

52. In the entirety of facts and circumstances and for the reasons noted above, present appeal succeeds and is **allowed** on the benefit of doubt that has arisen in favour of accused appellant. The appellant is on bail. His sureties and bail bonds are discharged, subject to compliance of Section 437-A Cr.P.C..

53. Let the trial court record be returned to the concerned court forthwith alongwith a copy of this order.

(2025) 2 ILRA 405
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 19.02.2025

BEFORE

**THE HON'BLE RAM MANOHAR NARAYAN
MISHRA, J.**

Criminal Revision No. 2019 of 2024

Ramesh Tiwari ...Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Narendra Deo Shukla, Vivek Shukla

Counsel for the Opposite Parties:
G.A., Lokesh Kumar Dwivedi, Ratnesh
Kumar Pathak

Criminal Law —Indian Penal Code, 1860 - Sections 323, 325, 452, 504, 506 & 308 - Criminal Procedure Code, 1973 - Sections 319, 397 & 401-Summoning under Section 319 Cr.P.C. — Sustainability of summoning order passed after conclusion of trial of chargesheeted accused — Applicant not charge-sheeted — Summoned as additional accused after co-accused already convicted and sentenced — Held, in view of law laid down in *Sukhpal Singh Khaira v. St. of Punjab*, (2022) 17 SCC 246, summoning under Section 319

Cr.P.C. must precede conclusion of trial — Summoning order passed after trial concluded and sentence pronounced is not sustainable — Impugned order set aside. (Paras 15 to 19)

HELD:

The Hon'ble Court answered question No.1, which is pertinent for the purposes of present Criminal Revision in affirmative and observed as under:- "The power under Section 319 of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable." (Para 16)

In the light of above observation it can be concluded that where the trial of co-accused where at the time of passing of summoning order under Section 319 Cr.P.C. in respect of a person who was not earlier facing trial as accused in the case after conclusion of trial of the persons who were already facing as accused in the case resulting in their conviction and imposition of sentence, summoning order of the persons concerned as additional accused in exercise of powers under Section 319 Cr.P.C. will not be sustainable. (Para 17)

The facts of present case are squarely covered with the land mark judgment of the Hon'ble Supreme Court in Sukhpal Singh Khaira (supra) and in view of foregoing discussion, the summoning order passed by learned court below against the revisionist in exercise of powers under Section 319 Cr.P.C. after conclusion of trial, resulting in conviction and sentencing of accused persons who had already faced trial in main S.T. No. 84 of 2006, is not sustainable and thus cannot be affirmed, the impugned summoning order is in conflict with law laid down by Hon'ble Supreme Court in

Sukhpal Singh Khaira (supra) as discussed above and thus vitiated by law, consequently the impugned order deserves to be set-aside. (Para 19)

Revision application allowed. (E-14)

List of Cases cited:

1. Sukhpal Singh Khaira Vs St. of Pun., (2022) 17 SCC 246
2. Hardeep Singh Vs St. of Pun., AIR 2014 SC 1400
3. Brijendra Singh Vs St. of Raj., (2017) 7 SCC 706

(Delivered by Hon'ble Ram Manohar Narayan Mishra, J.)

1. Instant Criminal Revision has been preferred under Section 397/401 Cr.P.C. against order dated 26.02.2024 passed by Learned Session Judge, Bhadohi in Misc. Criminal Case No. 155 of 2018 Ramesh Tiwari Vs. State, whereby the revisionist has been summoned to face trial in exercise of powers under Sections 319 Cr.P.C. for charge under Sections 323, 325, 452, 504, 506, 308 IPC in a case arising out of Case Crime No.186 of 2006, P.S. Suriyawa, District Bhadohi. Revisionist has been summoned on application filed by respondent No.2, the informant in the case.

2. Heard learned counsel for the revisionist, learned counsel for the respondent No.2 and learned A.G.A. for the State-respondent and perused the material available on record.

3. Learned counsel for the revisionist has contended that the learned court below has not recorded its finding with regard to its satisfaction while passing the impugned order dated 26.02.2024 in exercise of

powers under Section 319 Cr.P.C.. Whereby the revisionist has been summoned to face trial for charge under Sections 323, 325, 452, 504, 506, 308 IPC.

