

## **Critical analysis on powers u/s. 319 CrPC.**

**A. Saravanakumar B.A.B.L.,**

**Registrar (IT-Cum-Statistics)**

---

As Trial Judges we encounter many instances wherein petitions u/s. 319 CrPC are filed at various stages of criminal trials. Once we examine the language used in Sec. 319 CrPC., it is plain, simple and unambiguous. However, once we start exercising the power, there are some grey areas which sometimes deviate us for the established principles of law. Considering the niceties involved in the Sec. 319CrPc, even the Two Judges of Bench of Hon'ble Supreme Court thrice referred certain questions to larger Bench in the cases of *DharampalSingh*, *Hardeep Singh* and recently in *SukhpalSingh Kharia*. In this tiny article an attempt is made to the explain law laid down in the various cases by Supreme court and High Courts.

Before going to analyzeSection 319 CrPC, it would be better to understand the principles underlying the section and the nature of power vested with the court including the court of sessions.

### **Object underlying the section:**

Sec. 319 CrPC springs out of the doctrine “Judges condemned when guilty is acquitted”. This doctrine must be used as beacon light while explaining the ambit and spirit underlying the enactment of Sec.319 CrPC. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214 (5 Judges Bench)*)

It is also based on the principle that innocent should not be punished, at the same time, real culprit should not be allowed to escape.

### **Nature of power vested with the court of sessions under section 319 CrPC.**

The power u/s. 319 CrPC. is the really an extraordinary power which is conferred on the court and it should be used sparingly only if compelling reasons exist for taking cognizance against other person against whom action has not been taken (*Municipal Corporation of Delhi Vs. RamkishanRohtagi and others* -(1983) 1 SCC 1.)

Sec.319 CrPC of the court is the special provision. It seeks to meet an extraordinary situation. It although confers of vide amplitude but is required to be exercised sparingly. (*Lal Suraj @ Suraj Singh and another Vs. State of Jharkhand* – (2009) SAR CrI. 146 (SC)).

Power u/s. 319 CrPC. is a discretionary and an extra ordinary power it is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against the person from the evidence let before the court that such power should be exercised and not in a casual or cavalier manner. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214*)

### **Examination of Sec. 319 CrPC.**

A scrutiny of Sec. 319 CrPC. would show the Section has four parts from sub-section (1) to 4. The first part deals about when and how the power under the section can be exercised. The second part speaks about how to secure the presence of the newly added accused, If, he is not attending the court. The third

part depicts how the presence of the newly added accused can be secured if he is attending the court. The fourth part speaks about how the court should proceed and try against the said accused.

### **Ingredients of Section 319(1) CrPC.**

As regards, when and how the power can be exercised, Sec. 319 (1) CrPC., says that there are three ingredients must be satisfied:

(1) Firstly, there is any enquiry or trial of an offence.

(2) Secondly, it appears from the evidence the any person not being an accused has committed any offence.

(3) Thirdly, for which, the person to be tried together with the accused.

If the above ingredients are satisfied, any new accused can be added.

Moreover, the words used in section 319(1) CrPC, namely 'enquiry' or 'trial', 'appear', 'evidence', 'any person' assume greater importance.

### **Who can exercise the power under section 319:**

Sec.319 CrPC. empowers only to the 'court' proceeds against such person. The word court includes court of Sessions (Sec.9 CrPC), Court of Judicial Magistrate (11 CrPC) and Court of Metropolitan Magistrate (16 CrPC). (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214 (5 Judges Bench)*).

### **Who can apply under section 319:**

Power under section 319 of the code can be exercised by the court suo moto or on an application by someone including accused already before it, if it is satisfied that any person other than an accused has committed an offence and he is to be tried together with the accused. ((*Guriya @ Tabassum Tauquir and ors Vs. State of Bihar and Anr*) (2008)1 MLJ (Crl) 881 (SC).

### **Against whom the power can be exercised:**

Section 319 CrPC. allows the court to proceed against any person who is not an accused in a case before it. Thus, the person against whom summons are issued in exercise of such powers, has to necessarily not be an accused already facing trial.

