

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLREV No.465 of 2018**

(In the matter of an application under Section 401
read with Section 397 of Cr.P.C.)

Bidesi @ Chintamani Samal **Petitioner**
-versus-

State of Odisha **Opposite Party**

For Petitioner : Mr. B.S. Das, Advocate

For Opposite Party : Mr. C.R. Swain, AGA
Mr. H. N. Mohapatra, Advocate

CORAM:
JUSTICE V. NARASINGH

DATE OF HEARING & JUDGMENT: 20.07.2026

V. Narasingh, J. Heard learned counsel for the
Petitioner and learned counsel for the State.

1. The judgment dated 20.04.2018 passed by
the learned Additional Sessions Judge, Athagarh in
S.T. Case No. 29 of 2017 (arising out of Badamba
P.S. Case No. 134 dated 05.10.2016) whereby the



Petitioner was summoned to face trial in purported exercise of power under Section 319 of Cr.P.C.

2. In summoning the accused, the Trial Court has relied on the Constitution Bench judgment of the Apex Court in the case of ***Hardeep Singh v. State of Punjab***¹, reported in ***(2014) 3 SCC 92***, as well as that of ***Brejendra Singh v. State of Rajasthan***², reported in ***2017 (II) OLR (SC) 376*** and referring to Section 319 of the Cr.P.C., the Trial Court held as under:

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On scrutiny of the available evidence on record, it is found that there is clear, cogent, convincing evidence available against Bidesi @ Chintamani Samal. The interest of justice requires he should be summoned to face trial along with other accused persons, who are already facing their trial. Hence the petition is allowed. Issue summons to Bidesi @ Chintamani Samal.

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¹ *Hardeep Singh v. State of Punjab* (2014) 3 SCC 92.

² *Brejendra Singh v. State of Rajasthan* 2017 (II) OLR (SC) 376.



3. It is the submission of the learned counsel for the Petitioner, Mr. Das, referring to the provisions contained under Section 319 of the Cr.P.C. as well as the judgment of the Apex Court in the case of ***Sarabjit Singh and Another v. State of Punjab***³, reported in **(2009) 16 SCC 46**, that the Trial Court has failed to appreciate the law in its proper perspective and merely got carried away by the judgment of the Constitution Bench, without applying the same to the factual matrix of the case at hand. Hence, the exercise of jurisdiction, being *ex facie* perverse, merits consideration by this Court in exercise of its revisional jurisdiction. He also reiterates the time-tested principle that summoning of an accused during trial is a serious issue affecting his liberty and, hence, the power ought not to be exercised lightly, oblivious of the facts governing the case.

³ *Sarabjit Singh and Another v. State of Punjab* (2009) 16 SCC 46.



committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

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

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

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

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

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

Corresponding Law: S. 358 of BNSS.

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7. So far as the power of the Court to summon an accused in exercise of the power under Section 319 of the Cr.P.C. is concerned, the law is no longer *res integra* and has, in fact, been set at rest by the



Constitution Bench judgment in the case of **Hardeep Singh (supra)**.

8. It is apt to note that the judgment relied on by the learned counsel for the Petitioner, namely **Sarabjit Singh (supra)**, has been referred to at Serial No.12 of the chronological list of the cases cited before the Constitution Bench and has also been dealt with. The proposition on which reliance is placed has been considered under Question No. IV by the Constitution Bench, which reads as under:

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Question (iv)—What is the nature of the satisfaction required to invoke the power under Section 319 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

117.5. Though under Section 319(4)(b) CrPC the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 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."

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Hence, the evidence on record has to be scrutinized in the light of the Constitution Bench judgment referred to hereinabove.

9. While dealing with the degree of satisfaction, the Apex Court has held that "*the degree of satisfaction that will be required for summoning a person under Section 319 of the Cr.P.C. would be the same as that required for framing a charge.*"

In this context respectful reference can also be made to Paragraph 100 of the Constitution Bench judgment which reads as under:



“**100.** However, there is a series of cases wherein this Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 CrPC, has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. [Vide *State of Karnataka v. L. Muniswamy*; (1977) 2 SCC 699, *All India Bank Officers' Confederation v. Union of India*; (1989) 4 SCC 90, *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*; (1989) 1 SCC 715, *State of M.P. v. Krishna Chandra Saksena*; (1996) 11 SCC 439 and *State of M.P. v. Mohanlal Soni*; (2000) 6 SCC 338]”

10. Paragraph 21 of the judgment in the case of ***Sarabjit Singh (supra)***, relied upon by the learned counsel for the Petitioner, reads thus:

“An order under Section 319 of the Code, therefore, should not be passed only



because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction, For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned."

(Emphasized)

11. Taking into account that the judgment in the case of **Sarabjit Singh (supra)** has been referred to by the Apex Court in the Constitution Bench judgment in **Hardeep Singh (supra)**, with humility, it is stated that it cannot be laid down as an absolute proposition, as is being advanced in the case at hand, that the test has to be whether the evidence would reasonably lead to conviction.