4. Learned counsel for the revisionist further contended that it is settled law that a person should not be summoned by trial court in exercise of power under Section 319 Cr.P.C. as a matter of routine and the power should be exercise on the basis of cogent and plausible evidence. This power should not be exercised mechanically on the ground that some evidence has come on record implicating the person sought to be made an accused. Thus the impugned order is not sustainable in the eye of law. The power under Section 319 Cr.P.C. is discretionary and it should not be exercised only due to fact that some evidence has been adduced during trial connecting him with the offence alleged. The court should exercise its judicial discretion, after considering all the relevant facts and circumstances, it is an extraordinary power conferred on the court and it should be used sparingly only if the compelling reasons exists for taking cognizance against the persons who has not been arrayed as an accused in chargesheet. It is bounden duty of the trial court to record its satisfaction as laid down in the judgment of the Hon'ble Supreme Court in **Brijendra Singh & Ors vs State Of Rajasthan and others, 2017 (7) SCC 706**. The moot question is degree of satisfaction i.e. required satisfaction it must be 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.

5. He lastly submitted that the Investigating Officer had not found

complicity of the accused revisionist, in the offence and his presence was not found on the spot. The revisionist is named in the FIR, but his naming in the FIR was found false during investigation and his name was dropped by the Investigating Officer in the chargesheet. The Investigating Officer submitted chargesheet against three named accused persons Dinesh alias Kaptan, Suresh Vishwakarma and Ramesh Vishwakarma to face trial in S.T. No. 84 of 2006 State Vs. Dinesh alias Kaptan and others in the court of Session Judge, Bhadohi and were convicted and sentenced for said charges vide judgment and order dated 28.09.2017. The Investigation Officer had found presence of the revisionist some where else during investigation and not on the spot of occurrence. The respondent No.2, informant Rajeev Vishwakarma had filed an application under Section 319 Cr.P.C. after recording of evidence of PW-1 Rajeev Vishwakarma and PW2-Sanjay Vishwakarma during the course of trial of chargesheeted accused persons which was allowed by trial court vide order dated 10.08.2007 and revisionist was summoned as accused to face trial for charge under Sections 323, 325, 452, 504, 506, 308 IPC. The revisionist assailed said summoning order in Criminal Revision No.2486 of 2007 (Ramesh Tiwari Vs. State of U.P. and another) which was allowed by the Hon'ble Court with following observations:-

“After hearing the rival submissions it appears that from the law settled by this Court and the Apex Court, discussed above, a very strong satisfaction is required to be recorded by the trial court before summoning the accused under Section 319 Cr.P.C. In the present case only reference to the statement of P.W.-1 and P.W.- 2 has been made by the trial court without discussing what has come in

the statement of P.W.-1 and P.W.-2, against the applicant which has led the trial court to exercise its powers under Section 319 Cr.P.C. and summon the applicant for trial.

In view of the above, the impugned order dated 10.08.2007 passed by the trial court is set aside. Trial court is directed to pass fresh order, relating its satisfaction as required under Section 319 Cr.P.C. within one month from the receipt of the certified copy of this order without granting any adjournment at all to the revisionist.”

6. Learned counsel for the revisionist further submitted that before passing of final order in Criminal Revision No.2486 of 2007 by this Hon'ble Court the Session Trial being conducted against chargesheeted accused persons was finally concluded by trial court vide judgment and order dated 28.09.2017 and accused persons were convicted and sentenced for said charges. However, learned court below has taken up the case of the revisionist separately after conclusion of trial of co-accused persons and passed fresh order on application 26 Kha filed by the informant in S.T. No.84 of 2006 in Misc. Case No.155 of 2018 after the matter was remitted to court below by orders of Hon'ble Court dated 27.07.2018 which is assailed in present Criminal Revision. The impugned order is contrary to law and outcome of mis-appreciation of evidence appearing on record. Inasmuch as the revisionist could be summoned under Section 319 Cr.P.C after conclusion of trial of the accused who had already faced trial for alleged offence.

