(2025) 6 ILRA 2
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: LUCKNOW 13.06.2025

BEFORE

THE HON'BLE SAURABH LAVANIA, J.

Application U/S 482 No.491 of 2025

Deepak Singh @ Subham Singh ...Applicants
Versus
State of U.P. & Anr. ...Opp. Parties

Counsel for the Applicants:
Manuvendra Singh

Counsel for the Opp. Parties:
G.A., Ajay Pratap Singh

Criminal Law - Indian Penal Code, 1860 - Section 323, 504, 506, 325 & 308 - Code of Criminal Procedure, 1973 – Section 319 - Impugned summoning order is based on St.ments of injured witnesses (PW-1), (PW-2)/complainant and witness of fact (PW-3), who levelled specific allegations against applicant, also found in NCR - Challenge to order is based on ground that earlier application under Section 319 Cr.P.C. was dismissed as withdrawn without Court's permission to file a fresh one - It is contended that subsequent application under same Section was not maintainable - Testimony of injured witnesses holds high evidentiary value and should not be lightly discarded - At this stage, trial court need not assess evidence on merits, that is to be done during trial - First application was withdrawn for bona fide reasons, as it was informed that named person, had already passed away - Subsequently, second application was filed - Judgment in Baccha Lal @ Vijay Singh (infra) is per incuriam and not binding, liable to be disregarded - No illegality in impugned order. (Para 4, 6, 24 to 26)

Application dismissed. (E-13)

List of Cases cited:

1. St. of M.P. Vs Mansingh (2003) 10 SCC 414

2. Abdul Sayeed Vs St. of M.P. (2010) 10 SCC 259

3. St. of U.P. Vs Naresh (2011) 4 SCC 324

4. Laxman Singh Vs St. of Bihar (Now Jharkhand) (2021) 9 SCC 191

5. K.R. Deb Vs The Collector of Central Excise, Shillong, AIR 1971 SC 1447

6. St. of Assam & anr. Vs J,N, Roy Biswas, AIR 1975 SC 2277

7. St. of Panjab Vs Kashmir Singh, 1997 SCC (L&S) 88

8. U.O.I. & ors. Vs P.Thayagarajan, AIR 1999 SC 449

9. U.O.I. Vs K.D. Pandey & anr. (2002) 10 SCC 471

10. Assistant Commissioner, Commercial, Tax Department, Brothers (JT) 2010 (4) SC 35

11. CCT Vs Shukla & Brothers 2010 (4) SCC 785

12. Baccha Lal @ Vijay Singh Vs St. of U.P. & anr., Criminal Appeal No. 6502 of 2018, (Para 22 to 42)

13. Sarguja Transport Service Vs St. Transport Appellate Tribunal, M.P., Gwalior & ors.; (1987) 1 SCC 5

14. Upadhyay & Company Vs St. of U.P. & ors.; (1999) 1 SCC 81

15. Hardeep Singh Vs St. of Pun., reported in (2014) 3 SCC 92, (Para 10 to 19, 43, 45, 63)

16. Rajesh & ors. Vs St. of Har., reported in (2019) 6 SCC 368

17. Brijendra Singh Vs St. of Raj., (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144

18. Manjeet Singh Vs St. of Har. & ors., reported in (2021) 18 SCC 321, (Para 15 to 26)

19. Sukhpal Singh Khaira Vs St. of Pun. reported in (2023) 1 SCC 289 (Para 22, 38 to 41)

20. Yashodhan Singh & ors. Vs St. of U. P. & ors., reported in (2023) LiveLaw (SC) 576 : 2023 INSC 652

21. Jogendra & ors. Vs St. of Bihar & anr. , reported in (2015) 9 SCC 244

22. Sarva Shramik Sanghatana (KV) Vs St. of Mah. & ors. reported in (2008) 1 SCC 494

23. Himachal Pradesh Financial Corporation Vs Anil Garg & ors. reported in (2017) 14 SCC 634, (Para 13 to 16, 19)

24. P. Rathinam Vs U.O.I. & anr. reported in (1994) 3 SCC 394, (Para 92 to 96)

25. K.S. Panduranga Vs St. of Karn., [2013] 1 A.C. R 994, (Para 30 to 35)

26. Sundeep Kumar Bafna Vs St. of Mah. reported in (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558, (Para 19)

27. Punjab Land Development & Reclamation Corpn. Ltd. Vs Labour Commr., (1990) 3 SCC 682 : 1991 SCC (L&S) 71, (Para 40)

28. Bilkis Yakub Rasool Vs U.O.I. & ors.reported in (2024) 5 SCC 481, (Para 145, 146, 153, 154)

(Delivered by Hon’ble Saurabh Lavania, J.)

1. Heard Sri Manuvendra Singh, learned counsel for the applicant, Sri Ajay Kumar Srivastava, learned AGA for the State of U.P., Sri Ajay Pratap Singh-II, Advocate, who has filed Vakalatnama alongwith Sri Vinod Kumar Singh, Advocate on behalf of the opposite party No. 2/complainant/ Mahendra Pratap Singh in the Court today, which is taken on record, as well as perused the record.

2. By means of the instant application, the applicant has sought the following main relief(s):-

"That for the facts, reasons and circumstances stated in the accompanying affidavit filed in support of this application under section 482, Cr.P.C., it is most respectfully prayed that this Hon'ble Court may graciously be pleased to quash the impugned order dated 09-02-2023 passed by Upper Session Judge Room No. 8, Sultanpur, in S. T. No. 115/2016, arising out Case Crime No. 222/2012, Under Section 323, 504, 506, 325, 308, IPC, Police Station Chanda District Sultanpur contained here with as Annexure No. 1 to this affidavit, otherwise the applicant shall suffer irreparable loss and injury.

It is further prayed that this Hon'ble Court may graciously be pleased to stay the proceeding of the S.T. No. 115/2016 (State vs. Rajesh Pratap Singh and another) arisen out of the case crime no. 222 of 2012, under section 323, 504, 506, 325, 308, IPC, Police Station Chanda, District- Sultanpur, which is pending before Upper Session Judge Room No. 21 Sultanpur, which is pending before Chief Judicial Magistrate District Lucknow, otherwise the applicants shall suffer irreparable loss and injury."

3. Vide order, under challenge, dated 09.02.2023 passed by Additional Sessions Judge (Room No. 8), Sultanpur (in short "trial court") in S.T. No. 115/2016, arising out of Case Crime No. 222/2012, under Sections- 323, 504, 506, 325, 308 IPC, Police Station- Chanda District- Sultanpur, whereby, the trial court allowed the Application No. 37-Kha preferred by the opposite party No. 2 under Section 319 Cr.P.C. and summoned the

applicant to face the trial. The order dated 09.02.2023, being relevant, is extracted hereunder:-

दिनांक 09.02.2023

सत्र परीक्षण प्रस्तुत हुआ। वादी महेन्द्र प्रताप सिंह और से प्रार्थना पत्र संख्या–37 ख अन्तर्गत धारा–319 दण्ड प्रक्रिया संहिता एवं प्रस्तावित विपक्षी की ओर से प्रस्तुत आपत्ति प्रार्थना पत्र संख्या–40 ख पर उभयपक्षों के विद्वान अधिवक्ता सहित राज्य की ओर से उपस्थित विद्वान सहायक जिला शासकीय अधिवक्ता दाण्डिक सुना गया तथा पत्रावली का परिशीलन किया गया।

निस्तारण प्रार्थना पत्र संख्या–37 ख, अन्तर्गत धारा–319 दण्ड प्रक्रिया

1. वादी/अभियोजन पक्ष की ओर से प्रार्थना पत्र 37 ख, अन्तर्गत धारा–319 दण्ड प्रक्रिया संहिता मय शपथपत्र इस आशय का प्रस्तुत किया गया है कि दिनांक 08.05.2012 को समय 8.30 बजे राजेश प्रताप सिंह, शिवकेश सिंह, पुष्पा देवी व दीपक सिंह एक राय होकर जान से मारने की नियत से प्राणघातक चोटें पहुंचायी, जिसमें बाद विवेचना पुलिस द्वारा अभियुक्त पुष्पा सिंह एवं दीपक सिंह का नाम निकाल दिया गया है व अन्य अभियुक्तों के विरूद्ध धारा 308, 323, 325, 504, 506 भारतीय दण्ड संहिता के अन्तर्गत आरोप पत्र प्रेषित किया गया। विवेचक के समक्ष साक्षीगण द्वारा दिये गये बयान में उक्त अभियुक्तगण दीपक सिंह व पुष्पा सिंह के घटना में सम्मिलित होने का बयान दिया गया है। पत्रावली पर अभियुक्त दीपक सिंह द्वारा घटना कारित किये जाने का निश्चयात्मक साक्ष्य उपलब्ध है। दौरान विचारण अभियुक्ता पुष्पा सिंह की मृत्यु हो चुकी है। अतः प्रस्तावित अभियुक्त दीपक सिंह को विचारण हेतु तलब किया जाए।

2. उपर्युक्त प्रार्थना पत्र पर लिखित आपत्ति प्रार्थना पत्र संख्या–40 ख विपक्षी/अभियुक्त राजेश प्रताप सिंह की ओर से इस आशय की प्रस्तुत की गयी है कि अभियुक्त पुष्पा सिंह एवं दीपक सिंह को प्रथम सूचना रिपोर्ट में अभियुक्त बनाया गया है, परन्तु विवेचक द्वारा उनकी नामजदगी गलत पायी गयी तथा आरोप पत्र राजेश प्रताप सिंह व शिवकेश सिंह के विरूद्ध न्यायालय में प्रेषित किया गया। दीपक सिंह आपत्तिकर्ता का पुत्र नहीं है, उसके दो ही पुत्र हैं, जिनका नाम शिवम सिंह व शुभम सिंह है। दीपक सिंह के नाम का व्यक्ति आपत्तिकर्ता के घर परिवार का नहीं है। प्रथम सूचना रिपोर्ट पुरानी रंजिश के कारण लिखायी गयी है। अतः प्रार्थना पत्र निरस्त किया जाए।

3. आपत्तिकर्ता द्वारा अपनी आपत्ति के साथ अभियुक्त राजेश प्रताप सिंह का आधार कार्ड व शिवम सिंह व शुभम सिंह के हाईस्कूल अंक पत्र एवं परिवार रजिस्टर की प्रति प्रस्तुत की गयी है।

4. पत्रावली की परिशीलन से स्पष्ट होता है कि प्रस्तुत मामले में प्रथम सूचना रिपोर्ट वादी महेन्द्र प्रताप सिंह द्वारा दी गयी तहरीर जो कि पुलिस अधीक्षक, सुल्तानपुर को सम्बोधित की गयी है, जिसमें दीपक सिंह के अतिरिक्त अन्य अभियुक्तगण द्वारा प्राणघातक चोटें पहुंचाया जाना तत्पश्चात मेडिकल कराये जाने आदि का कथन किया गया है। अन्य तहरीर थानाध्यक्ष को प्रेषित की गयी है, पर भी अभियुक्त दीपक सिंह पुत्र राजेश मुल्जिम वर्णित किया गया है। धारा–161 दण्ड प्रक्रिया संहिता के अन्तर्गत अंकित किया गया है, जिसमें भी अभियुक्त दीपक सिंह के घटना में सम्मिलित होने के में बयान दिया गया है। अन्य साक्षी श्रीमती कुसुम सिंह द्वारा भी उक्त के समर्थन में बद दिया गया है।

5. न्यायालय के समक्ष साक्षी पी0डब्लू0 1 राजाराम का बयान अंकित किया गया है। जिसमें अभियुक्त दीपक सिंह के घटना में सम्मिलित होने के विषय में बयान दिया गया है। साक्षी पी0डब्लू0 2 महेन्द्र प्रताप सिंह द्वारा भी यह बयान दिया गया है कि घटना के समय दीपक सिंह लाठी डंडा लेकर आया तथा चारों अभियुक्तों द्वारा मिलकर मारपीट कारित की गयी। साक्षी पी0डब्लू0 3 साधना सिंह द्वारा भी प्रस्तावित अभियुक्त दीपक सिंह के घटना में सम्मिलित होने के संदर्भ में बयान दिया गया है। इस प्रकार साक्ष्य से भी प्रस्तावित अभियुक्त दीपक सिंह की घटना में संलिप्तता साक्षीगण द्वारा प्रदर्शित की गयी है। अतः प्रस्तावित अभियुक्त दीपक सिंह का भी अन्य अभियुक्तगण के साथ विचारण किया जाना न्यायोचित पाया जाता है। तदनुसार प्रार्थना पत्र स्वीकार किये जाने योग्य है।

आदेश

आवेदक/वादी महेन्द्र प्रताप सिंह द्वारा प्रस्तुत प्रार्थना पत्र संख्या 37 ख अंतर्गत धारा 319 दण्ड प्रक्रिया संहिता स्वीकार किया जाता है।

तदनुसार अभियुक्त दीपक सिंह को मुकदमा अपराध संख्या 222/2012, अंतर्गत धारा 308,323,302,325,504,506 सपतित धारा 34 भारतीय दण्ड संहिता, थाना चांदा, जिला सुल्तानपुर के अपराध में विचारण हेतु तलब किया जाता है। अभियुक्त दीपक सिंह के विरूद्ध दिनांक 06.03.2023 हेतु समन जारी हो।

*सत्र परीक्षण की पत्रावली दिनांक 06.06.2023 को प्रस्तुत हो।*ष

4. The order, under challenge, dated 09.02.2023 indicates that the applicant has been summoned after taking note of the statements of injured witnesses namely Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2) and one Sadhana Singh (PW-3), who is the witness of fact.

