

**SESSIONS CASE NO. 193 OF 2017**  
**ORDER BELOW APPLICATION - EXH. 7 TENDERED BY LD.**  
**SP.PP U/S 319 OF CODE OF CRIMINAL PROCEDURE**

[1] The Ld. Special PP Mr. P. N. Parmar Has tendered present application under Section 319 of Code of Criminal Procedure (Hereinafter be referred to as “CrPC”) for arraigning Mr. Narayan Sai Asumal Harpalini (Hereinafter be referred to as “**Proposed Accused**”) as accused in present Sessions Case.

[2] Ld. Special PP in support of his application has submitted that an FIR was registered by one Vimleshkumar Bhailal Thakkar on 28.02.2014 as he was attacked by some unknown person. After completion of investigation, the police filed total three charge-sheets against various accused persons. It is submitted that looking to the charge-sheet papers, it clearly transpires that the person who had attacked on complainant was closely associated with the proposed accused. It is further submitted that most of the accused persons, who are arraigned by the Investigating Officer during the investigation are all known to each other and they all had a common object of eliminating the witnesses/persons who have deposed against the proposed accused. It is submitted that all the accused persons, in connivance with each other, have tried to create an atmosphere of fear in the mind of witnesses in the case of proposed accused. It is submitted that from the charge-sheet papers, a close association between accused persons and proposed accused is found out. It is further submitted that the complainant/victim of this case was husband of rape victim, who had filed a complaint of rape against the proposed accused and hence, the proposed

accused had a motive to threaten the rape victim by attacking her husband. It is further submitted that accused persons are residents of Ashram of proposed accused and the proposed accused is the direct beneficiary out of the crime. Ld. Special PP has produced various documents vide list Exh.37 consisting of panchnama, statements, etc. which are the part of charge-sheet. It is further submitted that the prosecution has ample and cogent evidence against the propose accused, which show his involvement as conspirator of the crime. Ld. Special PP has also relied upon Section 10 of Evidence Act and thereby prayed to allow this application by issuing summons to the proposed accused for facing the trial.

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[3] In the present case, perusing the record, it transpires that proposed accused has tendered his submissions below Exh.10. However, looking to the provision of Section 319 of CrPC and as per the settled legal position, the accused has no locus or audience at the time of deciding the application under Section 319 of CrPC.

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[4] Heard Ld. Special PP and perused the application alongwith charge-sheet papers.

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[5] Before deciding the present application, it would be necessary to firstly decide that whether at the stage of framing of charge, an application under Section 319 of CrPC is maintainable ? For deciding said issue, Ld. Special PP has relied upon Judgment of Hon'ble Apex Court in the case of **Hardeep Singh Vs. State of Punjab and others** reported in **(2014) 3 SCC 92**. Before going further, it would be relevant to refer Section 319 of CrPC which is as under:

**319. Power to proceed against other persons appearing to be guilty of offence.**

*(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed.*

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

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

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

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

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

*(b) subject to the provisions of clause*

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

A. Careful perusal of aforesaid provision, it suggests that when the Investigating Agency for one reason or other does not array one of the real culprits as an accused, court is not powerless in calling the said accused to face the trial. The question that at what stage and in what circumstances should the court exercise its power as contemplated under Section 319 Cr.PC has been elaborately dealt with and answered by the Hon'ble Apex

Court in case of Hardeep Singh (Supra). In said pronouncement, Hon'ble Apex Court for proper appreciation of the stage of invoking of the powers under Section 319 CrPC and to understand the meaning had given much weightage to the words "inquiry" and "trial" as used under the section 319 C.r.PC by referring to the following cases.

1. [Raghubans Dubey v. State of Bihar](#) reported in AIR 1967 SC 1167. "Once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceeding initiated by his taking cognizance of an offence."

2. [The State of Bihar v. Ram Naresh Pandey and Anr](#) reported in AIR 1957 SC 389 "The words 'tried' and 'trial' appear to have no fixed or universal meaning. No doubt, in quite a number of sections in the Code to which our attention has been drawn the words 'tried' and 'trial' have been used in the sense of reference to a stage after the inquiry. That meaning attaches to the words in those sections having regard to the context in which they are used. There is no reason why where these words are used in another context in the Code, they should necessarily be limited in their connotation and significance. They are words which must be considered with regard to the particular context in which they are used and with regard to the scheme and purpose of the provision under consideration."

3. [Ratilal Bhanji Mithani v. State of Maharashtra and Ors](#) AIR 1979 SC 94 "Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it the proceedings are only an inquiry. After the framing of charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the

*manner provided in Section 254 to 258 to a logical end."*

B. For determining the issue, the Hon'ble Apex Court also referred to the Section 2(g) of CrPC defining INQUIRY as follows:

*"inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court."*

The Hon'ble Supreme Court after referring to Section 2 (g) of CrPC and the case laws held that the word 'inquiry' is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial and at the time of filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319 Cr.P.C. can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Section 207/208 Cr.P.C., committal etc., which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind.

C. The Hon'ble Apex Court also opined that the stage of inquiry does not contemplate any evidence in its strict legal sense, nor the legislature could have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can

apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies.

D. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 Cr.P.C.

E. Careful perusal of aforesaid judgment reveals that Hon'ble Apex Court while holding that trial commences after framing of charge held /ruled that inquiry can only be understood to be a pre-trial inquiry. Careful perusal of judgment rendered by the Hon'ble Apex Court in Hardeep Singh's case (supra) suggests that power under Section 319 of Cr.P.C. can be exercised at any time after filing of charge sheet and before pronouncement of the judgment.

