Jamin vs State Of Uttar Pradesh on 6 March, 2025

2025 INSC 330 REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1184 OF 2025
(ARISING OUT OF SLP (Crl.) NO. 6320 OF 2024)

JAMIN & ANR. ... APPELLANTS

VERSUS

STATE OF UTTAR PRADESH & ANR. ... RESPONDENTS

JUDGMENT

J. B. PARDIWALA, J. :

For the convenience of exposition, this judgment is divided into the following parts: -

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High Court of Judicature at Allahabad, Lucknow Bench dated 01.04.2024 in Criminal Application No. 2399 of 2024 filed by the appellants herein under Section 482 of the Code of Criminal Procedure, 1973 (the "CrPC") by which the High Court rejected the application and thereby affirmed the order passed by the Sessions Court summoning the appellants herein as accused under Section 319 of the CrPC in the Session Trial No. 582 of 2009.

A. FACTUAL MATRIX

3. On 14.04.2009, the respondent no. 2 herein lodged a First Information Report ("FIR") No. 99/2009 in the Police Station Bilgram, Hardoi, Uttar Pradesh for the offence punishable under Sections 147, 148, 149 and 302 of the Indian Penal Code, 1860 (hereinafter referred to as the "IPC") respectively against five persons namely Irshad, Irfan, Abdul, Jamin and Akil in connection with the murder of his brother. The FIR alleged that the appellants herein namely, Jamin and Akil exhorted the other co-accused to kill the deceased and as a result of such instigation, the said co-accused fired at the deceased using their pistols resulting into his death.

4. On conclusion of the investigation, the police filed chargesheet no. 07/2009 dated 14.07.2009 against two accused persons, namely Irshad and Irfan for the alleged offence. The police by way of Parcha No. CD 16 dated 14.07.2009 informed the court concerned that the investigation qua the remaining accused persons, namely Abdul, Jamin and Akil was ongoing. The chargesheet contained a list of 18 witnesses which the State proposed to examine in support of the charges.

5. On 27.10.2009, the Trial Court framed charge for the offence under Sections 147, 148, 149 and 302 of the IPC respectively against the accused persons who were named in the chargesheet who in

turn pleaded not guilty and claimed to be tried.

6. While the trial against the chargesheeted accused persons namely Irshad and Irfan was in progress, the respondent no. 2 filed an application under Section 319 of the CrPC praying to summon the other three persons named in the FIR to face the trial along with the chargesheeted accused persons.

7. On 29.01.2010, the Trial Court rejected the aforesaid application on the ground that a person could be summoned by the trial court in exercise of its powers under Section 319 of the CrPC provided that there is cogent and reliable evidence indicating towards the complicity of such person in the commission of an offence for which he could be tried together with the accused persons already put to trial. The Trial Court noted that PW-1 and PW-2 respectively had yet not been cross-examined and it was not clear whether the I.O. intended to file chargesheet against the persons sought to be summoned, therefore it declined the prayer to summon under Section 319 of the CrPC. The relevant extracts from the said order are reproduced hereinbelow:

> "Hence, from the aforesaid principles it is cleared that till date, cross examination of Pw-1 & Pw-2 has not been done and it is also not cleared that the chargesheet against the application by the accused u/s 319 CrPC is being filed or not Investigation have been completed or not and if final report have been filed then is it pending in Add District Court or till now investigation is going on? Whenever it would not be cleared and until and unless such evidence has not been filed by prosecution that such evidence against proposed accused is enough to punished the them until then summoned to accused is not justifiable. Hence, application not accepted and is deserved to be dismissed/rejected."

8. A revision petition bearing no. 203 of 2010 was filed by the respondent no.

2 before the High Court against the order of the Trial Court dated 29.01.2010 referred to above. The High Court vide order dated 14.05.2010 directed the Trial Court to reconsider the prayer of the respondent no. 2 for summoning the proposed accused persons under Section 319 of the CrPC after the cross- examination of PW-1 and PW-2 respectively was over. In the meantime, the evidence of PW-1 and PW-2 was recorded on 01.12.2009, 02.04.2010 and 15.05.2010 respectively. The relevant extracts from the said order are reproduced hereinbelow:

> "It appears that the revisionist is the complainant and his petition under section 319 CrPC for summoning additional accused has been rejected by the court concerned on the ground that cross-examination of PW-
>
> 1 and 2 had not taken place.

The learned trial court is expected to consider the revisionist's prayer after the cross-examination is over. With the aforesaid observation, the revision is finally disposed of."

9. Thereafter, on 10.06.2010, the respondent no. 2 filed a second application under Section 319 of the CrPC before the Trial Court with a prayer to summon the three persons named in the FIR as accused in addition to the accused persons named in the chargesheet. The Additional District & Sessions Judge, Hardoi vide order dated 19.07.2010 rejected the said application on the ground that the evidence recorded in the course of the trial did not warrant the summoning of the said three persons as accused. The Trial Court noted that that while exercising jurisdiction under Section 319 of the CrPC, it is necessary to see whether there is sufficient and cogent evidence to take cognizance and if not, then the persons sought to be summoned as accused cannot be asked to face the trial. The Court observed that the complainant had no idea as regards the identity of the proposed accused persons, namely, Abdul, Jamin and Akil and no explanation was forthcoming as to how their names came to be included in the FIR.

10. In such circumstances referred to above, the respondent no. 2 preferred revision petition bearing no. 400/2010 before the High Court seeking to challenge the order dated 19.07.2010.

11. During the pendency of the revision petition, the Additional District & Sessions Judge, Hardoi vide the judgment and order dated 19.10.2011, held Irshad and Irfan guilty of the offence of murder and sentenced them to life imprisonment and fine. The trial accordingly stood concluded.

12. Long after the conclusion of the trial, the High Court, though aware of conclusion of the trial of the co-accused, set aside the order of the Trial Court dated 19.07.2010, vide order dated 14.09.2021 passed in criminal revision petition no. 400/2010, while observing as under:

> a. First, merely on the basis of a statement made by a prosecution witness that not a single person in the village was known to him, the Trial Court could not have concluded that the proposed accused were not present at the scene of the crime; and b. Secondly, no final report was submitted by the police against the proposed accused, exonerating them from the alleged crime. The High Court held that a person not named in the FIR or if named in the FIR but not chargesheeted, could be summoned under Section 319 of the CrPC if the court was prima facie satisfied that such person had also committed the offence and he could be tried along with the other accused for the alleged offence on the basis of the evidence recorded in the course of inquiry into or trial of an offence. In light of the aforesaid observations, the High Court allowed the revision petition and directed the Trial Court to reconsider the application under Section 319 of the CrPC submitted by the complainant (the respondent no. 2 herein) within three months from the date of its order.
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> The relevant observations made by the High Court are reproduced hereinbelow:
>
> “8 The proposed accused are named in the FIR. The plaintiff has been examined as PW-1, he has confirmed the statements in his FIR. Just because he said that he did not know anyone by name in that village, it cannot be assumed that he did not know the proposed accused. In the cross-examination he was not specifically asked to identify the proposed accused, in such a situation it cannot be justified to conclude

> that he did not know the proposed accused. It is noteworthy here that the original trial has been completed and the accused have been found guilty. Annexure-1, submitted along with the supplementary affidavit dated 24.11.2020 submitted by the reviewer, is reflected in the copy of the decision. [...] In the light of the legal principles propounded by the Honorable Supreme Court and the above analysis, it is clear that the impugned order passed by the trial court is erroneous, because on the basis of mere statement of PW that he did not know any person in the village by name before the incident. Considering that he did not even know the proposed accused and the investigation against the proposed accused seems to be prevalent, neither the final report was given against them nor the rejection of the chargesheet application cannot be called legal and justified, as a result deserves to be set aside.
>
> 9 This revision is accepted. The impugned order dated 19.07.2010 passed by the trial court is set aside. The trial court is ordered to again consider the application submitted by the plaintiff under Section 319 CrPC in the light of all the evidence and well-established legal principles and pass an order as per law within three months of receiving the copy of the order."

13. On the strength of the order passed by the High Court referred to above, the respondent no. 2 filed another application dated 22.09.2021 under Section 319 of the CrPC before the Additional District and Session Judge and prayed to summon the proposed accused in the trial. The Additional District and Sessions Judge vide order dated 21.02.2024 allowed the said application on the ground that the oral evidence of the witnesses recorded by the Trial Court clearly revealed the involvement of the proposed accused, viz., Abdul, Jamin and Akil along with the accused who stood convicted. Since one of the proposed accused namely, Abdul had passed away, the court summoned Jamin and Akil to face the trial.

14. The appellants being dissatisfied with the summoning order, challenged the same by filing an application under Section 482 of the CrPC and prayed that the order be quashed and set aside. The challenge to the summoning order was essentially on the ground that the appellants had been summoned in a trial which stood concluded on 19.10.2011 that is, almost 13 years before the summoning order was passed.

15. The High Court vide the impugned order dated 01.04.2024, rejected the aforesaid application of the appellants filed under Section 482 of the CrPC and thereby affirmed the summoning order passed by the Additional District and Sessions Judge. The High Court held that Section 319(4) of the CrPC provides that where the court proceeds against any person under sub-section (1) of Section 319, the proceedings in respect of such person is supposed to commence afresh and the witnesses are to be re-heard with respect to the proposed accused so summoned. The conclusion of trial against the other accused persons would not cause any prejudice to the appellants as they would be afforded an opportunity to defend themselves in a fresh trial. In view of the aforesaid, the High Court found no illegality in the order summoning the appellants herein under Section 319 of the CrPC. The relevant observations made by the High Court are reproduced hereinbelow:

> "27. In the present case, the witnesses PW-1 and PW-2 have stated about that the previously tried accused had shot at the victim at the exhortation of the applicant. The trial stands concluded by the judgment and order dated 19.10.2011 wherein it was held that the accused persons Irshad and Irfan created an unlawful assembly with the other accused persons and they killed the deceased Arif by shooting at him with a firearm. In case the aforesaid evidence remains unrebutted, the same would lead to conviction of the applicant.
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> 28. Therefore, there is no illegality in the order summoning the applicant under Section 319 CrPC.
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> 29. Section 482 CrPC saves the inherent powers of the High Court to make such orders as may be necessary to secure the ends of justice. Non-summoning of accused persons against whom there was ample evidence warranting their trial, would defeat the ends of justice.

The order rejecting the application under Section 319 CrPC was set aside by this Court in exercise of its revisional jurisdiction and it is only thereafter, that the trial Court has summoned the applicants under Section 319 CrPC. Any interference with the order summoning the applicants to face trial would in fact defeat the ends of justice, which would be contrary to the object for which the inherent powers of this Court are meant to be exercised.