5. It would be apt to indicate here that Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2) are the injured witnesses and the testimony of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly, as observed by the Hon'ble Apex Court in the case(s) of ***State of M.P. vs. Mansingh (2003) 10 SCC 414; Abdul Sayeed vs. State of M.P. (2010) 10 SCC 259; State of U.P. vs. Naresh; (2011) 4 SCC 324 and Laxman Singh vs. State of Bihar (Now Jharkhand) (2021) 9 SCC 191.***

6. The order impugned dated 09.02.2023 has been challenged on the ground to the effect that the Application No. 30-Kha preferred under Section 319 Cr.P.C. was dismissed as withdrawn vide order dated 03.10.2022 without seeking leave/permission from the court to prefer a fresh application and as such, the second Application No. 37-Kha preferred by the prosecution under Section 319 Cr.P.C. itself was not maintainable and therefore, the impugned order dated 09.02.2023 passed thereon is liable to be interfered with by this Court.

7. Another ground of challenge is to the effect that the impugned order dated 09.02.2023 is not a speaking/reasoned order.

8. The aforesaid can be deduced from the paragraphs 23 and 24 of the instant application, which are extracted hereunder:-

"23. That in view of the aforesaid discussion, learned court below to conclude that since the first application under section 319 Cr.P.C. filed by first informant/opposite party no.2 was got dismissed as not pressed with liberty to file fresh, the second application under section 319 Cr.P.C. filed first informant/opposite party no.2 was clearly not maintainable.

24. That it is well settled principal of law that every order passed by quasi-judicial or judicial authority, must be speaking and reasoned, as held in following cases:-

1. K.R. Deb Vs. The Collector of Central Excise, Shillong, AIR 1971 SC 1447.

2. State of Assam & Anr. Vs. J,N, Roy Biswas, AIR 1975 SC 2277.

3. State of Panjab Vs. Kashmir Singh, 1997 SCC (L&S) 88.

4. Union of India & Ors. Vs. P.Thayagarajan, AIR 1999 SC 449.

5. Union of India Vs. K.D. Pandey & Anr. (2002)10 SCC471.

6. Assistant Commissioner, Commercial, Tax Department, Brothers (JT)2010(4)SC35,

7. CCT Vs. Shukla and Brothers 2010 (4)SCC785."

9. The order dated 03.10.2022 (Annexure No. 7 to the instant application), referred, is extracted hereunder:-

" दिनांक 03.10.2022

सत्र परीक्षण प्रस्तुत हुआ। वादी महेन्द्र प्रताप सिंह की ओर से प्रार्थना पत्र संख्या–30ख, अन्तर्गत धारा–319 दण्ड प्रक्रिया संहिता पर उभयपक्षों के विद्वान अधिवक्ता सहित राज्य की ओर से उपस्थित विद्वान सहायक जिला शासकीय अधिवक्ता दाण्डिक सुना गया तथा पत्रावली का परिशीलन किया गया।

वादी/आवेदक के विद्वान अधिवक्ता द्वारा उपरोक्त प्रार्थना पत्र पर इस आशय टिप्पणी अंकित की गयी है कि वह प्रार्थना पत्र पर बल नहीं देना चाहते हैं।

वर्णित परिस्थितियों में प्रस्तुत प्रार्थना पत्र संख्या–30ख, अन्तर्गत धारा–319 दण्ड प्रक्रिया संहिता बलाभाव में निरस्त किये जाने योग्य है।

आदेश

वादी/आवेदक द्वारा प्रस्तुत प्रार्थना पत्र संख्या–30ख, अन्तर्गत धारा–319 दण्ड प्रक्रिया संहिता बलाभाव में किया जाता है।

सत्र परीक्षण दिनांक 03.11.2022 को अग्रिम आदेश हेतु प्रस्तुत हो।"

10. In support of his submissions, learned counsel for the applicant has placed reliance on the judgment dated 04.11.2022 passed by this Court in ***Criminal Appeal No. 6502 of 2018 (Baccha Lal @ Vijay Singh vs. State of U.P. and another).*** The relevant paragraphs, referred, of the judgment dated 04.11.2022 are extracted hereunder:-

"22. Subsequently, first informant/opposite party-2, filed another application dated 02.03.2017 under Section 319 Cr.P.C. on the same ground praying therein that named but not charge-sheeted accused Bacchalal be also summoned to face trial. Same was registered as paper no. 17 Kha.

23. It transpires from the record that no written objection was filed by charge-sheeted accused to the application dated 02.03.2017 (paper No. 17 Kha).

24. Court below examined the application (paper no. 17 Kha) in the light of the oral testimonies of P.W.-1 Himmatlal, P.W.-2 Sunita and P.W.-3 Ramdhani and opined that complicity of appellant is also established in the crime in question. Accordingly, court below by means of order dated 19.09.2018 allowed aforementioned application and simultaneously summoned the appellant for trial in above-mentioned sessions trial.

25. Thus feeling aggrieved by the order dated 19.09.2018 passed by court-below, appellant has now approached this Court by means present appeal under Section 14-A (I) Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

26. Learned counsel for appellants contends that order impugned in present appeal is patently illegal and without jurisdiction. It is an undisputed fact that first informant/opposite party-2 filed an application dated 26.10.2016 (paper no. 16 Kha) under Section 319 Cr.P.C. Aforesaid application was got dismissed as not pressed without obtaining the leave of the Court to file fresh. However, irrespective of above, first informant/opposite party-2 filed subsequent application dated 02.03.2017 under Section 319 Cr.P.C. (paper no. 17 kha). It is this application, which has been allowed by court below by means of the impugned order.

27.According to learned counsel for appellant, though no specific bar is contained in the Code i.e. Cr.P.C. regarding filing of second application under Section 319 Cr.P.C. but public policy prohibits the filing of second application.

28. Per contra, the learned A.G.A. has opposed the present appeal. He contends that second application under Section 319 Cr.P.C. filed by first informant/opposite party-2 was maintainable as the first application under Section 319 Cr.P.C. filed by first informant/opposite party-2 was got dismissed as not pressed in view of inherent mistake in the application. Since the first application under Section 319 Cr.P.C. filed by first informant/opposite party-2 was not decided on merits, as such, no legal bar can be attached to the second application under Section 319 Cr.P.C. The issue as to whether complicity of appellant is there or not in the crime in question can be decided appropriately only during the course of trial. Since prima-facie something more than mere complicity of appellant is established in the crime in question, no illegality has been committed by court below in allowing the appeal. As scuh, no indulgence be granted by this Court in favour of appellant.

29. Before proceeding to consider the veracity of the order impugned in present appeal, this Court is to initially required to examine the maintainability of the application dated 02.03.2017 (paper no. 17 Kha) under Section 319 Cr.P.C. filed by first informant/opposite party-2.

30. Since the present appeal arises out of proceedings under Section 319 Cr.P.C., it is, therefore, desirable to reproduce Section 319 Cr.P.C. For ready reference same is extracted herein-under:-

"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 a fresh, 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."

31. From perusal of Section 319 Cr.P.C., it is apparent that there are no riders by way of proviso attached to Section 319 Cr.P.C. Therefore, Court has to examine the maintainability of the subsequent application under Section 319 Cr.P.C. in the light of law laid done by this

Court/Apex Court with reference to the Code i.e. Cr.P.C.. Section 319 Cr.P.C.particularly when the first application filed by first informant/opposite party under Section 319 Cr.P.C. was got dismissed by first informant/opposite party-2 as not pressed without obtaining the leave of the court to file fresh.

32. To begin with the Code of Criminal Procedure (hereinafter referred to as the Code) does not contain any provision, which bars the filing of a subsequent application under the Code.

33. Therefore, of necessity the Court has to examine the case in hand in the light of conclusions rendered by Apex Court/ this Court in similar circumstances.

34. In ***Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and others (1987) 1 SCC 5****, it was held by Court in paragraph 8 of the report as follows:*

"The Code as it now stands thus makes a distinction between 'abandonment' of a suit and 'withdrawal' from a suit with permission to file a fresh suit. It provides that where the plaintiff abandons a suit or withdraws from a suit without the permission, referred to in subrule (3) of rule 1 of Order XXIII of the Code, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. The principle underlying rule 1 of Order XXIII of the Code is that when a plaintiff once institutes a suit in a Court and thereby avails of a remedy given to him under law, he cannot be permitted to institute a fresh suit in respect of the same subject-matter again after abandoning the earlier suit or by withdrawing it without the permission of the Court to file fresh suit. Invito benificium non datur. The law confers upon a man no rights or benefits which he does not desire. Whoever waives, abandons or disclaims a right will loose it. In order to prevent a litigant from abusing the process of the Court by instituting suits again and again on the same cause of action without any good reason the Code insists that he should obtain the permission of the Court to file a fresh suit after establishing either of the two grounds mentioned in sub-rule (3) of rule 1 of Order XXIII. The principle underlying the above rule is rounded on public policy, but it is not the same as the rule of res judicata contained in section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or sub- stantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudi- cation of a suit. or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the Court."

35. Aforesaid judgement was re-affirmed by Apex Court ***in Upadhyay and Company Vs. State of U.P. and others***

***(1999) 1 SCC 81**. Paragraph 13 of the judgement is relevant for the controversy in hand. Accordingly same is extracted herein-under:-*

"The aforesaid ban for filing a fresh suit is based on public policy. This Court has made the said rule of public policy applicable to jurisdiction under Article 226 of the Constitution (Sarguja Iransport Service vs. State Transport Appellate Tribunal, Gwalior, 1987 1 SCC 5). The reasoning for adopting it in writ jurisdiction is that very often it happens, when the petitioner or his counsel finds that the court is not likely to pass an order admitting the writ petition after it is heard for some time, that a request is made by the petitioner or his counsel to permit him to withdraw it without seeking permission to institute a fresh writ petition. A court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit withdrawal of the petition. When once a writ petition filed in a High Court is withdrawn by the party concerned he is precluded from filing an appeal against the order passed in the writ petition because he cannot be considered as a party aggrieved by the order passed by the High Court. If so, he cannot file a fresh petition for the same cause once again. The following observations of E.S. Venkataramiah, J. (as the learned chief Justice then was) are to be quoted here:

"We are of the view that the principle underlying Rule 1 of Order 23 of the code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art.32of the constitution since such withdrawal does not amount to res judicata, the remedy under Art.226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission."

*36. Learned A.G.A. has referred to the judgement of Supreme Court in **V. Ravi Kumar Vs. State represented by Inspector of Police, District Crime Branch, Salem Tamilnadu and others (2019) 14 SCC 568,** wherein the Court has held that second complaint in respect of the same cause of action is maintainable. Observation made in paragraphs 16 to 20 of the report are relevant for the controversy in hand. Accordingly same are reproduced herein below:*

*"16. There is no provision in the Criminal Procedure Code or any other statute which debars a complainant from making a second complaint on the same allegations, when the first complaint did not lead to conviction, acquittal or discharge. In **Shiv Shankar Singh v. State of Bihar and Anr**., this Court held:*

"18. Thus, it is evident that the law does not prohibit filing or entertaining of the second complaint even on the same

facts provided the earlier complaint has been decided on the basis of insufficient material or the order has been passed without understanding the nature of the complaint or the complete facts could not be placed before the court or where the complainant came to know certain facts after disposal of the first complaint which could have tilted the balance in his favour. However, the second complaint would not be maintainable wherein the earlier complaint has been disposed of on full consideration of the case of the complainant on merit."

17. As held by this Court in Jatinder Singh and Others v. Ranjit Kaur, it is only when a complaint is dismissed on merits after an inquiry, that a second complaint cannot be made on the same facts. Maybe, as contended by the respondents, the first complaint was withdrawn without assigning any reason. However, that in itself is no ground to quash a second complaint. 1 (2012) 1 SCC 130 2 2001 (2) SCC 570

18. In Pramatha Nath Talukdar and Anr. v. Saroj Ranjan Sarkar, this Court dealt with the question whether the second complaint by the respondent should have been entertained when the previous complaint had been withdrawn. The application under Section 482 Cr.P.C. was allowed and the complaint dismissed by the majority Judges observing that an order of dismissal under Section 203Cr.P.C. was no bar to the entertainment of second complaint on the same facts, but it could be entertained only in exceptional circumstances, for example, where the previous order was passed on an incomplete record or a misunderstanding of the nature of the complaint or the order passed was manifestly absurd, unjust or foolish or where there were new facts, which could not, with reasonable diligence, have been brought on record in previous proceedings.

