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**SESSION - II**

**SECTIONS 311, 313 AND 319 CrPC  
INTRICACIES AND CASE LAW**

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## SECTIONS 311, 313 AND 319 CrPC – INTRICACIES AND CASE LAW

### SECTION 311 CrPC

In all proceedings before the Court, the best available evidence should be produced before it. Section 311 Code of Criminal Procedure ('CrPC' for brevity) is intended to support the criminal Court with the widespread power for the purpose of getting at the truth. It reads as follows:

**“311. Power to summon material witness, or examine person present:** Any Court may, at any stage of inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall or re-examine any person already examined, and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential for the just decision of the case.”

Section 348 Bharatiya Nagarik Suraksha Sanhita, 2023 is analogous to section 311 CrPC.

The power conferred on a Court under section 311 CrPC ensures that failure of justice is not occasioned on account of mistake of either party in bringing valuable evidence on record.

This section was analysed in great detail by the Hon'ble Supreme Court of India in *Iddar and others vs. Aabida and another*<sup>1</sup>, wherein it was held that the use of the word “may” first part of the section gives a discretionary power to the Court to summon any person as a witness or examine any person present in the Court as a witness or recall and re-examine any person as a witness. It was further held that the use of the “shall” in the second part of the section mandates the Court to take any of the above mentioned steps if it is essential to the just decision of the case.

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1 AIR 1968 SC 178

### **Nature of section 311 CrPC**

This section is phrased in widest possible terms to ensure that the Court has all the necessary evidence before it to arrive at a just decision of the case.

In *Rajaram Prasad Yadav vs. State of Bihar*<sup>2</sup>, the Hon'ble Supreme Court of India on interpretation of section 311 CrPC was pleased to hold that

“14. A conspicuous reading of section 311 CrPC would show that widest of the powers have been invested with the courts when it comes to the question of summoning a witness or to recall or re-examine any witness already examined. A reading of the provision shows that the expression “any” has been used as a prefix to ‘court’, “inquiry”, “trial”, “other proceeding”, “person as a witness”, “person in attendance though not summoned as a witness”, and “person already examined”. By using the said expression “any” as a prefix to the various expressions mentioned above, it is ultimately stated that all that was required to be satisfied by the court was only in relation to such evidence that appears to the court to be essential for the just decision of the case.”

Section 311 Cr.P.C. empowers the Court to not only recall and re-examine any person already examined as a witness but also examine any person who has not been examined earlier to enable to render a just decision. This section confers wide powers on the Court to examine any person present in the Court though he is not summoned as a witness.

The Court can exercise this power at any stage of the proceedings, not necessarily only during the course of trial. The power can be exercised suo motu or on an application moved by either party.

### **Object of section 311 CrPC**

The underlying objective of section 311 CrPC is to ensure that failure of justice is not occasioned on account of mistake of either party in bringing valuable evidence on record. The only criterion in whether such evidence is

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2 (2013) 14 SCC 461



essential to the just decision of the case. The question whether a witness is material or not depends on the facts and circumstances of each case.

This section ensures that the Court has all the relevant facts before it in order to determine the truth and arrive a just decision of the case. However the power must be exercised judicially and not capriciously or arbitrarily.

The object of the section was explained by the Hon'ble Supreme Court of India in ***JamatrajKewalji Govani vs. State of Maharashtra***<sup>3</sup>. While dealing with section 540 of the Code of Criminal Procedure, 1898 which is analogous to section 311 Code of Criminal Procedure, 1973 and section 468 of BharatiyaNagarik Suraksha Sanhita, 2023, the Hon'ble Supreme Court was pleased to hold that the object is to bring on record evidence not only from the point of view of the accused and the prosecution bu also from the point of view of the orderly society. It was held that a witness who has been summoned by the Court cannot be termed as a witness of any particular party and the court should give the right of cross – examination to the complainant. It was held that this section together with section 165 of the Evidence Act confer jurisdiction on the Judge to act in the aid of justice.

In ***Vijay Kumar vs. State of Uttar Pradesh***<sup>4</sup>,the Hon'ble Supreme Court of India, explained the scope and ambit of section 311 CrPC, and was pleased to hold that

“17.Though Section 311 confers vast discretion upon the court and is expressed in the widest possible terms, the discretionary power under the said section can be invoked only for the ends of justice. Discretionary power should be exercised consistently with the provisions of CrPC and the principles of criminal law. The discretionary power conferred under Section 311 has to be exercised judicially for reasons stated by the court and not arbitrarily or capriciously.”

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3 AIR 1968 SC 178

4 (2011) 8 SCC 136

This power should be exercised keeping in view the avowed objective of fair trial which protects the interests of the accused, the victim and the society at large.

The purpose behind the section is that the true case should not go unpunished for want of material evidence and innocent person should also not be punished for their failing to bring relevant and material evidence on record at an earlier stage of the proceedings.

### **Scope and ambit of power under section 311 CrPC**

Section 311 CrPC is an enabling provision and in certain circumstances, imposes a duty on the Court to examine a material witness who was not produced before it.

The scope and ambit of the powers conferred upon a Court under section 311 CrPC has been exhaustively discussed by the Hon'ble Supreme Court of India in ***Rajaram Prasad Yadav vs. State of Bihar***<sup>5</sup>, wherein it has been held that the powers under section 311 of the Code to summon any person as a witness or examine any in attendance, though not summoned as a witness, or recall and re-examine any person already examined, can be exercised at any stage provided that the same is required for the just decision of the case. It was held that the it is imperative that the invocation of section 311 CrPC and its application in a particular case can be ordered by the Court, only by bearing in mind the object and purport of the said provision, namely, for achieving a just decision of the case.

In the above case, after referring to its various judicial pronouncements, the Hon'ble Supreme Court of India was pleased to lay down the following principles that will have to be borne in mind by the Courts while considering applications filed under section 311 CrPC.

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5 (2013) 14 SCC 461

“23. a) Whether the Court is right in thinking that the new evidence is needed by it? Whether the evidence sought to be led in under section 311 is noted by the Court for a just decision of a case?

b) The exercise of the widest discretionary power under section 311 Cr.P.C. should ensure that the judgment should not be rendered on inchoate, inconclusive speculative presentation of facts, as thereby the ends of justice would be defeated.

c) If evidence of any witness appears to the Court to be essential to the just decision of the case, it is the power of the Court to summon and examine or recall and re-examine any such person.

d) The exercise of power under section 311 Cr.P.C. should be resorted to only with the object of finding out the truth or obtaining proper proof for such facts, which will lead to a just and correct decision of the case.

e) The exercise of the said power cannot be dubbed as filling in a lacuna in a prosecution case, unless the facts and circumstances of the case make it apparent that the exercise of power by the Court would result in causing serious prejudice to the accused, resulting in miscarriage of justice.

f) The wide discretionary power should be exercised judiciously and not arbitrarily.

g) The Court must satisfy itself that it was in every respect essential to examine such a witness or to recall him for further examination in order to arrive at a just decision of the case.

h) The object of section 311 Cr.P.C. simultaneously imposes a duty on the Court to determine the truth and to render a just decision.

i) The Court arrives at the conclusion that additional evidence is necessary, not because it would be impossible to pronounce the judgment without it, but because there would be a failure of justice without such evidence being considered.

j) Exigency of the situation, fair play and good sense should be the safe guard, while exercising the discretion. The Court should bear in mind that no party in a trial can be foreclosed from correcting errors and that if proper evidence was not adduced or a relevant material was not brought

on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified.

k) The Court should be conscious of the position that after all the trial is basically for the prisoners and the Court should afford an opportunity to them in the fairest manner possible. In that parity of reasoning, it would be safe to err in favour of the accused getting an opportunity rather than protecting the prosecution against possible prejudice at the cost of the accused. The Court should bear in mind that improper or capricious exercise of such a discretionary power, may lead to undesirable results.

l) The additional evidence must not be received as a disguise or to change the nature of the case against any of the party.

m) The power must be exercised keeping in mind that the evidence that is likely to be tendered, would be germane to the issue involved and also ensure that an opportunity of rebuttal is given to the other party.

n) The power under section 311 Cr.P.C. must therefore, be invoked by the Court only in order to meet the ends of justice for strong and valid reasons and the same must be exercised with care, caution and circumspection. The Court should bear in mind that fair trial entails the interest of the accused, the victim and the society and, therefore, the grant of fair and proper opportunities to the persons concerned, must be ensured being a constitutional goal, as well as a human right.”

