak** (Supra) and **Rajesh** (Supra) in detail. The relevant part of the aforesaid decisions which came to be considered by this Court are as under:

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- A “6.1.1 In *Hardeep Singh* (supra), this Court had an occasion to consider in detail the scope and ambit of the powers of the Magistrate under Section 319 CrPC, the object and purpose of Section 319 CrPC etc. It is observed in the said decision that the entire effort is not to allow the real perpetrator of an offence to get away unpunished. It is observed that this is also a part of fair trial and in order to achieve this very end that the legislature thought of incorporating the provisions of Section 319 CrPC. It is further observed that for the empowerment of the courts to ensure that the criminal administration of justice works properly, the law has been appropriately codified and modified by the legislature under the CrPC indicating as to how the Courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law. It is also observed that it is the duty of the court to find out the real truth and to ensure that the guilty does not go unpunished. In Paragraphs 8 and 9, this Court observed and held as under:
- B “8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.
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9. The presumption of innocence is the general law of the land as every man is presumed to be innocent unless proven to be guilty. Alternatively, certain statutory presumptions in relation to certain class of offences have been raised against the accused whereby the presumption of guilt prevails till the accused discharges his burden upon an onus being cast upon him under the law to prove himself to be innocent. These competing theories have been kept in mind by the legislature. The entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. This is also a part of fair trial and in our opinion, in order to achieve this very end that the legislature thought of incorporating provisions of Section 319 CrPC. It is with the said object in mind that a constructive and purposive interpretation should be adopted that advances the cause of justice and does not dilute the intention of the statute conferring powers on the court to carry out the abovementioned avowed object and purpose to try the person to the satisfaction of the court as an accomplice in the commission of the offence that is the subject-matter of trial.”

6.1.2 In the said case, the following five questions fell for consideration before this Court.

(i) What is the stage at which power under Section 319 CrPC can be exercised? E

(ii) Whether the word “evidence” used in Section 319(1) CrPC could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned? F

(iii) Whether the word “evidence” used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial? G

(iv) What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted? H

A (v) Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charged or who have been discharged?"

6.1.3 While considering the aforesaid questions, this Court in *Hardeep Singh* (supra) observed and held as under:

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

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

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

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

G **18.** The legislature cannot be presumed to have imagined all the circumstances and, therefore, it is the duty of the court to give full effect to the words used by the legislature so as to

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encompass any situation which the court may have to tackle while proceeding to try an offence and not allow a person who deserves to be tried to go scot-free by being not arraigned in the trial in spite of the possibility of his complicity which can be gathered from the documents presented by the prosecution.

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.

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22. In our opinion, Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial. It is this part which is under reference before this Court and therefore in our opinion, while answering the question referred to herein, we do not find any conflict so as to delve upon the situation that was dealt with by this Court in *Dharam Pal (CB) [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : AIR 2013 SC 3018]* .

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47. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections

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- A 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

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- C 53. It is thus aptly clear that until and unless the case reaches the stage of inquiry or trial by the court, the power under Section 319 CrPC cannot be exercised. In fact, this proposition does not seem to have been disturbed by the Constitution Bench in *Dharam Pal (CB)* [*Dharam Pal v. State of Haryana*, (2014) 3 SCC 306 :AIR 2013 SC 3018]. The dispute therein was resolved visualising a situation wherein the court was concerned with procedural delay and was of the opinion that the Sessions Court should not necessarily wait till the stage of Section 319 CrPC is reached to direct a person, not facing trial, to appear and face trial as an accused. We are in full agreement with the interpretation given by the Constitution Bench that Section 193 CrPC confers power of original jurisdiction upon the Sessions Court to add an accused once the case has been committed to it.

- F 54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage *prima facie* can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for

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this reason that the legislature has consciously used separate terms, A
namely, inquiry or trial in Section 319 CrPC.