19. In Poonam Chand Jain and Anr. v. Fazru, this Court relied upon its earlier decision in Pramatha Nath (supra) and held that an order of dismissal of a complaint was no bar to the entertainment of second complaint on 3 AIR 1962 SC 876 4 (2010) 2 SCC 631 the same facts, but it could be entertained only in exceptional circumstances, such as, where the previous order was passed on incomplete record, or on a misunderstanding of the nature of the complaint or was manifestly absurd, unjust or foolish or where there were new facts which could not, with reasonable diligence, have been brought on the record in the previous proceedings.

20. In Poonam Chand Jain (supra) this Court further held that:-

"...this question again came up for consideration before this Court in Jatinder Singh v. Ranjit Kaur. There also this Court by relying on the principle in Pramatha Nath held that there is no provisions in the Code or in any other statute which debars a complainant from filing a second complaint on the same allegation as in the first complaint. But this Court added when a Magistrate conducts an enquiry under Section 202 of the Code and dismisses a complaint on merits a second complaint on the same facts could not be made unless there are "exceptional cirumstances". This Court held in para 12, if the dismissal of the first complainant then there is no bar in filing a second complaint on the same facts.

However, if the dismissal of the complaint under Section 203 of the Code was on merit the position will be different."

37. The judgement relied upon by learned A.G.A. is clearly distinguishable. The Court in ***V. Ravi Kumar (supra)*** *concluded that the second complaint shall be maintainable if the contingencies specified therein are satisfied.*

38. In the case in hand, the earlier application filed by first informant/opposite party-2 was got dismissed as not pressed but without liberty to file fresh. Consequently the ratio laid down in ***Sarguja Transport (Supra)*** *as applied in* ***Upadhyay and Company (Supra****) is clearly attracted in the present case.*

39. In view of the aforesaid discussion, this Court has no hesitation to conclude that since the first application under Section 319 Cr.P.C. filed by first informant/opposite party-2 was got dismissed as not pressed without liberty to file fresh, the second application under Section 319 Cr.P.C. filed first informant/opposite party-2 was clearly not maintainable.

40. As a result present appeal succeeds and is liable to be allowed.

41. It is accordingly allowed.

42. The impugned order dated 19.09.2018 passed by IInd Additional District and Sessions Judge/ Special Judge, SC/ST Act, Kaushambi in Sessions Trial No.192 of 2014 (State Vs. Sunil Kumar and another), under Sections 304, 308, 323, 504 I.P.C. and Sections 3 (2) (V) SC/ST Act, Police Station-Kokhraj, District-Kaushambi is hereby quashed."

11. Per contra, Sri Ajay Kumar Srivastava, learned AGA appearing for the State and Sri Ajay Pratap Singh-II, learned counsel appearing for the complainant/opposite party No. 2, submitted that this Court while passing the judgment dated 04.11.2022 in the case of Baccha Lal @ Vijay Singh (supra), relied upon by the applicant's counsel, has not considered the earlier judgments passed by the Hon'ble Apex Court on the issue pertaining to exercise of power under Section 319 Cr.P.C. and as such, the judgment dated 04.11.2022 would be of no help to the applicant.

12. Further submission is that principle of 'res-judicata' would not be applicable in the criminal case/proceedings in issue.

13. It is also submitted that in the judgment dated 04.11.2022 passed in the case of ***Baccha Lal @ Vijay Singh (supra),*** this Court has not considered the merits of the case i.e. testimony of the witnesses of the prosecution on which basis the application under Section 319 Cr.P.C. was moved and in fact the same is based upon the judgment passed by the Hon'ble Apex Court in the case of ***Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and others; (1987) 1 SCC 5***, subsequently taken note of in the case of ***Upadhyay and Company Vs. State of U.P. and others; (1999) 1 SCC 81,*** wherein while holding that the second writ petition would not be maintainable if earlier i.e. first writ petition was withdrawn without seeking leave/permission from the court to file a fresh petition, the Hon'ble Apex Court took note of the principles embodied under Sub-rule (3 & 4) of Rule 1 of Order XXIII and Rule VII of Chapter XII of Allahabad High Court Rules, 1952

(in short "Rules of 1952"), and thereafter, observed that "***The principle underlying the above rule is rounded on public policy, but it is not the same as the rule of res judicata contained in section 11 of the Code which provides that no court shall try any suit or issue in which the matter directly or sub- stantially in issue has been directly or substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. The rule of res judicata applies to a case where the suit or an issue has already been heard and finally decided by a Court. In the case of abandonment or withdrawal of a suit without the permission of the Court to file a fresh suit, there is no prior adjudi- cation of a suit. or an issue is involved, yet the Code provides, as stated earlier, that a second suit will not lie in sub-rule (4) of rule 1 of Order XXIII of the Code when the first suit is withdrawn without the permission referred to in sub-rule (3) in order to prevent the abuse of the process of the Court."***

14. It is further submitted that taking note of the reasons in the case of Sarguja Transport (supra) for holding that second writ petition would not be maintainable and also that (i) in the instant case, the injured witnesses namely Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2), on oath, before the trial court have indicated the name of applicant, who was named in NCR dated 08.05.2012 lodged at 23.30 hours at Police Station- Chanda, District- Sultanpur (basis of pending criminal case), according to which, the applicant was involved in the crime/incident referred in the NCR and also that (ii) the first application under Section 319 Cr.P.C. was not withdrawn to avoid the court but for the bonafide reason which relates to death of Pushpa Singh, no interference is required by this Court in the instant case.

15. Clarifying the aforesaid, it is stated that in the instant case, the first application under Section 319 Cr.P.C. was withdrawn for the reason that after filing of first application under Section 319 Cr.P.C. i.e. Application No. 30-Kha, the defence informed that Pushpa Singh, whose name was indicated in the said application, has already been expired and therefore the Application No. 30-Kha was withdrawn and accordingly on this application, the order was passed on 03.10.2022 and thereafter on 08.12.2022, the second application i.e. Application No. 37-Kha was preferred under Section 319 Cr.P.C.

16. It is further stated that to the aforesaid Application No. 37-Kha, two objections were filed and the plea that second application would not be maintainable was not taken in any of the objections.

17. Considered the aforesaid and perused the record.

18. Upon due consideration of the aforesaid, this Court is of the view that in the instant case, following issues/questions are to be answered.

(i) Whether in the facts of the case, including that the impugned order dated 09.02.2023 is based upon the testimony of injured witnesses namely Rajaram (PW-1) and Mahendra Pratap

Singh/complainant (PW-2), interference is to be caused in the impugned order by this Court in exercise of inherent power on the ground that second application under Section 319 Cr.P.C. was preferred without seeking leave/liberty/permission from the Court to file the fresh application and therefore the same was not maintainable.

ii) Whether the judgment passed by the coordinate Bench of this Court in the case of Baccha Lal @ Vijay Singh (supra) is a per incuriam judgment and being so is liable to be ignored.

19. In order to conclude on the aforesaid issues/questions, this Court finds it appropriate to first refer some relevant paragraphs of some judgments passed by the Hon'ble Apex Court, wherein the Hon'ble Apex Court observed with regard to object of Section 319 Cr.P.C. and in what manner the concerned court would exercise its power under Section 319 Cr.P.C., which are as under.

(A) Relevant paragraphs of the judgment passed by the Constitution Bench of the Hon'ble Apex Court in the case of ***Hardeep Singh Vs. State of Punjab, reported in (2014) 3 SCC 92*** in the context of instant case are extracted hereunder:-

"10 [Ed. : Para 10 corrected vide Official Corrigendum No. F. 3/Ed.B.J./2/2014 dated 15-1-2014.] *. In order to answer the aforesaid questions posed, it will be appropriate to refer to Section 351 of the Criminal Procedure Code, 1898 (hereinafter referred to as "the old Code"), where an analogous provision existed, empowering the court to summon any person other than the accused if he is found to be connected with the commission of the offence. However, when the new CrPC was being drafted, regard was had to the 41st Report of the Law Commission where in Paras 24.80 and 24.81 recommendations were made to make this provision more comprehensive. The said recommendations read:*

"24.80.Section 351 limited to offenders in courts*.—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 the 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.How is cognizance taken*?—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 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 if a new person is added as an accused during the proceedings. It is, of course, necessary (as is already provided) that in such a situation the evidence must he reheard in the presence of the newly added accused."

11. Section 319 CrPC as it exists today, is quoted hereunder:

"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 reheard;

(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."

(emphasis supplied)

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?

14. The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of CrPC and

the judgments that have been relied on for the said purpose. The controversy centres around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.

15. It would be necessary to put on record that the power conferred under Section 319 CrPC is only on the court. This has to be understood in the context that Section 319 CrPC empowers only the court to proceed against such person. The word "court" in our hierarchy of criminal courts has been defined under Section 6 CrPC, which includes the Courts of Session, Judicial Magistrates, Metropolitan Magistrates as well as Executive Magistrates. The Court of Session is defined in Section 9 CrPC and the Courts of the Judicial Magistrates have been defined under Section 11 thereof. The Courts of the Metropolitan Magistrates have been defined under Section 16 CrPC. The courts which can try offences committed under the Penal Code, 1860 or any offence under any other law, have been specified under Section 26 CrPC read with the First Schedule. The Explanatory Note (2) under the heading of "Classification of offences" under the First Schedule specifies the expression "Magistrate of First Class" and "any Magistrate" to include Metropolitan Magistrates who are empowered to try the offences under the said Schedule but excludes Executive Magistrates.

16. It is at this stage that the comparison of the words used under Section 319 CrPC has to be understood distinctively from the words used under Section 2(g) defining an inquiry other than the trial by a Magistrate or a court. Here the legislature has used two words, namely, the Magistrate or court, whereas under Section 319 CrPC, as indicated above, only the word "court" has been recited. This has been done by the legislature to emphasise that the power under Section 319 CrPC is exercisable only by the court and not by any officer not acting as a court. Thus, the Magistrate not functioning or exercising powers as a court can make an inquiry in a particular proceeding other than a trial but the material so collected would not be by a court during the course of an inquiry or a trial. The conclusion therefore, in short, is that in order to invoke the power under Section 319 CrPC, it is only a Court of Session or a Court of Magistrate performing the duties as a court under CrPC that can utilise the material before it for the purpose of the said section.

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

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.

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.

43. The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology, etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot rewrite, recast or reframe the legislation for the reason that it has no power to legislate.

45. This Court in Rohitash Kumar v. Om Prakash Sharma [(2013) 11 SCC 451 : AIR 2013 SC 30] , after placing reliance on various earlier judgments of this Court held : (SCC pp. 460-61, paras 27-29)

"27. The court has to keep in mind the fact that, while interpreting the provisions of a statute, it can neither add, nor subtract even a single word. ... A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. ...

28. The statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The courts have to administer the law as they find it, and it is not permissible for the court to twist the clear language of the enactment in order to avoid any real or imaginary hardship which such literal interpretation may cause. ...

29. ... under the garb of interpreting the provision, the court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation."

(emphasis in original)

63. The provision and the abovementioned definitions clearly suggest

that it is an exhaustive definition. Wherever the words "means and include" are used, it is an indication of the fact that the definition "is a hard-and-fast definition", and no other meaning can be assigned to the expression that is put down in the definition. It indicates an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expression. (Vide Mahalakshmi Oil Mills v. State of A.P. [(1989) 1 SCC 164 : 1989 SCC (Tax) 56 : AIR 1989 SC 335] , Punjab Land Development and Reclamation Corpn. Ltd. v. Labour Court [(1990) 3 SCC 682 : 1991 SCC (L&S) 71] , P. Kasilingam v. P.S.G. College of Technology [1995 Supp (2) SCC 348 : AIR 1995 SC 1395] , Hamdard (Wakf) Laboratories v. Labour Commr. [(2007) 5 SCC 281 : (2007) 2 SCC (L&S) 166] and Ponds India Ltd. v. CTT [(2008) 8 SCC 369] .)"

(B) In the case of ***Rajesh and Others Vs. State of Haryana, reported in (2019) 6 SCC 368,*** the Hon'ble Apex Court considered the observations made in the cases of ***Hardeep Singh (surpa) and Brijendra Singh v. State of Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144*** as also the expression 'evidence' and also various other pronouncements on the issues related to summoning the accused in exercise of power under Section 319 Cr.P.C., which is apparent from the following portion of the report:-

"3.5. Relying upon the decision of this Court in Brijendra Singh v. State of Rajasthan [Brijendra Singh v. State of Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] , it is vehemently submitted by Shri Basant, learned Senior Advocate appearing on behalf of the appellants that, as observed by this Court, merely on the basis of the deposition of the complainant and some other persons, with no other material to support their so-called verbal/ocular version, no person can be arrayed as an accused in exercise of powers under Section 319 CrPC. It is submitted by the learned Senior Advocate appearing on behalf of the appellants that, as observed by this Court in the aforesaid decision, such an "evidence" recorded during the trial is nothing more than the statements which was already there under Section 161 CrPC recorded at the time of investigation of the case. Relying upon the aforesaid decision, it is vehemently submitted by the learned Senior Advocate appearing on behalf of the appellants that, in any case, the learned Magistrate was bound to look into the evidence collected by the investigating officer during investigation which suggested that the accused were not present at the time of commission of the offence. It is submitted that, in the present case, the learned Magistrate on the applications submitted by the SHO in fact discharged the appellant-accused herein and allowed the applications submitted by the SHO in which it was categorically stated that the appellants are innocent and that they were not present at the time of the incident. It is submitted that therefore the High Court has erred in dismissing the revision petition and confirming the order passed by the learned Magistrate in summoning the appellant-accused herein to face the trial for the offences under Sections 148, 149, 323, 324, 325, 302, 307 and 506 IPC, which was passed in exercise of powers under Section 319 CrPC.