The very purpose invoking section 319(1) CrPC. clearly shows that even persons who have been dropped by police during investigation, but against whom evidence showing their involvement of the offence come before the court are included in the expression ' any person not being accused'. (*Rakesh and another Vs.State of Haryana* (2001) 6 SCC 24)

If a person had not been charge- sheeted he may come within the purview of the description of such a person has contained in Sec. 319 CrPC. of the Court. (*Lal Suraj @ Suraj Singh and another Vs. State of Jharkhand – (2009) SAR Crl. 146 (SC)*)

Although, he is not named in the charge sheet or he has been discharged from the case, which would warrant is prosecution thereafter with the good chance of his conviction. (1) *Brindavan Dass and others Vs. State of West Bengal*

*(2009) SAR CrI. 117 (2) Deepu Vs. State of MP AIR 2019 SC 265 (3) Kishone Singh Vs. State of Bihar (1993) 2 SCC 16.*

However, concerning a person who has been discharged no proceedings can be commenced against him directly u/s. 319 CrPC without recourse to provision of Sec. 300(5) r/w. 398 CrPC. (*Hardeep Singh Vs. State of Punjab- 2014-1- Scale – 214 (5 Judges Bench)*)

A person not named in FIR and not charge sheeted can be summoned u/s. 319 CrPC. (1) *Guriya Vs. State of Bihar (2007) 8 SCC 224* (2) *Bholuram Vs. State of Punjab JT 2008 (9) SC 504.*

Even though, any person initially be named in the FIR as an accused, but not charge sheeted can also be added to face trial. (*Michael Machado and another Vs. CBI (2000) 3 SCC 262*)

Where a person was not summoned by the Magistrate u/s. 204 CrPC but his name surfaced in the statement recorded u/s. 244 CrPC. a person can be summoned has accused u/s. 319 CrPC. (*Nazma Vs. State of UP (2010) 2 ACR 1377 All*)

Power u/s. 319 CrPC can be exercised against the person not to subjected to investigation or a person placed in column 2 of charge sheet against whom cognizance had not been taken or a person who has been discharged. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214 (5 Judges Bench)*).

The accused against whom proceeding has been quashed can also be added u/s. 319 CrPC. (*Jovindar Singh Vs. State of Punjab – (1979) 1 SCC 345*)

*G. Venkateswara Raju Vs. S K. Jaiseela (1996(2) ALTCrL 621* the High Court of Telangana has held in para 11 ' In the instant case, the learned Metropolitan Sessions Judge, found that the evidence of C.Ws. 1 and 2 and P. W. 15 prima facie shows the participation of P.W. 6 in the commission of the offence and as such he is to be added as an additional accused in S.C. No. 5/91 on his file. It is also seen from the order assailed in the revision that the learned Metropolitan Sessions Judge felt that it is just and proper to order examination of the four persons as additional prosecution witnesses in S.C. No. 5/91. At this stage, I am of the opinion, without entering into the domain of the appreciation of evidence, that the order of the learned Metropolitan Sessions Judge does not appear to be arbitrary and illegal. For the aforesaid reasons, both the revision petitions are dismissed and the petitioner is at liberty to plead for discharge after appearing before the trial court.'

An order u/s. 319 CrPC. of the court should not be passed only because the false information or one of the witnesses seeks to implicate another person. (*Sarabjit Singh and another Vs. State of Punjab and another – (2009) SAR CrL 670 SC*)

On mere memo without evidence in enquiry or trial, no person can be implicated as an accused. (*Davidson Vs. State*) (2007) 2 MLJ (CrL) 151)

**At what stage the power of section 319 CrPC can be exercised:**

The power under section 319 can be exercised at the stage of enquiry or trial.

The trial means determination of issues adjudicating the guilt or the innocence of person, the person has to be aware of what is the case against him

and it is only the stage of framing of charges, the court informs him of the same. Therefore, the trial commences only on the charges being framed. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214 (5 Judges Bench)*)

The word ' inquiry ' is not any inquiry relating to the investigation by the investigating agency. But it is an inquiry after the case is brought to the notice of the court on filing the charge sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to means something other than actual inquiry. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214 (5 Judges Bench)*)

### **Stage of committal:**

The committing Magistrate has no power or jurisdiction u/s. 319 CrPC. to summon a person as an accused. (1) *Alibai Singh Vs. State of MP – 1992 CRLJ 3209 MP* (2)*Rajkishore Prasad Vs. State of Bihar – 1996 CRLJ 2523 (SC)*

It would be legitimate to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC. is forbidden, by express provision of Section 319 CrPC. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214*)

### **Stage of Taking cognizance:**

On reading of Sec. 193 CrPC. as it presently stands, once the case is committed to the court of Sessions by a Magistrate, the restriction placed on the power of court of Sessions to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case u/s. 209 CrPC. to the court of Sessions, the bar of Sec. 193 CrPC. is lifted thereby investing the court of sessions complete and unfitted jurisdiction of the court of original

jurisdiction to take cognizance of the offence which is included summoning of the person. (*KishunSingh and others Vs. State of Bihar -1993 SCC (216)*).