7. Per contra, learned counsel for the respondent No.2 and learned A.G.A. for the State submitted that there is no illegality, irregularity or perversity in the impugned

order passed by learned court below. Learned court below has discussed the facts and evidence on record elaborately while passing the impugned order. The revisionist is named in the FIR, he has been attributed specific role in the offence in FIR, wherein the informant has stated that the occurrence took place on 11.04.2006 at 08:30 PM when Sanjay Vishwakarma the brother of the informant while returning home after negotiating the matter of harvesting of his wheat crop with labourers, as soon as he came at the door of his house the accused persons Dinesh alias Kaptan, Suresh Vishwakarma and Ramesh Vishwakarma sons of Khurbhud Vishwakarma and Ramesh Tiwari son of Asha Ram who were hiding near the house of the informant emerged there armed with lathi, danda and iron rod. On exhortation of Ramesh Tiwari all the accused persons assaulted Sanjay Vishwakarma by the respective weapons. Geeta Devi wife of Sanjay Vishwakarma rushed there to save her husband on hearing his shrieks, but the accused persons also assaulted her when Sanjay and his wife ran inside the house to save themselves. The accused persons entered into the house and again gave beating to them, they also snatched a chain worn by Geeta Devi. The injured Sanjay Vishwakarma got fractured in his both legs due to blow given by the accused. He also received laceration on his head, the brother and sister-in-law (Bhabhi) of the informant got seriously injured and fell unconscious due to severe assault given by accused persons, they fled away from the place of occurrence when the complainant and witnesses reached there, the injured were transported to Government Hospital, Suriyawa from where they were referred to district Hospital Bhadohi, but doctors referred them to some higher center and they were admitted in Holicity Hospital, Pahadiya Varanasi, when their

conditions improved in said hospital they were shifted to Jeevan Jyoti Hospital, Bhadohi. In exercise of examination of injured Sanjay Vishwakarma and his wife Geeta Devi the injuries were found grievous. The informant lodged FIR on 20.04.2006 at P.S. concerned when the conditions of injured improved. The informant and injured witnesses have attributed role of exhortation and causing injuries both to revisionist alongwith co-accused persons in their statement under Section 161 Cr.P.C. PW1 and PW2 Ramesh Vishwakarma and Sanjay Vishwakarma. These witnesses have attributed active role to revisionist in their evidence before the court, they have stated that Ramesh Tiwari armed with iron rod assaulted Sanjay Vishwakarma on his head and left hand. After passing of the earlier order under Section 319 Cr.P.C., and before rehearing on application under Section 319 Cr.P.C. in respect of summoning of present revisionist, evidence of PW-3 Geeta Devi and PW-4 Mastu Tiwari was also recorded and these witnesses have also attributed specific and active role to the revisionist in the offence, which resulted in grievous and serious injuries to PW-2 Sanjay Vishwakarma and PW-3 Geeta Devi. The injury reports of injured corroborates the oral testimony of the witnesses. The Revisionist has been attributed role of both as extortionist as well as assailant.

8. The learned court below has discussed the evidence of witnesses PW1 and PW2 as pointed out by this Court in remand order and there is no legal or factual flaw therein. The learned court below has rightly summoned the revisionist to face trial for said charges, as there is ample evidence on record in support of the complicity of the revisionist in the offence.

9. The medico legal examination report of injured Geeta Devi dated 16.04.2006 reveals following injuries on her person:-

1. Contusion 6 cm x 3 cm on the right forearm, 3 cm below right elbow joint for swelling advice X-ray right forearm, injured referred to S.S.P.G. Hospital Varanasi.

2. Contusion 6.5 cm x 5 cm on the left palm 5.5 cm below left wrist joint swelling advice X-ray left palm.

3. complaint of pain in left leg.

4. Complaint of pain in right leg.

Duration about 6 days.

10. Injury report of Sanjay Vishwakarma reveals following visible injuries on his person on different parts of his bodies i.e. right wrist joint, right palm, left upper arm, left upper interior. Right leg, left leg.

In X-ray report of Sanjay Vishwakarma

1. Fracture of lower end of ulna and fracture in middle part of radius bone of right side seen. Nailing of the both bone has been done.

2. Fracture of the base of distal phalanx of thumb, fracture on the head of the second metacarpal bone, fracture of the proximal phalanx of the little finger of right palm.

3. Fracture of the shaft of the left arm.

4. Fracture of the lower end of fibula of right leg seen.

5. Fracture of the fibula bone at lower end of left leg seen.

6. There is breach in external lamina and depressed internal at frontal parietal junction of skull.

11. In X-ray report of Geeta Devi following injuries were seen:-

Fracture of right radius bone and fracture of second metacarpal bone were seen.