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6. While considering the aforesaid question/issue, few decisions of

this Court are required to be referred to and considered.

6.1. The first decision which is required to be considered is a decision 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] which has been consistently followed by this Court in subsequent decisions.

6.2. In Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , this Court had the occasion to consider in detail the scope and ambit of the powers of the Magistrate under Section 319 CrPC the object and purpose of Section 319 CrPC, etc. In the said case, the following five questions fell for consideration before this Court : (SCC p. 112, para 6)

"6. ... 6.1.(i) What is the stage at which power under Section 319 CrPC can be exercised?

6.2.(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?

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

6.4.(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?

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

6.3. While considering the aforesaid questions, this Court observed and held as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 114-17, 123 & 125-26, paras 12-14, 17-19, 22, 47 & 53-56)

"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?

14. The submissions that were raised before us covered a very wide canvas and the learned counsel have taken us through various provisions of CrPC and

the judgments that have been relied on for the said purpose. The controversy centres around the stage at which such powers can be invoked by the court and the material on the basis whereof such powers can be exercised.

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

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.

19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.

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22. In our opinion, Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial.

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47. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) CrPC can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and

determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

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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. ...

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.

56. ... What is essential for the purpose of the section is that there should appear some evidence against a person not proceeded against and the stage of the proceedings is irrelevant. Where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well, Section 319 CrPC acts as an empowering provision enabling the court/Magistrate to initiate proceedings against such other persons. The purpose of Section 319 CrPC is to do complete justice and to ensure that persons who ought to have been tried as well are also tried. Therefore, there does not appear to be any difficulty in invoking powers of Section 319 CrPC at the stage of trial in a complaint case when the evidence of the complainant as well as his witnesses are being recorded."

6.4. While answering Question (iii), namely, whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial, this Court, in the aforesaid decision has observed and held as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 126-27 & 131-32, paras 58-59, 78 & 82-85)

"58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of

powers under Section 319 CrPC, the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that come up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 CrPC indicate that the material has to be "where ... it appears from the evidence" before the court.

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

'(1) all statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;

(2) all documents including electronic records produced for the inspection of the court; such documents are called documentary evidence.'

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

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

83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the

court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. ...

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

85. In view of the discussion made and the conclusion drawn hereinabove, the answer to the aforesaid question posed is that apart from evidence recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319 CrPC. The "evidence" is thus, limited to the evidence recorded during trial."

(emphasis in original)

6.5. While answering Question (ii), namely, whether the word "evidence" used in Section 319(1) CrPC means as arising in examination-in-chief or also together with cross-examination, in the aforesaid decision, this Court has observed and held as under : (Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 132-34, paras 86-92

"86. The second question referred to herein is in relation to the word "evidence" as used under Section 319 CrPC, which leaves no room for doubt that the evidence as understood under Section 3 of the Evidence Act is the statement of the witnesses that are recorded during trial and the documentary evidence in accordance with the Evidence Act, which also includes the document and material evidence in the Evidence Act. Such evidence begins with the statement of the prosecution witnesses, therefore, is evidence which includes the statement during examination-in-chief. In Rakesh [Rakesh v. State of Haryana, (2001) 6 SCC 248 : 2001 SCC (Cri) 1090] , it was held that : (SCC p. 252, para 10)

'10. ... It is true that finally at the time of trial the accused is to be given an opportunity to cross-examine the witness to test its truthfulness. But that stage would not arise while exercising the court's power under Section 319 CrPC. Once the deposition is recorded, no doubt there being no cross-examination, it would be a prima facie material which would enable the Sessions Court to decide whether powers under Section 319 should be exercised or not.'

87. In Ranjit Singh [Ranjit Singh v. State of Punjab, (1998) 7 SCC 149 : 1998 SCC (Cri) 1554] , this Court held that : (SCC p. 156, para 20)

'20. ... it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers.'

88. In Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889] , it was held that the prerequisite for exercise of power

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

89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.

90. As held in Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889] and Harbhajan Singh [Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] , all that is required for the exercise of the power under Section 319 CrPC is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319 CrPC and can proceed against such other person(s). It is essential to note that the section also uses the words "such person could be tried" instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact,

examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

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

92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence."

(emphasis in original)

6.6. While answering Question (iv), namely, what is the degree of satisfaction required for invoking the power under Section 319 CrPC, this Court after considering various earlier decisions on the point, has observed and held as under : (Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC p. 138, paras 105-06)

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 in original)

6.7. While answering Question (v), namely, in what situations can the power under Section 319 CrPC be exercised : named in the FIR, but not charge-sheeted or has been discharged, this Court has observed and held as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 139 & 141, paras 112 & 116)

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

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116. Thus, it is evident that power under Section 319 CrPC can be exercised against a person not subjected to investigation, or a person placed in Column 2 of the charge-sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under Section 319 CrPC without taking recourse to provisions of Section 300(5) read with Section 398 CrPC."

6.8. Considering the law laid down by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and the observations and findings referred to and reproduced hereinabove, it emerges that (i) the Court can exercise the power under Section 319 CrPC even on the basis of the statement made in the examination-in-chief of the witness concerned and the Court need not wait till the cross-examination of such a witness and the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination; and (ii) a person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC, provided from the evidence (may be on the basis of the evidence collected in the form

of statement made in the examination-in-chief of the witness concerned), it appears that such person can be tried along with the accused already facing trial.

6.9. In S. Mohammed Ispahani v. Yogendra Chandak [S. Mohammed Ispahani v. Yogendra Chandak, (2017) 16 SCC 226 : (2018) 2 SCC (Cri) 138] , SCC para 35, this Court has observed and held as under : (SCC p. 243)

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."

6.10. Thus, even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in the FIR but not implicated in the charge-sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused.

7. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that, in the facts and circumstances of the case, neither the learned trial court nor the High Court have committed any error in summoning the appellants herein to face the trial along with other co-accused. As observed hereinabove, the appellants herein were also named in the FIR. However, they were not shown as accused in the challan/charge-sheet. As observed hereinabove, nothing is on record whether at any point of time the complainant was given an opportunity to submit the protest application against non-filing of the charge-sheet against the appellants. In the deposition before the Court, PW 1 and PW 2 have specifically stated against the appellants herein and the specific role is attributed to the appellant-accused herein. Thus, the statement of PW 1 and PW 2 before the Court can be said to be "evidence" during the trial and, therefore, on the basis of the same and as held by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , the persons against whom no charge-sheet is filed can be summoned to face the trial. Therefore, we are of the opinion that no error has been committed by the courts below to summon the appellants herein to face the trial in exercise of power under Section 319 CrPC."

(C) In the case of **Manjeet Singh Vs. State of Haryana & Ors., reported in (2021) 18 SCC 321,** after considering the various pronouncements on issues related to exercising the powers under Section 319

Cr.P.C. including the judgments passed in the case of Hardeep Singh (supra) and Brijendra Singh (supra), concluded as under:-

"15. The ratio of the aforesaid decisions on the scope and ambit of the powers of the court under Section 319CrPC can be summarised as under:

15.1. That while exercising the powers under Section 319CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished.

15.2. For the empowerment of the courts to ensure that the criminal administration of justice works properly.

15.3. The law has been properly codified and modified by the legislature under CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law.

15.4. To discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished.

15.5. 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.

15.6. Section 319CrPC allows the court to proceed against any person who is not an accused in a case before it.

15.7. 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.

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

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

15.10. The court can exercise the power under Section 319CrPC only after the trial proceeds and commences with the recording of the evidence.

15.11. The word "evidence" in Section 319CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents.

15.12. It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under Section 319CrPC is to be exercised and not on the basis of material collected during the investigation.

15.13. If the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under Section 319CrPC and can proceed against such other person(s).

15.14. That if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under Section 319CrPC can be exercised.

15.15. That power under Section 319CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not to wait till the said evidence is tested on cross-examination.

15.16. Even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses).

15.17. While exercising the powers under Section 319CrPC the court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

16. Applying the law laid down in the aforesaid decisions to the facts of the case on hand we are of the opinion that the learned trial court as well as the High Court have materially erred in dismissing the application under Section 319CrPC and refusing to summon the private respondents herein to face the trial in exercising the powers under Section 319CrPC. It is required to be noted that in FIR No. 477 all the private respondents herein who are sought to be arraigned as additional accused were specifically named with specific role attributed to them. It is specifically mentioned that while they were returning back, Mahindra XUV bearing no. HR 40A 4352 was standing on the road which belongs to Sartaj Singh and Sukhpal. Tejpal, Parab Saran Singh, Preet Samrat and Sartaj were standing. Parab Sharan was having lathi in his hand, Tejpal was having a gandasi, Sukhpal was having a danda, Sartaj was having a revolver and Preet Singh was sitting in the jeep. It is specifically mentioned in the FIR that all the aforesaid persons with common intention parked the Mahindra XUV HR 40A 4352 in a manner which blocks the entire road and they were armed with the weapons.

17. Despite the above specific allegations, when the charge-sheet/final report came to be filed only two persons came to be charge-sheeted and the private respondents herein, though named in the FIR, were put/kept in Column 2. It is the case on behalf of the private respondents herein that four different DSPs inquired into the matter and thereafter when no evidence was found against them the private respondents herein were put in Column 2 and therefore the same is to be given much weightage rather than considering/believing the examination-in-chief of the appellant herein. Heavy reliance is placed on Brijendra Singh [Brijendra Singh v. State of

Rajasthan, (2017) 7 SCC 706 : (2017) 4 SCC (Cri) 144] .

18. However none of DSPs and/or their reports, if any, are part of the charge-sheet. None of the DSPs are shown as witnesses. None of the DSPs are investigating officer. Even on considering the final report/charge-sheet as a whole there does not appear to be any consideration on the specific allegations qua the accused, the private respondents herein, who are kept in Column 2. Entire discussion in the charge-sheet/final report is against Sartaj Singh only.

19. So far as the private respondents are concerned only thing which is stated is:"During the investigation of the present case, Shri Baljinder Singh, HPS, DSP Assandh and Shri Kushalpal, HPS, DSP Indri found accused Tejpal Singh, Sukhpal Singh, sons of Gurdev Singh, Parab Sharan Singh and Preet Samrat Singh sons of Mohan Sarup Singh caste Jat Sikh, residents of Bandrala innocent and accordingly Sections 148, 149 and 341IPC were deleted in the case and they were kept in Column 2, whereas challan against accused Sartaj has been presented in the Court."

20. Now thereafter when in the examination-in-chief the appellant herein — victim — injured eyewitness has specifically named the private respondents herein with specific role attributed to them, the learned trial court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eyewitness. As observed by this Court in State of M.P. v. Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390] (para 9); Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] ; State of U.P. v. Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] , the evidence of an injured eyewitness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under Section 319CrPC the court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under Section 319CrPC.

21. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the learned trial court dismissing the application under Section 319CrPC is concerned, the High Court itself has observed that PW 1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received firearm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except that they were armed with weapons and the injuries concerned are attributed only to Sartaj Singh, even for the sake of arguments if someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all.

22. At the stage of exercising the powers under Section 319CrPC, the court

is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The learned trial court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under Section 319CrPC.

23. Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] at that stage the appellant herein did not prefer appeal against the impugned judgment and order passed by the High Court in Manjeet Singh v. State of Haryana [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] and therefore this Court may not exercise the powers under Article 136 of the Constitution is concerned the aforesaid has no substance. Once it is found that the learned trial court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] cannot be a ground not to direct to summon the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be summoned to face the trial.

24. Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in Column 2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in Rajesh [Rajesh v. State of Haryana, (2019) 6 SCC 368 : (2019) 2 SCC (Cri) 801] . This Court in the aforesaid decision has specifically observed that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC.

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

Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , the powers under Section 319CrPC can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under Section 319CrPC was given only one witness was examined and examination-in-chief of PW 1 was recorded and while the cross-examination of PW 1 was going on, application under Section 319CrPC was given which came to be rejected by the learned trial court. The order passed by the learned trial court is held to be unsustainable. If the learned trial court would have summoned the private respondents herein at that stage such a situation would not have arisen. Be that as it may, as observed herein powers under Section 319CrPC can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

26. In view of the above and for the reasons stated above, the impugned judgment and order [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] passed by the High Court and that of the learned trial court dismissing the application under Section 319CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the learned trial court is directed to summon the private respondents herein to face the trial arising out of FIR No. 477 dated 27-7-2016 in Sessions Case No. 362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149IPC."