30. In view of the foregoing discussion, the application filed under Section 482 CrPC lacks merit and the same is hereby dismissed." B. SUBMISSIONS ON BEHALF OF THE APPELLANTS

16. Mr. Siddharth Aggarwal, the learned Senior Counsel appearing for the appellants addressed himself on the following questions:

> (i) Whether the Trial Court could have entertained an application filed under Section 319 of the CrPC almost twelve years after the conclusion of the main trial and in the absence of any proceedings pending before it?
>
> (ii) Whether the application under Section 319 of the CrPC dated 22.09.2021 could have been filed by the respondent no. 2 on the strength of the order of the High Court dated 14.09.2021?

(iii) Whether the order dated 14.09.2021 could have been passed by the High Court without issuing notice to the appellants?

(iv) What is the effect of the conclusion of the trial on the revision petition pending before the High Court, more particularly when the proceedings of trial were not stayed by the High Court?

(v) Whether there was sufficient material on record to summon the appellants under Section 319 of the CrPC?

17. As regards the question whether the Trial Court could have entertained the application filed under Section 319 of the CrPC after the conclusion of the trial, the learned counsel made the following submissions:

> a) The conditions for the exercise of power by the Trial Court under Section 319(1) of the CrPC are:
>
> (i) that there must be any inquiry into, or trial of, an offence;
>
> (ii) that in course of that inquiry or trial, it must appear from the evidence that any person, who is not the accused, has committed any offence for which he could be tried together with the accused.

If the aforesaid conditions are satisfied, the person sought to be summoned can be asked to appear "in the course of any inquiry into, or trial of, an offence". In other words, the summoning order should be passed at a stage anterior to the date of pronouncement of the judgment, in the trial.

b) However, in the present matter, the application under Section 319 of the CrPC, which was allowed vide order dated 21.02.2024, was made 13 years after the judgment & order of conviction of the chargesheeted accused persons. Therefore, the Additional Sessions Judge, Hardoi could not have exercised its powers under Section 319 of the CrPC as he became functus officio with the passing of the order of conviction and sentence.

c) The High Court failed to take into consideration the law laid down by a Constitution Bench of this Court in Singh Khaira v. State of Punjab reported in (2023) 1 SCC 289 wherein it was held that the summoning order under Section 319 of the CrPC had to be necessarily passed before the order of sentence is passed where a finding of conviction was returned. Accordingly, the appellants could not have been summoned by the Trial Court in 2024, long after the conclusion of the proceedings of Sessions Trial No. 582 of 2009 resulting into conviction and sentence of life imprisonment being passed against the original accused, namely Irshad and Irfan. Therefore, the order dated 21.02.2024 passed by the Additional District and Sessions Judge, Hardoi was not merely a procedural lapse but rather a violation of the substantive rights of the appellants.

d) The respondent no. 2 also failed to inform the Trial Court about the pendency of the Revision Petition no. 400/2010 before the High Court and the High Court was also not informed about the conclusion of trial qua the chargesheeted accused persons.

e) The decision of this Court in Shashikant Singh v. Tarkeshwar Singh & Anr. reported in (2002) 5 SCC 738 is distinguishable from the present case as having been passed in a very different set of facts and thus would not come to the aid of the respondents. The facts in Shashikant Singh (supra) were that a revision petition was preferred against the order of the Trial Court allowing the application under Section 319 of the CrPC and summoning the proposed accused. Thereafter, the trial came to be concluded during the pendency of the revision petition. In Shashikant Singh (supra), the application under Section 319 was allowed at a time when the Trial Court still had the

jurisdiction and therefore, the matter was remanded by this Court to the High Court for fresh consideration on merits. However, contrary to the facts in Shashikant Singh (supra), in the present matter, the Revision Petition no. 400 of 2010 was preferred by the respondent no. 2 against the order of the Trial Court rejecting the application under Section 319 on merits. Thus, while in Shashikant Singh (supra) the summoning order was issued during the pendency of the trial, in the present case the summoning order came to be issued long after the conclusion of the trial and is, thus, bad in law as the Trial Court became functus officio with the conclusion of the trial and could not have passed the summoning order.

f) Further, this Court in Hardeep Singh v. State of Punjab reported in (2014) 3 SCC 92 has held that the powers under Section 319 of the CrPC should be exercised sparingly. The evidence on record warranting exercise of this power must be such that if it goes unrebutted then it would lead to a conviction. In the present case, the appellants were named in the FIR and were subjected to investigation and yet were not arrayed as accused in the chargesheet dated 14.07.2009.

g) The record of the Trial Court indicates that the investigation qua the appellants was closed for want of sufficient material against them and therefore the investigating officer decided not to file chargesheet against the appellants.

h) The oral evidence of PW-1 and PW-2, respectively, before the Trial Court also failed to inspire any confidence for the purpose of summoning the appellants as the testimony of PW-1 was not believable. It was pointed out that PW-1 himself had deposed that he did not know anyone from the village to which the appellants belonged and the testimony of PW-2 by itself could not have been relied upon as the respondent no. 2 did not name himself as an eye-witness in his complaint or in his statement recorded under Section 161 of the CrPC or in his substantive evidence before the court.

18. As regards the question whether the High Court could have passed the order dated 14.09.2021 without issuing notice and granting an opportunity of being heard to the appellants, the counsel made the following submissions:

> a) Upon rejection of the application under Section 319 of the CrPC dated 10.06.2010 by the Trial Court, the respondent no. 2 preferred Revision Petition no. 400 of 2010 before the High Court. However, contrary to the settled position of law, the appellants were not joined as parties to the said revision petition.

b) Further, the said revision petition remained pending for 11 years before the High Court and in the interregnum, the appellants were not heard at any stage. Therefore, the order directing the Trial Court to reconsider the application under Section 319 came to be passed on 14.09.2021 without affording the appellants any opportunity to be heard.

c) The order dated 14.09.2021 could be said to be contrary to the law laid down by this Court in Manharbhai Muljibhai Kakadia v. Shaileshbhai Mohanbhai Patel reported in (2012) 10 SCC 517 and Subhash Sahebrao Deshmukh v. Satish Atmaraman Talekar & Ors. reported in (2020) 6 SCC 625 wherein the right to be heard has been recognised and it was held that an opportunity of hearing is

to be mandatorily granted to a proposed accused in revisional proceedings.

19. As regards the question pertaining to the legal effect of the conclusion of trial on the revision proceedings pending before the High Court, more particularly when the High Court had not stayed the proceedings of the trial, the counsel submitted the following:

> a) Upon conclusion of trial, as a natural corollary, any interim proceedings arising therefrom would come to an end as the Trial Court becomes functus officio unless a specific stay on such trial proceeding has been granted by a higher court.
>
> b) In the present matter, the Trial Court became functus officio on 19.10.2011 i.e., the date on which it pronounced the judgment of conviction and sentence against the original accused persons namely, Irshad and Irfan, and was thereafter shorn of the jurisdiction to entertain a subsequent application under Section 319 of the CrPC as no proceedings were pending before it. As such, no order for summoning the appellants could have been passed by the Trial Court, especially because the High Court in its revisional jurisdiction had not passed any order for staying the trial proceedings or restraining the Trial Court from pronouncing the final judgment against the other accused persons during the pendency of the revision petition
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> c) The principle that the Trial Court cannot exercise its powers under Section 319 of the CrPC after conclusion of the trial has been duly recognized by this Court in its decision in Sukhpal Singh Khaira (supra).
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> 20. As regards the question whether there was sufficient material on record to summon the appellants to face trial, the counsel submitted as follows:
>
> a) No chargesheet had been filed against the appellants nor was any evidence adduced to point towards the involvement of the appellants in the alleged offence.
>
> b) The application under Section 319 of the CrPC was not preferred by the prosecution but by the complainant.
>
> c) The Case Diary No. 19 dated 05.09.2009 also recorded that action against Abdul, Jamin and Akil was not required as their presence at the spot of the crime had not been confirmed.
>
> d) The second application under Section 319 of the CrPC dated 10.06.2010 was rejected by the Trial Court inter alia on the ground that upon examination of PW-1, it became evident that the complainant did not know the appellants herein and no explanation had been offered as to how the complainant mentioned their names in the FIR. Further, it was observed that investigation against the proposed accused persons was ongoing and no final report against them had been submitted by the police.

e) After due consideration of all the materials and evidence collected during investigation, the prosecution arrived at a decision that no case was made out against the appellants herein and accordingly decided not to file a supplementary chargesheet against them. Similarly, after considering the oral evidence on record, the Trial Court recorded a finding that no prima facie case was made out against the appellants and accordingly rejected the application filed under Section 319 of the CrPC.

f) Even after the filing of the criminal revision petition before the High Court against the rejection of the application under Section 319, no stay on the trial proceedings was granted by the High Court and the respondent no. 2 also did not seek an early hearing of the revision petition despite being aware of the fact that the trial was about to conclude.

g) The impugned order of the High Court also noted that the counsel for the complainant did not apprise the Trial Court of the pendency of the revision petition.

C. SUBMISSIONS ON BEHALF OF THE RESPONDENT

21. Mr. Shaurya Sahay, the learned counsel appearing for the State of Uttar Pradesh, addressed himself primarily on the following two aspects:

> (i) The issue of summoning of proposed accused under Section 319 of the CrPC after conclusion of trial is well settled in law and in light of the said settled position the summoning order issued in the present case cannot be said to be erroneous in law.
>
> (ii) The impact and purport of Section 319(4) to the extent it contemplates re-hearing of the witnesses and fresh commencement of trial had been correctly considered by the High Court while passing the impugned order.

22. As regards the first proposition, the counsel submitted as follows:

> a) This Court in its decision in Sukhpal Singh Khaira (supra), inter alia, laid down the following guidelines to be followed by a court while deciding an application under Section 319 of the CrPC:
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> i. If the competent court finds cogent evidence or if an application is made under Section 319 of the CrPC showing involvement of any other person in the commission of the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, the court shall stop the proceedings of the trial at that stage and proceed to decide the application filed under Section 319 of the CrPC first before proceeding further with the trial.
>
> ii. If the court decides to summon an accused under Section 319 of the CrPC, such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the court shall apply

its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

iii. If the power under Section 319 of the CrPC is not invoked or exercised in the main trial till its conclusion and if there is a split-

up case, such power 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).

b) In the present matter, the High Court in its impugned order has recorded that as per Section 319(4), the trial against the accused sought to be summoned has to be commenced afresh and the witnesses have to be re-heard. Therefore, the conclusion of the trial against the original accused persons would not cause any prejudice to the appellants.

c) The aforesaid finding of the High Court falls squarely within the ambit of paragraphs 41.3 and 41.6 of Sukhpal Singh Khaira (supra). The relevant guidelines laid down in Sukhpal Singh Khaira (supra) and relied upon by the counsel are reproduced below:

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

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."

d) The impugned order also finds sustenance from the decision of this Court in Sarojben Ashwinkumar Shah v. State of Gujarat reported in (2011) 13 SCC 316 wherein while laying down the principles applicable to Section 319 of the CrPC, it was held that regard must be had to the constraints imposed by sub-Section (4) of Section 319 that the proceedings in respect of newly added persons shall be commenced afresh from the beginning of the trial.

e) The decision of this Court in Devendra Kumar Pal v. State of Uttar Pradesh & Anr. reported in 2024 SCC OnLine SC 2487 has referred to the Constitution Bench judgment in Sukhpal Singh Khaira (supra) and held that if a summoning order is passed after the passing of order of acquittal in the case of acquittal or after the passing of order on sentence in the case of conviction, the same may not be sustainable.

