

Summoning of Additional Accused u/s 319 CrPC

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1. **Twin requirements for summoning an additional accused u/s 319 CrPC** : Twin requirements for summoning an additional accused u/s 319 CrPC are as under :
 - (i) That from the evidence it appears to the court that such person has committed any offence.
 - (ii) That such a person could be tried together with the accused already facing trial. See : **R. Dineshkumar Vs. State, (2015) 7 SCC497.**

2. **Power u/s 319 CrPC is discretionary** : Power to summon an additional accused u/s 319 CrPC to face trial is discretionary and cannot be fettered either by calling it extraordinary or exercisable only in exceptional circumstances. It is left to the judicial discretion of the court to decide to proceed or not to proceed against person in terms of Sec. 319 CrPC. See :
 1. **Sarojben Ashwin kumar Shah Vs. State of Gujrat and another 2011 (74) ACC 951 (SC)**
 2. **Rajendra Singh Vs. State of UP, AIR 2007 SC 2786**
 3. **Hardeep Singh Vs. State of Punjab, 2009 (65) ACC 768 (SC)**

3. **Relevant considerations for exercising power u/s 319 CrPc.** : For exercising power to summon a person as accused u/s 319 CrPc, the relevant considerations for the court is to see as to whether there are sufficient grounds to proceed against the accused and the evidence of the witnesses shows complicity of the accused with the crime. See : **Golla Deva Veram vs. Karanam Balarama Krishna Murthy, (2010) 3 SCC (Cri.) 628**

4. **Recording of satisfaction by trial court regarding likelihood of conviction of proposed accused must for summoning u/s 319 Cr PC** :

Before a court exercises its discretionary jurisdiction in terms of section 319 of the code of criminal procedure, it must arrive at the satisfaction caused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the court concerned may also like to consider other evidence.

1. **Mohd.Shafi Vs. Mohd. Rafiq, 2007(58)ACC 254(SC)**
2. **Sarabjit Singh vs. State of Punjab, (2010) 2 SCC (Criminal) 141**
3. **Michael Machado Vs. CBI, AIR 2000 SC 1127**

5(A). Power u/s 319 CrPC being extraordinary to be exercised sparingly :

Power u/s 319 CrPC to summon a person as accused should be exercised sparingly keeping in mind all the attending circumstances and only if compelling reasons exist for taking cognizance against the person other than the accused. See---

1. **Michael Machado Vs. CBI, 2000 (3) SCC 262**
2. **Prasanna Das Vs. State of Orissa, 2004 (13) SCC 30**
3. **Krishnappa Vs. State of Karnataka, (2004) 7 SCC 792**

5(B). Summoning of additional accused u/s 319 CrPC without evidence held

improper: This was basically a matrimonial dispute wherein husband/complainant had leveled allegations against his wife and her other family members. Though in the FIR, the complainant had mentioned that 15 women and 35 men had come by vehicles but names of 11 persons alone were disclosed in the FIR. In the statements recorded under Section 161 CrPC, the complainant and his witnesses had not disclosed any other names except the 11 persons named in the FIR. Thus, the complainant had sought to cast net wide so as to include numerous other persons while moving an application u/s 319 CrPC without there being primary evidence about their role in house trespass or of threatening the complainant. The

Supreme Court held that large number of people would not come to house of the complainant and would return without causing any injury as they were said to be armed with weapons like crowbar, knife and ripper etc. In the FIR or in the statements recorded u/s 161 CrPC, names of the appellants or any other description had not been given so as to identify them. The allegations in the FIR were vague and could be used any time to include any person in absence of description in the FIR to identify such persons. There was no assertion in respect of the villages to which the additional accused belonged. Therefore, there was no strong or cogent evidence to make the appellants stand the trial for offences under Sections 147, 448, 294(b) and 506 of the IPC. Mere disclosure of names of the appellants could not be said to be strong and cogent evidence to make them to stand trial under Section 319 CrPC, especially when the complainant was a husband and had initiated criminal proceedings against the family of his in-laws and when their names or other identity were not disclosed at the first opportunity. **See: Periyasami and others Vs. S. Nallasamy, AIR 2019 SC 1426.**

6. **Supreme Court guidelines for exercising powers u/s 319 CrPC** : In the case of **Sarojben Ashwin Kumar Shah Vs. State of Gujarat, 2011(74) ACC 951 (SC)(para 16)**, the Hon'ble Supreme Court has drawn following guidelines for exercising the jurisdiction by courts u/s 319 CrPC :
- (i) The Court can exercise the power conferred on it under Section 319 of the Code suo motu or on an application by someone.
 - (ii) The power conferred under Section 319(1) applies to all Courts including the Sessions Court.
 - (iii) The phrase "any person not being the accused" occurring in section 319 does not exclude from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in column 2 of the charge-sheet. In other words, the said expression covers any person who is not being tried already by the Court and would include person or persons who have been dropped by the police during investigation but

against whom evidence showing their involvement in the offence comes before the Court.