(D) Relevant paragraphs of the judgment passed by the Hon'ble Apex Court in the case of ***Sukhpal Singh Khaira vs. State of Punjab*** reported in ***(2023) 1 SCC 289*** in the context of instant case are extracted hereunder:-

"22. Thus, to put the matter in perspective, a perusal of the recommendation of the Law Commission would indicate the intention that an accused who is not charge-sheeted but if is found to be involved should not go scot-free. Hence, Section 319CrPC was incorporated which provides for the court to exercise the power to ensure the same before the conclusion of trial so as to try such accused by summoning and being proceeded along with the other accused. In Shashikant Singh [Shashikant Singh v. Tarkeshwar Singh, (2002) 5 SCC 738 : 2002 SCC (Cri) 1203] , a Bench of two Hon'ble Judges, on holding that the joint trial is not a must has held the requirement as contained in Section 319(1)CrPC as only directory, and as such the judgment of conviction dated 16-7-2001 against the charge-sheeted accused was considered not to be an impediment for the court to proceed against the accused who was added by the summoning order dated 7-4-2001, which in any case was prior to the conclusion of the trial which in our view satisfies the requirement since the summoning order was before the judgment. In Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] also the power of the court under Section 319CrPC has been upheld, reiterated, and it has been held that such

power is available to be exercised at any time before the pronouncement of judgment. Therefore, there is no conflict or diverse view in the said decisions insofar as the exercise of power, the manner and the stage at which power is to be exercised. However, a certain amount of ironing the crease is required to explain the connotation of the phrase "could be tried together with the accused" appearing in sub-section (1) read with the requirement in sub-section (4)(a) to Section 319CrPC and to understand the true purport of exercising the power as per the phrase "before the pronouncement of judgment".

xxx xxx xxx xxx xxx

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

39.(I) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

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

40.(II) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

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

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

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

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

41.3. If the decision of the court is to exercise the power under Section 319CrPC and summon the accused, such

summoning order shall be passed before proceeding further with the trial in the main case.

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

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

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

41.7. If the proceeding paused as in para 41.1 above, is in a case where the accused who were tried are to be acquitted, and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

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

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

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

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

41.12. If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier:

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

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

(E) In the case of ***Yashodhan Singh and Others Vs. State of U. P. and Others***, reported in ***(2023) LiveLaw (SC) 576 : 2023 INSC 652,*** the Hon'ble Apex Court considered the various pronouncements including the judgment passed in the case of ***Hardeep Singh (supra), Brijendra Singh (supra), Sukhpal Singh Khaira (supra) and Jogendra and Others Vs. State of Bihar and Anr.***, reported in ***(2015) 9 SCC 244***, wherein the Hon'ble Apex Court observed that opportunity to the proposed accused is required, and thereafter dismissed appeal

filed by ***Yashodhan Singh and Others***. The relevant paras are reproduced hereinunder:-

"22. The relevant paragraphs in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] can be crystallised as under:

22.1. The Constitution Bench of this Court was concerned with three aspects : firstly, the stage at which powers under Section 319CrPC can be invoked; secondly, the materials on the basis whereof the invoking of powers under Section 319CrPC can be justified; and thirdly, the manner in which powers under Section 319CrPC have to be exercised. While answering the five questions referred to the Constitution Bench in para 117, it was concluded as under : (Hardeep Singh case [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , SCC pp. 141-42)

"117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

— What is the stage at which power under Section 319CrPC 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

117.1. In Dharam Pal case [Dharam Pal v. State of Haryana, (2014) 3 SCC 306 : (2014) 2 SCC (Cri) 159 : AIR 2013 SC 3018] , 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 193CrPC and the Sessions Judge need not wait till "evidence" under Section 319CrPC becomes available for summoning an additional accused.

117.2. Section 319CrPC, 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, 201, 202CrPC, and under Section 398CrPC are species of the inquiry contemplated by Section 319CrPC. 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 319CrPC, and also to add an accused whose name has been shown in Column 2 of the charge-sheet.

117.3. In view of the above position the word "evidence" in Section 319CrPC 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

117.4. Considering the fact that under Section 319CrPC 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 319CrPC 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

117.5. 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 319CrPC would be the same as for framing a charge [Ed. : The conclusion of law as stated in para 106, p. 138 c-d, may be compared:"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". See also especially in para 100 at p. 136 f-g.] . The difference in the degree of satisfaction for summoning the original accused and a subsequent 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 319CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

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 319CrPC 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 Sections 300 and 398CrPC has to be complied with before he can be summoned afresh."

22.2. While answering the questions aforesaid, this Court observed in Hardeep Singh [Hardeep Singh v. State

of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that if 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 entire effort, therefore, is not to allow the real perpetrator of an offence to get away unpunished. 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 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. It was pertinently observed by this Court that 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.

22.3. While distinguishing a trial from an enquiry, it was observed by this Court that trial follows an inquiry and the purpose of the trial is to fasten the responsibility upon a person on the basis of facts presented and evidence led. Emphasising on the word "course" used in Section 319CrPC, it was observed that the said power can be invoked under the said provision against any person from the initial stage of inquiry by the court up to the stage of conclusion of the trial. 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. Thus, the power under Section 319(1)CrPC can be exercised at any time after the charge-sheet is filed before the pronouncement of judgment, except during the stage of Sections 207/208CrPC, committal, etc.

22.4. Elaborating the nuances of Section 319CrPC, it was further observed in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that what is essential for the purpose of Section 319CrPC is that there should appear some evidence against a person not proceeded against; the stage of the proceedings is irrelevant. Section 319CrPC is an empowering provision particularly where the complainant is circumspect in proceeding against several persons, but the court is of the opinion that there appears to be some evidence pointing to the complicity of some other persons as well.

22.5. It was further observed that circumstances which lead to the inference being drawn up by the court for summoning a person under Section 319 arise out of the availability of the facts and material that come up before the court. The material should disclose complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence.

22.6. It was also observed by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that apart from evidence in the strict legal sense recorded during trial, any material that has been received by the court after cognizance is taken and before the trial commences, can be utilised only for corroboration and to support the evidence recorded by the court to invoke the power under Section 319CrPC. Holding that the expression "evidence" must be given a broad meaning, it was observed that material which is not exactly evidence recorded before the court, but is a material collected

by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. Such material would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have been suppressed or had escaped the notice of the court. Therefore, any material brought before the court even prior to the trial can be read within the meaning of the expression "evidence" for the purpose of Section 319CrPC. While considering the evidence that emanates during the trial, it was observed by this Court that evidence recorded by way of examination-in-chief and which is untested by cross-examination is nevertheless evidence which can be considered by the court for the exercise of power under Section 319CrPC so long as, it would appear to the court that some other person who is not facing the trial, may also have been involved in the offence.

22.7. Further, Section 319CrPC also uses the words "such person could be tried", which means not to have a mini-trial at the stage of Section 319CrPC by having examination and cross-examination and thereafter coming to a prima facie conclusion on the overt act of such person sought to be added. Such a mini-trial will affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all. As under Section 319(4)CrPC, such a person has the right to cross-examine the prosecution witnesses and examine the defence witnesses and advance his arguments. It was further observed that the power under Section 319CrPC can be exercised even after completion of examination-in-chief and the court does not have to wait till the said evidence is tested on cross-examination, for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other persons, not facing the trial in the offence.

22.8. 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. Therefore, such satisfaction is sine qua non for exercise of power under Section 319CrPC. Ultimately, the exercise of power is for the trial of such persons summoned together with the accused already on trial and not for conviction with the accused. Therefore, at that stage, the court need not form any definite opinion as to the guilt of the accused.

22.9. This Court further observed that the difference in the degree of satisfaction for summoning the original accused and a subsequent 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. Hence, the degree of satisfaction for summoning the original accused and the accused summoned subsequently during the course of trial is different.

22.10. It was further observed by this Court that a person, whose name does not appear even in the FIR or in the charge-sheet or whose name appears in the FIR and not in the main part of the charge-sheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193CrPC can still be summoned by the court, provided the court

is satisfied that the conditions provided in the said statutory provisions stand fulfilled. However, a person who has already been discharged stands on a different footing than a person who was never subjected to investigation or if subjected to, but not charge-sheeted. Such a person has stood the stage of inquiry before the court and upon judicial examination of the material collected during investigation, the court had come to the conclusion that there is not even a prima facie case to proceed against such person. Therefore, the court must keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations.

22.11. This Court further observed that it has to be circumspect in treating such evidence and try to separate the chaff from the grain. If after such careful examination of the evidence, the court is of the opinion that there does exist evidence to proceed against the person so discharged, it may take steps but only in accordance with Section 398CrPC without resorting to the provision of Section 319CrPC directly. Section 398CrPC is in the nature of a revisional power which can be exercised only by the High Court or the Sessions Judge, as the case may be. However, a person discharged can also be arraigned again as an accused but only after an inquiry as contemplated by Sections 300(5) and 398CrPC. If during or after such inquiry, there appears to be an evidence against such person, power under Section 319CrPC can be exercised.

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 227CrPC as extracted above but on an inquiry, if it appears that there is evidence against such a discharged person, then power under Section 319CrPC 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 319CrPC 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 319CrPC 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.

24. Further, when a person is summoned as an accused under Section 319CrPC which is based on the satisfaction recorded by the trial court on the evidence that has emerged during the course of trial so as to try the person summoned as an accused along with the other accused, the summoned accused cannot seek discharge. It is necessary to state that discharge as contemplated under Section 227CrPC is at a stage prior to the commencement of the trial and immediately after framing of charge but when power is exercised under Section 319CrPC to summon a person to be added as an accused in the trial to be tried

along with other accused, such a person cannot seek discharge as the court would have exercised the power under Section 319CrPC based on a satisfaction derived from the evidence that has emerged during the evidence recorded in the course of trial and such satisfaction is of a higher degree than the satisfaction which is derived by the court at the time of framing of charge.

25. The learned Senior Counsel Shri S. Nagamuthu strenuously contended that a person summoned in exercise of power under Section 319CrPC must be given an opportunity of being heard before being added as an accused to the trial to be tried along with the other accused and that such person must have an opportunity of filing an application seeking discharge. The same are clearly not envisaged in view of the judgment in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] and hence the said contentions are rejected.

26. Moreover, there is no finality attached to Section 319CrPC. It only indicates commencement of trial qua the added accused. The rationale is that a person need not be heard before being added on or arrayed as an accused. Reference to and reliance placed upon opportunity of hearing to a complainant in the form of protest petition when a closure report is filed is wholly misplaced because there is finality in a closure report; therefore the complainant is given an opportunity.

27. In Sukhpal Singh Khaira [Sukhpal Singh Khaira v. State of Punjab, (2023) 1 SCC 289 : (2023) 1 SCC (Cri) 454] , a Constitution Bench of this Court of which one of us was a member (Nagarathna, J.), adumbrated on the meaning of the expression "conclusion of trial" in the context of Section 319 read with other allied sections of CrPC and after referring to several decisions of this Court including Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] answered the question referred to as under : (Sukhpal Singh Khaira case [Sukhpal Singh Khaira v. State of Punjab, (2023) 1 SCC 289 : (2023) 1 SCC (Cri) 454] , SCC pp. 311-13, paras 39-41)."

20. On the aforesaid issues/questions, this Court also finds it appropriate to refer relevant paragraphs of the judgment(s) passed by the Hon'ble Apex Court in the case of ***Sarva Shramik Sanghatana (KV) v. State of Maharashtra and others*** reported in ***(2008) 1 SCC 494 and Himachal Pradesh Financial Corporation vs. Anil Garg and others*** reported in ***(2017) 14 SCC 634.***

(A) In the judgment passed in the case of ***Sarva Shramik Sanghatana (supra),*** the Hon'ble Apex Court with regard to judgment passed in the case of Sarguja Transport (supra) observed that *"the decision of this Court in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88]* cannot be treated as a Euclid's formula". Further, according to this judgment, the malpractice related to 'Bench Hunting' was discouraged by the decision in ***Sarguja Transport (supra).*** This judgment also indicates that in what manner a decision should be followed. In nutshell, as per this judgment, "Judgments of Courts are not to be construed as statutes" and "Disposal of Cases by blindly placing reliance on a decision is not proper" and also that "A little difference of facts or additional facts

may make a lot of difference in precedential value of a decision". The relevant paragraphs on reproduction are as under:-

"11. Learned counsel for the appellant has strongly relied on the decision of this Court in Sarguja Transport Service v. STAT [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] . He has submitted that in that decision this Court has laid down that if a writ petition filed in a High Court is withdrawn without permission to file a fresh writ petition, a second writ petition for the same relief is barred. Learned counsel for the appellant submitted that in the order of the Labour Commissioner dated 12-4-2007, a copy of which is Annexure P-4 to this appeal, it is only mentioned that the applicant Company is allowed to withdraw its application under Section 25-O(1) seeking permission for closure of its textile mill, but there is no mention in the said order that the Company is given liberty or permission to file a fresh application under Section 25-O(1). Accordingly, he submitted that the decision of Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] squarely applies to the present case. He submitted that although the decision in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] related to a writ petition, the ratio of that decision was based on public policy and hence it was also application to proceedings under Section 25-O of the Industrial Disputes Act.

12. We have carefully examined the decision of Sarguja Transport Service case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] . In the said decision it is mentioned in para 8 as follows : (SCC p. 11)

"8. ... It is common knowledge that very often after a writ petition is heard for some time when the petitioner or his counsel finds that the court is not likely to pass an order admitting the petition, request is made by the petitioner or by his counsel to permit the petitioner to withdraw the writ petition without seeking permission to institute a fresh writ petition. A court which is unwilling to admit the petition would not ordinarily grant liberty to file a fresh petition while it may just agree to permit the withdrawal of the petition."