In the context of the judgment in **Hardeep Singh (supra)**, it is no longer open for the learned



Counsel for the Petitioner to interpret ***Sarabjit Singh (supra)*** in that light.

12. To test the submission of the learned counsel for the Petitioner that the evidence of P.Ws. 1, 6 and 9 is neither cogent nor reliable, this Court went through the evidence of P.Ws. 1, 6 and 9 as well as their cross-examinations. The copies of the depositions produced by the learned counsel for the Petitioner are taken on record and shall form part of the Court proceedings.

13. A detailed examination of the evidence of P.Ws. 1, 6 and 9 would prejudice the Petitioner and, in the considered view of this Court, would give an unfair advantage to the prosecution.

14. On going through the evidence as well as the cross-examinations, as noted above, this Court does not find substance in the submission of the learned counsel for the Petitioner that P.W.1 is not a cogent witness. It is also apt to note that there is a reference in the evidence of P.W.6 regarding the presence of



P.W.1 at the time of the occurrence. This Court has also gone through the evidence of P.W.9.

15. The suggestions given to the said witnesses are also material in the case at hand; however, they are not being dealt with in detail for the reasons already stated.

16. Hence, on a conspectus of the evidence on record, taking into account the law laid down by the Apex Court in the Constitution Bench judgment in ***Hardeep Singh (supra)***, this Court does not find any infirmity in the order passed by the learned Trial Court issuing summons to Bidesi @ Chintamani Samal. More so, in the light of the observations made by the Apex Court in ***Yadwinder Singh v. Lakhi @ Lakhwinder Singh⁴***, reported in **2025 SCC OnLine SC 686**, upon which reliance has been placed by the learned Public Prosecutor.

⁴ *Yadwinder Singh v. Lakhi @ Lakhwinder Singh* 2025 SCC OnLine SC 686.



In the said judgment, the Apex Court has extensively referred to the Constitution Bench judgment in ***Hardeep Singh (supra)*** and, while doing so, has referred to Paragraph 106 thereof, which reads as under:

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the Court acting under Section 319 of Cr.P.C. to form any opinion as to the guilt of the accused on Court.



17. Paragraphs 16 and 17 of the judgment

Yadwinder Singh (supra), reads thus:

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16. The law contemplates and provides for a different outcome under Section 319 of the Code, dependent on the peculiar factual premises of a case. Juxtaposition of the law with the instant factual backdrop reveals as under: It is true that the SIT found no evidence against the private respondents, however such factum by itself puts no fetters on the powers bestowed under Section 319 of the Code. Moreover, eye-witnesses in the Trial Court have named the private respondents as persons present on the site of occurrence. The hardship, were we to adjudge it at this juncture, could be more if the private respondents are not summoned than opposed to if they are.

17. Be it noted, the private respondents will have all defences open to them before the Trial Court to put forth their version of innocence, including by way of resort to cross-examination. Trial being an exercise to unravel the truth, given the depositions before the Trial Court, to absolve the private respondents based on the SIT's findings alone, to our mind, may not be in the best interests of justice. Indubitably, while an innocent person should not be punished, no guilty person should go scot-free. The Trial Court could have better worded its order through clearer reasoning. Reproduction of a passage from Ramkrishna Forgings



Limited v. Ravindra Loonkar, (2024) 2 SCC 122 is apt:

"39. In the recent past, from *Kranti Associates (P) Ltd. v. Masood Ahmed Khan* [*Kranti Associates (P) Ltd. v. Masood Ahmed Khan*, (2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852] to *Manoj Kumar Khokhar v. State of Rajasthan* [*Manoj Kumar Khokhar v. State of Rajasthan*, (2022) 3 SCC 501 : (2022) 2 SCC (Cri) 1], the clear position in law is that a court or even a quasi-judicial authority has a duty to record reasons for its decision. Needless to add, "Reason is the heartbeat of every conclusion. Without the same, it becomes lifeless." [*Raj Kishore Jha v. State of Bihar*, (2003) 11 SCC 519; 2004 SCC (Cri) 212]..."

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18. The contours of the exercise of revisional jurisdiction are well settled and need not be repeated. Applying such self-imposed limitations, and since this Court does not find any perversity in the appreciation of the evidence by the learned Trial Court warranting interference, and at the cost of repetition it is re-stated that, in the light of the law laid down by the Constitution Bench in ***Hardeep Singh (supra)***, as further clarified in ***Yadwinder Singh (supra)***, this



Court does not find any infirmity in the order passed by the learned Trial Court so as to warrant interference.

19. Accordingly, this Criminal Revision stands disposed of.

20. The learned Trial Court be intimated forthwith regarding the disposal of this revision. Since the trial is stated to be pending since 2017, the Trial Court is requested to make an endeavour to conclude the same at the earliest.

(V. Narasingh)
Judge

*Orissa High Court, Cuttack,
Dated the 20th July, 2026/Jina*

Signature Not Verified

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