23. As regards the impact and purport of Section 319(4) with respect to re-

hearing of the witnesses and fresh commencement of trial, the counsel made the following submissions:

> a) The High Court in the impugned order has observed that the revisional power of the High Court under Sections 397 and 401 of the CrPC respectively is plenary and there are no limitations to reverse an order rejecting the Section 319 application in order to ensure that actual perpetrators of the crime are rightly brought before the court to face trial.
>
> b) The High Court has further recorded in the impugned order that merely because the trial against the original accused persons stood concluded during the pendency of the revision, the power of revision cannot be limited, more particularly when the Trial Court had recorded that the murder was committed by the original accused due to the exhortation of the persons sought to be summoned under Section 319 of the CrPC.
>
> c) The principles governing the exercise of jurisdiction under Section 319 were laid down by this Court in Hardeep Singh (supra) wherein it was observed that it is the duty of the court to do justice by punishing the real culprit.
>
> d) As regards the satisfaction of the court before it proceeds to exercise its power under Section 319 of the CrPC, the Constitution Bench in Hardeep Singh (supra) has held as follows:
>
> "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."

e) In the present case, both the Trial Court and High Court concurrently held that the summoning of the appellants was warranted in view of the evidence that had come on record during the course of the trial. The appellants were accused of having exhorted the original accused persons and therefore prima facie could be said to have abetted the commission of the offence of murder.

24. In such circumstances referred to above, the counsel appearing for the respondent State submitted that the Trial Court was justified in summoning the appellants as accused in exercise of its powers under Section 319 CrPC. D. ISSUES FOR DETERMINATION

25. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

> (i) Whether the High Court was right in exercising its revisional jurisdiction for the purpose of setting aside the order of the Trial Court rejecting the second application preferred by the respondent no. 2 under section 319 of the CrPC?
>
> (ii) Whether the order dated 21.02.2024 passed by the Trial Court to give effect to the order passed by the High Court directing it to reconsider the application under Section 319 of CrPC would relate back and replace its earlier order dated 19.07.2010 rejecting the Section 319 application?
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> (iii) Whether the Trial Court could have entertained an application filed under Section 319 of the CrPC after the conclusion of the trial, more particularly when no stay on trial had been granted by the High Court?
>
> (iv) Whether the High Court should have given an opportunity of hearing to the proposed accused before deciding the revision petition filed against the rejection of application under Section 319 of the CrPC by the Trial Court? If yes, whether the order dated 14.09.2021 passed by the High Court in exercise of its revisional jurisdiction was passed without issuing notice to the appellants and providing them an opportunity of hearing?

E. ANALYSIS

(i) Legislative history, ingredients and scope of Section 319 of the CrPC

26. Section 319 of the CrPC empowers the court to proceed against other persons appearing to be guilty of offence. The section is reproduced below:

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

such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

27. Before the enactment of CrPC in 1973, Section 351 of the Code of Criminal Procedure, 1898 (hereinafter referred to as "the Code, 1898") was the provision corresponding to Section 319 of the CrPC. Section 351 of the Code, 1898 is reproduced hereinbelow:

"351. Detention of offenders attending court.

(1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

(2) When the detention takes place in the course of an inquiry under Chapter XVIII or after a trial has been begun the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard."

28. A perusal of Section 351 of the Code, 1898 indicates that under the old provision the court was empowered to proceed only against a person who was attending the Court and who also appeared to have committed the offence from the evidence adduced before the Court, of which such Court can take cognizance, by detaining such a person for the purpose of enquiry or trial. Sub-section (2) provided that in respect of such person, the proceedings shall have to be commenced afresh and the witnesses re-heard.

29. The expression "any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed" used in Section 351 clearly indicates two aspects, namely:

> a. First, that it must appear from the evidence that a person who is attending the Court has committed an offence; and b. Secondly, that the offence is such that the Court can take cognizance.

30. Therefore, what becomes clear from the aforesaid is that there was a lacuna in Section 351 of the Code, 1898 as it did not cover two important situations:

> a. First, the situation where the person who appears to have committed an offence during the course of the enquiry into or trial was not attending the Court; and b. Secondly, the manner in which the cognizance will be taken as against that person.

31. In order to make Section 351 comprehensive, the Law Commission, realizing the above two grey areas, in its 41st report, recommended for suitable amendment of the said provision. The relevant recommendation of the Law Commission is reproduced hereinbelow:

> "24.80. It happens sometimes, though not very often, that a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in a connected offence. It is only proper that a Magistrate should have the power to call and join him in the proceedings. Section 351 provides for such a situation, but only if that person happens to be attending the Court. He can then be detained and proceeded against. There is no express provision in Section 351 for summoning such a person if he is not present in Court. Such a provision would make Section 351 fairly comprehensive, and we think it proper to expressly provide for that situation.
>
> 24.81. Section 351 assumes that the Magistrate proceeding under it has the power of taking cognizance of the new case. It does not, however, say in what manner cognizance is taken by the Magistrate.

The modes of taking cognizance are mentioned in Section 190, and are apparently exhaustive. The question is, whether against the newly added accused, cognizance will be supposed to have been taken on the Magistrate's own information under Section 190(1)(c), or only in the manner in which cognizance was first taken of the offence against the accused. The question is important, because the methods of inquiry and trial in the two cases differ. About the true position under the existing law, there has been difference of opinion, and we think it should be made clear. It seems to us that the main purpose of this particular provision is, that the whole case against all known suspects should be proceeded with expeditiously and convenience requires, that cognizance against the newly added accused should be taken in the same manner as against the other accused We, therefore, propose to recast Section 351 making it comprehensive and providing that there will be no difference in the mode of taking cognizance of a new person is added as an accused during the proceedings." (Emphasis supplied)

32. The aforesaid indicates that the Law Commission made two recommendations:

> a. First, to add an accused who is not before the Court but connected with that offence; and b. Secondly, the mode of taking cognizance as against the newly added accused shall be the same as against the other accused.

33. Pursuant to the above recommendation, Section 319 was enacted in CrPC with suitable modifications. A perusal of Section 319 of CrPC makes it manifest that any person, not being the accused before the court, who also appears to have committed an offence from the evidence adduced before the court during the course of any enquiry into or trial of an offence for which cognizance has already been taken, regardless of whether such person is attending the court or not, can be summoned. If he is added as an accused pursuant to the said decision of the court, the mode of taking cognizance in respect of such person would the same as in the case of the already arraigned accused. In other words, he is deemed to have been an accused when the Court originally took cognizance of the offence earlier. For this purpose, a legal fiction is created in Clause (b) of sub-section (4) of Section 319 of CrPC.

34. Section 319 has been included in the statute book with the object of ensuring effective administration of justice. The legislature enacted Section 319 to eliminate any situation wherein the courts would feel helpless in proceeding against any person who appears to be guilty of committing an offence, more particularly, in cases where the investigating agency or prosecution files chargesheet only against a few persons in relation to an offence and leaves out a few others either intentionally or unintentionally. The said section empowers the courts to proceed with persons who are not the accused before it, upon satisfaction of the conditions prescribed in the provision.

35. The scope of power under Section 319 CrPC was explained by this Court in Municipal Corpn. of Delhi v. Ram Kishan Rohtagi reported in (1983) 1 SCC 1 wherein it was held that cognizance against a proposed accused can be taken under Section 319 even if the proceedings against him have been quashed earlier. The relevant observations are reproduced as under:

> “19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything further at this stage. We leave the entire matter to the discretion of the court concerned so that it may act according to law. We would, however, make it plain that the mere fact that the proceedings have been quashed against Respondents 2 to 5 will not prevent the court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it.” (Emphasis supplied)

36. Further, this Court, in Kishun Singh v. State of Bihar reported in (1993) 2 SCC 16, observed that even a person who has been discharged earlier would fall within the sweep of Section 319 of the CrPC subject to other requirements for applicability of the provision being satisfied. The relevant observations are reproduced hereinbelow:

> "11. On a plain reading of sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of any inquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused. This power, it seems clear to us, can be exercised only if it so appears from the evidence at the trial and not otherwise. Therefore, this sub-section contemplates existence of some evidence appearing in the course of trial wherefrom the court can prima facie conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those already named by the police. Even a person who has earlier been discharged would fall within the sweep of the power conferred by Section 319 of the Code." (Emphasis supplied)

37. A perusal of the aforesaid decisions of this Court indicates that the intention behind giving a wide interpretation to Section 319 is to ensure that the perpetrator of a crime does not get away unpunished. The legislature incorporated the provision with the purpose of empowering the courts to find out the real culprits without getting hindered by procedural impediments so that the guilty does not go unpunished.

38. While discussing the spirit underlying Section 319 of the CrPC, this Court in Hardeep Singh (supra) observed that the provision is based on the doctrine judex damnatur cum nocens absolvitur which means that "the Judge is condemned when guilty is acquitted". The Court further observed that this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC. The relevant portions from the said decision discussing the spirit of the provision and the approach which the courts must adopt while interpreting the provision are reproduced hereinbelow:

> "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.

> 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.

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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.

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?" (Emphasis supplied)

39. A bare perusal of sub-section (1) of Section 319 brings out three essential requirements that must be fulfilled for invoking the powers thereunder:

> a. First, there must be an ongoing inquiry or trial in respect of the original accused person(s); and b. Secondly, in the course of such proceedings, evidence must have come on record to show that any person other than the original accused has committed any offence; and c. Thirdly, the person sought to be summoned could be tried together with the original accused for such offence.

40. This Court in Raj Kishore Prasad v. State of Bihar reported in (1996) 4 SCC 495 held that Section 319 deals only with a situation in which the complicity of the persons sought to be arrayed as accused comes to light from the evidence taken and recorded in the course of an inquiry or trial.

This Court in its decision in Suman v. State of Rajasthan reported in (2010) 1 SCC 250 held that a case can be proceeded with under Section 319 if, based upon the evidence brought on record in the

course of any inquiry into, or trial of an offence, the court is prima facie satisfied that such person has committed any offence for which he can be tried with other accused.

41. The standard of such prima facie satisfaction to be formed from the evidence produced during the course of trial or inquiry has been explained by this court in Hardeep Singh (supra). The relevant observations from the said decision are reproduced below:

> "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." (Emphasis supplied)

42. As regards the requirement of evidence and the standard for testing such evidence, Hardeep Singh (supra) indicates as follows:

> a. First, it is not necessary for the evidence tendered to be tested by way of cross-examination for establishing the involvement of an additional accused; and b. Secondly, the threshold for establishing the involvement of an additional accused is more than that of a prima facie case as exercised at the time of framing of charge, but less than such a satisfaction that the evidence, if goes unrebutted, would lead to conviction.

