

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1750 OF 2008

HARDEEP SINGH Appellant(s)  
:VERSUS:  
STATE OF PUNJAB AND ORS. Respondent(s)

WITH  
CRIMINAL APPEAL NO. 1751 OF 2008

MANJITPAL SINGH Appellant(s)  
:VERSUS:  
STATE OF PUNJAB AND ANR. Respondent(s)

AND  
SPECIAL LEAVE PETITION (CrI.) NO. 5331 of 2009

RAJESH Petitioner(s)  
:VERSUS:  
STATE OF U.P AND ANR. Respondent(s)

AND

SPECIAL LEAVE PETITION (CrI.) NO. 5724 of 2009

RAVINDER KUMAR AND ANR. Petitioner(s)  
:VERSUS:  
STATE OF HARYANA AND ORS. Respondent(s)

AND  
SPECIAL LEAVE PETITION (CrI.) NO. 5975 of 2009

TEJPAL AND ANR. Petitioner(s)  
:VERSUS:  
STATE OF HARYANA AND ORS. Respondent(s)

AND

SPECIAL LEAVE PETITION (CrI.) NO. 7209 of 2010

RAJENDRA SHARMA AND ANR. Petitioner(s)  
:VERSUS:  
STATE OF M.P. AND ANR. Respondent(s)

AND  
SPECIAL LEAVE PETITION (CrI.) NO. 9157 of 2009

RAMDHAN MALI AND ANR. Petitioner(s)  
:VERSUS:  
STATE OF RAJASTHAN AND ANR. Respondent(s)

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AND

SPECIAL LEAVE PETITION (CrI.) NO. 9040 of 2010

JUNED PAHALWAN Petitioner(s)  
:VERSUS:  
STATE OF U.P. AND ANR. Respondent(s)

AND

SPECIAL LEAVE PETITION (CrI.) NO. 9184 of 2008

BABUBHAI BHIMABHAI Petitioner(s)  
:VERSUS:  
STATE OF GUJARAT AND ANR. Respondent(s)

O R D E R

1. A two Judge Bench of this Court has referred the following questions of law for consideration by a three Judge Bench:

(a) When the power under sub-Section (1) of Section 319 of the Code of Criminal Procedure, 1973, of addition of accused can be exercised by a Court? Whether application under Section 319 of the Code is not maintainable unless the cross-examination of the witness is complete?

(b) What is the test and what are the guidelines of exercising power under sub-Section (1) of Section 319 of the Code? Whether such power can be exercised only if the Court is satisfied that the accused summoned in all likelihood would be convicted?

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2. We have heard the learned counsel appearing on behalf of the parties and perused various judgments cited by them.

3. A three Judge Bench of this Court in the case of Dharam Pal and Ors. vs. State of Haryana and another, (2004) 13 SCC 9, doubted the correctness of the interpretation reached in Ranjit Singh vs. State of Punjab, (1998) 7 SCC 149 and referred the matter to a larger Bench. In that case, this Court further observed that the law was correctly enunciated in Kishun Singh and Ors. Vs. State of Bihar (1993) 4 SCC 392.

4. The issues involved in these cases are identical in nature. Since all the above-mentioned decisions of this Court have been rendered by three-Judge Benches, therefore, we deem it appropriate to refer these appeals/SLPs to the Constitution Bench for consideration of the following questions:

(i) What is the stage at which power under

Section 319 of the Code of Criminal Procedure,  
1973 can be exercised?

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(ii) Whether the word "evidence" used in

Section 319(1) of the Code of Criminal  
Procedure, 1973 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?

(iii) Whether the word "evidence" used in

Section 319(1) of the Code of Criminal  
Procedure, 1973 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?

(iv) What is the nature of the

satisfaction required to invoke the power under  
Section 319 of the Code of Criminal Procedure to  
arraign an accused? Whether the power under  
Section 319(1) of the Code of Criminal  
Procedure, 1973 can be exercised only if the  
court is satisfied that the accused summoned  
will in all likelihood be convicted?

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(v) Does the power under Section 319 of

the Code of Criminal Procedure, 1973 extend to  
persons not named in the FIR or named in the FIR  
but not charged or who have been discharged?

5. Let the records of these cases be placed  
before Hon'ble the Chief Justice of India for  
referring these matters to a Constitution Bench of  
at least five Judges.



Date: 07/12/2011 These matters called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DALVEER BHANDARI  
HON'BLE MR. JUSTICE T.S. THAKUR  
HON'BLE MR. JUSTICE DIPAK MISRA

For Appellant (s)  
in Cr1A 1750 Mr. Vibhakar Mishra, Adv.  
Mr. P.K. Mohapatra, Adv.  
Mr. Arun K. Dakar, Adv.  
Mr. Shudhanshu Shekhar Upadhyay, Adv.  
Mr. Abhish Kumar, Adv.

In Cr1A 1751 Mr. Satinder Singh gulati, Adv.  
Ms. Kamaldeep Gulati, Adv.

In SR 9184 Mr. Vinod A. Bobde, Sr. Adv.  
Mr. Aniruddha P. Mayee, Adv.  
Mr. Dharmesh Nanavati, Adv.  
Mr. Charudatta Mahindrakar, Adv.

In SR 7209 Dr. J.N. Dubey, Sr. Adv.  
Mr. Anurag Dubey, Adv.  
Mr. Meenesh Dubey, Adv.  
Mr. D.P. Pande, Adv.  
Mr. Rajesh Pandey, Adv.  
Mr. S.R. Setia, Adv.