This issue is answered by the Constitution bench in the case of *Dharam Pal Vs. State of Haryana AIR 2013 SC 3018*, wherein it was held that a court of sessions can with the aid of section 193 CrPC proceed to array a person and summon him for being tried, even if the provisions of section 319 CrPC cannot be pressed into service at that stage. The supreme court has clarified that Sessions court is competent to summon or take cognizance of the additional accused even when the case of that particular person was not committed to it

Cognizance against another person cannot be taken on the basis of material available in charge sheet or case diary and the same can be taken only on the basis of evidence adduced before during the trial of the case. (*Girraj and others Vs. State of Rajasthan (2008) CrLJ 2098 Raj*)

#### **After taking cognizance till the stage of section 230 CrpC:**

So, from the stage of committal till the Sessions Court reaches the stage indicated in Section 230 of the Code, that court can deal with only the accused referred to in Section 209 of the Code. There is no intermediary stage till then for the Sessions Court to add any other person to the array of the accused. Thus, once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under Section 319 of the Code can be invoked. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214*)



Any material that has been received by the court after cognizance the statement before the trial commences can be utilized only for corroboration and to support the evidence recorded by the court to invoke the power u/s. 319 CrPC. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214 (5 Judges Bench)*)

In the situation where the Sessions Judge notices from the material produce but before any evidence is taken that any other person should also have necessarily been made an accused, if the sessions court completely powerless to deal with such a contingency?

Though such situation may arise only in extreme rare cases the Sessions court is not altogether powerless to deal with such situations to prevent a miscarriage of justice. It is done open to the sessions court to send the report to High Court dealing the situation so that the High Court can inherently powers or revisional powers direct the committing Magistrate to rectify the committal order by issuing process to such left out accused. But hastened to add that the said procedure needs to be resorted to only for rectifying or correcting such grave mistakes. (*Ranjith Singh Vs. State of Punjab- 1998 (2) SCC 149*)

**From the recording of evidence to pronouncement of judgment:**

On Plain reading of sub section 319 they can be no doubt that it must appear from the evidence tender in the course of enquiry that any person not being the accused has committed any offence for which he could be tried together along with the accused. The power can be exercised only if it shows appears from the evidence at the trial not otherwise. (*Kishunsingh and others Vs. State of Bihar -1993 SCC (216)*).

Sec.319 CrPC is self-contained, complete in itself and independent of Sec.190 CrPC. It is only when the court reaches the stage of recording evidence application u/s. 319 CrPC lies before that it cannot be entertained. (*Logeshwar Singh Vs. State of Bihar - 2002 CRLJ 3886 Patna*)

Once the Sessions court takes cognizance of the offence pursuant to the committal order, the only stage when the Sessions Court is empowered to add any other person to array of the accused is after reaching evidence collection when powers u/s. 319 CrPC. can be invoked. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214 (5 Judges Bench)*)

There is yet another set of provisions which form part of enquiry relevant for the purposes of Sec.319 CrPC. i.e., provisions of Sections 200, 201, 202 CrPC. applicable in the case of complaint cases. Evidence means evidence adduced before the court. Complaint cases are the distinct category of the criminal trial where some sought of evidence in the strict legal sense of Sec. 3 of the Evidence Act comes before the court. There does not seem to be any restriction in the provisions of Sec.319 CrPC. so as to preclude such evidence has coming before the court in complaint cases even before charges against framed or the process has been issued. But at that state, there is no accused before the court. Such evidence can be used only to corroborate evidence recorded during the trial court for the purposes of Sec.319 CrPC if so required. It is clear that the word evidence in Sec. 319 CrPC. means only such evidence as is made before the court, in relation to statement and has produced before the court in relation to document. It is only such evidence that can be taken into account by the court

and not on the basis of material collected during investigation. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214 (5 Judges Bench)*)

**Whether court can summon the accused under section 319 when the judgment has been pronounced or delivered by the court:**

After pronouncement of judgment the course of trial comes to end. The powers u/s. 319 CrPC also comes to end. (*Samartha Ram V. State of Rajasthan (2002) Vol II-Crimes 536*)