- (iv) The power to proceed against any person, not being the accused before the Court, must be exercised only where there appears during inquiry or trial sufficient evidence indicating his involvement in the offence as an accused and not otherwise. The word "evidence" in section 319 contemplates the evidence of witnesses given in Court in the inquiry or trial. The Court cannot add persons as accused on the basis of materials available in the charge-sheet or the case diary but must be based on the evidence adduced before it. In other words, the Court must be satisfied that a case for addition of persons as accused, not being the accused before it, has been made out on the addition let in before it.
- (v) The power conferred upon the Court is although discretionary but is not to be exercised in a routine manner. In a sense, it is an extraordinary power which should be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person has committed an offence. A mere doubt about involvement of the other person on the basis of the evidence let in before the Court is not enough. The Court must also be satisfied that circumstances justify and warrant that the other person be tried with the already arraigned accused.
- (vi) The Court while exercising its power under Section 319 of the Code must keep in view full conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then.
- (vii) Regard must also be had by the Court to be constraints imposed in Section 319(4) that proceedings in respect of newly added persons shall be commenced afresh from the beginning of the trial.
- (viii) The Court must, therefore, appropriately consider the above aspects and then exercise its judicial discretion."

7. **Person named in FIR but not charge sheeted can still be summoned u/s 319 CrPC**---A person who was named as accused in FIR but was not charge sheeted can still be summoned by the court u/s 319 Cr.PC. See---
1. **Bholu Ram Vs. State of Punjab, JT 2008 (9)SC 504**
 2. **Rajindra Singh Vs. State of UP, AIR 2007 SC 2786**
 3. **Ram Awadh Vs. State of UP, 2005(2) ACr.R 1233 (All.)**
 4. **Surendra Kumar Agrawal Vs. State of UP, 2003(3) ACR 2290(All.)**
 5. **Smt. Rukhsan Khatoon Vs. Sakhawat Hussain, AIR 2002 SC 2342**
8. **A person not named in FIR can be summoned u/s 319 CrPC**---A person not named in FIR and not charge sheeted can be summoned u/s 319 CrPC. See---
1. **Guriya Vs. State of Bihar, (2007) 8 SCC 224**
 2. **Hardeep Vs. State of Punjab, 2009 (65) ACC 768 (para 42)**
 3. **Bholu Ram Vs. State of Punjab, JT 2008 (9)SC 504**
9. **Satisfaction Of IO not to be allowed to frustrate the purpose of Sec.319 Cr PC**--- Satisfaction of the investigating officer (on alibi of accused) should not be given primacy over summoning of the accused u/s 319 CrPC otherwise the very purpose of Sec. 319 CrPC would be frustrated. See---**Y.Saraba Reddy Vs. Puthur Rami Reddy, 2007(3)A Cr.R 2438 (SC) (Three- Judge Bench)**
10. **Defence plea like alibi cannot be entertained at the stage of Sec. 319 CrPC**---Satisfaction of the investigating officer on alibi of accused should not be given primacy over summoning of the accused u/s 319 Cr.P.C otherwise the very purpose of Sec. 319 Cr.PC would be frustrated. See---
1. **Y. Saraba Reddy Vs. Puthur Rami Reddy, 2007(3)A Cr.R 2438 (SC) (Three- Judge Bench)**
 2. **Krishna Kumar Rai Vs. State of UP, 2009(1) ACR 414 (All.)**
 3. **Rajindra Singh Vs. State of UP, AIR 2007 SC 2786**

Note- ACR = Allahabad Criminal Rulings.