### **How to exercise power under section 311 Cr.P.C.**

The Court is competent to exercise such power even suo motu if no application has been filed by the either of the parties. However, the court must satisfy itself, that it was in fact essential to examine such a witness, or to recall him for further examination in order to arrive at a just decision of the case. However, the discretion conferred is to be exercised judiciously, as the wider the power, the greater is the necessity for application of judicial mind.

A criminal Court is well within its judicial discretion to summon any person as a witness at any stage of proceedings/trial till it is seized of the matter. The power of the Court under section 311 Cr.P.C. is not unqualified, unbridled and unfettered power. The section itself provides that the power to

examine or recall and re-examine any such person can be exercised only if his evidence appears to the Court to be essential to the just decision of the case.

An application under section 311 Cr.P.C. must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party.

In ***State (NCT of Delhi) vs. Shiv Kumar Yadav and another***<sup>6</sup>, the Hon'ble Supreme Court of India was pleased to hold that mere observation that recall was necessary "for ensuring fair trial" is not enough unless there are tangible reasons to show how the fair trial suffered without recall.

In ***UT of Dadra and Nagar Haveli vs. Fatehsinh Monansinh Chauhan***<sup>7</sup>, the Hon'ble Supreme Court of India was pleased to hold that evidence should not be received as a disguise for retrial or to change the nature of the case against either of the parties and the discretion of the Court must obviously be dictated by the exigency of the situation and fair play and good sense appear to be the safe guides and that only the requirement of justice command the examination of any person which would depend on the facts and circumstances of each case.

In ***Sidhartha Vashist @Manu Sharma vs. State NCT of Delhi***<sup>8</sup>, the Hon'ble Supreme Court of India considered the scope of power under section 311 CrPC and the limitations on exercise of such power. It was held that

"Section 311 of the Code does not confer any party any right to examine, cross-examine and re-examine any witness. This is a power given to the Court not to be merely exercised at the bidding of any one party/person but the powers conferred and discretion vested are to

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6 (2016) 2 SCC 402

7 (2006) 7 SCC 529

8 (2010) 6 SCC 1

prevent any irretrievable or immeasurable damage to the cause of society, public interest and miscarriage of justice. Recourse may be had by Courts to power under this section only for the purpose of discovering relevant facts or obtaining proper proof of such facts as are necessary to arrive at a just decision in the case.

The Hon'ble High Court of Andhra Pradesh in ***Kunchala Subrahmanyam vs. State***<sup>9</sup>, sounded a note of caution against misuse of the discretionary power of recalling the witness. It was held that though the powers of Court under section 311 CrPC are wide, it does not mean that the accused can take advantage of his own default and contend that whatever may be circumstances, the discretionary power of recalling the witnesses has to be exercised in his favour. The liberty of exercise of power in recalling the witnesses cannot be stretched too far and the same should be within the permissible limits only.

### **Duty of Court**

The Hon'ble High Court of Andhra Pradesh in ***Seva Swarna Kumari @ Kumaramma and others vs. State of Andhra Pradesh***<sup>10</sup>, was pleased to hold that while dealing with applications under section 311 CrPC, the Court is required to exercise its discretion judiciously and not capriciously or arbitrarily. The learned trial Court that dismissed an application on behalf of the accused for recall of witnesses on the ground that the evidence of the particular witness has very limited evidentiary value. While setting aside the order of the learned trial Court, the Hon'ble High Court was pleased to hold that such a view with pre-conceived notion amounts to arbitrary exercise of power and denial of opportunity to the petitioners to establish their case.

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9 (2003) 1 ALT (Cri) 115

10 2022 LiveLaw (AP) 113

In ***Udaya Gowri vs. A.P. Rao and another***<sup>11</sup>, the Hon'ble High Court of Anhra Pradesh disapproved passing cryptic orders in recall applications. It was held that

“2. It is elementary that for ordering recall of a witness for further cross – examination, the trial Judge shall be satisfied that, for a just decision of the case and a perusal of the evidence of that person that such recall or re-examination is essential. This we find is a jurisdictional pre-condition necessary for ordering recall of witnesses for further cross examination under section 311 CrPC. Learned trial Judge has not adverted to this essential requirement in passing the order impugned in these proceedings.”

### **Additional evidence under section 311 CrPC**

In ***Rajeswar Prasad Misra vs. State of West Bengal***<sup>12</sup>, the Hon'ble Supreme Court dealt with power of the Court with respect to taking additional evidence and observed that it may not be possible for the legislature to foresee all situations and possibilities and therefore, the Court must examine the facts and circumstances of each case before it. It was held that the Criminal Court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed and the jurisdiction of the Court must obviously be dictated by the exigency of the situation.

In ***T. Nagappa vs. Y. R. Muralidhar***<sup>13</sup>, the Hon'ble Supreme Court held that while considering an application under section 311 CrPC, the Court must not imagine or assume what the deposition of the witness would be, in the event that an application under section 311 CrPC is allowed and should not appreciate the anticipated evidence in its entirety.

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11 1991 (2) ALT 661

12 AIR 1965 SC 1887

13 (2008) 5 SCC 633

The Hon'ble Supreme Court of India in ***Natasha Singh vs C.B.I. (State)***<sup>14</sup>, was pleased to consider a case where the charge-sheet stated that insurance claim filed by the appellant was inflated and there was collusion of a public servant in this aspect, the appellant sought examination of three witnesses including the handwriting expert and the mediator to recovery of documents who was neither listed nor listed on behalf of the prosecution. The trial Court refused to examine the witnesses and prejudged the evidence sought to be examined by the appellant. The Hon'ble Supreme Court held that such an approach tantamounted to flagrant violation of the principles of law governing the production of such evidence keeping with the provisions of section 311 of Cr.P.C. because the examination of both the witnesses was essential and imperative for facilitating just decision of the case. It was held that an application filed under section 311 CrPC must be allowed if fresh evidence is being produced to facilitate a just decision.

**Recall of witness by prosecution after examination of accused under section 313 Cr.P.C.**

In ***Mir Mohd. Omar and others vs. State of West Bengal***<sup>15</sup>, the Hon'ble Supreme Court was pleased to consider a case wherein, after the statement of the accused has been recorded under section 313 CrPC had been recorded, the prosecution had filed an application to further examined a witness and the Hon'ble High Court allowed the same. The Hon'ble Supreme Court held that granting of liberty to the prosecution to recall a witness after the accused has been examined under section 313 CrPC may amount to filling up a lacuna existing in the case of the prosecution and therefore, such an order was uncalled for.

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14 (2013) 5 SCC 741

15 (1989) 4 SCC 436



### **Recalling of witness whose evidence was eschewed**

In *Jeslina Ghei vs. State of Andhra Pradesh*<sup>16</sup>, the Hon'ble High Court of Andhra Pradesh was pleased to deal with a case where PW2 was examined – in – chief but was later eschewed as she did not turn up for cross examination. The application filed by the prosecution under section 311 CrPC to recall her was allowed by the learned trial Court and was set aside by the learned revisional Court. The Hon'ble High Court of Andhra Pradesh while confirming the order of the trial Court and setting aside the order passed in revision was pleased to hold that no prohibition to examine a person by invoking section 311 CrPC, who was earlier examined by her evidence was eschewed, especially when the Court is of the opinion that the evidence of that witness is essential for the just decision of the case.

### **Summoning of expert as a witness**

In *Pinninti Satyanarayana vs. State of Andhra Pradesh*<sup>17</sup>, the Hon'ble High Court of Andhra Pradesh was pleased to hold that an expert can be summoned as a witness for the purpose of marking the expert opinion by invoking section 311 CrPC as it is not further investigation or further evidence but is part of the evidence that was investigated by the investigating officer.

### **Lacuna in prosecution case**

The Hon'ble Supreme Court of India in *UT of Dadra and Nagar Haveli vs. Fatehsinh Mohansinh Chauhan*<sup>18</sup>, was pleased to consider the aspect of defence counsel opposing the exercise of powers under section 311 CrPC or under section 165 of Evidence Act, 1872 saying that the Court could not fill the lacuna in the prosecution case. It was held that

“A lacuna in prosecution case is not to be equated with the fallout of an oversight committed by a Public Prosecutor during trial, either in

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16 (2008) 1 ALD (Cri) 227 (AP)

17 (2004) 1 ALD (Cri) 65

18 (2006) 7 SCC 529

producing relevant materials or eliciting relevant answers from witnesses. The adage “to err is human” is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as a lacuna which a Court cannot fill up.”

In ***Mina Lalita Baruwa vs. State of Orissa***<sup>19</sup>, the Hon’ble Supreme Court of India observed that it is the duty of the criminal Court to allow the prosecution to correct an error in the interest of justice.