55. Accordingly, we hold that the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence and also in exceptional circumstances as explained hereinabove. B

56. There is yet another set of provisions which form part of inquiry relevant for the purposes of Section 319 CrPC i.e. provisions of Sections 200, 201, 202, etc. CrPC applicable in the case of complaint cases. As has been discussed herein, evidence means evidence adduced before the court. Complaint case is a distinct category of criminal trial where some sort of evidence in the strict legal sense of Section 3 of the Evidence Act 1872 (hereinafter referred to as “the Evidence Act”) comes before the court. There does not seem to be any restriction in the provisions of Section 319 CrPC so as to preclude such evidence as coming before the court in complaint cases even before charges have been framed or the process has been issued. But at that stage as there is no accused before the court, such evidence can be used only to corroborate the evidence recorded during the trial (*sic or*) for the purpose of Section 319 CrPC, if so required. What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 CrPC acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 CrPC is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 CrPC at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses are being recorded. C

6.1.4 While answering Questions (iii), namely, whether the word “evidence” used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during D

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- A investigation or the word “evidence” is limited to the evidence recorded during trial, this Court, in the aforesaid decision has observed and held as under:
- “**58.** To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers under Section 319 CrPC, the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that come up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 CrPC indicate that the material has to be “where … it appears from the *evidence*” before the court.

59. Before we answer this issue, let us examine the meaning of the word “evidence”. According to Section 3 of the Evidence Act, “evidence” means and includes:

- E “(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;
- (2) all documents including electronic records produced for the inspection of the court; such documents are called documentary evidence.”

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

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

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83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. This would harmonise such material with the word “evidence” as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.

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

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- A **85.** In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The “evidence” is thus, limited to the evidence recorded during trial.
- B 6.1.5 While answering Question (ii) namely, whether the word “evidence” used in Section 319(1) CrPC means as arising in examination-in-chief or also together with cross-examination, in the aforesaid decision, this Court has observed and held as under:
- C **86.** The second question referred to herein is in relation to the word “evidence” as used under Section 319 CrPC, which leaves no room for doubt that the evidence as understood under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In *Rakesh* [(2001) 6 SCC 248 : 2001 SCC (Cri) 1090 : AIR 2001 SC 2521], it was held that: (SCC p. 252, para 10)
- F “10. ... It is true that finally at the time of trial the accused is to be given an opportunity to cross- examine the witness to test its truthfulness. But that stage would not arise while exercising the court’s power under Section 319 CrPC. Once the deposition is recorded, no doubt there being no cross- examination, it would be a *prima facie* material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not.”
- G **87.** In *Ranjit Singh* [*Ranjit Singh v. State of Punjab*, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554 : AIR 1998 SC 3148], this Court held that: (SCC p. 156, para 20)
- H “20. ... it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers.”

88. In *Mohd. Shafi* [*Mohd. Shafi v. Mohd. Rafiq*, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899], it was held that the prerequisite for exercise of power under Section 319 CrPC is the satisfaction of the court to proceed against a person who is not an accused but against whom evidence occurs, for which the court can even *wait till the cross-examination is over* and that there would be no illegality in doing so. A similar view has been taken by a two-Judge Bench in *Harbhajan Singh v. State of Punjab* [(2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135]. This Court in *Hardeep Singh* [*Hardeep Singh v. State of Punjab*, (2009) 16 SCC 785 : (2010) 2 SCC (Cri) 355] seems to have misread the judgment in *Mohd. Shafi* [*Mohd. Shafi v. Mohd. Rafiq*, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899], as it construed that the said judgment laid down that for the exercise of power under Section 319 CrPC, the court has to necessarily wait till the witness is cross-examined and on complete appreciation of evidence, come to the conclusion whether there is a need to proceed under Section 319 CrPC.