11. **A new accused may be summoned u/s 319 CrPC even without recording any evidence during trial by the Sessions Judge** : Overruling its earlier Three-Judge Bench decision in *Ranjit Singh Vs. State of Punjab*, 1998 (37) ACC 768 (SC) (Three-Judge Bench) and giving approval to its division Bench decision in *Kishun Singh Vs. State of Bihar*, 1993 (30) ACC 167 (SC), a Constitution Bench of the Hon'ble Supreme Court, in the case noted below, has ruled thus : *"Sessions Court had jurisdiction on committal of a case to it take cognizance of the offences against the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal u/s 209 CrPC, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial alongwith those already named therein. The Sessions Judge acting as a court of original jurisdiction could issue summons u/s 193 CrPC on the basis of the records transmitted to him as result of the committal order passed by the Magistrate. Once the case is committed to the court of sessions by the Magistrate, court of sessions assumes original jurisdiction. The Magistrate has to play passive role in committing the case to the court of session and it cannot be said that part cognizance is taken by the Magistrate and part cognizance by the Court of Sessions. Court of Sessions has jurisdiction u/s 193 CrPC on committal of a case to it by the Magistrate to take cognizance of offences against persons not named as offenders and even without recording evidence upon committal u/s 209 CrPC, Sessions Judge may summons those persons shown in column No. 2 of the police report to stand trial along with those already named therein. Sessions Judge has not to wait till the stage u/s 319 CrPC for proceeding against whom prima facie case is made out from the material on record."*

See : **Dharam Pal Vs. State of Haryana, 2013 (82) ACC 963 (Five-Judge Bench)** (*paras 27, 28, 29 & 30*)

11. **Only evidence led before court to be considered at the stage of Sec. 319 CrPC---** Only evidence led before the court can be taken into consideration at the time of disposal of the application u/s 319 of the CrPC. Materials contained in the case diary or charge sheet cannot be looked into at that stage as they do not constitute evidence. See---
 1. **Y.Saraba Reddy Vs. Puthur Rami Reddy, 2007(3)A Cr.R 2438 (SC)**
 2. **Rajindra Singh Vs. State of UP, AIR 2007 SC 2786**
12. **An additional accused can be summoned u/s 319 CrPC merely on the basis of deposition made by the witness in his examination-in-chief :**
An additional accused can be summoned u/s 319 CrPC merely on the basis of deposition made by the witness in his examination-in-chief See. **R. Dineshkumar Vs. State, (2015) 7 SCC497.**
13. **Cross Examination of PWs not necessary before disposal of application u/s 319 CrPC :** Cross Examination of PWs is not necessary before disposal of application u/s 319 CrPC. See---
 - 1.**Rakesh Vs State of Haryana, (2001) 6 SCC 248**
 - 2.**Harbhajan Singh Vs.State of Punjab, 2009(67)ACC 339(SC)**
 - 3.**Hardeep Singh Vs. State of Punjab, 2009 (65) ACC 768 (SC)**
 - 4.**Dilshad Vs. State of UP, 2016 (94) ACC 106 (All)**
14. **Cross examination of PWs may be allowed before disposal of application u/s 319 CrPC---**Before a court exercises its discretionary jurisdiction in terms of Sec.319 CrPC, it must arrive at the satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the Court concerned may also like to consider other evidence. See---**Mohd. Shafi Vs. Mohd.Rafiq, 2007(58)ACC 254(SC)**

Note—The correctness of the decision in *Mohd Shafi Vs. Mohd Rafiq* (on the point of necessity of cross examination of PW before exercising power u/s 319 CrPC) has been doubted & referred to a Three-Judge Bench by the Supreme Court in *Harbhajan Singh Vs. State of Punjab, 2009(67)ACC 339(SC)* & *Hardeep Singh Vs. State of Punjab, 2008(62) ACC 904(SC)*.

15. **Materials in case diary or charge sheet not to be considered at the stage of Sec. 319 CrPC**---Only evidence led before the court can be taken into consideration at the time of disposal of the application u/s 319 of the Cr.PC. Materials contained in the case diary or charge sheet or affidavits or statements recorded u/s 161 CrPC cannot be looked into at that stage as they do not constitute evidence. See---
 - 1.Y.Saraba Reddy Vs. Puthur Rami Reddy, 2007(3)A CR 2438 (SC)
 - 2.Rajendra Singh Vs. State of UP, AIR 2007 SC 2786
16. **Belated application u/s 319 CrPC not to be rejected on the ground of delayed moving of the same**---An application moved u/s 319 Cr.PC at belated stage of the proceedings cannot be rejected on the ground of delay.See--- Y.Saraba Reddy Vs. Puthur Rami Reddy, 2007(3)ACR 2438 (SC)
17. **An accused summoned u/s 319 CrPC can be tried even after conclusion of trial of the co-accused**--- An accused summoned u/s. 319 Cr.P.C. can be tried by the court even after the conclusion of the trial of the co-accused. See---
 1. Babubhai Bhimabhai Bokhiria Vs. State of Gujarat, AIR 2013 SC 3648
 2. Shashikant Singh Vs. Tarkeshwar Singh, (2002) 5 SCC 738
 3. Mohit Singh Vs. State of U.P., 2010 (68) ACC 212 (All)
 4. Rajendra Singh Vs. State of UP, AIR 2007 SC 2786
18. **Person not summoned u/s 204 CrPC can be summoned u/s 319CrPC after evidence u/s 244 CrPC**--- Where a person was not summoned by the magistrate u/s 204 Cr.PC but his name had surfaced in statement recorded u/s 244 CrPC, a person can be summoned as accused u/s 319 CrPC as the