12. The Constitution Bench of **Hon'ble Supreme Court in Hardeep Singh Vs. State of Punjab and others AIR 2014 SC 1400** settled the ambit and scope of exercise of power by trial court under Section 319 Cr.P.C. to add a person whose complicity in the offence is found as accused. Hon'ble Court addressed various issues involved under Section 319 Cr.P.C. and held that section deserves to be given constructive and purposive interpretation that advances cause of justice. Hon'ble Court observed as under:-

11. Section 319 Cr.P.C. as it exists today, is quoted hereunder:

"319 Cr.P.C. -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.”

12. Section 319 Cr.P.C. 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 Cr.P.C.

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 Cr.P.C.?

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

.....15. Section 319 Cr.P.C. allows the court to proceed against any person who is not an accused in a case

before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in Column 2 of the chargesheet filed under Section 173 Cr.P.C. or a person whose name has been disclosed in any material before the court that is to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence.

.....45. It may be pertinent to refer to the decision in the case of *Raj Kishore Prasad* (supra) where, in order to avoid any delay in trial, the court emphasised that such a power should be exercised keeping in view the context in which the words “inquiry” and “trial” have been used under Section 319 Cr.P.C. and came to the conclusion that such a power is not available at the pre-trial stage and should be invoked only at the stage of inquiry or after evidence is recorded.

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

....98. Power under Section 319 Cr.P.C. 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.

99. 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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused. Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?

13. Hon'ble Supreme Court in **Brijendra Singh & Ors vs State Of Rajasthan and others reported in 2017 (7) SCC 706** observed as under:-

"12. The moot question, however, is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question is as to in what situations this power should be

exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by the Constitution Bench in Hardeep Singh's case and answered in the following manner:

"95. At the time of taking cognizance, the court has to see whether a *prima facie* case is made out to proceed against the accused. Under Section 319 CrPC, though the test of *prima facie* case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas V. State of Rajasthan [(2014) 3 SCC 321]*, held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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 un rebutted, 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.

13. In order to answer the question, some of the principles enunciated in Hardeep Singh's case may be recapitulated: Power under Section 319 Cr.P.C. can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases

where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.

14. Learned counsel for the respondent No.2, the informant produced photo copy of certified copy of judgment passed in ST No. 84 of 2006 State of U.P. Vs. Dinesh alias Kaptan and others arising out of Case Crime No.186 of 2006, P.S. Suriyawa, District Bhadohi, which reveals that the co-accused persons in the present offence have already been convicted and sentenced to maximum term of seven years imprisonment and fine for aforesaid charges. The earlier summoning order was passed on application under Section 319 Cr.P.C. moved by respondent No.2 on 10.08.2007 was set-aside by this Court in Criminal Revision No.2486 of 2007 and matter was remanded to trial court for passing a fresh on application under Section 319 Cr.P.C. within a month vide order dated 27.07.2018 passed by this Court. This Court observed that in the impugned that only reference of the statement of PW-1 and PW-2 has been made by the trial court without discussing what has come in the statement of PW-1 and PW-2 applicant which has led the trial court to exercise its power under Section 319 Cr.P.C. and summoned the applicant for trial. It appears that when the final order was passed by this Court on 27.07.2018 in Criminal Revision No.2486 of 2007

preferred by present revisionist against earlier summoning order under Section 319 Cr.P.C. the session trial in respect of co-accused persons had already decided by trial court on 28.09.2017 and perhaps this fact was not brought to the notice of counsels for either side, otherwise this important fact would have come in final order passed by this Court. Thus, the position emerges that on the date of passing a fresh order on application under Section 319 Cr.P.C. with regard to summoning of the revisionist as accused on 26.02.2024, the trial in respect of co-accused persons who were chargesheeted and faced trial for said offence was concluded way-back on 28.09.2017 and therefore there was no question to hold a joint trial of the revisionist with co-accused persons who were already facing trial in the case as their trial was already concluded and they were convicted and sentenced for said charges.

15. The Hon'ble Supreme Court in **Sukhpal Singh Khaira Vs. The State of Punjab 2022 (17) SCC 246** addressed three substantial questions of law were raised for further consideration before the Constitution Bench which read as hereunder:-

“I. Whether the trial court has the power under Section 319 of 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?”