This question is referred to Larger constitutional bench in the case of *Sukhpal Singh Khaira Vs. state of Punjab (2019)*

**Prosecution of public servant under section 319 CrPC:**

The provisions of Section 19 of the Act will have an overriding effect over the general provisions contained in Section 190 or 319 CrPC. A Special Judge while trying an offence under the Prevention of Corruption Act, 1988, cannot summon another person and proceed against him in the purported exercise of power under Section 319CrPC. if no sanction has been granted by the appropriate authority for prosecution of such a person as the existence of a sanction is sine qua non for taking cognizance of the offence qua that person. (*DilwarsinghVs. Darvindersingh 2006(2) MLJ (Cri) 902 SC*)

**Whether cross examination is needed before issuing summons:**

This court has laid emphasis on the words it ' appears from the evidence, any person has committed any offence'. Section 319 Cr.P.C. has to be essentially exercised only on the basis of the evidence brought on record of the case. The

discretion jurisdiction could be exercised only after the legal evidence comes on record. (*Ram Singh and other Vs. Ram Nivas and another – (2009) SAR Criminal 755 Supreme court*).

Even without cross examination on the basis of a prima facie materials which would enable the sessions court to decide whether the power u/s. 319 Cr.P.C. of the court should be exercised or not. (*Rakesh and another Vs. state of Hariyana - (2001) 6 SCC 248*)

The trial Judge thought that the matter should receive its due consideration only after cross examination of the witnesses is over no exception thereto could be taken far less at the instance of the witness and well a state was not agreed the same. (*Mohammed Shafi Vs. Mohammed Rafiq – 2007 – 5 –Scale – 611*).

There is one more aspect that before summoning the accused. 319(1) CrPC there is no requirement of allowing such accused person to cross examine the witness. (*Hari Narayan G.Bajaj Vs. State of Maharashtra and others -2010- SAR CRIMINAL. 170*)

Sec. 319 CrPC can be exercised at the stage of completion of examination in chief and the court does not need to wait till, the said evidence is tested on cross examination. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214 (5 Judges Bench)*)

### **Criteria or test to decide issue of summons:**

While examining an application under Sec. 319 of the court, the court has to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell for the exercise of discretion u/s. 319 of the court, all

the relevant factors have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating any person.

The principle of strong suspicion may be a criterion at the stage of framing charges, but for the purpose of summoning a person a different legal principle is to be applied. The power has to be exercised on the basis of fresh evidence brought before the court. There lies a fine but clear distinction. (*Lal Suraj @ Suraj Singh and another Vs. State of Jharkhand (2008) 16 Scale 276*)

Mere existence of prima facie case may not say purpose. Different standards ought to be applied at different stages. The test of prima facie case may be sufficient for taking cognizance of the offence, at the stage of framing of charges the court must be satisfied that there exist a strong suspicious. While framing charges in terms of Sec.227 CrPC. the court must consider the entire materials on record to form an opinion that the evidence if an unrebutted would lead to a judgment of conviction. Whether a higher standard be set up for the purpose is invoking the jurisdiction u/s. 319 CrPC to the court is the question? The answer to the question should be rendered in the affirmative. Unless higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down the ingredients thereof i.e. an extra ordinary case and a case was sparingly exercise of jurisdiction would not be satisfied. (*Sabarjit Singh and another Vs. State of Punjab and another – (2009) SAR CrI. 671 (SC)*).

The court power has to be exercised on the basis of fresh evidence brought before the court. (*Lal Suraj @ Suraj Singh and another Vs. State of Jharkhand – (2009) SAR CrI. 146 (SC)*)

Since issue of summons u/s. 319 CrPC. entitles a *denovo* trial under large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay the trial, the trial court has to exercised such discretion with great care and perspicacity. (*Brindavan Dass and others Vs. State of West Bengal (2009) SAR CrI. 117*)

Summoning of additional accused u/s. 319 Cr PC without evidence held to be improper. (*Periayasamy and others Vs. Nallasamy AIR 2019 SC 1426*)

The Court should keep in mind that the witness when giving evidence against the person so discharged, is not doing so merely to seek revenge or is naming him at the behest of someone or for such other extraneous considerations. The court has to be circumspect in treating such evidence and try to separate the chaff from the grain. (*SukdeepSingh Vs. state of Punjab*)