43. Further, the exercise of powers under Section 319 is not inhibited with respect to who can be summoned as an accused. This Court in Hardeep Singh (supra) has clarified in express terms that Section 319 CrPC can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the chargesheet and against whom cognizance had not been taken, or even a person who has been discharged. However, as regards 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. Such a person can be proceeded against under Section 319 only if during or after an inquiry under Section 300(5) read with Section 398, there appears to be evidence against such person which may indicate that they committed any offence for which they could be tried together with the accused.

44. Therefore, a summoning order issued under Section 319 of the CrPC cannot be quashed only on the ground that even though the proposed accused were named in the FIR or complaint, the police did not include their names in the chargesheet. In other words, if the evidence tendered in the course of any inquiry or trial shows that any person not being the accused has committed any offence for which he could be tried together with the accused, he can be summoned to face trial even though he may not have been chargesheeted by the investigating agency or may have been discharged at an earlier stage.

45. Sub-section (4) of Section 319 mandates that a fresh trial or a de novo trial is to be conducted in respect of the persons summoned under sub-section (1) so as to ensure that such persons are not deprived of the opportunity to present their case and examine the witnesses properly. The requirement of a de novo trial in sub-section (4)(a) is quite different from the notion of a split- up or separate trial as provided under Section 317 of the CrPC. The provision of a de novo trial is to safeguard the right of fair trial to be provided to the new persons summoned under Section 319(1).

46. However, while the provision of de novo or fresh trial under Section 319(4) is mandatory, the said sub-section is applicable only in cases where the court proceeds against any person under sub-section (1). Thus, a de novo trial can be commenced in respect of the proposed accused only if the power under sub-section (1) has been validly exercised by the court. In other words, sub- section (4) is subject to sub-section (1) and thus also to the expression “could be tried together with the accused” mentioned in sub-section (1).

(ii) Stage at which power under Section 319 of the CrPC can be exercised

47. The principal contention of the appellants is that the Trial Court could not have allowed the application under Section 319 of the CrPC after the conclusion of the trial of the original accused. In other words, the appellants have contended that once the stage of trial was over by virtue of pronouncement of judgment of conviction and sentence, it was not open anymore to the Trial Court to issue summons against the appellants.

48. To better appreciate and address the aforesaid contention of the appellants, it is important to understand the stage at which the power under Section 319 of the CrPC can be exercised. A bare perusal of the sub-section (1) of Section 319 of the CrPC indicates that the power thereunder can be exercised “in the course of an inquiry into, or trial of, an offence”.

49. A Constitution Bench of this Court in Hardeep Singh (supra) was called upon to resolve, inter alia, the issue of the stage at which an order under Section 319 could be passed. This Court considered the meaning and scope of the words “course”, “inquiry” and “trial” appearing in sub-section (1) in detail and inter alia made the following observations:

> a. The stage of committal can neither be said to fall under the meaning of the expression "inquiry" or "trial" and thus the powers under Section 319 cannot be exercised at the stage of committal of proceedings.

b. The stage of trial commences upon the framing of charges. c. Inquiry does not include the stage of investigation by the investigating authorities and refers to the stage which commences upon the case being brought to the notice of the court upon filing of the chargesheet. d. 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. e. The application of the provisions of Section 319 CrPC, at the stage of inquiry remains limited to adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice.

f. The word "course" appearing in sub-section (1) signifies that the power under Section 319 can be exercised when either the inquiry, or trial, has been commenced and is going on.

50. The relevant observations made by this Court in Hardeep Singh (supra) in the context of the stage at which the powers under Section 319 can be exercised by the courts are reproduced hereinbelow:

> "38. In view of the above, the law can be summarised to the effect that as "trial" means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the "trial" commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken.
>
> 39. Section 2(g) CrPC and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under CrPC by the Magistrate or the court.

The word "inquiry" is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial.

40. Even the word "course" occurring in Section 319 CrPC, clearly indicates that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial and the trial stage. The word "course" therefore, allows the court to invoke this power to proceed against any person from the initial stage of inquiry up to the stage of the conclusion of the trial. The court does not become functus officio even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused. [...]

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42. To say that powers under Section 319 CrPC can be exercised only during trial would be reducing the impact of the word “inquiry” by the court. It is a settled principle of law that an interpretation which leads to the conclusion that a word used by the legislature is redundant, should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim a verbis legis non est recedendum which means, “from the words of law, there must be no departure” has to be kept in mind.

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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. [...]

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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]. [...]

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 this reason that the legislature has consciously used separate terms, 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.

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57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on

the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-

sheet or any other person who might be an accomplice." (Emphasis supplied)

51. In Sukhpal Singh Khaira (supra), a Constitution Bench of this Court was called upon to authoritatively consider the stage at which a trial could be said to have been concluded for the purposes of Section 319 of the CrPC. The Court, inter alia, framed the following two questions:

> a. Whether the trial court has the power under Section 319 CrPC 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?
>
> b. Whether the trial court has the power under Section 319 CrPC 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?

52. Answering the first question, the Court observed that where there is a judgment of conviction the power under Section 319 CrPC is to be invoked and exercised before the pronouncement of the order of sentence. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. As regards cases where the summoning order and order of conviction/acquittal are passed on the same day, the Court held that it will have to be examined on the facts and circumstances of each case and if such summoning order is found to have been passed either after the order of acquittal or imposing sentence in the case of conviction, the same would not be sustainable.

53. With the regard to the second question, the Court observed that the trial court has the power to summon additional accused during the proceeding of split- up trial (i.e., trial of the accused which had been separated or bifurcated from the main trial), subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. The Court clarified that 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.

54. The Court also approved its earlier decision in Shashikant Singh (supra) wherein it was held that the expression "could be tried together with the accused" used in Section 319 does not mandate that the proposed accused has to be jointly tried with the original accused. It was held by this Court that at the time of deciding to proceed against the proposed accused under Section 319, the court is also required to apply its mind and take a decision as to whether the proceedings shall continue jointly with the original accused or separately for the proposed accused.

55. The relevant portions from the reasoning assigned by the Court in arriving at the aforesaid conclusions are reproduced hereinbelow:

> "23. [...] 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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> 27. From a perusal of the provisions extracted above, it is seen that if the Sessions Court while analysing the evidence recorded finds that there is no evidence to hold the accused for having committed the offence, the Judge is required to record an order of acquittal. In that case, there is nothing further to be done by the learned Judge and therefore the trial concludes at that stage. In such cases where it arises under Section 232 CrPC and an order of acquittal is recorded and when there are more than one accused or the sole accused, have/has been acquitted, in such cases, that being the end of the trial by drawing the curtain, the power of the court to summon an accused based on the evidence as contemplated under Section 319 CrPC will have to be invoked and exercised before pronouncement of judgment of acquittal. There shall be application of mind also, as to whether separate trial or joint trial is to be held while trying him afresh. After such order it will be open to pronounce the judgment of acquittal of the accused who was tried earlier.
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> 29. The above aspects would indicate that even after the pronouncement of the judgment of conviction, the trial is not complete since the learned Sessions Judge is required to apply her/his mind to the evidence which is available on record to determine the gravity of the charge for which the accused is found guilty; the role of the particular accused when there is more than one accused involved in an offence and in that light, to award an appropriate sentence. Therefore, it cannot be said that the trial is complete on the pronouncement of the judgment of conviction alone, though it may be so in the case of acquittal as contemplated under Section 232 CrPC, since in that case there is nothing further to be done by the learned Judge except to record an order of acquittal which results in conclusion of trial.
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> 32. Therefore, from a perusal of the provisions and decisions of this Court, it is clear that the conclusion of the trial in a criminal prosecution if it ends in conviction, a judgment is considered to be complete in all respects only when the sentence is imposed on the convict, if the convict is not given the benefit of Section 360 CrPC. Similarly, in a case where there are more than one accused and if one or more among them are acquitted and the others are convicted, the trial would stand concluded as against the accused who are acquitted and the trial will have to be concluded against the convicted accused with the imposition of sentence.

When considered in the context of Section 319 CrPC, there would be no dichotomy as argued, since what becomes relevant here is only the decision to summon a new accused based on the evidence available on record which would not prejudice the existing accused since in any event they are convicted.

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34. Though Section 319 CrPC 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 223 CrPC to hold a joint trial, it would also be open to the learned Sessions Judge at the point of considering the application under Section 319 CrPC 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 319 CrPC 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 319 CrPC. 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 v. Tarkeshwar Singh, (2002) 5 SCC 738 : 2002 SCC (Cri) 1203] which in our opinion is the correct view.

35. One other aspect which is necessary to be clarified is that if the trial against the absconding accused is split up (bifurcated) and is pending, that by itself will not provide validity to an application filed under Section 319CrPC or the order of court to summon an additional accused in the earlier main trial if such summoning order is made in the earlier concluded trial against the other accused. This is so, since such power is to be exercised by the court based on the evidence recorded in that case pointing to the involvement of the accused who is sought to be summoned. If in the split up (bifurcated) case, on securing the presence of the absconding accused the trial is commenced and if in the evidence recorded therein it points to the involvement of any other person as contemplated in Section 319CrPC, such power to summon the accused can certainly be invoked in

the split up (bifurcated) case before conclusion of the trial therein." (Emphasis supplied)

56. Further, this Court in Sukhpal Singh Khaira (supra) also laid down certain guidelines for the exercise of power by the courts under Section 319 of the CrPC. These guidelines are reproduced below:

> "41.(III) What are the guidelines that the competent court must follow while exercising power under Section 319CrPC?
>
> 41.1. If the competent court finds evidence or if application under Section 319 CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.
>
> 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 319 CrPC 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 319 CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated) trial.

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 319 CrPC, 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)

57. The guidelines laid down by this Court contemplate several situations as to how the trial of the accused summoned under Section 319 should take place. Paragraph nos. 41.1 to 41.4 lay down the chronology of steps to be taken while deciding an application under Section 319 that is:

a. First, the court has to decide the need for summoning an accused under Section 319;

b. Secondly, if the court reaches the conclusion that a person is required to be arrayed as an accused under Section 319, then the summoning order in respect thereof must be passed before the conclusion of the trial of the original accused;

c. Thirdly, depending on the stage of the trial at which the summoning order under Section 319 is passed, the court also has to decide whether the newly arrayed accused will be jointly or separately tried with the original accused.