Re – examining a witness already examined for the purpose of finding out the truth in order to enable the Court to arrive at a just decision of the case cannot be construed as filling up the lucana in prosecution case.

### **Delay cannot be a sole ground for rejection of application**

In ***State represented by the Deputy Superintendent of Police vs. Tr.N. Seenivasagan***<sup>20</sup>, the Hon’ble Supreme Court of India observed that delay alone should not be the sole ground for rejection of application under section 311 CrPC if the evidence is essential for just decision of the case.

### **Recall of witnesses after adding new accused under section 319 CrPC**

The Hon’ble High Court of Andhra Pradesh in ***Kantipudi Jayaseela vs. State, Inspector of Police, Vijayawada***<sup>21</sup>, was pleased to hold that after adding a new accused under section 319(1)(4)(a) of CrPC, it is not necessary for the Court to recall and examine all the witnesses mechanically but it is sufficient to examine only such witnesses who said something against the newly added accused.

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19 (2013) 16 SCC 173

20 AIR 2021 SC 2441

21 2000 (1) ALD (Cri) 384

### **Whether a given up witness can be recalled?**

The Hon'ble High Court of Madras in ***Crown Prosecutor vs. C. V. Ramanjula Naidu***<sup>22</sup>, was pleased to deal with a case wherein the prosecution had given up some of its witnesses and again intended to examine one of the given up witnesses. While setting aside the order of the learned Magistrate that dismissed the application of the prosecution in this regard, the Hon'ble High Court of Madras was pleased to hold that there is nothing to prevent the party from changing his mind and further held that it is a general rule of law and equity that the prosecution is at liberty to examine whomsoever it pleases until the prosecution evidence has been closed. It permitted the prosecution to examine the given witness also.

The Hon'ble High Court of Kerala in ***Syed Mohammed vs. K.C. Raman and others***<sup>23</sup>, referred to the above decision and held that by merely making an endorsement that a particular witness is given up, the prosecution is not estopped from examining the witnesses later before the prosecution closes its case. It was also held that the Court can also examine the witnesses as Court witnesses by exercising its power under section 540 of CrPC, 1898 which is analogous to section 311 of CrPC, 1973 and section 348 of BNSS.

### **Summoning a witness whose statement has not been recorded under section 161 CrPC**

The prosecution can examine any witness or documents, which were not listed in the list of documents or witnesses filed in the Court, if such additional evidence assists the Court in reaching a just decision.

In ***J.B.Roy vs. State of Andhra Pradesh***<sup>24</sup>, was pleased to hold that

“7. The list of witnesses usually is given by the police along with the charge-sheet because of the prevalent practice. The practice is

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22 AIR 1944 Mad 169

23 1964 (1) Cr L J 100

24 AIR 1968 AP 236

undoubtedly desirable but no provision of the Code compels the prosecution to furnish any such list along with the charge-sheet. Nor furnishing such a list of witnesses along with charge-sheet can mean that the prosecution has relinquished its right to call for any other witness whose name is not mentioned in the list. Nor binds the Court only to record only the statements of such persons whose names appear in the list. It does not disable the prosecution or the Court any other witness if is found desirable or necessary for the purposes of the case.”

In ***Pattivada Balaji vs. State of Andhra Pradesh***<sup>25</sup>, the Hon’ble High Court of Andhra Pradesh was pleased to hold that the object of every criminal investigation or trial is not only to administer and secure the ends of justice but also to find out the truth. By referring to section 254 CrPC that deals with procedure in summons cases when accused is not convicted either under section 252 or 253 CrPC, sections 231 CrPC and 242 CrPC that deal with evidence for prosecution respectively in sessions cases and in warrant cases, it was held that

“16. The list of witnesses/documents filed with the police report (charge sheet) filed by the police is only a practice. It does not prevent the prosecution or Magistrate/Court from examining any other documents if they help the Court to arrive at a just decision in the case.

### **Court witness**

If the Court wants to examine any person as a ‘court witness’, it should be done only after the prosecution witnesses are examined. Otherwise, the court witnesses were examined amidst the examination of prosecution witnesses, it would prejudice the prosecution as held by the Hon’ble High Court of Andhra Pradesh in ***N. Venkata Reddy vs. Sreehar Reddy***<sup>26</sup>.

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25 2023 SCC OnLine AP 2544

26 2000 (1) ALD (Cri) 82

In ***Zahira Habibullah Sheikh vs. State of Gujarat***<sup>27</sup>, it was held that if a witness called by the Court gives evidence against the complainant, he should be allowed an opportunity to cross – examine. This arises not under CrpC but under the Evidence Act.

**Application for recall of witness for further cross – examination when not to be allowed**

In ***State of Haryana vs. Ram Mehar and others***<sup>28</sup>, the Hon'ble Supreme Court was pleased to deal with a case where the statements of 148 accused persons was recorded under section 313 CrPC and the defence had examined 15 witnesses. The accused person sought for recall of the witnesses under section 311 read with section 231 (2) CrPC on the ground of illness of the counsel. It was held that recalling of witnesses as envisaged under the said statutory provision on the grounds that the accused are in custody, the prosecution was allowed to recall some of its witnesses earlier, the counsel was ill and magnanimity commands fairness should be shown, are not acceptable in the facts and circumstances of the case. It was held that the concept of fair trial cannot be limitlessly stretched.

In ***Saud Faisal vs. State of Uttar Pradesh***<sup>29</sup>, the Hon'ble Supreme Court of India dealt with a case in which PW1 gave a statement in his examination-in-chief stated that he had clearly identified the petitioner/accused Saud Faisal as one of the assailants who was carrying a rifle. Nothing to the contradictory could be elicited during his cross – examination.

Relating to the same incident, the petitioner/accused was also facing a case under the Gangsters Act. The same witness (PW1) was examined in that case wherein he gave a statement that although he could identify the two

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27 (2006) 3 SCC 354

28 (2016) 8 SCC 762

29 MANU/SC/0810/2022

other assailants i.e. Shere and Rashid, the third assailant, that is the petitioner/accused, could not be identified as he was wearing a cloth on his face. On the basis of this statement given by PW1 in the gangster's case an application was filed under section 311 CrPC in the other case to recall PW1.

The Hon'ble Supreme Court while upholding the order of the learned trial Court dismissing the application was pleased to hold that merely because a different statement given by the same prosecution witness in another case that itself would not be a reason for recalling the witness and that too, after a period of seven years. It was held that is not a case where a contradictory statement was given by some other witnesses in the present trial and dismissed the challenge to the order.

In ***Swapan Kumar Chatterjee vs. Central Bureau of Investigation***<sup>30</sup>, the Hon'ble Supreme Court of India held that the Courts should not encourage filing of successive applications for recall of witness under section 311 CrPC.

### **Whether revision lies against order passed under section 311 CrPC?**

In ***Sethuraman vs. Rajamanickam***<sup>31</sup>, the Hon'ble Supreme Court of India held that an order passed under section 311 CrPC to summon a witness is pure and simple interlocutory order and it does not decide anything finally and a revision under section 397(1) CrPC is clearly barred under section 397(2) CrPC.

### **Conclusion**

The power of the Court under section 311 CrPC can be exercised at any stage but before the pronouncement of the judgment. The object and scope of this provision is to enable the Court to render a just decision and such power such be exercised judiciously. However such evidence should not be received as a disguise for retrial, so as to change the nature of the case.

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30 (2019) 14 SCC 328

31 (2009) 5 SCC 153

## SECTION 313 CrPC

Audi alteram partem i.e., no accused or a person directly affected by a decision, shall be condemned unless given an opportunity to submit his case and rebut the opponent's case is one of the fundamental rules of natural justice. Section 313 CrPC is based on this principle. It reads as follows:

**“313. Power to examine accused:** (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court -

(a) may at any stage, without previously warning the accused put such questions to him as the Court considers necessary;

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case.

Provided that in a summons case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under section clause (b).

(2) No oath shall be administered to the accused when he is examined under sub – section (1).

(3) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.

(4) The answers given by the accused may be taken into consideration in such inquiry or trial and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(5) The Court may take the help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the Court may permit filing of written statement by the accused as sufficient compliance of this section.

Section 351 Bharatiya Nagarik Suraksha Sanhita, 2023 is analogous to section 313 CrPC.

The Hon'ble Supreme Court of India in ***Nar Singh vs. State of Haryana***<sup>32</sup>, was pleased to consider the kinds of examination available under section 313 CrPC. It was held that

“There are two kinds of examination under section 313 CrPC. The first under section 313(1)(a) CrPC relates to any stage of inquiry or trial; while the second under section 313(1)(b) CrPC takes place after the prosecution witnesses are examined and before the accused is called upon to enter his defence. The former is particular and optional; but the latter is general and mandatory.”