The satisfaction of the investigation officer on alibi of the accused should not be given primacy over summoning of the accused u/s. 319 CrPC. (1) *Saraba Reddy Vs. Puthur Rani Reddy(3 Judges Bench) (2007) 4 SCC 773* (2) *Rajindra Singh Vs. State of UP (AIR) 2009 SC 2786*

Only evidence let before the court can be taken into consideration at the time of disposal of application u/s. 319 CrPC. Materials contained in the case diary or charge sheet or affidavits or statement recorded u/s. 161CrPC. cannot be looked into at the stage as they do not consequence evidence. (*Rajindra Singh Vs. State of UP - AIR 2007 SC 2786*)

The test it has to be applied u/s. 319 CrPC is one which is more than prima facie case has exercised at the time of taking the charge but sought of satisfaction

to an extent that the evidence if goes unrebutted would lead to conviction. (*Hardeep Singh Vs. State of Punjab- 2014- 1- Scale – 214 (5 Judges Bench)*)

Since there was no evidence against the accused to be guilty of offence, but only witness giving opinion that petitioner might have committed offence, hence order of Magistrate for addition of petitioner as accused on such evidence would be unjustified, because adding of a person as an accused on the basis of some suspicion created by a witness would be travesty of justice. (*G. Palanisamy Vs. State) 2003 MLJ (Crl) 394 (Mad)*).

As there is no direct evidence, Hearsay evidence cannot be the basis for issue of summons (*Brindaban das Vs. State of West Bengal AIR 2009 1248(SC)*, *LabhujiAmratjiThakor Vs. State of Gujarat 2018(4) MLJ(Crl) 739 (SC)*)

### **Whether prior notice is necessary -**

The point raised in Asha's case is that whether the trial court is justified in summoning the petitioners as accused in terms of Section 319, CrPC. without giving them an opportunity of being heard?

Whenever a person is sought to be summoned as an additional accused in terms of Section 319, CrPC., not only prior notice calling upon him to show cause is to be issued, but also the judge dealing with the case has to take extra caution to satisfy himself/herself that stronger evidence exists as the basis for taking such action.

It is further held that it is always incumbent upon criminal courts to issue prior notice to a person calling upon him or her to show cause as to why he/she should not be made an additional accused. Only on giving an opportunity of being

heard, a suitable order should be passed. If the order is passed summoning a particular person in terms of Section 319, CrPC. without giving prior notice, such an order would not withstand the legal scrutiny. Hence all criminal courts are expected to keep in mind this aspect of the matter as explained by the Hon'ble apex court in the case of JOGENDRA YADAV (supra). (*Asha Vs. State of Karnataka* 30.3.2016)

### **How to secure presence of the newly added accused:**

As per sub- section(2) and (3) of section 319 CrPC, if such person is not attending the court, he may be arrested or summoned. If such person attending the court, although not under arrest, upon summons may be detained.

Issuance of non bailable order without using other tools of summons and bailable warrant to secure attendance of such a person would impair the personal liberty of the individual/accused person. *Vikas Vs. State of Rajasthan* 201491LW. (Crl)436 (SC)

### **How to proceed against new added accused -*Denovo* trial and tried together with other accused:**

The provision of de novo trial is mandatory. It vitally affects right of the persons brought before the court. It would not be sufficient only to tender witnesses for the cross examination of such a person. They have to be examined afresh. Fresh examination in chief and not only their prosecution for the purpose of cross examination of newly added accused is the mandate of Sec.319(4) CrPC. The word ' could be tried together' with accused in Section 319(1) appears to be only directly 'Could be' cannot under these circumstances be held to be must be.



Once the Sessions Court take cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other persons to array of the accused is after reaching evidence collection when the powers u/s. 319 CrPC of the court can be invoked.

The provision of *denovo* trial u/s.319 CrPC is mandatory. It would not be sufficient to only tender the witnesses for cross examination of such a person. They have to be examined afresh. The words could be tried together with the accused in Sec. 319(1) CrPC appears to be only directory. (*Hari Narayan G.Bajaj Vs. State of Maharashtra (2010) 70 ACC 566 SC*)