58. Paragraph 41.8 of the guidelines clarifies that the power under Section 319 can be invoked only during the pendency of trial of the original accused person(s). To illustrate, say in a case with accused 'A' and accused 'B' the trial was split-up by the court in respect of accused 'B' because he was found to be absconding, then the main trial in respect of the accused 'A' can continue separately without any hindrance or delay. In a situation where the main trial in respect of accused 'A' has already concluded and only the split- up trial in respect of accused 'B' remains pending, the power under Section 319 can be invoked even in such split-up proceedings provided that it appears from the evidence recorded in such split-up trial proceedings that a person not being the accused has

committed any offence which could be tried together with accused 'B' whose culpability is being adjudicated in the split-up trial. It is apposite to mention here that if the evidence recorded during the course of the main trial in respect of accused 'A' indicates towards the complicity of an additional accused person, but the same has already concluded, then, by using such evidence, the power under Section 319 cannot be invoked during the split-up trial in respect of accused 'B'. For a person to be summoned under Section 319 in the split-up trial, the condition precedent is that the evidence taken in the split-up trial by itself should indicate towards the involvement of the proposed accused in the offence.

59. Further, it is clear from Paragraph nos. 41.5, 41.6, 41.7, 41.9, 41.10, 41.11 and 41.12, respectively, that a de novo or a fresh trial is mandatory upon summoning of an accused person under Section 319. If upon such summoning, the court decides to conduct a joint trial of the proposed accused with the original accused, then the trial will be conducted afresh for the newly arrayed accused. On the other hand, if the decision of the court is to conduct a separate trial for the newly arrayed accused, then the main trial in respect of the original accused can be concluded without any impediment and the fresh trial of the new accused persons can be conducted separately.

60. Therefore, conducting a fresh trial in respect of the proposed accused after the conclusion of the main trial is not permissible unless an order separating the trial of the original accused with that of the proposed accused is passed by the court before the original trial stands concluded. This stage is reached after the summoning order has been made during the pendency of the trial in respect of the original accused. From the above exposition of law, it is clear that passing of a summoning order before the conclusion of trial is a requirement that flows from sub-section (1) of Section 319. This requirement is in no way qualified by the provision of a fresh trial under sub- section (4) and thus, cannot be the basis to allow a summoning order to be passed after the conclusion of trial in the absence of a decision by the court to proceed against the proposed accused under sub-section (1) of Section 319 of the CrPC during the pendency of the trial.

(iii) Meaning of the expression "could be tried together with the accused"

61. In our considered view, the expression "could be tried together with the accused" lays down a necessary requirement that the persons sought to be arrayed as accused under Section 319 should be capable of being jointly tried with the original accused irrespective of whether they are actually tried together or not. This Court in its decision in R. Dineshkumar @ Deena v. State represented by Inspector of Police & Ors. reported in (2015) 7 SCC 497 observed that the expression "could be tried together" as appearing in Section 319 of the CrPC is to be construed in the context of Section 223 of the CrPC which provides for circumstances under which different persons may be tried together. The relevant observations are reproduced below:

> "8. [...] The section authorises the court making any inquiry into or conducting the trial of an offence to "proceed" against any person (other than the accused facing trial) subject to two conditions (i) that from the "evidence" it appears to the court that such a person "has committed any offence", and (ii) that such a person "could be tried together with the accused".

> 9. We shall first consider the question as to when could a person appearing to have committed an offence "be tried together with the accused" already facing trial?
>
> 10. Section 223 CrPC provides for the joint trial of different accused in certain circumstances. It enumerates different contingencies in which different persons may be charged and tried together. As rightly noticed by the High Court, the only clause if at all relevant for the purpose of the present case is Section 223(d) which stipulates that persons accused of different offences committed in the course of the same transaction could be charged and tried together." (Emphasis supplied)
>
> 62. Section 223 of the CrPC provides for certain situations and contingencies in which different persons may be charged and tried together. This Court in R. Dineshkumar (supra) had the occasion to consider the meaning of the expression "same transaction" and held that joint trial of persons accused of different offences committed in the course of same transaction is permissible under Section 319 where the offences are not wholly unconnected.
>
> 63. What is discernible from the principles expounded in R. Dineshkumar (supra) is that for offences committed in the same transaction, the court should ideally arraign all the concerned persons as accused at the same time.

Even if a person is not arraigned as an accused, he could be arraigned as an accused under Section 319 provided, inter alia, he "could be tried together" with the originally chargesheeted accused. Therefore, what follows is that a person must be arraigned as an accused under Section 319 when the persons originally chargesheeted are still accused persons and their culpability is yet to be decided.

64. The power under Section 319 can only be exercised in a situation where the Trial Court is seized of the offence committed in the "same transaction". When the trial is concluded, such court becomes functus officio and the power to summon persons under Section 319 for the offences alleged to have been committed in the same transaction no longer vests with the said court as the new persons sought to be summoned cannot be tried together with the original accused.

65. While it is mandatory for the court to arrive at an objective satisfaction, on the basis of the evidence adduced in the course of inquiry or trial, that the proposed accused appears to have committed an offence, the court is also duty bound in law to ascertain whether the proposed accused could be tried with the original accused for the commission of the offence which he appears to have committed. Undoubtedly, it is open for the court to take a decision as to whether it wishes to try the proposed accused jointly with the original accused or proceed against him in a separate trial, however, the stage for exercise of such a discretion can only arise if the aforesaid two obligatory conditions are satisfied. By implication, both the aforesaid conditions can only be satisfied if the court proceeds against the proposed accused before the conclusion of the trial as with the conclusion of trial the possibility of fulfilment of the twin conditions of "in the course of trial" and "could be tried together" ceases to exist.

66. We may clarify with a view to obviate any confusion that the requirement placed by the expression "could be tried together with the accused" for exercise of power under sub-section (1) of Section 319 is mandatory in the sense that a joint trial of the original accused and proposed accused must be possible. However, whether a joint trial, or a separate trial, is held is left to the discretion of the Trial Court. As a result, passing of the summoning order before the conclusion of trial is mandatory. It cannot be said for a moment that passing of the summoning order before the conclusion of trial is directory merely because sub-section (4) provides for conduct of a fresh trial in respect of the additional accused.

67. This Court in its decisions in Shashikant Singh (supra) and Sukhpal Singh Khaira (supra) has clarified that the expression "could be" tried together with the accused is only directory i.e., an expression of possibility and should not be construed to mean "must be". The dictum laid in the aforesaid cases is that conclusion of the trial qua the original accused would not act as an impediment for the court to proceed with the trial of the proposed accused who were summoned under Section 319 of the CrPC before the conclusion of the original trial. In other words, if a summoning order under Section 319 of the CrPC is passed against the proposed accused during the pendency of the trial in respect of the original accused, then even if such trial concludes before the court is able to proceed with the proposed accused, that would not prevent the court from proceeding in a separate trial against the proposed accused.

68. Thus, what has been emphasised by this Court in the aforesaid decisions is that if the Trial Court, after applying its mind as regards the fulfilment of the twin conditions under sub-section (1) of Section 319, decides to summon the proposed accused for facing trial, then the mere fact that the main trial stands concluded during the pendency of a revision petition against the summoning order before the High Court, would not incapacitate the Trial Court from proceeding with the summoned proposed accused in a separate trial even after conclusion of the main trial. In other words, the summoning order would not become ineffective and inoperative so as to nullify the opinion earlier formed by the court on the basis of evidence before it that the newly added person appears to have committed the offence if the trial against the additional accused does not commence before the conclusion of the main trial in respect of the original accused. The expression "could be tried together with the accused" does not fetter the power of the Trial Court under Section 319 to conduct trial of the proposed accused persons even after the conclusion of the main trial provided the summoning order is passed before such conclusion. It is in this context that this Court stated that the said expression is to be construed as directory and not mandatory.

(iv) Peculiar facts of the present case not fully covered by the guidelines issued by this Court in its decisions in Sukhpal Singh Khaira and Hardeep Singh

69. The dictum that flows from the aforesaid discussion is that the power under Section 319 of the CrPC must be exercised by the court against the proposed accused before the conclusion of the trial in respect of the original accused. However, the factual matrix of the case at hand is one of its kind and requires us to take a step forward into a territory which this Court has not had the occasion to tread in any of its earlier decisions including those in Sukhpal Singh Khaira (supra), Hardeep Singh (supra) and Shashikant Singh (supra) all of which have been discussed in detail by us.

70. The facts in the present case compared to those in Shashikant Singh (supra) are distinguishable to the extent that the summoning order in the latter case was passed before the conclusion of trial and the same was overturned by the High Court in exercise of its revisional powers on the sole ground that the trial in respect of the original accused had concluded during the pendency of the revision. However, this Court gave a purposive interpretation to Section 319 and set aside the order of the High Court and remanded the matter back for a fresh consideration. The decision in Shashikant Singh (supra) was later approved by the Constitution Bench in Sukhpal Singh Khaira (supra) as the summoning order in Shashikant Singh (supra) was passed by the Trial Court before the conclusion of the trial.

71. In Sukhpal Singh Khaira (supra), the question to be decided was limited to the extent whether the summoning order could have been passed by the Trial Court after the passing of the order of conviction and sentence.

72. The peculiarity of the present case lies in the fact that although the application under Section 319 of the CrPC was rejected before the conclusion of the trial, the same came to be allowed after the conclusion of the trial, and the case was remanded by the High Court for a fresh consideration due to a patent illegality in the order of rejection passed by the Trial Court.

73. The facts in detail are that the Trial Court had rejected the second application filed under Section 319 by the respondent no. 2 whilst the trial was pending. The respondent no. 2 preferred a revision before the High Court against the rejection of his application. This rejection order came to be set aside by the High Court subsequent to the conclusion of the trial by the Sessions Court. The High Court directed the Trial Court to consider the application afresh and in compliance with the same, the respondent no. 2, though not required as per the High Court's order, moved a third application under Section 319 of the CrPC almost 10 years after the conclusion of trial. The 3rd application under Section 319 of the CrPC came to be allowed by the Sessions Court and challenge to the same by the appellants under Section 482 of the CrPC came to be rejected vide the impugned order passed by the High Court.

74. The fundamental difference between the case at hand and Shashikant Singh (supra) is that although the application under Section 319 was considered by the Trial Court before the conclusion of the trial, yet the summoning order could not be passed before the conclusion of trial as the trial stood concluded during the pendency of the revision petition before the High Court. Thus, what falls for our consideration is the legal effect of the order of the High Court setting aside the rejection of the second application by the Trial Court long after the conclusion of the trial. More particularly, what needs to be determined is the interplay between power of courts under Section 319 vis- à-vis the revisional power of the High Court under Sections 397 to 401 of the CrPC.

(v) Whether the High Court was right in exercising its revisional jurisdiction for the purpose of setting aside the order of the Trial Court rejecting the second application preferred by the respondent no. 2 under section 319 of the CrPC?

75. We are in seisin of the fact that the order dated 14.09.2021 passed by the High Court in Revision Petition No. 400/2010, before it was acted upon, was not challenged by the appellants before any forum and thus could be said to have attained finality. What is impugned before us is the order passed by the High Court rejecting the Section 482 petition filed against the order of the Trial Court allowing the application under Section 319 of the CrPC and summoning the appellants as accused to face trial. However, to have a comprehensive overview of the matter and considering the peculiar circumstances in which the order in Revision Petition 400/2010 came to be passed, we deem it appropriate to examine whether the High Court was right in exercising its revisional jurisdiction to set aside the order of the Trial Court rejecting the application under Section 319 and directing it to consider the same afresh.