The Hon'ble Supreme Court of India in ***Usha K. Pillai vs. Raj K. Srinivas***<sup>33</sup>, was pleased to hold that the proviso which is applicable to summons cases, is an exception to clause (b) of sub – section (1) of section 313 CrPC. It states in no uncertain terms that in a summons case where the Court has dispensed with the personal attendance of the accused it would be open to the Court to dispense with the examination of the accused under clause (b) of section 313(1) CrPC.

### **Nature and scope of section 313 CrPC**

The purpose of section 313 CrPC is to establish a dialogue between the Court and the accused. It provides an opportunity to the accused to explain the facts and circumstances appearing against him in the evidence. It provides a procedural safeguard to him and provides a valuable opportunity to him to explain any point appearing against him in the prosecution evidence. This is an important facet of fair trial.

Explaining the importance of statement under section 313 CrPC, the Hon'ble Supreme Court of India in ***Paramjeet Singh @ Pamma vs. State of Uttarakhand***<sup>34</sup>, was pleased to hold that

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32 (2015) 1 SCC 496

33 (1993) 3 SCC 208

34 (2010) 10 SCC 436



“Section 313 CrPC is based on the fundamental principle of fairness. The attention of the accused must specifically be brought to inculpatory pieces of evidence to give him an opportunity to offer an explanation if he chooses to do so. Therefore, the Court is under a legal obligation to put incriminating circumstances before the accused and solicit his response. The provision is mandatory in nature and casts an imperative duty on the Court and confers a corresponding right on the accused to have an opportunity to offer an explanation for such incriminatory material appearing against him.”

The Hon’ble Supreme Court of India in ***Jai Dev vs. State of Punjab***<sup>35</sup>, considered the scope of section 342 of Code of Criminal Procedure, 1898 which corresponds to section 313 of Code of Criminal Procedure, 1973. It was held that the provision is mainly intended to benefit the accused and as its corollary to benefit the Court in reaching the final conclusion.

### **Object of section 313 CrPC**

The object of section 313(1)(b) CrPC is to bring the substance of the accusation to the accused to enable the accused to explain each and every circumstance appearing in the evidence against him. The provisions of this section are mandatory and the Court is duty bound to afford an opportunity to the accused to explain each and every circumstance and incriminating evidence against him. It should be borne in mind that examination of the accused under section 313(1)(b) CrPC is not a mere formality.

In ***Kalicharan vs. State of Uttar Pradesh***<sup>36</sup>, the Hon’ble Supreme Court of India emphasised that the requirement of section 313 CrPC is that the accused must be explained the circumstances appearing in the evidence against him so that the accused can offer an explanation. It was held that if the accused is not explained the important circumstances appearing against him in the evidence on which his conviction is sought to be based, the

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35 AIR 1963 SC 612

36 (2023) 2 SCC 583

accused will not be in a position to explain the said circumstances brought on record and will not be in a position to defend himself properly.

In ***Bommiseti Anjaneyulu vs. State of Andhra Pradesh***<sup>37</sup>, the Hon'ble High Court of Andhra Pradesh was pleased to hold that

“16. The very purpose of examining the accused under section 313 CrPC is to enable the accused to defend himself and explain in a proper manner the incriminating circumstances, which are spoken to by witnesses in their evidence. When once the incriminating evidence is not put to the accused at the time of 313 CrPC examination and the accused is not given an opportunity to explain the circumstances, it can safely be concluded that prejudice is caused to the accused.

### **Framing of questions and recording the statement**

Section 313 of the CrPC deals with the Courts power to frame questions against an accused and seek an explanation based on the evidence led against the accused during a criminal trial. The examination of accused under section 313 CrPC has got practical utility for the criminal Courts in affording opportunity to the accused to explain the incriminating circumstances. The questions should be framed in an easily understandable manner and they should not be lengthy and complicated. Several distinct matters of evidence should not be clubbed in a single question. Long questions comprising number of matters should not be put to the accused. The Court must ensure that the question is framed in such a manner that the accused would be able to understand easily and answer the same.

In ***Ajai Singh vs. State of Maharastra***<sup>38</sup>, the Hon'ble Supreme Court of India while interpreting the word “generally” in sub-section (1)(b) of section 313 CrPC was pleased to hold that the question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed.

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37 2002 LawSuit(AP) 50

38 (2007) 12 SCC 341

It was held that it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material substance which is intended to be used against him.

In ***Jai Prakash Tiwari vs. State of Madhya Pradesh***<sup>39</sup>, the Hon'ble Supreme Court of India was pleased to hold that a reasonable opportunity entails putting all the adverse evidences in the form of questions so as to give an opportunity to the accused to articulate his defence and give his explanation. It was held that if all the circumstances are bundled together and a single opportunity is provided to the accused to explain himself, he may not be able to put forth a rational and intelligible explanation. It held that such exercises defeat fair opportunity are mere empty formalities.

#### **Whether presence of accused is necessary for recording his statement under section 313 CrPC?**

The proviso to section 313(1) CrPC states that in a summons case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his attendance under section 313 CrPC.

In ***Bibhuti Bhusan Das Gupta vs. State of West Bengal***<sup>40</sup>, the Hon'ble Supreme Court of India held that the privilege and the duty of answering questions under section 342 of Code of Criminal Procedure, 1898 which corresponds to section 313 of Code of Criminal Procedure, 1973 cannot be delegated to a pleader. It was held that no doubt the form of summons shows the pleader may answer the charges against the accused, but in so answering the charges, he cannot do what only the accused can do personally.

In ***Basavaraj R. Patil vs. State of Karnataka***<sup>41</sup>, the Hon'ble Supreme Court of India was pleased to consider when a criminal Court completes

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39 2022 LiveLaw SC 658

40 AIR 1969 SC 381

41 (2000) 8 SCC 740

prosecution evidence (other than in summons cases) is it indispensably mandatory that the accused himself should be questioned? After considering the advancements in technology and communication and improved facilities for legal aid, the Hon'ble Supreme Court of India was pleased to hold that the word shall in clause (b) to section 313 (1) of the Code is to be interpreted as obligatory on the Court and it should be complied with when it is for the benefit of the accused.

It was further held that in appropriate cases e.g., if the accused satisfies the Court that he is unable to reach the Court, except by bearing huge expenditure or that he is unable to travel the long journey due to physical incapacity or some other hardship, compliance with the requirements of section 313 CrPC can be ensured if the accused, who is already exempted from personally appearing in the Court, makes an application to the Court to permit him to answer the questions without his physical presence in the Court on account of justifying exigency. It was held that such an application should be accompanied by affidavit sworn to by the accused himself containing a narration of the facts to satisfy the Court of his real difficulties to be physically present in Court for giving such answers, an assurance that no prejudice will be caused to him and an undertaking that he would not raise any grievance on that score at any stage of the Court. A questionnaire can be supplied to the advocate containing the questions which might be put to the accused under section 313 CrPC to be returned duly answered by the accused within a time fixed by the Court together with an affidavit that the questions were answered by the accused himself. It was held that failure of the accused to return the questionnaire duly answered within the time granted by the Court will result in the accused forfeiting his right to seek personal exemption in this regard.

However the procedure can only be resorted in exceptional cases and not as a matter of right. In ***K. Anbazhagan vs. Superintendent of Police***<sup>42</sup>, the accused who was the Chief Minister sought her personal appearance be dispensed with on the ground of her physical condition and requested the Court to send questionnaire to her to be answered. The Hon'ble Supreme Court distinguished this case from its earlier decision in ***Basavaraj R. Patil vs. State of Karnataka***<sup>43</sup> and held that it was a ploy adopted to circumvent the process of law and grant of exemption in the circumstances was not proper.

Section 313(5) CrPC permits the accused to file a written statement after obtaining permission of the Court and that would be sufficient compliance of the requirement contemplated under section 313(1)(b) CrPC. This power can only be used sparingly.

#### **Statement of accused recorded under section 313 CrPC is not evidence**

Section 313(2) CrPC states that no oath shall be administered to the accused when he is examined under section 313(1) CrPC. The Hon'ble Supreme Court of India in ***Dehal Singh vs. State of Himachal Pradesh***<sup>44</sup>, dealt with a case where the accused were convicted of offence punishable under section 20 of the Narcotic Drugs and Psychotropic Substances Act, 1985. One of the appellants before the Hon'ble Supreme Court contended that during the course his examination under section 313 CrPC he specifically stated that he had taken lift in the vehicle and was not aware of the fact that Chars was being transported in the vehicle and sought for acquittal. Rejecting such a plea, the Hon'ble Supreme Court of India was pleased to hold that since the statement of the accuses is recorded under section 313 CrPC

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42 (2004) 2 SCC 767

43 (2000) 8 SCC 740

44 (2010) 9 SCC 85

without administering oath, it cannot be treated as evidence under section 3 of the Evidence Act.