In para 9 of the said decision, it is also mentioned as follows : (SCC p. 12)

"9. ... But we are of the view that the principle underlying Rule 1 of Order 23 of the Code should be extended in the interests of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in Bench-hunting tactics."

(emphasis supplied)

We are of the opinion that the decision in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] has to be understood in the light of the observations in paras 8 and 9 therein, which have been quoted above. The said decision was given on the basis of public policy that, if while hearing the first writ petition the Bench is inclined to dismiss it, and the learned counsel withdraws the petition so that he could file a second writ petition before what he regards as a more suitable or convenient Bench, then if he withdraws it he should not be allowed to file a second writ petition unless liberty is

given to do so. In other words, Bench-hunting should not be permitted.

13. It often happens that during the hearing of a petition the court makes oral observations indicating that it is inclined to dismiss the petition. At this stage the counsel may seek withdrawal of his petition without getting a verdict on the merits, with the intention of filing a fresh petition before a more convenient Bench. It was this malpractice which was sought to be discouraged by the decision in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] .

14. On the subject of precedents Lord Halsbury, L.C., said in Quinn v. Leathem [1901 AC 495 : (1900-1903) All ER Rep 1 (HL)] : (All ER p. 7 G-I)

"Before discussing Allen v. Flood [1898 AC 1 : (1895-1899) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before—that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

(emphasis supplied)

We entirely agree with the above observations.

15. In Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213] (vide SCC p. 221, para 18) this Court observed:

"18. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

16. In Bhavnagar University v. Palitana Sugar Mill (P) Ltd. [(2003) 2 SCC 111] (vide SCC p. 130, para 59) this Court observed:

"59. ... It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

(emphasis supplied)

17. As held in Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani [(2004) 8 SCC 579 : AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed : (SCC pp. 584-85, paras 9-12)

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These

observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. v. Horton [1951 AC 737 : (1951) 2 All ER 1 (HL)] (AC at p. 761), Lord MacDermott observed : (All ER p. 14 C-D)

'The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge, ...'

10. In Home Office v. Dorset Yacht Co. Ltd. [1970 AC 1004 : (1970) 2 WLR 1140 : (1970) 2 All ER 294 (HL)] Lord Reid said,

'Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.' (All ER p. 297g)

Megarry, J. in Shepherd Homes Ltd. v. Sandham (No. 2) [(1971) 1 WLR 1062 : (1971) 2 All ER 1267] , observed : (All ER p. 1274d)

'One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;'

And, in British Railways Board v. Herrington [1972 AC 877 : (1972) 2 WLR 537 : (1972) 1 All ER 749 (HL)] Lord Morris said : (All ER p. 761c)

'There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'

11. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Hidayatullah, J. in the matter of applying precedents have become locus classicus : (Abdul Kayoom v. CIT [AIR 1962 SC 680] , AIR p. 688, para 19)

'19. ... Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.'

***

'Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My

plea is to keep the path to justice clear of obstructions which could impede it.' "

(emphasis supplied)

18. We have referred to the aforesaid decisions and the principles laid down therein, because often decisions are cited for a proposition without reading the entire decision and the reasoning contained therein. In our opinion, the decision of this Court in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] cannot be treated as a Euclid's formula.

19. In the present case, we are satisfied that the application for withdrawal of the first petition under Section 25-O(1) was made bona fide because the respondent Company had received a letter from the Deputy Labour Commissioner on 5-4-2007 calling for a meeting of the parties so that an effort could be made for an amicable settlement. In fact, the respondent Company could have waited for the expiry of 60 days from the date of filing of its application under Section 25-O(1), on the expiry of which the application would have deemed to have been allowed under Section 25-O(3). The fact that it did not do so, and instead applied for withdrawal of its application under Section 25-O(1), shows its bona fide. The respondent Company was trying for an amicable settlement, and this was clearly bona fide, and it was not a case of Bench-hunting when it found that an adverse order was likely to be passed against it. Hence, Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] is clearly distinguishable, and will only apply where the first petition was withdrawn in order to do Bench-hunting or for some other mala fide purpose.

20. We agree with the learned counsel for the appellant that although the Code of Civil Procedure does not strictly apply to proceedings under Section 25-O(1) of the Industrial Disputes Act, or other judicial or quasi-judicial proceedings under any other Act, some of the general principles in CPC may be applicable. For instance, even if Section 11 CPC does not in terms strictly apply because both the proceedings may not be suits, the general principle of res judicata may apply vide Pondicherry Khadi & Village Industries Board v. P. Kulothangan [(2004) 1 SCC 68 : 2004 SCC (L&S) 32] . However, this does not mean that all provisions in CPC will strictly apply to proceedings which are not suits.

21. Learned counsel for the appellant has relied on an observation in the decision of this Court in U.P. State Brassware Corpn. Ltd. v. Uday Narain Pandey [(2006) 1 SCC 479 : 2006 SCC (L&S) 250] in para 38 of which it is stated : (SCC p. 491)

"38. Order 7 Rule 7 of the Code of Civil Procedure confers powers upon the court to mould relief in a given situation. The provisions of the Code of Civil Procedure are applicable to the proceedings under the Industrial Disputes Act."

(emphasis supplied)

It may be noted that the observation in the aforesaid decision that the provisions of CPC are applicable to proceedings under the Industrial Disputes Act was made in the context of Order 7 Rule 7 of the Code of Civil Procedure which confers powers upon the court to mould relief in a given situation. Hence, the

aforesaid observation must be read in its proper context, and it cannot be interpreted to mean that all the provisions of CPC will strictly apply to proceedings under the Industrial Disputes Act.

22. No doubt, Order 23 Rule 1(4) CPC states that where the plaintiff withdraws a suit without permission of the court, he is precluded from instituting any fresh suit in respect of the same subject-matter. However, in our opinion, this provision will apply only to suits. An application under Section 25-O(1) is not a suit, and hence, the said provision will not apply to such an application."

(B) Paragraphs 13 to 16 of the judgment passed in the case of Himachal Pradesh Financial Corporation (supra) are as under:-

"13. The question whether there has been an abandonment of the claim by withdrawal of the suit is a mixed question of law and fact as held in Ramesh Chandra Sankla v. Vikram Cement [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] . The language of the order for withdrawal will not always be determinative. The background facts will necessarily have to be examined for a proper and just decision. Sarguja Transport Service [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] cannot be applied as an abstract proposition or the ratio applied sans the facts of a case. The extract below is considered relevant observing as follows: (Vikram Cement case [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] , SCC pp. 79-80, para 62)

"62. ... '9. ... While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit....' (Sarguja Transport Service case [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] , SCC p. 12, para 9)"

(emphasis in original)

14. The application for withdrawal stated that it was being done to pursue remedies under the Act. Undoubtedly the proceedings under the Act are more expeditious for recovery as compared to a suit, which after decree is required to be followed by the execution proceedings. Section 3(1)(d)(iv) of the Act provided that the remedy under it was without prejudice to any other remedy available under any other law. The appellant, therefore, never intended to abandon its claim by withdrawing the suit. The language of the withdrawal order cannot be determinative without considering the background facts. 15. The bar under Order 23 Rule 1 would apply only to a fresh suit and not proceedings under the Act. In Sarva Shramik Sanghatana (KV) v. State of Maharashtra [Sarva Shramik Sanghatana (KV) v. State of Maharashtra, (2008) 1 SCC 494 : (2008) 1 SCC (L&S) 215] , the application under Section 25-O of the Industrial Disputes Act, 1947 for closure of undertaking was withdrawn as attempts were made for settlement of the matter. Settlement not having been possible, the management filed a fresh application. It was opposed as barred under Order 23 of the Code of Civil Procedure since the earlier application was withdrawn unconditionally with no liberty granted, relying on Sarguja Transport

Service [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] . The argument was repelled holding that the proceedings under the Industrial Disputes Act were not a suit and that withdrawal was bona fide to explore amicable settlement. It was not a withdrawal made mala fide or for Bench hunting holding as follows: (Sarva Shramik Sanghatana case [Sarva Shramik Sanghatana (KV) v. State of Maharashtra, (2008) 1 SCC 494 : (2008) 1 SCC (L&S) 215] , SCC p. 502, para 22)

"22. No doubt, Order 23 Rule 1(4) CPC states that where the plaintiff withdraws a suit without permission of the court, he is precluded from instituting any fresh suit in respect of the same subject-matter. However, in our opinion, this provision will apply only to suits. An application under Section 25-O(1) is not a suit, and hence, the said provision will not apply to such an application."

16. In Vikram Cement [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] the earlier petition was dismissed as not pressed and the second application was opposed as not maintainable. Dismissing the objection it was observed as follows: (SCC p. 80, para 65)

"65. It is thus clear that it was not a case of abandonment or giving up of claim by the Company. But, in view of the office objection, practical difficulty and logistical problems, the petitioner Company did not proceed with an "omnibus" and composite petition against several workmen and filed separate petitions as suggested by the Registry of the High Court.""

21. Further, to answer the above indicated issues/questions, expression 'public policy' is also required to be taken note of, as the judgment passed by this Court in the case of ***Baccha Lal @ Vijay Singh (Supra)*** is based upon the judgment passed by the Hon'ble Apex Court in the case of ***Sarguja Transport (supra),*** in which the Hon'ble Apex Court after considering that Sub-Rule 1 Rule 4 of Order XXIII observed that "The principle underlying the above rule is founded on public policy"

(A) In regard to expression 'public policy', reference can be made on the following paragraphs of the judgment passed by the Hon'ble Apex Court in the case ***of P. Rathinam vs. Union of India and another reported in (1994) 3 SCC 394,*** which are extracted hereunder:-

"92. The concept of public policy is, however, illusive, varying and uncertain. It has also been described as "untrustworthy guide", "unruly horse" etc. The leading judgment describing the doctrine of public policy has been accepted to be that of Parke, B. in Egerton v. Brownlow [(1853) 4 HLC 121] in which it was stated as below at p. 123, as quoted in paragraph 22 of Gherulal Parakh v. Mahadeodas Maiya [AIR 1959 SC 781 : 1959 Supp (2) SCR 406] :

" 'Public policy' is a vague and unsatisfactory term, and calculated to lead to uncertainty and error, when applied to the decision of legal rights; it is capable of being understood in different senses; it may, and does, in its ordinary sense, mean 'political expedience' or that which is best for the common good of the community; and in that sense there may be every variety of opinion, according to education

habits, talents and dispositions of each person, who is to decide whether an act is against public policy or not. To allow this to be a ground of judicial decision, would lead to the greatest uncertainty and confusion. It is the province of the statesman and not the lawyer, to discuss, and of the Legislature to determine what is best for the public good and to provide for it by proper enactments. It is the province of the judge to expound the law only; the written from the statutes; the unwritten or common law from the decisions of our predecessors and of our existing courts, from text writers of acknowledged authority, and upon the principles to be clearly deduced from them by sound reason and just inference; not to speculate upon what is the best, in his opinion, for the advantage of the community. Some of these decisions may have no doubt been founded upon the prevailing and just opinions of the public good; for instance, the illegality of covenants in restraint of marriage or trade. They have become a part of the recognised law, and we are therefore bound by them, but we are not thereby authorised to establish as law everything which we may think for the public good, and prohibit everything which we think otherwise."

93. In the aforesaid case a three-Judge Bench of this Court summarised the doctrine of public policy by stating at p. 795 that public policy or policy of law is an illusive concept; it has been described as "untrustworthy guide", "variable quality", "uncertain one", "unruly horse" etc.

94. Different High Courts of the country have had also occasion to express their views on this concept in their judgments in Bhagwant Genuji Girme v. Gangabisan Ramgopal [AIR 1940 Bom 369 : 42 BLR 750 : 191 IC 806] ; Mafizuddin Khan Choudhury v. Habibuddin Shekh [AIR 1957 Cal 336] ; Kolaparti Venkatareddi v. Kolaparti Peda Venkatachalam [AIR 1964 AP 465 : (1964) 1 Andh WR 248] and Ratanchand Hirachand v. Askar Nawaz Jung [AIR 1976 AP 112 : ILR (1975) AP 843 : (1975) 1 APLJ (HC) 344] . In Kolaparti case [AIR 1964 AP 465 : (1964) 1 Andh WR 248] it was stated that the term public policy is not capable of a precise definition and whatever tends to injustice of operation, restraint of liberty, commerce and natural or legal rights; whatever tends to the obstruction of justice or to the violation of a statute and whatever is against good morals can be said to be against public policy. These decisions have also pointed out that the concept of public policy is capable of expansion and modification. In Ratanchand case [AIR 1976 AP 112 : ILR (1975) AP 843 : (1975) 1 APLJ (HC) 344] a Bench of Andhra Pradesh High Court speaking through Chinnappa Reddy, J. as he then was, quoted at p. 117 a significant passage from Professor Winfield, "Essay on Public Policy in the English Common Law" (42 Harvard Law Review 76). The same is as below:

"Public policy is necessarily variable. It may be variable not only from one century to another, not only from one generation to another but even in the same generation. Further it may vary not merely with respect to the particular topics which may be included in it, but also with respect to the rules relating to any one particular topic…. This variability of public policy is a stone in the edifice of the doctrine and not a missile to be flung at it. Public policy would be almost useless without it."