**[6]** Based on above discussion and settled preposition of law in case of Hardeep Singh's case (supra), present application under Section 319 of CrPC is maintainable at this stage, when the matter is for framing of charge.

[7] It is well settled principle that the power under Section 319 of CrPC is discretionary and extraordinary, which are required to be exercised sparingly and only in those cases, where circumstances of cases so warrant. For arraigning accused by exercising power under Section 319 of CrPC, very strong and cogent evidence against such person are required and such power cannot be exercised in casual and cavalier manner. Considering the above position of law, it is required to be seen that whether prosecution has sufficient evidence against proposed accused, so that he can be joined as an accused in Sessions Case. For this purpose, following evidences are required to be seen.

- a. Firstly, looking to the complaint at Mark-37/1 given by Vimleshkumar Bhailal Thakkar, he has alleged that on the date of incident, one unknown person had suddenly came from behind and injured him on back and left jaw with some sharp object. He has stated that as his wife has given a complaint against accused Narayan Sai and as he is in jail, by keeping a grudge of the same, the attack had been done and except this, he is having no enmity with anyone.
- b. It would be relevant to refer Panchnama drawn u/s.27 of Evidence Act produced at Mark-37/2, by which various articles have been discovered at the instance of accused namely Kishor Kumar Balkrishna Bodke. Considering the list of articles naratted in said Panchnama at Sr. no. 25, a chit is found containing 6 names, wherein at Sr. No.2, it is written “husband of Parul at Hospital Site”. At Sr. No.6, name of Amrut Prajapati is written. Said Amrutbhai had given an application to the Police Commissioner, Surat stating therein that he is

having an apprehension that a person named Vaasu had come for his raiki and his name has been revealed as an accused, who had threatened the witnesses against Asharam - Narayan. Ld. Special PP has submitted that later on, said Amrutbhai was murdered.

- c. Considering the further statement of complainant dated 07.04.2014, it reveals that present accused namely Vaasu and Sejal had imposed themselves as victims of Asharam and availed the trust of complainant and his wife and after the alleged incident, they both were not found and it came to the knowledge of complainant that in real, said Vaasu and Sejal had hatched a conspiracy by imposing themselves as husband and wife for reaching near to the witnesses in the case of Narayan Sai.
- d. Looking to the statement of Parul w/o Vimleshkumar Bhailal Thakkar recorded on 28.02.2014, she has clearly apprehended that the cause of alleged attack was that she had filed a complaint of rape against Narayan Sai and as Narayan Sai is in jail, by keeping the grudge of the same, the attack had been made on her husband.
- e. Considering the statement of Gopalbhai Motibhai Patel, recorded on 16.03.2014, he has alleged that when he was present at his shop, at that time, police had come and inquired about accused Kishor Balkrishna Bodke and Manojbhai who made an acid attack on Dinesh Chandubhai Bhagchandani. In the chit produced at Mark-37/3 recovered at the instance of accused Kishor Bodke, the name of said Dinesh is appearing at

Sr. No. 3.

- f. Considering the statement of Jaswantbhai Maganbhai Parmar dated 03.04.2014, he has stated that he came to know about the attack on Dinesh Bhagchandani, present complainant Vimlesh Thakkar and Rakesh Patel, the name of Rakesh Patel is appearing at Sr. No. 4 in the chit recovered at the instance of accused Kishor Bolke.
- g. Ld. Special PP has produced the pursis of accused Basavraj @ Vaasu tendered before the Ld. JMFC Court declaring his residential address as per condition of bail at Mark-37/16 and 37/17. In both these documents, accused Basavraj @ Vaasu has declared his address as Sant Shree Asharam Ashram, Jahangirpura, Surat.

**[8]** From the above all evidence, it clearly transpires that the persons who were involved in attacking the complainant and the person who had attacked the complainant were closely related to proposed accused. Moreover, looking to the entire charge-sheet, perusing a motive attributed to all such accused persons is that to eliminate or threaten the witnesses, who have deposed against the proposed accused. It would further be relevant to note that proposed accused is a direct beneficiary out of the crime and the role attributed by prosecution is of conspiracy against the proposed accused. There cannot be any direct evidence of conspiracy and as per the opinion of this Court, there are strong and cogent reasons as narrated above for arraigning the proposed accused as an accused of the case. It would be relevant to observe that merely police had not narrated

him as an accused in the charge-sheet, the Court is not powerless to arraign such accused upon finding cogent evidence against him. Moreover, the accused would be getting all the opportunities throughout the trial for cross examining the witnesses and challenging the evidences produced by the prosecution. Hence, if the application is allowed, then no prejudice whatsoever is likely to be caused to the proposed accused. The ultimate purpose of the trial is to bring truth on record and as discussed above, there are cogent reasons for arraigning the proposed accused in the present case and the veracity of evidence can be tested during the trial. Therefore, in the interest of Justice, I pass the following order.

### **ORDER**

1. The present application Exh.7 tendered by Ld. Special PP u/s. 319 of CrPC for joining Mr.Narayan Sai Asumal Harpalini, presently at Lajpore Central Jail, Surat is hereby allowed.
2. The accused Mr.Narayan Sai Asumal Harpalini shall be issued summons to appear before this Court on 13.02.2023.

Pronounced and signed in open Court on this 30<sup>th</sup> day of January, 2023.

Date : 30.01.2023

Place: Surat

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**[ Robin P. Mogera ]**

8<sup>th</sup> Addl. Sessions Judge, Surat.

UID :- GJ01539.