In ***Sumeti Vij vs. Paramount Tech Fab Industries***<sup>45</sup>, the Hon'ble Supreme Court of India was dealing with a case under where the appellant was convicted of the offence punishable under section 138 of the Negotiable Instruments Act. It held that the statement of the accused recorded under section 313 CrPC is not a substantive evidence of defence, but only an opportunity to the accused to explain the incriminating circumstances appearing in the prosecution case. It held that such a statement is not sufficient to rebut the presumption under section 139 of the Negotiable Instruments Act that the cheques were issued for consideration.

#### **Effect of giving false answers during section 313 CrPC examination**

In ***Sidhartha Vashisht @ Manu Sharma vs. State (NCT of Delhi)***<sup>46</sup>, it was held that while answer given by the accused to question put under section 313 CrPC are not per se evidence because, firstly it is not on oath and, secondly, the other party i.e., the prosecution does not get an opportunity to cross – examine the accused, it is nevertheless subject to consideration by the Court to the limited extent of drawing an adverse inference against such accused for any false answers voluntarily offered by him and to provide an additional/missing link in the chain of circumstances.

In ***Swapan Patra vs. State of West Bengal***<sup>47</sup>, the Hon'ble Supreme Court of India held that in a case of circumstantial evidence when the accused offers an explanation and that explanation is found to be untrue then the same offers an additional link in the chain of circumstances to complete the chain.

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45 AIR 2021 SC 1281

46 (2010) 6 SCC 1

47 (1999) 9 SCC 242

In ***Katikala Ratnam vs. State of Andhra Pradesh***<sup>48</sup>, the Hon'ble High Court of Andhra Pradesh was pleased to consider a case wherein the appellant took a different stand under his statement under section 313 CrPC from his earlier version. The Hon'ble High Court disbelieved the statement of the accused under section 313 CrPC that he was not present in the house and dismissed his appeal holding that the chain of circumstances point to the presence of the accused at the time of the offence.

### **Silence on the part of accused during section 313 CrPC examination**

A finding of guilt is not justified on mere refusal of the accused to answer any question put to him during examination under section 313 CrPC in relation to any evidence against him.

In ***Ram Naresh vs. State of Chattisgarh***<sup>49</sup>, the Hon'ble Supreme Court of India was pleased to hold that the accused has freedom to speak or maintain silence when his statement is recorded under section 313 CrPC. It was held that if the accused makes statement supporting prosecution, it can be used against him.

In ***Indrakunwar vs. State of Chattisgarh***<sup>50</sup>, the Hon'ble Supreme Court of India after considering several judgments rendered in respect of section 313 CrPC held that right to remain silent cannot be used against the accused. While acquitting the appellant accused of killing her own child, it deduce the principles regarding what may be required of the convict – appellant in a statement under section 313 CrPC. It was pleased to hold that

“34.1 The object, evident from the Section itself, is to enable the accused to themselves explain any circumstances appearing in the evidence against them.

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48 2008 (1) ALD (Crl) 578

49 AIR 2012 SC 1357

50 2023 INSC 934

34.2 The intent is to establish a dialogue between the Court and the accused. This process benefits the accused and aids the Court in arriving at the final verdict.

34.3 The process enshrined is not a matter of procedural formality but is based on the cardinal principle of natural justice, i.e., audi alterum partem.

34.4 The ultimate test when concerned with the compliance of the Section is to enquire and ensure whether the accused got the opportunity to say his piece.

34.5 In such a statement, the accused may or may not admit involvement or any incriminating circumstance or may even offer an alternative version of events or interpretation. The accused may not be put to prejudice by any omission or inadequate questioning.

34.6 The right to remain silent or any answer to a question which may be false shall not be used to his detriment, being the sole reason.

34.7 This statement cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence. It does not discharge but reduces the prosecution's burden of leading evidence to prove its case. They are to be used to examine the veracity of the prosecution's case.

34.8 This statement is to be read as a whole. One part cannot be read in isolation.

34.9 Such a statement, as not on oath, does not qualify as a piece of evidence under Section 3 of the Indian Evidence Act, 1872; however, the inculpatory aspect as may be borne from the statement may be used to lend credence to the case of the prosecution.

34.10 The circumstances not put to the accused while rendering his statement under the Section are to be excluded from consideration as no opportunity has been afforded to him to explain them.

34.11 The Court is obligated to put, in the form of questions, all incriminating circumstances to the accused so as to give him an opportunity to articulate his defence. The defence so articulated must be carefully scrutinized and considered.



34.12 Non-compliance with the Section may cause prejudice to the accused and may impede the process of arriving at a fair decision.

In ***Dugudu China Tirupathi vs. State of Andhra Pradesh***<sup>51</sup>, the Hon'ble High Court of Andhra Pradesh was pleased to hold that the accused can also keep silent during his examination under section 313 CrPC and it is not necessary that he has to give some explanation to every question put to him.

The Hon'ble Supreme Court of India in ***Vahitha vs. State of Tamil Nadu***<sup>52</sup>, by referring to ***Ram Naresh vs. State of Chattisgarh***<sup>53</sup>, observed that though the accused has a right to maintain silence during investigation as also before Court during examination under section 313 CrPC, it is permissible to draw an adverse inference in accordance with law as result of maintaining silence and not availing opportunity to explain circumstances appearing against him.

#### **Failure to draw attention of the accused to incriminating evidence if fatal**

Section 313 CrPC mandates that the attention of the accused must be specifically be brought to inculpatory evidence to provide him opportunity to offer explanation.

In ***Shivaji Sahabrao Bobade and another vs, State of Maharashtra***<sup>54</sup>, the Hon'ble Supreme Court of India considered the effect of failure to bring some of incriminating circumstances to the notice of the accused during examination under section 313 CrPC. It was pleased to hold that the omission to put every inculpatory material to the accused does not ipso facto vitiate the proceedings and the accused must establish that he has been prejudiced by such omission. It was held that in the event of evidentiary material not being put to the accused, the Court must eschew such material from consideration.

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51 Criminal Appeal No.417 of 2011 dt.08.12.2017

52 (2023) 11 SCC 338

53 AIR 2012 SC 1357

54 (1973) 2 SCC 793

It was further held that during the appellate stage the counsel for the accused should be called upon to show what explanation the accused has in this regard and if the accused is unable to offer any plausible or reasonable explanation, the Court may assume that the accused would not have furnished any good ground to get out of the conviction. It was further held the Court should proceed on the forming that despite the grave irregularity, the omission has not been shown to have prejudiced the accused.

In ***Alister Anthony vs. State of Maharashtra***<sup>55</sup>, while considering whether failure to draw attention of the accused to incriminating evidence is per se fatal, the Hon'ble Supreme Court of India held that failure in not drawing the attention of the accused to the incriminating evidence and inculpatory materials brought in the prosecution specifically, distinctly and separately may not by itself render the trial against the accused void and bad in law; firstly, if having regard to all the questions put to him, he was afforded an opportunity to explain what he wanted to say in respect of the prosecution case against him and secondly, such omission has not caused prejudice to him resulting in failure of justice. The burden is on the accused to establish that a prejudice has been caused resulting in miscarriage of justice by apprising him of the incriminating evidence and the inculpatory materials that had come in the prosecution evidence against him.

In ***Sunil and others vs. State of NCT of Delhi***<sup>56</sup>, the Hon'ble Supreme Court of India held that where there has been a failure in putting the incriminating circumstances to the accused, the same would not ipso facto vitiate the trial unless it is shown that the non – compliance has prejudiced the accused.

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55 (2012) 2 SCC 648

56 2023 INSC 840

The Hon'ble High Court of Andhra Pradesh in ***State of Andhra Pradesh vs. Madala Venkata Narasimha Rao***<sup>57</sup>, was pleased to hold that though the statement that is to be recorded from an accused under section 313 CrPC or the absence thereof, cannot constitute by itself the basis for conviction, where the presence of the accused with the deceased, or at the scene of occurrence, is natural or proved, it can constitute one of the important circumstances.

In ***Thota Panduranga Rao vs. State of Andhra Pradesh***<sup>58</sup>, the appellant was convicted of offence punishable under 354, 451 and 302 Indian Penal Code on the basis of two dying declarations that were not put to him during his examination under section 313 CrPC. The Hon'ble High Court of Andhra Pradesh was pleased to incriminating evidence not put to the accused while he was examined under section 313 CrPC has to be eschewed and conviction based on such incriminating evidence has to be invalidated.