95. As to how the "unruly horse" of public policy influenced English law has been narrated by W. Friedman in his Legal

Theory (5th Edn.) at p. 479 et seq in Part III, Section 2 titled as "Legal Theory, Public Policy and Legal Evaluation". As to the description of public policy as "unruly horse", it may be stated that there have been judges not to shy away from unmanageable horses. Lord Denning is one of them. What this noble judge stated in Enderby Town Football Club Ltd. v. Football Association Ltd. [(1971) Ch 591, 606] at p. 606 is "With a good man in the saddle, the unruly horse can be kept in control. It can take jump over obstacles." (See para 93 of Central Inland Water Transport Corpn. Ltd. v. Brojo Nath Ganguly [(1986) 3 SCC 156 : 1986 SCC (L&S) 429 : (1986) 1 ATC 103 : AIR 1986 SC 1571] .) But how many judges can be anywhere near Lord Denning? He is sui generis.

96. The magnitude and complexity of what is or is not public policy or can be a part of public policy, would be apparent from bird's eyeview of what has been stated regarding this at pp. 454 to 539 of Words and Phrases (Permanent Edn., Vol. 35, 1963). To bring home this a few excerpts would be enough. It has been first stated under the sub-heading "In general" as below at pp. 455 and 456:

" 'Public policy' imports something that is uncertain and fluctuating, varying with the changing economic needs, social customs, and moral aspirations, of the people. Barwin v. Reidy [307 P 2d 175, 181 : 62 N.M. 183] .

'Public policy' is in its nature so uncertain and fluctuating, varying with the habits and fashions of the day, with the growth of commerce and the usages of trade, that it is difficult to determine its limits with any degree of exactness. It has never been defined by the courts, but has been let loose and free from definition in the same manner as fraud. Pendeleton v. Greever [j 193 p. 885, 887, j 80 Ok 1, 35 : 17 ALR 317].

'Public policy' is a term that is not always easy to define and it may vary as the habits, opinions and welfare of a people may vary, and what may be the public policy of one State or country may not be so in another. Franklin Fire Ins. Co. v. Moll [58 NE 2nd 947, 950, 951 : 115 Ind. App. 289] ."

(B) On the expression 'public policy', it would also be appropriate to refer paragraph 19 of the judgment passed in the case of ***Himachal Pradesh Financial Corporation (supra),*** which reads as under:-

"19. The phrase "public policy" is not capable of precise definition. In P. Rathinam v. Union of India [P. Rathinam v. Union of India, (1994) 3 SCC 394 : 1994 SCC (Cri) 740] , it was observed: (SCC p. 424, para 92)

"92. The concept of public policy is, however, illusive, varying and uncertain. It has also been described as "untrustworthy guide", "unruly horse", etc. ..."

Broadly it will mean what is in the larger interest of the society involving questions of righteousness, good conscience and equity upholding the law and not a retrograde interpretation. It cannot be invoked to facilitate a loanee to avoid legal obligation for repayment of a loan. The loanee has a pious duty to abide by his promise and repay. Timely repayment ensures facilitation of the loan

to others who may be needy. Public policy cannot be invoked to effectively prevent a loanee from repayment unjustifiably abusing the law. Invocation of the principle of doctrine of election in the facts of the case was completely misconceived."

(C) To the view of this Court, what would be the 'public policy' in regard to criminal cases can be deduced from the following maxims:-

(a) "Crimen Omnia Ex Se Nata Vitiate": Property obtain by crime is tainted/vitiated.

(b) "Commodum Ex Injuria Sua Nemo Habere Debet": Crime vitiates everything which spring from it. The same can also be expressed as- A crime vitiates all things proceedings from it, crime taints all that spring from it, crime vitiate everything born from it.

(c) "Interest reipublicae ne maleficia remaneant impunita". It concerns the commonwealth that crimes do not remain unpunished.

(d) "Maleficia non debent remanere impunita, et impunitas continuum affectum tribuit delinquenti": Evil deeds ought not to remain unpunished, for impunity affords continual excitement to the delinquent.

(e) "Paen ad paucos, metus ad omnes perveniat": A punishment inflected on a few causes a dread to all. Punishment to few, dread or fear to all.

(f) "Spes impunitatis continuum affectum tribuit delinquendi": The hope of impunity holds out a continual temptation to crime.

(g) "Ubi culpa est ibi paean subesse debet": Where there is culpability, there punishment ought to be.

(h) "Ubi quis delinquit ibi punietur": Let a man be punished when he commits the offence.

(D) A conjoint reading of the above referred paragraphs of the judgments passed by the Hon'ble Apex Court in the case of ***P. Rathinam (supra) and Himachal Pradesh Financial Corporation (supra)*** and the maxims, quoted above, would indicate that the expression 'public policy' in the context of the instant case or in the context of criminal cases or the case covered under Section 482 Cr.P.C. (now repealed)/Section 528 BNSS, to the view of this Court, would be that a 'person who commits crime/offence should be punished'. In other words, in so far as criminal cases are concerned, the expression 'public policy' would be that 'evil deeds ought not to remain unpunished'. Therefore, a known suspect/accused should not go scot-free without facing trial.

(E) To fortify the aforesaid, it would be apt to refer following portion of the judgment passed in the case of ***Hardeep Singh (supra)****:-*

"..... 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 against the other accused. ....."

xxx xxx xxx xxx xxx

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?

xxx xxx xxx xxx xxx

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

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.

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."

22. Legal maxim "Per incuriam" has been interpreted by Hon'ble the Apex Court, which could be deduced from the following cases.

(A) In the case of ***K.S. Panduranga v. State of Karnataka, [2013] 1 A.C. R 994,*** the Hon'ble Apex Court observed as under:—

"Para : 30. Presently, we shall proceed to deal with the concept of per incuriam. In A.R. Antulay v. R.S. Nayak, (1988) 2 SCC 602, Sabyasachi Mukharji, J. (as His Lordship then was), while dealing with the said concept, had observed thus:
42. … 'Per incuriam' are those decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some part of the decision or some step in the reasoning on

which it is based, is found, on that account to be demonstrably wrong.

Para : 31. Again, in the said decision, at a later stage, the Court observed:

47…. It is a settled rule that if a decision has been given per incuriam the court can ignore it.

Para : 32. In Punjab Land Development and Reclamation Corporation Ltd. v. Labour Court, (1990) 3 SCC 682, another Constitution Bench, while dealing with the issue of per incuriam, opined as under:

40. The Latin expression 'per incuriam' means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court.

Para : 33. In State of U.P. v. Synthetics and Chemicals Ltd., (1991) 4 SCC 139, a two-Judge Bench adverted in detail to the aspect of per incuriam and proceeded to highlight as follows:

40. 'Incuriam' literally means 'carelessness'. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. (Young v. Bristol Aeroplane Co. Ltd., [1944] 1944 All ER 293 (CA)) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.

Para : 34. In Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694, while addressing the issue of per incuriam, a two-Judge Bench, after referring to the dictum in *Bristol Aeroplane Company Ltd. (supra)* and certain passages from *Halsbury's Laws of England and Raghubir Singh (supra)*, has stated thus:

138. The analysis of English and Indian Law clearly leads to the irresistible conclusion that not only the judgment of a larger strength is binding on a judgment of smaller strength but the judgment of a coequal strength is also binding on a Bench of Judges of co-equal strength. In the instant case, judgments mentioned in paras 124 and 125 are by two or three Judges of this Court. These judgments have clearly ignored the Constitution Bench judgment of this Court in Sibbia case, (1980) 2 SCC 565 which has comprehensively dealt with all the facets of anticipatory bail enumerated under Section 438 of the Code of Criminal Procedure. Consequently, the judgments mentioned in paras 124 and 125 of this judgment are per incuriam.

Para : 35. In Government of A.P. v. B. Satyanarayana Rao (dead) byL. Rs., (2000) 4 SCC 262 this Court has observed that the rule of per incuriam can be applied where a court omits to consider a binding precedent of the same court or the superior court rendered on the same issue or where a court omits to consider any statute while deciding that issue."

(B) In the case of ***Sundeep Kumar Bafna v. State of Maharashtra reported in (2014) 16 SCC 623 : (2015) 3***

SCC (Cri) 558, the Hon'ble Apex Court has held as under: (SCC p. 642, para 19)

'19. It cannot be overemphasised that the discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a co-equal or larger Bench; or if the decision of a High Court is not in consonance with the views of this Court. It must immediately be clarified that the per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam.'

(emphasis by the court)

(C) Likewise, the Supreme Court **in Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Commr. [Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Commr., (1990) 3 SCC 682 : 1991 SCC (L&S) 71]** has held as under: (SCC p. 705, para 40)

'40. We now deal with the question of per incuriam by reason of allegedly not following the Constitution Bench decisions. The latin expression per incuriam means through inadvertence. A decision can be said generally to be given per incuriam when this Court has acted in ignorance of a previous decision of its own or when a High Court has acted in ignorance of a decision of this Court. It cannot be doubted that Article 141 embodies, as a rule of law, the doctrine of precedents on which our judicial system is based. In Bengal Immunity Co. Ltd. v. State of Bihar [Bengal Immunity Co. Ltd. v. State of Bihar, (1955) 6 STC 446 : 1955 SCC OnLine SC 2 : AIR 1955 SC 661 : (1955) 2 SCR 603] , it was held that the words of Article 141, "binding on all courts within the territory of India", though wide enough to include the Supreme Court, do not include the Supreme Court itself, and it is not bound by its own judgments but is free to reconsider them in appropriate cases. This is necessary for proper development of law and justice. May be for the same reasons before judgments were given in the House of Lords in Dawson's Settlement Lloyds Bank Ltd. v. Dawson [Dawson's Settlement Lloyds Bank Ltd. v. Dawson, [1966] 1 WLR 1234] , on 26-7-1966 Lord Gardiner, L.C. made the following statement on behalf of himself and the Lords of Appeal in ordinary:

"Their Lordships regard the use of precedent as an indispensable foundation upon which to decide what is the law and its application to individual cases. It provides at least some degree of certainty upon which individuals can rely in the conduct of their affairs, as well as a basis for orderly development of legal rules. Their Lordships nevertheless recognise that too rigid adherence to precedent may lead to injustice in a particular case and also unduly restrict the

proper development of the law. They propose, therefore, to modify their present practice and, while treating former decisions of this House as normally binding, to depart from a previous decision when it appears right to do so.

In this connection they will bear in mind the danger of disturbing retrospectively the basis on which contracts, settlements of property and fiscal arrangements have been entered into and also the especial need for certainty as to the criminal law.'''

(D) From the aforesaid judgments in ***Sundeep Kumar Bafna case [Sundeep Kumar Bafna v. State of Maharashtra, (2014) 16 SCC 623 : (2015) 3 SCC (Cri) 558] and Punjab Land Development & Reclamation Corpn. Ltd. case [Punjab Land Development & Reclamation Corpn. Ltd. v. Labour Commr., (1990) 3 SCC 682 : 1991 SCC (L&S) 71],*** it emerges that the Hon'ble Apex Court has categorically held that discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation which was not brought to the notice of the court or a decision or judgment can also be per incuriam if the decision of a High Court is not in consonance with the view of the Supreme Court.

(E) In the case of ***Bilkis Yakub Rasool vs. Union of India and others reported in (2024) 5 SCC 481***, the Hon'ble Apex Court observed as under:-

"145. We wish to consider the case from another angle. The order of this Court dated 13-5-2022 [Radheshyam Bhagwandas Shah v. State of Gujarat, (2022) 8 SCC 552 : (2022) 3 SCC (Cri) 517] is also per incuriam for the reason that it fails to follow the earlier binding judgments of this Court including that of the Constitution Bench in V. Sriharan [Union of India v. V. Sriharan, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695] vis-à-vis the appropriate Government which is vested with the power to consider an application for remission as per sub-section (7) of Section 432CrPC and that of the nine-Judge Bench decision in Naresh Shridhar Mirajkar [Naresh Shridhar Mirajkar v. State of Maharashtra, 1966 SCC OnLine SC 10 : AIR 1967 SC 1] that an order of a High Court cannot be set aside in a proceeding under Article 32 of the Constitution.

146. In State of U.P. v. Synthetics & Chemicals Ltd. [State of U.P. v. Synthetics & Chemicals Ltd., (1991) 4 SCC 139] ("Synthetics & Chemicals"), a two-Judge Bench of this Court (speaking through Sahai, J. who also wrote the concurring judgment along with Thommen, J.) observed that the expression per incuriam means per ignoratium. This principle is an exception to the rule of stare decisis. The "quotable in law" is avoided and ignored if it is rendered, "in ignoratium of a statute or other binding authority". It would result in a judgment or order which is per incuriam. In Synthetics & Chemicals [State of U.P. v. Synthetics & Chemicals Ltd., (1991) 4 SCC 139] , the High Court relied upon the observations in para 86 of the judgment of the Constitution Bench in Synthetics & Chemicals Ltd. [Synthetics & Chemicals Ltd. v. State of U.P., (1990) 1 SCC 109] , namely, "sales tax cannot be charged on industrial alcohol in the present case, because under the Ethyl Alcohol (Price Control) Orders,

sales tax cannot be charged by the State on industrial alcohol" and struck down the levy.