statement of witnesses recorded u/s 244 CrPC is evidence. See---**Nazma Vs. State of UP, 2010(2) ACR 1377 (All.)**

Note- ACR = Allahabad Criminal Rulings.

- 19. De novo trial mandatory u/s 319(4) CrPC**---The provision of de novo trial u/s 319(4) CrPC 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 Sec. 319(4)CrPC. The words “could be tried together with the accused” in Sec. 319(1)CrPC appear to be only directory. See---
1. **Hari Narayan G. Bajaj Vs. State of Maharashtra, 2010 (70) ACC 566(SC)**
 2. **Rajendra Singh Vs. State of UP, AIR 2007 SC 2786**
- 20. Fresh Examination-in-Chief of Pws must u/s 319 CrPC**--- The provision of de novo trial u/s 319(4) CrPC 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 Sec. 319(4)CrPC. The words “could be tried together with the accused” in Sec. 319(1)CrPC appear to be only directory. See---**Rajendra Singh Vs. State of UP, AIR 2007 SC 2786**
- 21. An accused summoned u/s 319 CrPC cannot be discharged u/s 227 CrPC** : An accused summoned under 319 CrPC cannot be discharged u/s 227 CrPC. See : **Jogendra Yadav Vs. State of Bihar, (2015) 9 SCC 244.**

22. **An accused discharged earlier can be summoned u/s 319 CrPC**--- Even a person who has earlier been discharged would fall within the sweep of the power conferred by Sec. 319 CrPC. See---
1. **Deepu Vs. State of MP, AIR 2019 SC 265.**
 2. **Rajendra Singh Vs. State of UP, AIR 2007 SC 2786**
 3. **Kishun Singh Vs. State of Bihar, (1993) 2 SCC 16**
23. **An accused already discharged cannot be summoned u/s 319 CrPC-**
The provisions of Sec. 319 have to be read in consonance with the provisions of Sec. 398. Once a person is found to have been the accused in the case he goes out of the reach of Sec. 319. Whether he can be dealt with under any other provisions of the Code is a different question. In the case of the accused who has been discharged under the relevant provisions of the Code, the nature of finality to such order and the resultant protection of the persons discharged subject to revision under Sec. 398 may not be lost sight of. Once a person was an accused in the case he would be out of reach of Sec. 319. The crucial words in Sec. 319 are any person not being the accused. See--- **Sohan Lal Vs. State of Rajasthan, AIR 1990 SC 2158**
24. **An accused can be summoned u/s 319 CrPC even after the quashment of proceedings against him u/s 482 CrPC**---An accused can be summoned u/s 319 CrPC even after the quashment of proceedings against him u/s 482 CrPC. See---
1. **Municipal Corp. of Delhi Vs. Ram Kishan Rohtagi, (1983) 1 SCC 1**
 2. **Rajendra Singh Vs. State of UP, AIR 2007 SC 2786**
25. **Hearing of proposed accused not to be done before summoning u/s 319 CrPC**---A person proposed to be summoned as accused u/s 319 CrPC cannot be heard under this Sec. prior to his summoning as accused. Question of giving opportunity to him at that stage could not arise. See---
1. **Hardeep Singh Vs. State of Punjab, 2009(65) ACC 768(SC)**