Thus defective examination of the accused under section 313 CrPC does not by itself vitiate the trial. The accused should prove that he has been seriously prejudiced on account of such defective examination under section 313 CrPC.

### **Circumstances not appearing in the evidence cannot be put to accused under section 313 CrPC**

In ***Kalpanath Rai vs. State through CBI***<sup>59</sup>, the Hon'ble Supreme Court held that no trial Court should corner the accused with any paper or document outside the evidence. It was held that circumstances not appearing in evidence cannot be put to accused.

### **Case of accused under section 313 CrPC not suggested to victim in cross examination**

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57 2008 SCC OnLine 846 AP

58 1998 (2) ALT (Cri) 57

59 (1997) 8 SCC 732

The Hon'ble Supreme Court of India in ***Vijay Kumar vs. State of Himachal Pradesh***<sup>60</sup>, dealt with a case in which the accused during the course of his examination under section 313 CrPC stated that he has been in a relationship with the victim for one year and that it was consensual. Holding that the such fact was not suggested to the victim by the accused during her cross – examination, the Hon'ble Supreme Court refused to set aside the conviction of accused on the ground that the victim could not rebut such statement of accused.

### **Statement admitting guilt not a sole ground for conviction**

In ***State of Maharashtra vs. Sukhdev Singh***<sup>61</sup>, the Hon'ble Supreme Court of India held that the answers given by the accused accepting his guilt under section 313 CrPC examination can be used for proving his guilt as much as the evidence given by the prosecution witnesses.

In ***Ashok Debbarma @ Achak Debbarma vs. State of Tripura***<sup>62</sup>, the Hon'ble Supreme Court of India was pleased to hold that the statement made in defence by accused under section 313 CrPC can certainly be taken in aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under section 313 CrPC cannot be made the sole basis of his conviction. It was held that the statement of the accused under section 313 CrPC for the admission of his guilt or confession as such cannot be made the sole basis for finding the accused guilty, the reason being he is not making the statement on oath, but at the same time the confession or admission of guilt can be taken as a piece of evidence since the same lends credence to the evidence led by the prosecution.

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60 2024 LiveLaw (SC) 403

61 (1992) 3 SCC 700

62 (2014) 4 SCC 747

In ***Darshan Singh vs. State of Punjab***<sup>63</sup>, the Hon'ble Supreme Court of India considered the consequences when a particular defence plea was not taken by the accused under section 313 CrPC. It held that mere omission to take a specific plea when examined under section 313 CrPC is not enough to denude him of his right if the same can be made out otherwise.

#### **Examination of different accused on different dates**

In ***Kishore Bhadke vs. State of Maharashtra***<sup>64</sup>, the Hon'ble Supreme Court of India was pleased to deal with a case in which separate statement of each accused under section 313 CrPC was recorded on different dates. It was held that this is substantial compliance of section 313 CrPC and the trial will not be vitiated.

#### **Effect of non – consideration of defence case**

The Hon'ble Supreme Court of India in ***Reena Hazarika vs. State of Assam***<sup>65</sup> held that if the accused takes a defence after the prosecution evidence is closed, under section 313(1)(b) CrPC the Court is duty bound under section 313(4) CrPC to consider the same. It was further held that a solemn duty is cast on the Court in dispensation of justice to adequately consider the defence of the accused taken under section 313 CrPC and to either accept or reject the same for reasons specified in writing and that unlike the prosecution, the accused is not required to establish the defence beyond all reasonable doubt and he has only to raise doubts on a preponderance of probability.

#### **Duty of appellate Court when plea of non – compliance of section 313 CrPC is raised**

While holding that the victim of the offence or the accused should not suffer for laches or omission of the Court, the Hon'ble Supreme Court of India

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63 2024 INSC 19

64 (2017) 3 SCC 760

65 (2019) 3 SCC 289

in ***Nar Singh vs. State of Haryana***<sup>66</sup>, issued guidelines for appellate Courts for dealing with plea non – compliance of section 313 CrPC. After considering several judgments in this regard it was held that

“30. Whenever a plea of omission to put a question to the accused on vital piece of evidence is realised in the appellate Court, courses available to the appellate Court can be briefly summarised as under:-

(i) Whenever a plea of non – compliance of section 313 CrPC is raised, it is within the powers of the appellate Court to examine and further examine the convict or the counsel appearing for the accused and the said answers shall be taken into consideration for deciding the matter. If the accused is unable to offer the appellate Court any reasonable explanation of such circumstance, the Court may assume that the accused has no acceptable explanation to offer;

(ii) In the facts and circumstances of the case, if the appellate Court comes to the conclusion that no prejudice was caused or no failure of justice was occasioned, the appellate Court will hear and decide the matter upon merits;

(iii) If the appellate Court is of the opinion that non – compliance with the provisions of section 313 CrPC has occasioned or is likely to have occasioned prejudice to the accuse, the appellate Court may direct retrial from the stage of recording statements of the accused from the point where the irregularity occurred, that is, from the stage of questioning the accused under section 313 CrPC and the trial Judge may be directed to examine the witnesses afresh and defence witness if any and dispose of the matter afresh;

(iv) The appellate Court may decline to remit the matter to the trial Court for retrial on account of long time already spent in the trial of the case and the period of sentence already undergone by the convict and in the facts and circumstances of the case, may decide the appeal on its own merits, keeping in view the prejudice caused to the accused.”

**Conclusion**

It is essential for the court to conduct this examination thoroughly to uphold the principles of fairness and justice in the trial process. It should bring all the incriminating materials to the specific attention of accused and provide him reasonable opportunity of explaining them. The questions should be framed with accuracy and precision.

## SECTION 319 CrPC

Section 319 CrPC empowers the Court to proceed against a person who is not arrayed as accused before it. It reads as follows:

**“319. Power to proceed against other persons appearing to be guilty of offence.** - (1) Where, in the course of 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 an summons, may be detained by such Court for the purpose of 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 witnesses re – heard;

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

Section 358 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is analogous to section 319 CrPC.

This section allows the Court to proceed against such person who from the evidence during inquiry or trial appear to have committed the offence and such person is made an accused in the inquiry or trial already in progress. No separate proceedings need to be initiated against him, but proceedings shall be held afresh and witnesses re-examined.

Clause (b) of section 319(4) CrPC states that adding a new person as accused in the pending proceedings will not make any difference insofar as taking of cognizance is concerned,



The Hon'ble Supreme Court of India in **Joginder Singh vs. State of Punjab**<sup>67</sup> was pleased to consider the phrase "any person not being an accused" occurring in section 319 CrPC. It rejected the contention that the phrase excludes any person who has been released by the police under section 169 CrPC and has been shown in column No.2 of the charge-sheet. It was held that the expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like section 319(1) CrPC clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal Court, are included in the said expression.

The term "evidence" appearing in this section contemplates the evidence of witness given in the Court as held by the Hon'ble Supreme Court of India in **Y. Saraba Reddy vs. Puthur Rami Reddy**<sup>68</sup>.

The Hon'ble High Court of Andhra Pradesh in **R.C. Kumar vs. State of Andhra Pradesh**<sup>69</sup>, was pleased to hold that the crucial requirement contemplated by section 319 CrPC is that it should appear "from the evidence" that a person not being an accused has committed an offence. It held that the primary requirement for application of section 319 CrPC is availability of 'evidence' in contradistinction from the 'police report and documents enclosed thereto' as contemplated by section 173 CrPC. It held that:

"29. ....Further, the 'evidence' contemplated by section 319 is not the material envisaged by sections 173, 227, 228, 239 or 240 since in none of those sections the word 'evidence' is used. Had the Legislature intended the material covered by sections 173, 227, 228, 239 or 240 to be 'evidence' it would have repeated the terminology used in those provisions and would not have guardedly introduced the word 'evidence' in section 319 CrPC Therefore, 'evidence' as contemplated by section

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67 (1979) 1 SCC 345

68 (2007) 4 SCC 773

69 1991 Cri L J 887

319 CrPC cannot be understood to be the material covered by sections 173, 227, 228, 239 or 240 CrPC.”

In ***Municipal Corporation of Delhi vs. Ram Kishan Rastogi***<sup>70</sup>It was explained that the power under section 319 CrPC is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier.

In ***Lok Ram vs. Nihal Singh***<sup>71</sup>, it was held that power under section 319 CrPC can be exercised by the Court suo motu or on an application by someone including the accused already before it.

### **Nature of section 319 CrPC**

Section 319 CrPC is enacted to ensure that no guilty person is left unpunished. It must appear to the Court that some other person who is not facing trial, may also have been involved in the offence.