76. Explaining the scope of revisional jurisdiction under Section 397 of the CrPC, this Court in Amit Kapoor v. Ramesh Chander reported in (2012) 9 SCC 460 made the following observations:

> "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
>
> 13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated.

Even framing of charge is a much advanced stage in the proceedings under the CrPC.

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court.

Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

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20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression "prevent abuse of process of any court or otherwise to secure the ends of justice", the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily. [...]" (Emphasis supplied)

77. A perusal of the aforesaid decision indicates that the scope of revisional jurisdiction is limited and is to set right a patent illegality or defect of law in the order of a subordinate court. The power of revision is not as extensive as that under Section 482 of the CrPC and should not be exercised lightly.

78. The High Court passed the order dated 14.09.2021 setting aside the order of the Trial Court on two grounds:

> a. First, the mere fact that chargesheet had not been filed against the proposed accused despite there being a FIR against them cannot be a ground for not proceeding against them under Section 319 of the CrPC.
>
> b. Secondly, the Trial Court wrongly assumed that as the first informant/ respondent no. 2 didn't know the proposed accused persons by name and hence their presence at the time of the commission of the offence was not established.

79. The High Court observed that the settled position of law was that the filing or non-filing of a chargesheet would not have any effect on the power of the court to proceed against the proposed accused under Section 319 of the CrPC. Thus, we are of the view that the High Court was right in exercising its revisional jurisdiction as the order was passed to set aside the order of a subordinate court which was based on a misapplication of the settled position of law and thus could be said to have been suffering from a patent illegality.

80. In such circumstances, the High Court set aside the order of the Trial Court and directed it to reconsider the application under Section 319 within a period of three months. The question that now arises is whether any meaningful effect can be given to the order of the High Court for a fresh consideration of the application under Section 319 of the CrPC after the conclusion of the main trial.

(vi) Whether the order passed by the High Court in exercise of its revisional jurisdiction would relate back to the order passed by the Trial Court rejecting the application under Section 319 of the CrPC

81. This Court in Hardeep Singh (supra) observed that Section 319 casts a duty upon the courts to give full effect to the words used by the legislature to ensure that no person who deserves to be tried is able to go scot-free. The relevant paragraphs are reproduced below:

> "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 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.
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> 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."

82. In Shashikant Singh (supra), this Court emphasised on the duty of the courts to give a meaningful or rather a purposeful interpretation to Section 319 so as to fulfil its avowed objective of ensuring that no person who is guilty of an offence goes unpunished. The Court observed thus:

> "8. When a statute is passed for the purpose of enabling something to be done, and prescribes the way in which it is to be done, it may be either an absolute enactment or a directory enactment. The difference being that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially. No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. (Craies on Statute Law, 7th Edn., pp.
>
> 260-62.)
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> 9. The intention of the provision here is that where in the course of any enquiry into, or trial of, an offence, it appears to the court from the evidence that any person not being the accused has committed any offence, the court may proceed against him for the offence which he appears to have committed. At that stage, the court would consider that such a person could be tried together with the accused who is already before the court facing the trial. The safeguard provided in respect of such person is

that, the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses reheard. In short, there has to be a de novo trial against him. The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. Fresh examination-in-chief and not only their presentation for the purpose of the cross-examination of the newly added accused is the mandate of Section 319(4). The words "could be tried together with the accused" in Section 319(1), appear to be only directory. "Could be" cannot under these circumstances be held to be "must be". The provision cannot be interpreted to mean that since the trial in respect of a person who was before the court has concluded with the result that the newly added person cannot be tried together with the accused who was before the court when order under Section 319(1) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the court on the basis of the evidence before it that the newly added person appears to have committed the offence resulting in an order for his being brought before the court."

83. A strict application of the dictum as laid in Sukhpal Singh Khaira (supra) as regards the stage of passing of summoning order under Section 319 of the CrPC to the peculiar facts in the present case may be antithetical to the very object of Section 319 and would render the order of the High Court nugatory and incapable of being given effect to despite having been passed to rectify a patent mistake committed by the Trial Court. In our considered view, the aforesaid would lead to a serious miscarriage of justice. Such a result is also contrary to the principle enshrined in the legal maxim nullum tempus aut locus occurrit regi which means that "crime never dies".

84. The facts of the case on hand are peculiar and require us to go one step ahead of our present understanding of Section 319. We are of the view that the answer to present conundrum lies in determining the legal effect of the order passed by the High Court in exercise of its revisional jurisdiction and whether it operates from the date on which it came to be passed or would it relate back to the date of the order of the Trial Court against which it was passed.

85. This Court in Maru Ram v. Union of India, reported in (1981) 1 SCC 107 held that:

"56. We are mindful of one anomaly and must provide for its elimination. If the Trial Court acquits and the higher Court convicts and it so happens that the acquittal is before Section 433-A came into force and the conviction after it, could it be that the convicted person would be denied the benefit of prospectivity and consequential non-application of Section 433-A merely because he had the bad luck to be initially acquitted? We think not. When a person is convicted in appeal, it follows that the appellate Court has exercised its power in the place of the original court and the guilt, conviction and sentence must be substituted for and shall have retroactive effect from the date of judgment of the Trial Court. The appellate conviction must relate back to

the date of the Trial Court's verdict and substitute it. In this view, even if the appellate Court reverses an earlier acquittal rendered before Section 433-A came into force but allows the appeal and convicts the accused, after Section 433-A came into force, such persons will also be entitled to the benefit of the remission system prevailing prior to Section 433-A on the basis we have explained. An appeal is a continuation of an appellate judgment as a replacement of the original judgment. [Freedom Behind Bars — Criminology and Consciousness, Series I, 1979, Maharshi European Research University Press Publication, p. 73]" (Emphasis supplied)

86. The judgment in Maru Ram (supra) is relevant to the extent that the order of the appellate court relates back to the order of the Trial Court on the premise that an appeal is a continuation of trial and an appellate judgment is a replacement of the original judgment.

87. Once the High Court i.e., a superior court deems fit to interfere with an order of a subordinate court, then any rectifications made to the order passed by the subordinate court by such superior court 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 relate back to the original order.

88. This Court in Shankar Ramchandra Abhyankar v. Krishnaji Dattatreya Bapat reported in (1969) 2 SCC 74 observed thus:

"6. Now when the aid of the High Court is invoked on the revisional side it is done because it is a superior court and it can interfere for the purpose of rectifying the error of the court below. Section 115 of the Code of Civil Procedure circumscribes the limits of that jurisdiction but the jurisdiction which is being exercised is a part of the general appellate jurisdiction of the High Court as a superior court. It is only one of the modes of exercising power conferred by the statute; basically and fundamentally it is the appellate jurisdiction of the High Court which is being invoked and exercised in a wider and larger sense. We do not, therefore, consider that the principle of merger of orders of inferior courts in those of superior Courts would be affected or would become inapplicable by making a distinction between a petition for revision and an appeal.

7. It may be useful to refer to certain other decisions which by analogy can be of some assistance in deciding the point before us. In U.J.S. Chopra v. State of Bombay [1955 SCC OnLine SC 57 : AIR 1955 SC 633], the principle of merger was considered with reference to Section 439 of the Criminal Procedure Code which confers revisional jurisdiction on the High Court. In the majority judgment it was held, inter alia, that a judgment pronounced by the High Court in the exercise of its appellate or revisional jurisdiction after issue of a notice and a full hearing, in the presence of both the parties would replace the judgment of the lower court thus constituting the judgment of the High Court—the only final judgment to be executed in accordance with law by

the Court below. [...] " (Emphasis supplied)

89. The reasoning assigned by this Court in Krishnaji Dattatreya Bapat (supra) and U.J.S. Chopra v. State of Bombay reported in 1955 SCC OnLine SC 57 when read with the reasoning in Maru Ram (supra) would indicate that the order of the High Court in exercise of its revisional jurisdiction relates back to and replaces the order of the Trial Court. It is of no consequence that the exercise of revisional jurisdiction is discretionary as opposed to appellate jurisdiction. It is settled law that an appellate court exercises its power in the place of the original court and the order passed by such court shall have retroactive effect from the date of judgment of the Trial Court. Similarly, once the High Court, being the superior court, decides to interfere with the order of the Trial Court and passes an order in exercise of its revisional jurisdiction with the purpose of rectifying any errors in the same, such order will replace the order of the Trial Court.

90. What can be discerned from the aforesaid is that if the High Court passes an order in exercise of its revisional jurisdiction either setting aside or modifying the order of the Trial Court for the purpose of Section 319, the same would relate back to the original order passed by the Trial Court and substitute it to the extent of modification.

91. Besides above, the normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of facts or law which have a material bearing on the entitlement of the parties to the relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance of the subsequent changes of fact and law to mould the relief (See: Ramesh Kumar v. Kesho Ram reported in 1992 Supp (2) SCC

623). Justice Krishna Iyer in Pasupuleti Venkateswarlu v. Motor and General Traders, reported in (1975) 1 SCC 770 has observed thus:

"4. ... It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fair play is violated, with a view to promote substantial justice - subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings in this point

are legion, even as situations for applications of this equitable rule are myriad." Though the aforesaid observations are in the context of civil proceedings, the legal principle enshrined therein is based on a well-known latin maxim "actus curaie neminen gravabit" – "an act of court shall prejudice no man", which is of universal application. As a sequitur, no man should suffer because of the fault of the court or delay in the procedure.

92. In the present case, the High Court, in exercise of its revisional jurisdiction, set aside the order of the Trial Court rejecting the second application under Section 319 of the CrPC and directed the Trial Court to reconsider the application under Section 319. At the stage of issuing the aforesaid direction, the High Court was conscious that the trial had concluded, yet to do substantial justice, it deemed it necessary to issue such a direction. In doing so, the High Court's order, which relates back to the date of the Trial Court's order, did not mandate the Trial Court to do something which was barred by law because, as already noticed above, holding a joint trial is directory. Therefore, in complying with the said direction of the High Court, the Trial Court committed no act which was prohibited by law.

93. There is not an iota of doubt that if the Trial Court would have proceeded against the appellants under Section 319 of the CrPC in the absence of the order passed by the High Court in the revision petition, the same would have been illegal for having being done after the conclusion of the trial of the original accused in light of the clear guidelines laid down in Sukhpal Singh Khaira (supra). However, by virtue of relating back of the order passed by the High Court in the 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 for this reason could be said to have been passed before the conclusion of the trial.