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153. Thus, although it is the ratio decidendi which is a precedent and not the final order in the judgment, however, there are certain exceptions to the rule of precedents which are expressed by the doctrines of per incuriam and sub silentio. Incuria legally means carelessness and per incuriam may be equated with per ignoratium. If a judgment is rendered in ignoratium of a statute or a binding authority, it becomes a decision per incuriam. Thus, a decision rendered by ignorance of a previous binding decision of its own or of a court of coordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law is per incuriam. Such a per incuriam decision would not have a precedential value. If a decision has been rendered per incuriam, it cannot be said that it lays down good law, even if it has not been expressly overruled vide Mukesh K. Tripathi v. LIC [Mukesh K. Tripathi v. LIC, (2004) 8 SCC 387 : 2004 SCC (L&S) 1128] , para 23. Thus, a decision per incuriam is not binding.

154. Another exception to the rule of precedents is the rule of sub silentio. A decision is passed sub silentio when the particular point of law in a decision is not perceived by the court or not present to its mind or is not consciously determined by the court and it does not form part of the ratio decidendi it is not binding vide Arnit Das (1) v. State of Bihar [Arnit Das (1) v. State of Bihar, (2000) 5 SCC 488 : 2000 SCC (Cri) 962] ."

23. Now reverting to the issues/questions to be answered by this Court, which at the cost of repetition, are extracted hereinunder:-

(i) Whether in the facts of the case, including that the impugned order dated 09.02.2023 is based upon the testimony of injured witnesses namely Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2), interference is to be caused in the impugned order by this Court in exercise of inherent power on the ground that second application under Section 319 Cr.P.C. was preferred without seeking leave/liberty/permission from the Court to file the fresh application and therefore the same was not maintainable.

(ii) Whether the judgment passed by the coordinate Bench of this Court in the case of Baccha Lal @ Vijay Singh (supra) is a per incuriam judgment and being so is liable to be ignored.

24. In regard to issue/question No. 1, upon due consideration of the law propounded by the Hon'ble Apex Court in judgments, referred above, and also the facts of the case, I am of the view that that the impugned order dated 09.02.2023 is not liable to be interfered with in exercise of its inherent power under Section 482 Cr.P.C. (now repealed)/Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (in short "BNSS"). It is for the following reasons:-

(i) The impugned order dated 09.02.2023 has been passed by the trial court after taking note of the testimony of the injured witnesses namely Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2).

(ii) In regard to the testimonies of injured witnesses, the Hon'ble Apex Court

in a catena of judgments has observed that the testimony of injured witnesses has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(iii) At this stage, the trial court is not under obligation to appreciate the deposition/evidence of the prosecution witnesses on merits which is required to be done during trial.

(iv) With regard to the aforesaid, it would not be out of place to refer the following paragraphs of the judgment passed in the case of ***Manjeet Singh (supra***):-

"20. Now thereafter when in the examination-in-chief the appellant herein — victim — injured eyewitness has specifically named the private respondents herein with specific role attributed to them, the learned trial court as well as the High Court ought to have summoned the private respondents herein to face the trial. At this stage it is required to be noted that so far as the appellant herein is concerned he is an injured eyewitness. As observed by this Court in State of M.P. v. Mansingh [State of M.P. v. Mansingh, (2003) 10 SCC 414 : (2007) 2 SCC (Cri) 390] (para 9); Abdul Sayeed v. State of M.P. [Abdul Sayeed v. State of M.P., (2010) 10 SCC 259 : (2010) 3 SCC (Cri) 1262] ; State of U.P. v. Naresh [State of U.P. v. Naresh, (2011) 4 SCC 324 : (2011) 2 SCC (Cri) 216] , the evidence of an injured eyewitness has greater evidential value and unless compelling reasons exist, their statements are not to be discarded lightly. As observed hereinabove while exercising the powers under Section 319CrPC the court has not to wait till the cross-examination and on the basis of the examination-in-chief of a witness if a case is made out, a person can be summoned to face the trial under Section 319CrPC.

21. Now so far as the reasoning given by the High Court while dismissing the revision application and confirming the order passed by the learned trial court dismissing the application under Section 319CrPC is concerned, the High Court itself has observed that PW 1 Manjeet Singh is the injured witness and therefore his presence cannot be doubted as he has received firearm injuries along with the deceased. However, thereafter the High Court has observed that the statement of Manjeet Singh indicates over implication and that no injury has been attributed to either of the respondents except that they were armed with weapons and the injuries concerned are attributed only to Sartaj Singh, even for the sake of arguments if someone was present with Sartaj Singh it cannot be said that they had any common intention or there was meeting of mind or knew that Sartaj would be firing. The aforesaid reasonings are not sustainable at all.

22. At the stage of exercising the powers under Section 319CrPC, the court is not required to appreciate and/or enter on the merits of the allegations of the case. The High Court has lost sight of the fact that the allegations against all the accused persons right from the very beginning were for the offences under Sections 302, 307, 341, 148 & 149IPC. The High Court has failed to appreciate the fact that for attracting the offence under Section 149IPC only forming part of unlawful assembly is sufficient and the individual role and/or overt act is immaterial. Therefore, the reasoning given by the High Court that no injury has been attributed to

either of the respondents except that they were armed with weapons and therefore, they cannot be added as accused is unsustainable. The learned trial court and the High Court have failed to exercise the jurisdiction and/or powers while exercising the powers under Section 319CrPC.

23. Now so far as the submission on behalf of the private respondents that though a common judgment and order was passed by the High Court in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] at that stage the appellant herein did not prefer appeal against the impugned judgment and order passed by the High Court in Manjeet Singh v. State of Haryana [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] and therefore this Court may not exercise the powers under Article 136 of the Constitution is concerned the aforesaid has no substance. Once it is found that the learned trial court as well as the High Court ought to have summoned the private respondents herein as additional accused, belated filing of the appeal or not filing the appeal at a relevant time when this Court considered the very judgment and order in Satkar Singh v. State of Haryana [CRR No. 3238 of 2018 reported as Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 sub nom Satkar Singh v. State of Haryana] cannot be a ground not to direct to summon the private respondents herein when this Court has found that a prima facie case is made out against the private respondents herein and they are to be summoned to face the trial.

24. Now so far as the submission on behalf of the private respondents that though in the charge-sheet the private respondents herein were put in Column 2 at that stage the complainant side did not file any protest application is concerned, the same has been specifically dealt with by this Court in Rajesh [Rajesh v. State of Haryana, (2019) 6 SCC 368 : (2019) 2 SCC (Cri) 801] . This Court in the aforesaid decision has specifically observed that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well as who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the court is still not powerless by virtue of Section 319CrPC.

25. Similarly, the submission on behalf of the private respondents herein that after the impugned judgment and order passed by the High Court there is much progress in the trial and therefore at this stage power under Section 319CrPC may not be exercised is concerned, the aforesaid has no substance and cannot be accepted. As per the settled proposition of law and as observed by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , the powers under Section 319CrPC can be exercised at any stage before the final conclusion of the trial. Even otherwise it is required to be noted that at the time when the application under Section 319CrPC was given only one witness was examined and examination-in-chief of PW 1 was recorded and while the cross-examination of PW 1 was going on, application under Section 319CrPC was given which came to be rejected by the learned trial court. The order passed by the learned trial court is held to be unsustainable. If the learned trial court would have summoned the

private respondents herein at that stage such a situation would not have arisen. Be that as it may, as observed herein powers under Section 319CrPC can be exercised at any stage from commencing of the trial and recording of evidence/deposition and before the conclusion of the trial at any stage.

26. In view of the above and for the reasons stated above, the impugned judgment and order [Manjeet Singh v. State of Haryana, 2020 SCC OnLine P&H 2782 [Ed. : This also disposed of CRR No. 3238 of 2018 by a common judgment and order]] passed by the High Court and that of the learned trial court dismissing the application under Section 319CrPC submitted on behalf of the complainant to summon the private respondents herein as additional accused are unsustainable and deserve to be quashed and set aside and are accordingly quashed and set aside. Consequently the application submitted on behalf of the complainant to summon the private respondents herein is hereby allowed and the learned trial court is directed to summon the private respondents herein to face the trial arising out of FIR No. 477 dated 27-7-2016 in Sessions Case No. 362 of 2016 for the offences punishable under Sections 302, 307, 341, 148 & 149IPC.""

(v) If this Court interferes in the impugned order dated 09.02.2023 on the ground that second application under Section 319 Cr.P.C. was not maintainable then in that eventuality a person/accused (applicant) would go scot-free without facing trial and the same would be against the 'public policy', as has been observed in paragraph 21 of this judgment.

(vi) The first application under Section 319 Cr.P.C. was not withdrawn to avoid the court but for the bonafide reason. It is in view of the fact that the first Application No. 30-Kha under Section 319 Cr.P.C. was dismissed as withdrawn on 03.10.2022 for the reason that after filing of this application under Section 319 Cr.P.C., the defence informed that Pushpa Singh (name indicated in the said application) has already been expired and thereafter on 08.12.2022, the second application i.e. Application No. 37-Kha was preferred under Section 319 Cr.P.C.

25. In regard to issue/question No. (ii), upon due consideration of the aforesaid, I am of the view that the judgment/decision of coordinate Bench of this Court in the case of ***Baccha Lal @ Vijay Singh (Supra)*** is a 'per incuriam' judgment and being so the same is liable to be ignored. I hold accordingly. It is for the following reasons:-

(i) The judgment/decision in the case of ***Baccha Lal @ Vijay Singh (Supra)*** is not in consonance with the view of the Hon'ble Apex Court expressed in the pronouncements/judgments referred in paragraph 19 of this judgment, in which, the Hon'ble Apex Court has explained the object of Section 319 Cr.P.C. and how power under Section 319 Cr.P.C. would be exercised. According to which, in nutshell, it is the duty of the Court to do justice by punishing the real culprit and a suspect or known accused should not go scot-free without facing trial.

(ii) While passing the judgment in the case of ***Baccha Lal @ Vijay Singh (Supra)***, coordinate Bench of this Court has not considered the judgment passed by the Hon'ble Apex Court in the case of ***Sarva Shramik Sanghatana (supra),*** wherein, it has been observed that "Disposal of cases by blindly placing reliance on a decision is

not proper and also that "In our opinion, the decision of this Court in Sarguja Transport case [(1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] cannot be treated as a Euclid's formula" and also the case of ***Himachal Pradesh Financial Corporation (supra),*** wherein, the Hon'ble Apex Court observed as under:-

"13. The question whether there has been an abandonment of the claim by withdrawal of the suit is a mixed question of law and fact as held in Ramesh Chandra Sankla v. Vikram Cement [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] . The language of the order for withdrawal will not always be determinative. The background facts will necessarily have to be examined for a proper and just decision. Sarguja Transport Service [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] cannot be applied as an abstract proposition or the ratio applied sans the facts of a case. The extract below is considered relevant observing as follows: (Vikram Cement case [Ramesh Chandra Sankla v. Vikram Cement, (2008) 14 SCC 58 : (2009) 1 SCC (L&S) 706] , SCC pp. 79-80, para 62)

"62. ... '9. ... While the withdrawal of a writ petition filed in a High Court without permission to file a fresh writ petition may not bar other remedies like a suit....' (Sarguja Transport Service case [Sarguja Transport Service v. STAT, (1987) 1 SCC 5 : 1987 SCC (Cri) 19 : AIR 1987 SC 88] , SCC p. 12, para 9)"

(emphasis in original)"

(iii) Expression 'public policy' in the context of criminal cases/proceedings, after taking note of the judgment passed in the case ***of P. Rathinam (supra) and Himachal Pradesh Financial Corporation (supra)*** as also the legal maxim(s), referred in paragraph 21 of this judgment, has not been considered by the coordinate Bench of this Court while passing the judgment in the case of ***Baccha Lal @ Vijay Singh (Supra).***

(iv) The coordinate Bench of this Court in the case of ***Baccha Lal @ Vijay Singh (Supra)*** has not advert to the facts of the case which were required for coming to the conclusion on the issue as to whether the first application under Section 319 Cr.P.C. was withdrawn for the bonafide reasons or to avoid the concerned court.

26. In the instant case, the impugned order dated 09.02.2023 passed by the trial court is based upon the testimony of injured witnesses namely Rajaram (PW-1) and Mahendra Pratap Singh/complainant (PW-2), who levelled specific allegations against the applicant, against whom, the allegations were levelled in the NCR also, and therefore, this Court is of the view that the trial court has not committed any irregularity and illegality in passing the impugned order dated 09.02.2023 and summoning the present applicant to face the trial.

27. For the reasons aforesaid, this Court finds no force in the instant application. It is accordingly ***dismissed***. No order as to costs.

28. The Court records the valuable assistance given by Ms. Urmish Shankar, Research Associate, attached with me.