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89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. 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 straitjacket formula can and should be laid with respect to

- A 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.
- E **91.** Further, in our opinion, there does not seem to be any logic behind waiting till the cross-examination of the witness is over. It is to be kept in mind that at the time of exercise of power under Section 319 CrPC, the person sought to be arraigned as an accused, is in no way participating in the trial. Even if the cross-examination is to be taken into consideration, the person sought to be arraigned as an accused cannot cross-examine the witness(es) prior to passing of an order under Section 319 CrPC, as such a procedure is not contemplated by CrPC. Secondly, invariably the State would not oppose or object to naming of more persons as an accused as it would only help the prosecution in completing the chain of evidence, unless the witness(es) is obliterating the role of persons already facing trial. More so, Section 299 CrPC enables the court to record evidence in absence of the accused in the circumstances mentioned therein.
- H **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.

6.1.6 While answering Question (iv), namely, what is the degree of satisfaction required for invoking the power under Section 319 CrPC, this Court after considering various earlier decisions on this point, has observed and held as under:

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 “*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.

6.1.7 While answering Question (v), namely, in what situations can the power under Section 319 CrPC be exercised: named in the FIR, but not charge-sheeted or has been discharged, this Court has observed and held as under:

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- A **112.** However, there is a great difference with regard to a person who has been discharged. A person who has been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a *prima facie* case to proceed against such person. Generally, the stage of evidence in trial is merely proving the material collected during investigation and therefore, there is not much change as regards the material existing against the person so discharged. Therefore, there must exist compelling circumstances to exercise such power. The court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398 CrPC without resorting to the provision of Section 319 CrPC directly.

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- 116.** Thus, it is evident that power under Section 319 CrPC can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the charge-sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 CrPC without taking recourse to provisions of Section 300(5) read with Section 398 CrPC.
- G 6.2 Considering the law laid down by this Court in *Hardeep Singh* (supra) and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination

of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC, provided from the evidence (may be on the basis of the evidence collected in the form of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

6.3 In *S. Mohammed Ispahani v. Yogendra Chandak* (2017) 16 SCC 226, this Court has observed and held as under: (SCC p. 243)

“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 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.”

6.4 In the case of *Rajesh v. State of Haryana* (2019) 6 SCC 368, after considering the observations made by this Court in *Hardeep Singh* (supra) referred to hereinabove, this Court has further observed and held that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in FIR but not implicated in charge- sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.”

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- A 13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under Section 319 CrPC can be summarized as under:
- B (i) That while exercising the powers under Section 319 CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;
- B (ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;
- C (iii) the law has been properly codified and modified by the legislature under the CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;
- D (iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;
- D (v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;
- E (vi) Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it;
- F (vii) 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;
- G (viii) Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;
- H (ix) the power under Section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage intended to put the process into motion;

- (x) the court can exercise the power under Section 319 CrPC only after the trial proceeds and commences with the recording of the evidence; A
- (xi) the word “evidence” in Section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents; B
- (xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319 CrPC is to be exercised and not on the basis of material collected during the investigation; C
- (xiii) 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);
- (xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319 CrPC can be exercised; D
- (xv) that power under Section 319 CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not wait till the said evidence is tested on cross-examination; E
- (xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses); F
- (xvii) while exercising the powers under Section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial. G
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- A 14. Applying the law laid down in the aforesaid decisions to the facts of the case on hand we are of the opinion that the Learned trial Court as well as the High Court have materially erred in dismissing the application under Section 319 CrPC and refusing to summon the private respondents herein to face the trial in exercising the powers under Section 319 CrPC. It is required to be noted that in the FIR No.477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, Mahendra XUV bearing no. HR-40A-4352 was standing on the road which belongs to Sartaj Singh and Sukhpal. Tejpal, Parab Saran Singh, Preet Samrat and Sartaj were standing. Parab Sharan was having lathi in his hand, Tejpal was having a gandsi, Sukhpal was having a danda, Sartaj was having a revolver and Preet Singh was sitting in the jeep. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the Mahendra XUV HR-40A-4352 in a manner which blocks the entire road and they were armed with the weapons. Despite the above specific allegations, when the charge-sheet/final report came to be filed only two persons came to be charge-sheeted and the private respondents herein though named in the FIR were put/kept in column no.2. It is the case on behalf of the private respondents herein that four different DSPs inquired into the matter and thereafter when no evidence was found against them the private respondents herein were put in column no.2 and therefore the same is to be given much weightage rather than considering/believing the examination-in-chief of the appellant herein. Heavy reliance is placed on the case of **Brijendra Singh** (Supra). However none of DSPs and/or their reports, if any, are part of the charge-sheet. None of the DSPs are shown as witnesses. None of the DSPs are Investigating Officer. Even on considering the final report/charge-sheet as a whole there does not appear to be any consideration on the specific allegations qua the accused the private respondents herein who are kept in column no.2. Entire discussion in the charge-sheet/final report is against Sartaj Singh only.
- G So far as the private respondents are concerned only thing which is stated is "During the investigation of the present case, Shri Baljinder Singh, HPS, DSP Assandh and Shri Kushpal, HPS, DSP Indri found accused Tejpal Singh, Sukhpal Singh, sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of Mohan Sarup Singh caste Jat H Sikh, residents of Bandrala innocent and accordingly Sections 148, 149