In ***Hardeep Singh vs. State of Punjab***<sup>72</sup>, the Hon’ble Supreme Court of India explained that the doctrine *damnatur cum nocensabsolvitur* (Judge is condemned when guilty is acquitted) serves as a beacon light in explaining the ambit and spirit underlying the enactment of section 319 CrPC. It was held that when the investigating agency for any reason does not array one of real culprits as an accused, the Court is not powerless in calling the said accused to face trial.

The Hon’ble Supreme Court of India in ***Kishun Singh vs. State of Bihar***<sup>73</sup> held that this section comes into play at the post – cognisance stage when it appears to the Court from the evidence recorded at the trial that any

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70 (1983) 1 SCC 1

71 (2006) 10 SCC 192

72 (2014) 3 SCC 92

73 (1993) 2 SCC 16

person other than those named as offenders appears to have committed any offence in relation to the incident for which the co – accused are on trial.

In ***Lal Suraj @ Suraj Singh vs. State of Jharkhand***<sup>74</sup>, it was held that the Court exercising its jurisdiction under section 319 CrPC should exercise the power on the basis of fresh evidence brought before it. It held that fine but clear distinction exists between framing a charge based on materials on record which are required to be proved by the prosecution and summoning additional accused based on evidence produced before the Court.

### **Scope and ambit of section 319 CrPC**

In order to invoke this section it is not sufficient that the Court entertained some doubt, from the evidence, about the involvement of another person in the offence. The Hon'ble Supreme Court of India in ***Michael Machado vs. Central Bureau of Investigation***<sup>75</sup>, observed that the discretion under section 319 CrPC has to be exercised very sparingly and the power has to be exercised only on the basis of the evidence. It was held that power under this section can be used only after the legal evidence comes on record and from the evidence it appears that the concerned person has committed an offence.

While explaining the scope of section 319 CrPC, the Hon'ble Supreme Court of India in ***Sarabjit Singh vs. State of Punjab***<sup>76</sup>, observed that the Courts are required to apply stringent test: one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

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74 (2009) 2 SCC 696

75 (2000) 3 SCC 262

76 (2009) 16 SCC 46

## Principles governing exercise of power under section 319 CrPC

The Hon'ble Supreme Court of India in *Hardeep Singh vs. State of Punjab*<sup>77</sup>, a Constitution Bench while considering the scope and extent of power of the Courts under the criminal justice system during the course of inquiry or trial as contemplated under section 319 CrPC, was pleased to lay down principles for criminal Courts to follow.

The Hon'ble Supreme Court of India framed questions in respect of applicability of section 319 CrPC. After discussing the scope of section 319 CrPC in detail and after considering the entire gamut of judicial pronouncements in respect of section 319 CrPC, it summarised the principles governing section 319 CrPC in the following manner

“110...

Questions No.1 & III

Q.1 What is the stage at which power under section 319 CrPC. can be exercised?

Q.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?

A. In *Dharam Pal and others vs. State of Haryana*<sup>78</sup>, 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 investigation. Such cognizance can be taken under section 193 CrPC and the Sessions Judge need not wait till 'evidence' under section 319 CrPC becomes available for summoning an additional accused.

Section 319 CrPC significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under sections 200, 201, 202 CrPC and under section

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77 (2014) 3 SCC 92

78 (2014) 3 SCC 306

398 CrPC are species of the inquiry contemplated by section 319 CrPC. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under section 319 CrPC, and also to add an accused whose name has been shown in Column 2 of the chargesheet.

In view of the above position the word 'evidence' in section 319 CrPC has to be broadly understood and not literally i.e. as evidence brought during a trial.

#### Question No. II

Q.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?

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

#### Question No. IV

Q.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?

A. Though under section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under section 319 CrPC would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused 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 No.V

Q.V Does the power under section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been charge sheeted or a person who has been discharged can be summoned under section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of sections 300 and 398 CrPC has to be complied with before he can be summoned afresh.

The Hon'ble Supreme Court of India in **Sarojben vs State of Gujarat**<sup>79</sup>, after considering various judicial pronouncements relating to section 319 CrPC was pleased to hold that

“16. The legal position that can be culled out from the material provisions of Section 319 of the Code and the decided cases of this Court is this :

(i) The Court can exercise the power conferred on it under Section 319 of the Code suo motu or on an application by someone.

(ii) The power conferred under Section 319(1) applies to all courts including the Sessions Court.

(iii) The phrase "any person not being the accused" occurring in Section 319 does not exclude from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the charge-sheet. In other words, the said expression covers any person who is not being tried already by the court and would include person or persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the court.

(iv) The power to proceed against any person, not being the accused before the court, must be exercised only where there appears during inquiry or trial sufficient evidence indicating his involvement in the

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79 (2011) 13 SCC 316

offence as an accused and not otherwise. The word 'evidence' in Section 319 contemplates the evidence of witnesses given in court in the inquiry or trial. The court cannot add persons as accused on the basis of materials available in the charge- sheet or the case diary but must be based on the evidence adduced before it. In other words, the court must be satisfied that a case for addition of persons as accused, not being the accused before it, has been made out on the additional evidence let in before it.

(v) The power conferred upon the court is although discretionary but is not to be exercised in a routine manner. In a sense, it is an extraordinary power which should be used very sparingly and only if evidence has come on record which sufficiently establishes that the other person has committed an offence. A mere doubt about involvement of the other person on the basis of the evidence let in before the court is not enough. The Court must also be satisfied that circumstances justify and warrant that other person be tried with the already arraigned accused.

(vi) The court while exercising its power under Section 319 of the Code must keep in view full conspectus of the case including the stage at which the trial has proceeded already and the quantum of evidence collected till then.

(vii) Regard must also be had by the court to the constraints imposed in Section 319 (4) that proceedings in respect of newly - added persons shall be commenced afresh from the beginning of the trial.

(viii) The court must, therefore, appropriately consider the above aspects and then exercise its judicial discretion.

### **Cross-examination cannot be ignored in deciding plea under section 319 CrPC**

The Hon'ble Supreme Court of India in *Hetram @ Babli vs. State of Rajasthan*<sup>80</sup>, held that while deciding an application under Section 319 of the CrPC to summon a person as an accused in a criminal case, the court must consider the cross-examination as well. It held that while deciding an application under section 319 of CrPC, the Court must consider the cross-

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80 2024 SCC OnLine SC 3509

examination as well. If an application under section 319 of CrPC is made after the cross-examination of witnesses, it will be unjust to ignore the same.

### **Stronger evidence to summon person as additional accused**

The Hon'ble Supreme Court of India in *Shankar vs. State of Uttar Pradesh*<sup>81</sup>, observed that the power under section 319 CrPC could only be invoked when the evidence to summon the accused is stronger and more reliable than mere probability of his involvement in the crime. It was held that

“16. The degree of satisfaction required to exercise power under Section 319 Cr.P.C. is well settled after the above-referred decision. The evidence before the trial court should be such that if it goes unrebutted, then it should result in the conviction of the person who is sought to be summoned. As is evident from the above referred decision, the degree of satisfaction that is required to exercise power under Section 319 Cr.P.C. is much stricter, considering that it is a discretionary and an extra-ordinary power. Only when the evidence is strong and reliable, can the power be exercised. It requires much stronger evidence than mere probability of his complicity.”

### **Person summoned under section 319 CrPC need not be heard before being added as accused**

In *Yasodhan Singh vs. State of Uttar Pradesh*<sup>82</sup>, the Hon'ble Supreme Court of India rejected the contention advanced on behalf of the appellant that a person who is added as an accused under section 319 CrPC be necessarily heard before being so added. It held that Section 319 CrPC clearly uses the expression “to proceed” which means to proceed with the trial and not to jeopardise the trial at the instance of the person(s) summoned by conducting a mini trial or a trial within a trial thereby derailing the main trial of the case and particularly against the accused who are already facing trial and who may be in custody. It held that

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81 2024 INSC 366

82 2023 INSC 652



“33. Thus, the lateral entry of a person summoned in exercise of power under Section 319 Cr.P.C. is only to face the trial along with other accused. This, being a salutary provision in order to meet the ends of justice, the same cannot be diluted by importing within the scope of Section 319 Cr.P.C. principles of natural justice which in any case would be followed during the trial. It is well settled that principles of natural justice cannot be applied in strait-jacket formula and they would depend upon the facts of each case and the object and purpose to be achieved under a provision of law.”