94. This Court in Sukhpal Singh Khaira (supra) had no occasion to consider a factual situation like the one at hand, and thus the guidelines laid down by the Constitution Bench did not prescribe anything as regards the application of Section 319 of the CrPC in the context of revisional jurisdiction of the High Court. In such circumstances, the spirit underlying Section 319 requires us to adopt an approach which furthers and fulfils the object of the provision rather than rendering it nugatory.

95. If the order of the High Court passed in its revisional jurisdiction is not related back, the consequence would be that although from the evidence, it appears that there are some other persons who might be involved in the offence, yet those persons will go scot-free solely because the Trial Court erred in not exercising its powers under Section 319 which it ought to have.

Relating back the High Court's revisional order to the date of the Trial Court's order strikes a balance between the interests of the newly summoned persons and the general public/victims without causing prejudice to either.

96. While we have clarified the position of the effect of an order passed in exercise of revisional jurisdiction on an order passed under Section 319, we deem it equally necessary to address the mechanism for exercise of powers under Section 319 in cases where the trial is over but the revisional order relates back to the date of the rejection of an application under the said section by the Trial Court. It is axiomatic that in such a case there is no occasion for a joint trial to be conducted with the original accused persons. Therefore, when the order of the High Court passed in revision after the conclusion of trial relates back to the order of the Trial Court passed before the conclusion of trial, it must be taken to mean that the new accused would be proceeded against in a separate trial. Such a situation shall be governed by the guidelines provided in Sukhpal Singh Khaira (supra), more particularly, by the guideline in para 41.6 thereof which states that "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." We clarify with a view to obviate any confusion that there is no requirement for a decision by the Trial Court on the question of separation of trial in cases like the present one since the trial has already concluded in respect of the original accused and the only manner in which the order of the High Court can be given effect to is by proceeding in a separate trial qua the new accused persons.

97. We deem it appropriate to refer to the decision of this Court in Uday Mohanlal Acharya v. State of Maharashtra reported in (2001) 5 SCC 453. In the said case, the appellant before this Court was an accused in relation to certain offences for which he was remanded to judicial custody. Upon expiry of sixty days, the accused-appellant moved an application for the grant of default bail as no chargesheet was filed by the investigating agency. However, the application came to be rejected by the Magistrate who took the view that provisions of Section 167(2) would not be applicable to the offence committed under the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 ("MPID Act"). The appellant filed a revision before the High Court against the order passed by the Magistrate. During the pendency of the revision, chargesheet was filed by the investigating authorities. In such circumstances, although the High Court set aside the order of the Magistrate on the ground that Section 167(2) of the CrPC would apply to offences under the MPID Act yet it held that the accused-appellant was not entitled to be released on bail as chargesheet had come to be filed during the pendency of the revision thereby rendering the right accrued in favour of the appellant unenforceable. The matter travelled to this Court, wherein G.B. Pattanaik, J. speaking for himself and U.C. Banerjee, J. took the view that a purposive interpretation had to be given to the proviso to sub-section (2) of Section 167 of the CrPC and the object of the proviso to curb the mischief of indefinite and prolonged investigation had to be kept in mind while interpreting the provision. The relevant paragraphs from the said decision are reproduced hereinbelow:

> "10. In Bipin Shantilal Panchal (Dr) v. State of Gujarat [(1996) 1 SCC 718 : 1996 SCC (Cri) 200] , a three-Judge Bench decision, this Court referred to the proviso to

sub-section (2) of Section 167 of the Code of Criminal Procedure and held that though the aforesaid provisions would apply to an accused under the NDPS Act, but since the charge-sheet had already been filed and the accused is in custody on the basis of orders of remand passed under other provisions of the Code the so-called indefeasible right of the accused must be held to have been extinguished, as was held by the Constitution Bench in Sanjay Dutt [(1994) 5 SCC 410 :

1994 SCC (Cri) 1433] . The Court observed thus: (SCC p. 720, para 4) "Therefore, if an accused person fails to exercise his right to be released on bail for the failure of the prosecution to file the charge-sheet within the maximum time allowed by law, he cannot contend that he had an indefeasible right to exercise it at any time notwithstanding the fact that in the meantime the charge-sheet is filed. But on the other hand if he exercises the right within the time allowed by law and is released on bail under such circumstances, he cannot be rearrested on the mere filing of the charge-sheet, as pointed out in Aslam Babalal Desai v. State of Maharashtra [(1992) 4 SCC 272 : 1992 SCC (Cri) 870]."

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13. [...] In such a case, therefore, even if the application for consideration of an order of being released on bail is posted before the court after some length of time, or even if the Magistrate refuses the application erroneously and the accused moves the higher forum for getting a formal order of being released on bail in enforcement of his indefeasible right, then filing of challan at that stage will not take away the right of the accused. [...] With the aforesaid interpretation of the expression "availed of" if the charge-sheet is filed subsequent to the availing of the indefeasible right by the accused then that right would not stand frustrated or extinguished, necessarily therefore, if an accused entitled to be released on bail by application of the proviso to sub-

section (2) of Section 167, makes the application before the Magistrate, but the Magistrate erroneously refuses the same and rejects the application and then the accused moves the higher forum and while the matter remains pending before the higher forum for consideration a charge-sheet is filed, the so-called indefeasible right of the accused would not stand extinguished thereby, and on the other hand, the accused has to be released on bail. Such an accused, who thus is entitled to be released on bail in enforcement of his indefeasible right will, however, have to be produced before the Magistrate on a charge-sheet being filed in accordance with Section 209 and the Magistrate must deal with him in the matter of remand to custody subject to the provisions of the Code relating to bail and subject to the provisions of cancellation of bail, already granted in accordance with the law laid down by this Court in the case of Mohd. Iqbal v. State of Maharashtra [(1996) 1 SCC 722 : 1996 SCC (Cri) 202]." (Emphasis supplied)

98. We are conscious of the fact that unlike Section 167(2), where an indefeasible right accrues in favour of the accused upon the expiry of the period of sixty/ninety days, Section 319 is a

discretionary provision and no right can be said to accrue in the applicant upon making of the application under Section 319. However, as held by this Court in a number of its decisions, Section 319 casts a duty on the court to ensure that any person who appears to have committed the crime must be brought before the court and tried along with other accused. In the present case, the application under Section 319 was made by the respondent no. 2 during the pendency of the trial. As per the guidelines laid down in Sukhpal Singh Khaira (supra), if an application under Section 319 is made before a trial court, the court must stop the trial and proceed to determine the application first before proceeding further with the trial. In the present case, the Trial Court considered the application under Section 319 of the CrPC and after rejecting the same proceeded with the trial and concluded the same. The High Court, in exercise of its revisional jurisdiction, held that the rejection of the application under Section 319 by the Trial Court suffered from a patent illegality and thus directed the Trial Court to reconsider the application. In such circumstances, more particularly, keeping in mind the avowed objective of Section 319 of the CrPC, it cannot be held that the order passed by the High Court in revision cannot be given effect to merely because the trial came to be concluded before an order could be passed by the High Court. The present, unlike the facts in Sukhpal Singh Khaira (supra), is not a case wherein the application under Section 319 came to be filed or decided by the Trial Court after the conclusion of the trial. Instead, the case at hand is one wherein the application under Section 319 though decided at the correct stage, came to be decided wrongly owing to a patent illegality committed by the Trial Court. In such circumstances, an approach which gives full effect to the legislative intention behind Section 319 of the CrPC must be adopted.

99. Having discussed the position of law on the exercise of power under Section 319 of the CrPC, we shall now proceed to apply them to the facts of the present case. The sequence of applications under Section 319 of the CrPC and the consequential High Court proceedings arising therefrom are tabulated below:

APPLICATION UNDER SECTION 319	COURT	DATE OF THE ORDER	REMARKS
First Application	Trial Court	29.01.2010	The first application was rejected. Grounds: • Investigation against the proposed accused was ongoing and remained pending. • The cross-examination of PW-1 & PW-2 was incomplete.
	High Court	14.05.2010	The revision application against the order dated 29.01.2010 was allowed. Direction: • To the Trial Court to

			consider application under Section 319 after the cross-examination of PW-1 & PW-2.

Trial Court 19.07.2010 The second application was rejected on merits.

Trial was concluded on 19.10.2011 – Original accused were convicted and, inter alia, sentenced to life imprisonment.

	High Court	14.09.2021	The revision application against the order dated 19.07.2010 was allowed on merits.
Second Application dated 10.06.2010			Direction: • To the Trial Court to reconsider the application under Section 319 within three months from the date of the order. Note: • It was noted by the High Court that the trial in respect of the original accused had already concluded.

Trial Court 21.02.2024 The third application was allowed on merits.

Third Application dated 22.09.2021 (the complainant renewed the prayer under		Direction: • To summon the appellants herein as accused. Note: • It was recorded that the Trial Court had been

			authorized by the order Section 319)
			dated 14.09.2021 of the High Court to allow the
			application under Section
	High Court	01.04.2024	The application preferred by the appellants herein under Section 482 of the CrPC was dismissed and the order dated 21.02.2024 was upheld. Note: • It was recorded that as per Section 319(4), the trial against the summoned accused has to be commenced afresh and the witnesses re-heard. Therefore, the conclusion of trial in respect of the accused summoned originally would not cause any prejudice to the appellants herein.

100. What is clear from the above is that as the Trial Court rejected the application under Section 319, no summoning order could be passed before the conclusion of trial. However, the High Court in exercise of its revisional jurisdiction set aside the said order and directed the Trial Court to reconsider the application under Section 319.

101. We have discussed in the preceding parts of this judgment that the revisional jurisdiction of the High Court cannot be rendered nugatory solely because the trial was not stayed by the High Court and stood concluded before the High Court could pass the order in exercise of its revisional jurisdiction.

Therefore, unlike cases where an application under Section 319 is being decided in the first instance by the Trial Court, the conclusion of trial will not have a bearing on the adjudication of an application under Section 319 in terms of the directions of the High Court passed by way of a revisional order.

102. As discussed hereinabove, an order passed by the High Court in exercise of its revisional jurisdiction would relate back to the order of the Trial Court. In the present case, the Trial Court in its discretion rejected the second application filed under Section 319 before the conclusion of trial vide order dated 19.07.2010. The High Court, more than ten years after the conclusion of trial, set aside the said order and directed the Trial Court to reconsider the application under Section 319 afresh. In our considered view, such order passed by the High Court on the second application under Section 319 travels back to 19.07.2010 i.e., the date when the Trial Court rejected the said application. The effect of the order of the High Court relating back to the original order of the Trial Court is that the Trial Court cannot be considered functus officio as regards considering the application under Section 319 after the conclusion of the trial. We say so because the Trial Court, in considering the application under Section 319 after the conclusion of the trial, is merely giving effect to a revisionary order directing it to freshly consider the application which it had originally rejected.