and 341 of the IPC were deleted in the case and they were kept in column no.2, whereas challan against accused Sartaj has been presented in the Court.”

14.1 Now thereafter when in the examination-in-chief the appellant herein – victim – injured eye witness has specifically named the private respondents herein with specific role attributed to them, the Learned trial Court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eye-witness. As observed by this Court in the cases of **State of MP v. Mansingh** (2003) 10 SCC 414 (para 9); **Abdul Sayeed v. State of MP** (2010) 10 SCC 259; **State of Uttar Pradesh v. Naresh** (2011) 4 SCC 324, the evidence of an injured eye witness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under Section 319 CrPC the Court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under Section 319 CrPC.

14.2 Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the Learned trial Court dismissing the application under Section 319 CrPC is concerned, the High Court itself has observed that PW1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received fire arm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except they were armed with weapons and the concerned injuries are attributed only to Sartaj Singh even for the sake of arguments someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all. At the stage of exercising the powers under Section 319 CrPC, the Court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149 IPC. The High Court has failed to appreciate the fact that for

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- A attracting the offence under Section 149 IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The Learned trial Court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under Section 319 CrPC.

14.3 Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in CRR No.3238 of 2018 at that stage the appellant

- C herein did not prefer appeal against the impugned judgment and order passed by the High Court in CRR No.28 of 2018 and therefore this Court may not exercise the powers under Section Article 136 is concerned the aforesaid has no substance. Once it is found that the Learned trial Court as well as the High Court ought to have summoned the private
- D respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order but in CRR No.3238 of 2018 cannot be a ground not to direct to summons the private respondents herein when this Court has found that a *prima facie* case is made out against the private respondents herein and they are to be summoned to face the trial.

14.4 Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in column no.2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in the case of **Rajesh** (Supra). This Court in the

- F aforesaid decision has specifically observed that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial Court to summon other persons as well as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319

G CrPC.

14.5 Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and order passed by the High Court there is a much progress in the trial and therefore at this stage power under Section 319 CrPC may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled

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preposition of law and as observed by this Court in the case of **Hardeep Singh** (Supra), the powers under Section 319 CrPC can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under Section 319 CrPC was given only one witness was examined and examination-in-chief of PW1 was recorded and while the cross-examination of PW1 was going on, application under Section 319 CrPC was given which came to be rejected by the Learned trial Court. The Order passed by the Learned trial Court is held to be unsustainable. If the Learned trial Court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may as observed herein powers under Section 319 CrPC can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

15. In view of the above and for the reasons stated above the impugned judgment and order passed by the High Court and that of the Learned trial Court dismissing the application under Section 319 CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the Learned trial Court is directed to summon the private respondents herein to face the trial arising out of FIR No.477 dated 27.07.2016 in Sessions Case No.362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149 IPC. However, it is specifically observed that the observations made hereinabove are only *prima facie* for the purpose of exercising the powers under Section 319 CrPC and the Learned trial Court to decide and dispose of the trial in accordance with the law and on its own merits and on the basis of the evidence to be laid before it.

Appeal is allowed accordingly.