2.Nagavva Vs. Veeranna, (1976) 3 SCC 736

- 26. Belated application u/s 319 Cr PC not to be allowed---** Where application u/s 319 Cr PC was moved after 54 PWs were already examined, it has been held that such application at so late stage should not be allowed as it will frustrate the whole labour towards trial already done by the court. See--- **Michael Machado Vs. CBI, AIR 2000 SC 1127**
- 27. Mere suspicion of complicity of accused not sufficient to summon u/s 319 CrPC---**Mere suspicion is not sufficient to hold that there is a reasonable prospect of convicting the accused of the offence (of criminal conspiracy). See--- **Michael Machado Vs. CBI, AIR 2000 SC 1127**
- 28. Revision against an order u/s 319 CrPC maintainable :** An order rejecting application u/s 319 CrPC to summon additional accused in not an interlocutory order. Revision lies against such an order passed u/s. 319 CrPC. See:
- (i) Mohit Vs. State of UP, AIR 2013 SC 2248 (*paras 21 & 22*)
 - (ii) **Khanna vs. Chief Secretary, AIR 1983 SC 595.**
- 29. Issuing of notice to the proposed accused for hearing in revision filed against an order rejecting application u/s 319 CrPC mandatory :** Where a criminal revision was filed before the sessions court against an order rejecting application u/s 319 CrPC to summon additional accused, relying upon its earlier decision in **Manharibhai Muljibhai Kakadia Vs. Shaileshbhai Mohanbhai Patel, (2012) 10 SCC 517 (Three-Judge Bench)**, it has been ruled by the Hon'ble Supreme Court that a right of hearing in revision had accrued in favour of the person proposed as accused before the lower court in the application moved u/s 319 CrPC and the revision ought not to be decided without issuing notice and hearing to such person. See : **Mohit Vs. State of UP, AIR 2013 SC 2248 (para 29).**
- 30. Remedy of revision bars remedy u/s 482 CrPC before High Court :** Inherent power of the High Court can be exercised when there is no

remedy (like revision etc.) provided in the CrPC for redressal of the grievance. It is well settled that inherent power of the Court can ordinarily be exercised when there is no express provision in the Code under which order impugned can be challenged. See : **Mohit Vs. State of UP, AIR 2013 SC 2248 (para 23)**

31. **Constitution Bench decision on Sec. 319 CrPC as reported in Hardeep Singh Vs. State of Punjab, (2014) 3 SCC 92 (Five-Judge Bench)(para 117)** : The questions referred by a Three-Judge Bench of the Supreme Court to a Five-Judge Bench and the answers made by the Constitution Bench thereto are as under :

Questions (i) and (iii)

What is the stage at which power under Section 319 CrPC can be exercised ?

AND

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

Answer :

Para 117.1 : In Dharm Pal Case, (Dharm Pal Vs. State of Haryana, (2014) 3 SCC 306) the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of the investigation. Such cognizance can be taken under Section 193 CrPC and the Sessions Judge need not wait till "evidence" under Section 319 CrPC becomes available for summoning an additional accused.

Para 117.2 : Section 319 CrPC, significantly, uses two expressions that have to be taken note of i.e. (1) inquiry (2) trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 2001, 2002 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 3139 CrPC. Materials coming before the court in course of such inquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 CrPC, and also to add an accused whose name has been shown in Column of the Charge-sheet.

Para 117.3 : In view of the above position the word "evidence" in Section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

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

Answer

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

Question (iv) What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused ? Whether the power under Section 319(1) CrPC can be exercised only if the court is

satisfied that the accused summoned will in all likelihood be convicted ?

Answer

Para 17.5. : Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge..... The difference in the degree of satisfaction for summoning the original accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial, therefore, the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question (v): Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheet or who have been discharged?

Answer

Para 117.6 : A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Section 300 and 398 CrPC has to be complied with before he can be summoned afresh. Kindly See : **Hardeep Singh Vs. State of Punjab & Others, (2014) 3 SCC 92 (Five-Judge Bench).**

32. **Magistrate can summon some other person as accused not named in FIR or charge-sheeted u/s 173(2) CrPC** : Person who has not joined as accused in the charge-sheet can be summoned at the stage of taking cognizance under S. 190. Thus, the Magistrate is empowered to issue process against some other person, who has not been charge-sheeted, but there has to be sufficient material in the police report showing his involvement. In that case, the Magistrate is empowered to ignore the conclusion arrived at by the investigating officer and apply his mind independently on the facts emerging from the investigation and take cognizance of the case. At the same time, it is not permissible at this stage to consider any material other than that collected by the investigating officer. See : **Sunil Bharti Mittal Vs. CBI, AIR 2015 SC 923 (Three-Judge Bench).**