A plain reading of Section 319(4) makes it clear that the evidence must be recorded *de-novo* when a new accused is added. The case shall commence afresh insofar as the newly added accused is concerned and all the evidence must be taken in the presence of the accused person. Merely calling the prosecution witnesses for cross examination will not meet the requirements of Section 319(4) of CrPC. Clearly, the proceedings against the person summoned under sub-section (1) are required to be commenced afresh and the witnesses reheard. The entire proceedings have to recommence from the beginning of the trial. All the witnesses have to be examined afresh. Opportunity has to be granted to such a person to cross examine those witnesses. There has to be a *de novo* trial. The safeguard provided in respect of such person is that, the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses reheard. In short, there has to be a *de novo* trial against him. The provision of *de novo* trial is mandatory. (*K.V.PownrajVs. State 2019(1) MWN (Crl) 45(Mad)*)

The expression '*could be tried together*' appearing in Section 319 of CrPC. means that there newly added accused must be tried along with the accused already sent for trial (*Shashikant Singh Vs. Tarkeshwar Singh and another (2002) 5 SCC 738*).

The primary of the underline Sec. 319 CrPC. is that the whole case against all the accused should be tried and disposed off not only an expeditiously but also simultaneously. (*Bholuram Vs. State of Punjab and another (2008) CrLJ 4576 (SC)*)

An accused summoned u/s. 319 CrPC can be tried by the court even after the conclusion of the trial of the court accused. (1) *Babu Bhai, Bhima Bhai, Bokhiria Vs. State of Gujarat (AIR) 2013 SCC 3648* (2) *Rajindra Singh Vs. State aof UP AIR 2007 SC 2786*

### **Delay and No Limitation:**

In a trial of the case, if the court had already taken cognizance of the offence within the limitation and some other persons or summons subsequently to the stand trial as accused. Then no bar of limitation shall arise by such inclusion. (*Chandmaltak Vs. State of Rajasthan and another (2008) CRLJ 1264 Raj*)

Limitation is not a bar u/s. 468 CrPC would not apply. (*A. Vasanthakumar Vs. State of Karnataka - 2004 CRLJ 1960 Karnataka*)

Delay cannot be attributed to the complainant; mere delay is no ground for rejecting application u/s. 319 CrPC. (*Y. Saraba Reddy Vs. Puthur Rani Reddy (2007) 4 SCC 773*).

The power u/s. 319 CrPC. can be exercised even at the far end of the trial.  
(*Bholuram Vs. state of Punjab (2008) 3 SCC CrI. 710*).

**Reasoned order:**

Summoning order u/s. 319 CrPC. should be a reasoned and speaking order.  
(*RukhasnaKhartoon Vs. Sakhawat Hussain (AIR) 2002 SC 2342*)

**Issue estoppel:**

Where a petition u/s. 319 CrPC are summoning the person as accused is dismissed and order is confirmed in revision such person cannot be summoned again on the basis of further investigation and supplementary charge sheet. Principle of issue estoppel will apply. (*Ladu Devi Vs. State of Rajasthan – 2005 CRLJ 543 (Raj)*)

**Court cannot recall or review its order:**

The court has no jurisdiction to recall or review the summoning order u/s. 319 CrPC. (*Nazeer Ahmed Vs. State of UP - 2002 All LJ 1434.*)

**Petition cannot be dismissed for default:**

A petition u/s. 319 CrPC. cannot be dismissed for default. It is not only the responsibility of the prosecution or the informant but also equally the duty of the court to apply its judicial mind to seek if any person should be or should not be added as an accused in a case. *Halima Bibi Vs. State of Orissa 2001 TLP 108 Orissa*

**Accused added under section 319 CrPC cannot be discharged:**

An accused summoned u/s. 319 CrPC cannot be discharged u/s. 227 CrPC.  
(*Jogendra Yadav Vs. state of Bihar (2015)9 SCC 244*)

**Revision lies:**

An order rejecting application u/s. 319 CrPC to summon additional accused is not an interlocutory order. Revision lies against such order. (1) *Mohid Vs. State of UP AIR 2013SC 2248* 92(2) *Khanna Vs. Chief Secretary AIR 1983 SC 595*.

**Conclusion:**

Certain aspects are not still settled in Supreme Court. Recently in *SukhpalSingh Kharia Vs. State of Punjab Criminal appeal 866 of 2019* referred the following questions to larger bench by observing that @ after pursuing the relevant facts and circumstances, the following substantial questions of law arise for further consideration.

- I. Whether the trial court has the power under Section 319 of 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?
- II. Whether the trial court has the power under Section 319 of the 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?
- III. What are the guidelines that the competent court must follow while exercising power under Section 319 Cr.P.C?

\*\*\*\*\*