103. Ordinarily, an application under the Section 319 cannot be moved after the conclusion of trial as a necessary corollary of the dictum laid down in Sukhpal Singh Khaira (supra). However, the peculiar facts and circumstances presented by the case on hand indicate that an application under Section 319 dated 10.06.2010 was directed to be considered afresh by the High Court vide order dated 14.09.2021 and, therefore, the third application dated 22.09.2021 was not even required, though moved by the respondent no. 2 in pursuance of the order of the High Court order dated 14.09.2021 allowing the revision petition. Accordingly, the summoning order, in exercise of the powers under Section 319, came to be passed by the Trial Court on 21.02.2024.

104. The summoning order dated 21.02.2024 was passed by the Trial Court in pursuance of the direction issued by the High Court vide its revisional order dated 14.09.2021. Therefore, it has to been seen 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 on 21.02.2024 is that the order of the Trial Court dated 19.07.2010 rejecting the second Section 319 application is 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). Thus, as the summoning order can be deemed to have been passed before the conclusion of the trial, there is no impediment for the Trial Court to proceed with the appellants in the manner envisaged under Section 319 of the CrPC. As the summoning order passed in compliance with the order passed by High Court in revision takes effect from the date of the original order, this ensures that there is compliance with the dictum laid in Sukhpal Singh Khaira (supra) that the summoning order has to be necessarily passed before the conclusion of the trial.

105. We are also of the view that the relating back of the order of the High Court is not going to cause any prejudice to the appellants. Considering that the original trial has already concluded, there will have to be a separate trial so far as the appellants are concerned. Section 319(4)(a) takes care of the rights of the newly summoned persons by providing that “the proceedings in respect of such person shall be commenced afresh, and the witnesses re- heard”.

106. In view of the aforesaid, we have arrived at the conclusion that the order passed in revision by the High Court cannot be rendered ineffective merely on procedural grounds especially when it involves substantive rights of the parties and seeks to cure a patent illegality. However, it is apposite to clarify in the same breath that although the law allows for travelling back of the revisional order of the High Court, yet it is far from ideal to do so after the passage of a substantial period of time, in this case, ten years after the conclusion of trial. The correct approach to be adopted in cases like this is that the High Court should direct the Trial Court to stay its proceedings till the revision proceedings in respect of Section 319 are disposed of. At the same time, the High Court must also expedite the revision proceedings so as to ensure that unreasonable delay is not caused in the conclusion of trial.

107. The High Court in its impugned order has rightly observed that the summoning order dated 21.02.2024 was passed in compliance with the order passed by the High Court in exercise of its revisional jurisdiction. It further correctly observed that the order passed by the High Court in exercise of its revisional jurisdiction was in furtherance of the object of Section 319 of the CrPC which is to ensure that the actual perpetrators of a crime are arraigned as accused to face trial. The High Court was also right in observing that the conclusion of the trial qua the original accused would not prejudice the appellants in any manner and their interest would be safeguarded by sub-section (4) of Section 319 of the CrPC. The High Court also noted that the summoning order, though having been passed after the conclusion of the trial, cannot be said to be vitiated in the peculiar facts and circumstances of the case. For all the reasons that we have assigned in the preceding parts of this judgment, we do not see any reason to interfere with the impugned order passed by the High Court.

(vii) Right of the proposed accused to be heard at the stage of summoning under Section 319 of CrPC

108. Before we part with the matter, we deem it necessary to address the submissions of the appellants as regards the violation of their right to be heard before the passing of the order in Revision Petition 400/2010 by the High Court.

109. As regards the right of the proposed accused to be heard before an application under Section 319 is allowed by the court, we are in respectful agreement with a recent pronouncement of this Court in Yashodhan Singh v. State of U.P. reported in (2023) 9 SCC 108 wherein it has been held that 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. The relevant observations from the said decision are reproduced hereinbelow:

> “23. From the aforesaid observations of the Constitution Bench of this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , it is noted that an inquiry is contemplated as against a person who has been discharged prior to the commencement of the trial in terms of Section 227 CrPC as extracted above but on an inquiry, if it appears that there is evidence against such a discharged person, then power under Section 319 CrPC can be exercised against such a discharged person. This clearly would mean that when a person who is not

> discharged but is to be summoned as per Section 319 CrPC on the basis of satisfaction derived by the court on the evidence on record, no inquiry or hearing is contemplated. This would clearly indicate that principle of natural justice and an opportunity of hearing a person summoned under 319 CrPC are not at all contemplated. Such a right of inquiry 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 other accused.
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> --xxx--
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> 35. This Court in the subsequent paragraphs of Jogendra Yadav [Jogendra Yadav v. State of Bihar, (2015) 9 SCC 244 : (2015) 3 SCC (Cri) 756] has also not stated that if a person is to be summoned under Section 319 CrPC to be added as an accused, then an opportunity must be given to such a person and only after hearing him, he could be added as an accused in the trial. We do not find that the ratio of Jogendra Yadav [Jogendra Yadav v. State of Bihar, (2015) 9 SCC 244 : (2015) 3 SCC (Cri) 756] turns on the said aspect.

36. However, it is contented by the learned Senior Counsel Shri Nagamuthu that what has been observed in para 9 of Jogendra Yadav [Jogendra Yadav v. State of Bihar, (2015) 9 SCC 244 : (2015) 3 SCC (Cri) 756] will make it a necessary mandate or a rule that a person who is to be summoned under Section 319 CrPC to be added as an accused will necessarily be heard before being so added. Para 9 cannot be considered to be the ratio of Jogendra Yadav [Jogendra Yadav v. State of Bihar, (2015) 9 SCC 244 : (2015) 3 SCC (Cri) 756] . Further, the context in which the observations are made in the paragraph must relate to the facts of the said case where an opportunity was in fact provided to the persons summoned therein.

37. Similarly, in Ram Janam Yadav [Ram Janam Yadav v. State of U.P., (2023) 9 SCC 130] , on facts, it was noticed that the person summoned was, in fact, provided an opportunity of hearing.

38. Merely because in certain proceedings the persons summoned had been provided an opportunity of being heard cannot be the same thing as stating that it is a mandatory requirement or a precondition that at the time of summoning a person under Section 319 CrPC, he should be given an opportunity of being heard. That is not the mandate of law inasmuch as Section 319 clearly uses the expression “to proceed” which means to proceed with the trial and not to jeopardise the trial at the instance of the person(s) summoned by conducting a mini trial or a trial within a trial thereby derailing the main trial of the case and particularly against the accused who are already facing trial and who may be in custody.

39. A person who is summoned in exercise of the power under Section 319 CrPC cannot hijack the trial so to say and deviate from its focus and take it to a tangent in order to bolster his own case in a bid to escape trial. All that is contemplated when a person is summoned to appear is to ascertain

that he is the very person who was summoned and if any summoned person fails to appear on the given date. On the appearance of the summoned person, no procedure of an inquiry or opportunity of being heard is envisaged before been added as an accused to the list of accused already facing trial unless such a summoned person had already been discharged, in which event, an inquiry is contemplated as discussed above.

40. Thus, the contention that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial is clearly not contemplated under Section 319 CrPC. It is also observed by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that such a summoned person can assail a summoning order before a superior Court and will also have the right of cross-examining the witnesses as well as can let in his defence evidence, if any." (Emphasis supplied)

110. However, in the facts of the present case, the application under Section 319 was rejected by the Trial Court but the revision against such rejection was entertained by the High Court without allegedly putting the proposed accused to notice. Upon a careful perusal of the decision in Yashodhan Singh (supra), we are of the view that the right of hearing is not available to the proposed accused only in the first instance, that is only at the stage when the application is being heard for the first time.

111. 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 has enured in favour of the proposed accused, then the High Court is required 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. The said provision is reproduced hereinbelow:

> "401. High Court's powers of revision.
>
> (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.
>
> (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.
>
> (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly." (Emphasis supplied)

112. The aforesaid principle was also recognised by this Court in Manharbhai Muljibhai Kakadia (supra). The relevant portion of the said decision is reproduced below:

"48. In a case where the complaint has been dismissed by the Magistrate under Section 203 of the Code either at the stage of Section 200 itself or on completion of inquiry by the Magistrate under Section 202 or on receipt of the report from the police or from any person to whom the direction was issued by the Magistrate to investigate into the allegations in the complaint, the effect of such dismissal is termination of complaint proceedings. On a plain reading of sub-section (2) of Section 401, it cannot be said that the person against whom the allegations of having committed the offence have been made in the complaint and the complaint has been dismissed by the Magistrate under Section 203, has no right to be heard because no process has been issued. The dismissal of complaint by the Magistrate under Section 203—although it is at preliminary stage— nevertheless results in termination of proceedings in a complaint against the persons who are alleged to have committed the crime. Once a challenge is laid to such order at the instance of the complainant in a revision petition before the High Court or the Sessions Judge, by virtue of Section 401(2) of the Code, the suspects get the right of hearing before the Revisional Court although such order was passed without their participation. The right given to "accused" or "the other person" under Section 401(2) of being heard before the Revisional Court to defend an order which operates in his favour should not be confused with the proceedings before a Magistrate under Sections 200, 202, 203 and 204. In the revision petition before the High Court or the Sessions Judge at the instance of the complainant challenging the order of dismissal of complaint, one of the things that could happen is reversal of the order of the Magistrate and revival of the complaint. It is in this view of the matter that the accused or other person cannot be deprived of hearing on the face of the express provision contained in Section 401(2) of the Code. The stage is not important whether it is pre-process stage or post process stage." (Emphasis supplied)

113. In view of the principles explained in Manharbhai Muljibhai Kakadia (supra), the right of hearing is available to the proposed accused at the stage of revision as the

High Court by setting aside the order rejecting the application under Section 319 may revive the proceedings against the proposed accused under Section 319. Providing the proposed accused with a mandatory right of hearing allows him to defend himself against a prejudicial order that may be passed in the course of the hearing of the revision petition.

114. However, a perusal of the order dated 14.09.2021 passed in Revision Petition No. 400/2010 clearly indicates that the appellants were respondent nos. 2 and 4, respectively, before the High Court. Hence, we do not find any merit in the submission of the appellants that the order rejecting the 2nd application under Section 319 of the CrPC was set aside by the High Court without providing any opportunity of hearing to them.

F. CONCLUSION

115. We summarise our findings on the issues framed for consideration as follows:

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.

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.

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.

e. The legal effect of the order passed by the High Court relating back to the original order of the Trial Court is that the Trial Court would not be rendered functus officio for the purpose of considering the application under Section 319 after the conclusion of the trial. We say so because the Trial Court, in considering the application under

> Section 319 after the conclusion of the trial, merely gave effect to a revisional order directing it to consider the application afresh which it had originally rejected.
>
> 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.

116. For all the foregoing reasons, the appeal fails and is hereby dismissed.

117. The Trial Court is directed to take necessary steps in furtherance of the summoning order dated 21.02.2024 to ensure that the appellants are produced before the court to face the trial.

118. Pending application(s), if any, shall stand disposed of.

.....J. (J.B. Pardiwala) .....J. (Manoj Misra) New Delhi.

6th March, 2025.