### **Public servant cannot be summoned as additional accused under section 319 CrPC without previous sanction**

The Hon'ble Supreme Court of India in *State of Punjab vs Partap Singh Verka*<sup>83</sup>, while reiterating that the court cannot take cognizance of an offence committed by a public servant under the Prevention of Corruption Act in the absence of prosecution sanction, held that accused cannot be summoned to face trial under section 319 CrPC without following the mandatory requirement of section 19 of the Prevention of Corruption Act. It observed:

““It is a well settled position of law that courts cannot take cognizance against any public servant for offences committed under Sections 7,11,13 & 15 of the P.C. Act, even on an application under section 319 of the CrPC, without first following the requirements of Section 19 of the P.C Act. Here, the correct procedure should have been for the prosecution to obtain sanction under Section 19 of the P.C Act from the appropriate Government, before formally moving an application before the Court under Section 319 of CrPC.”

### **Summoning of accused under section 319 CrPC who was discharged earlier**

In *Deepu @ Deepak vs. State of Madhya Pradesh*<sup>84</sup>, it was held that a person who has been discharged earlier can be summoned under section 319 CrPC.

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83 2024 INSC 483

84 (2019) 2 SCC 393

In *Manjeet Singh vs. State of Haryana*<sup>85</sup>, the Hon'ble Supreme Court of India held that even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial Court to summon the persons as well as those 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 FIR but not implicated in the charge-sheet can be summoned to face trial, provided during trial some evidence surfaces against the accused (may be in the form of examination-in-chief of the prosecution witness. It also held that Court is not required or justified to appreciate the evidence of the prosecution witnesses on merits and the stage of invoking power under section 319 CrPC.

**A person summoned under section 319 CrPC cannot be discharged under section 227 CrPC**

In *Jogendra Yadav vs. State of Bihar*<sup>86</sup>, the Hon'ble Supreme Court of India held that an order for addition of an accused made after considering the evidence cannot be undone by coming to the conclusion that there is no sufficient ground for proceeding against the accused without appreciation of evidence. It held

"12. ...The exercise of the power under Section 319 of the Cr.P.C., must be placed on a higher pedestal. Needless to say the accused summoned under Section 319 of the Cr.P.C., are entitled to invoke remedy under law against an illegal or improper exercise of the power under Section 319, but cannot have the effect of the order undone by seeking a discharge under Section 227 of the Cr.P.C. If allowed to, such an action of discharge would not be in accordance with the purpose of the Cr.P.C in enacting Section 319 which empowers the Court to summon a person for being tried along with the other accused where it appears from the evidence that he has committed an offence."

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85 (2021) 18 SCC 321

86 2015 INSC 496

**Witness who made self incriminating statements can be summoned as additional witness based on other materials**

In *Raghuveer Sharan vs. District Sahakari Krishi Gramin Vikas Bank*<sup>87</sup>, was pleased to consider section 319 CrPC and section 132 of the Evidence Act that offers statutory immunity against self incrimination providing that no answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution or be proved against him in any criminal proceedings except a prosecution for giving false evidence by such answer. It held that

“22. There cannot be an absolute embargo on the Trial Court to initiate process under section 319 CrPC merely because a person, who though appears to be complicit has deposed as a witness. The finding to invoke section 319 CrPC, must be based on the evidence that has come up during the course of Trial. There must be additional, cogent material before the Trial Court apart from the statement of the witness.

**Standard of proof for summoning an additional accused under section 319 CrPC**

The Hon'ble Supreme Court of India in *Shiv Prakash Mishra vs. State of Uttar Pradesh*<sup>88</sup>, held that the standard of proof employed for summoning a person as an accused person under Section 319 Cr.P.C. is higher than the standard of proof employed for framing a charge against the accused person.

In *Labhuji Amratji Thakor vs. State of Gujarat*<sup>89</sup>, the Hon'ble Supreme Court of India held that Court has to consider substance of the evidence, which has come before it and has to apply the test i.e. "more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction.

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87 2024 INSC 681

88 (2019) 7 SCC 806

89 (2019) 12 SCC 644

### **Accused cannot be added on the basis of mere disclosure of names by witnesses during trial**

In *Periyasami vs. S. Nallasamy*<sup>90</sup>, the Hon'ble Supreme Court of India dealt with a case in which the complainant sought to include numerous persons in application filed under section 319 CrPC. It held that mere disclosing the names of the appellants cannot be said to be strong and cogent evidence to make them to stand trial for the offence under Section 319 CrPC. It observed that

“10. 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.”

### **Trial of newly added accused**

In *Shashikant Singh vs. Tarakeshwar Singh*<sup>91</sup>, the Hon'ble Supreme Court of India while interpreting section 319 CrPC was pleased to hold that the proceedings against the person summoned under sub – section(1) are required to be commenced afresh and the witnesses reheard. It was further held that the entire proceedings have to be recommence from the beginning of the trial and all the witnesses have to be examined afresh and opportunity has to be granted to such a person to cross – examine those witnesses.

In *Rajendra Singh vs. State of Uttar Pradesh*<sup>92</sup>, the Hon'ble Supreme Court of India held that the provision of de novo trial under section 319(4)

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90 2019 SCC OnLine SC 379

91 (2002) 5 SCC 738

92 (2007) 7 SCC 378

CrPC is mandatory. It was observed that the phrase “could be tried together with the accused” appear only to be directory. It was observed that the word “evidence” appearing in section 319 CrPC contemplates the evidence of witnesses given in the Court.

In ***Sukhpal Singh Khaira vs. State of Punjab***<sup>93</sup>, a Constitution Bench of the Hon’ble Supreme Court considered the meaning of the expression “conclusion of trial” in the context of Section 319 read with other allied Sections of the Cr.P.C. and issued guidelines for exercise of power under section 319 CrPC by the trial Courts. It answered the reference made to in the following manner

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

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

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

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

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93 (2023) 1 SCC 289

(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 319 CrPC?

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

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

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

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

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

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

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

41.8. If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under section 319 CrPC can be invoked or exercised only if there is evidence

to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated) trial.

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

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.”

In *Juhru vs. Karim*<sup>94</sup>, it was held that no impediment for the Court to continue and conclude the trial against the accused being proceeded with, if decided for separate trial of the summoned accused.

### **Whether Court has to wait till section 319 CrPC to summon a person to face trial?**

In *Dharam Pal and others vs. State of Haryana*<sup>95</sup>, a Bench of three Hon'ble Judges of the Hon'ble Supreme Court of India disagreed with the view expressed by a co-ordinate Bench in *Ranjit Singh vs. State of Punjab*<sup>96</sup>, wherein it was held that from the stage of committal till the Sessions Court reached the stage indicated in section 230 CrPC, that Court could deal only with the accused referred to in section 209 CrPC and there is no intermediary

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94 2023 SCC OnLine SC 171

95 (2014) 3 SCC 306

96 (1998) 7 SCC 149

stage till then enabling the Sessions Court to add any other person to the array of accused. The matter was placed before a Constitution Bench for consideration.

The Constitution Bench was pleased to hold that the view expressed in ***Kishun Singh vs. State of Bihar***<sup>97</sup>, wherein it was held that the Sessions Court has power under section 193 CrPC to take cognisance of an offence and summon other persons whose complicity in the commission of the offence could prima facie be gathered from the material available on record. Answering the reference, it was held that:

“28. In that view of the matter, we have no hesitation in agreeing with the views expressed in *Kishun Singh's* case (*supra*) that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.

29. We are also unable to accept Mr. Dave's submission that the Session Court would have no alternative, but to wait till the stage under section 319 CrPC. was reached, before proceeding against the persons against whom a prima facie case was made out from the materials contained in the case papers sent by the learned Magistrate while committing the case to the Court of Session.”

It held that Sessions Court should not necessarily wait till the stage of section 319 CrPC is reached to direct a person, not facing trial, to appear and face trial as accused.

### **Revision lies against order under section 319 CrPC**

The Hon'ble Supreme Court of India in ***Mohit @ Sonu vs. State of Uttar Pradesh***<sup>98</sup>, held that order passed under section 319 CrPC is not an

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97 (1993) 2 SCC 16

98 (2013) 7 SCC 789



interlocutory order within the meaning of section 397(2) CrPC as it decides the rights and liabilities of the parties in respect of their involvement in the case. By referring to *Amar Nath vs. State of Haryana*<sup>99</sup>, it held that section 397(2) CrPC does not contemplate any bar to order passed under section 319 CrPC as the order substantially affects the rights of the accused or decides certain rights of the parties.

### **Conclusion**

Section 319 CrPC is meant to achieve the avowed objective that real culprit should not get away unpunished. Wide powers are conferred on the Court to ensure that not only guilty are brought to justice but they are brought to justice at the earliest.

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99 (1977) 4 SCC 137