In SR 5724 & 5975 Mr. P.S. Narasimha, Sr. Adv.  
Mr. Anshuman Ashok, Adv.  
Mr. A. Ramesh, Adv.  
Ms. G. Madhavi, Adv.

In SR 9040 Mr. S.K. Dubey, Adv.  
Mr. Vibhor Gupta, Adv.  
Mr. K.V.Mohan, Adv.

In SR 5331 Mr. S.R. Singh, Sr. Adv.  
Ms. Sunita Pandit, Adv.  
Mr. Avnish Singh, Adv.  
Ms. Asha Gopalan Nair, Adv.

In SR 9157 Mr. Sanjai Kumar Pathak, Adv.

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For Applicants (s)  
in SLP 9184 Mr. Puneet Jain, Adv.  
Mr. Ashwin Dagli, Ad.  
Ms. Sushil Kumar Jain, Adv.  
  
Ms. Meenakshi Arora, Adv.

In Cr1.A. 1750 Mr. Kunwar C.M. Khan, Adv.  
Mr. Aftab Ali Khan, Adv.

For Respondent (s)  
in Cr1A 1750 Mr. Satinder Singh Gulati, Adv.  
Ms. Kamaldeep Gulati, Adv.

in CRLA 1751 Mr. Kuldip Singh, Adv.  
Mr. R.K. Pandey, Adv.

Mr. H.S. Sandhu, Adv.  
Mr. K.K. Pandey, Adv.  
Mr. Mohit Mudgil, Adv.

For RR 2 in  
SLP 9184

Dr. Rajeev Dhawan, Sr. Adv.  
Mr. Nirupam Nanavati, Sr. Adv.  
Mr. Huzefa Ahmadi, Adv.  
Mr. Ejaz Maqbool, Adv.  
Mr. B.M. Mangulkiya, Adv.  
Mr. Ajay singh, Adv.  
Mr. V.H. Kanara, Adv.  
Mr. Mrigank Prabhakar, Adv.  
Ms. Sakshi Banga, Adv.  
Ms. Garima Kapoor, Adv.

For RR 1 in  
SLP 9184

Ms. Hemantika Wahi, Adv.

For RR 2 in  
In SR 7209

Mr. Jetendra Singh, Adv.  
Ms. Priyanka Singh, Adv.  
Mr. Sanjay Mukhopadhyay, Adv.  
Mr. S.K. Sabharwal, Adv.

For RR 1 in  
In SLP 7209

Mr. C.D. Singh, Adv.

For RR No. 2 in  
SLP 5975 & 5724

Mr. Pahlad Singh Sharma, Adv.  
Mr. J.M. Sharma, Adv.  
Mr. Sandeep Singh, Adv.  
Mr. Sameer Singh, Adv.  
Mr. Vikas Kakkar, Adv.

In SLP 5724

Mr. Suresh Kumar Antil, Adv.  
Ms. Naresh Bakshi, Adv.

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In SLP 5975

Dr. Kailash Chand, Adv.

In SR 9040

Mr. Pramod Swarup, Sr. Adv.  
Mr. Pradeep Misra, Adv.  
Ms. Pareena Swarup, Adv.  
Mr. Ameet Singh, Adv.

In SR 9157

Mr. Ram Naresh Yadav, Adv.  
Mr. R. Gopalakrishnan, Adv.

UPON hearing counsel the Court made the following

O R D E R

Mr. S.R. Singh, learned senior counsel for the petitioners in SLP (Crl) No.5331/2009 commenced his submissions at 12:20 P.M. and concluded at 3:00 P.M. Thereafter Mr. Vinod A. Bobde, learned senior counsel for the petitioners in SLP(Crl) No.9184/2008 made his submissions and was on his legs when the Court rose for the day at 4.00 P.M. leaving the matters part-heard.

[A.S. BISHT]  
COURT MASTER

[KALYANI GUPTA]  
COURT MASTER

[INDU SATIJA]  
COURT MASTER

ITEM NO.101  
(Part-heard)

COURT NO.3

SECTION IIB

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 1750 OF 2008

HARDEEP SINGH

Appellant (s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

WITH OTHER CONNECTED MATTERS

Date: 08/12/2011 These matters called on for hearing today.

CORAM AND APPEARANCE: SAME AS ON 07/12/2011

UPON hearing counsel the Court made the following  
O R D E R

CRL.M.P. No.24292/2011 in S.L.P.(CrI.) No.9184/2008:

Prayer for impleadment is allowed.

In this application it is mentioned that the applicant is in jail for last about six years while the trial has been stayed by order dated 17.12.2008 passed by this Court. The apprehension of the learned counsel for the applicant is that after reference of these cases to a larger Bench, it may take a few months more before the reference is answered by the Constitution Bench and the applicant will have to remain in jail. In this view of the matter, let this matter be placed before a regular Bench for adjudication of the prayer for bail in the last week of January, 2012.

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CRL.M.P. No.21161/2008 in S.L.P.(CrI.) No.9184/2008:

Application for impleadment/intervention is allowed. The bail applications by the impleaded parties be listed before the regular Bench in the last week of January, 2012.

CRL.M.P.No.22878/2010 in SLP(CrI.) No.9040/2010:

This application for stay be listed before a regular Bench of this Court in the last week of January, 2012.

All the appeals and the SLPs are referred to the Constitution Bench in terms of the signed order.

[A.S. BISHT]  
COURT MASTER

[KALYANI GUPTA]  
COURT MASTER

[INDU SATIJA]  
COURT MASTER

(Signed order is placed on the file)