II. Whether the trial court has the power under Section 319 of the 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?”

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

16. The Hon'ble Court answered question No.1, which is pertinent for the purposes of present Criminal Revision in affirmative and observed as under:-

“The power under Section 319 of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.”

17. In the light of above observation it can be concluded that where the trial of co-accused where at the time of passing of summoning order under Section 319 Cr.P.C. in respect of a person who was not earlier facing trial as accused in the case after conclusion of trial of the persons who were already facing as accused in the case resulting in their conviction and imposition of sentence, summoning order of the persons concerned as additional accused in exercise of powers under Section 319 Cr.P.C. will not be sustainable.

18. The Hon'ble Court laid down following 12 guidelines that the competent

court must follow while exercising power under Section 319 Cr.P.C.

“(i) if the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

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

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

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

(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

19. The facts of present case are squarely covered with the land mark judgment of the Hon'ble Supreme Court in **Sukhpal Singh Khaira** (supra) and in view of foregoing discussion, the summoning order passed by learned court below against the revisionist in exercise of powers under

Section 319 Cr.P.C. after conclusion of trial, resulting in conviction and sentencing of accused persons who had already faced trial in main S.T. No. 84 of 2006, is not sustainable and thus cannot be affirmed, the impugned summoning order is in conflict with law laid down by Hon'ble Supreme Court in **Sukhpal Singh Khaira (supra)** as discussed above and thus vitiated by law, consequently the impugned order deserves to be set-aside.

20. The impugned summoning order passed against the revisionist under Section 319 Cr.P.C. is set-aside. The revision is accordingly **allowed**.

(2025) 2 ILRA 415
REVISIONAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 07.02.2025

BEFORE

**THE HON'BLE RAM MANOHAR NARAYAN
MISHRA, J.**

Criminal Revision No. 3040 of 2023

Nagendra Sirohi ...Revisionist
Versus
State of U.P. & Anr. ...Opposite Parties

Counsel for the Revisionist:
Chandan Sharma, Rahul Agarwal

Counsel for the Opposite Parties:
G.A., Sanjeev Kumar

Criminal Law — Indian Penal Code, 1860 - Sections 302 & 307- Criminal Procedure Code, 1973, Section 439-Bail — Second Bail Application — Prolonged Incarceration — Delay in Trial — Article 21 of the Constitution of India — Accused in custody for over 7 years and 9 months — Trial remained stalled due to pendency of challenge to summoning order under Section 319 Cr.P.C. before Supreme Court

— Only 3 of 16 prosecution witnesses examined — No likelihood of conclusion of trial in near future — Held, prolonged detention without progress in trial is violative of right to speedy trial under Article 21 — Bail not to be withheld as punishment — Bail granted. (Paras 16,17, and 18)

HELD:

Hon'ble Supreme Court in Kalyan Dey Chowdhury Vs Rita Dey Chowdhury Nee Nandy AIR (2017) SC 2383 placing reliance on a earlier judgment in Dr. Kulbhushan Kumar Vs Raj Kumari & anr.(1970) 3 SCC 129, in this case, it was held that 25% of the husband's net salary would be just and proper to be awarded as maintenance to the respondent-wife. The amount of permanent alimony awarded to the wife must be befitting the status of the parties and the capacity of the spouse to pay maintenance. Maintenance is always dependent on the factual situation of the case and the court would be justified in moulding the claim for maintenance passed on various factors. Therefore, without disturbing the broad findings of fact given by learned court below, the amount of maintenance awarded to the applicant is being modified as below. (Para 16)

Considering the rival submissions of the learned counsel for the parties, totality of the facts and circumstances of the case, it cannot be held that due to non-compliance of mandatory directions of Hon'ble Supreme Court in Rajnesh Vs Neha & anr.(supra) before the court below, the impugned judgment and gets vitiated under law. This court in revisional stage has assured compliance of mandatory directions of Hon'ble Supreme Court in Rajnesh Vs Neha & anr.(supra) to avoid any further delay in final disposal of the matter. The purpose of filing affidavit of disclosure of assets and liabilities is to clarify the stand of the parties in maintenance case, their assets, liabilities and economic condition show that the court may be in a position to out the truth and come to just decision in the case. (Para 17)

Revision application dismissed. (E-14)

List of Cases cited: