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A SCRUTINY OF SECTION 319 OF CRPC IN SUKHPAL SINGH KHAIRA V.

STATE OF PUNJAB

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Abstract

The Indian Criminal system is set in such a way that everyone is innocent until proven guilty and no guilty person remains unaccused and at least, should not remain so. To find the real offender, the Indian Courts turn inquisitorial, therefore, sometimes the Indian Criminal System is inquisitorial in nature. To make the accused liable for the offence, the judge himself investigates through an agency (having legal force) in extreme situations. In the case in hand, there is an attempt by the Court to interpret the meaning of Section 319 of CrPC. All the contentions of the appellant and the respondent have been discussed in detail. The views of the Amicus Curiae have also been mentioned in the following paper. The judgement delivered in this case has expanded the horizon of criminal justice system as is the aim behind the legislation of Section 319.

Keywords: purposive interpretation, joint trial, additional accused, acquittal

Introduction

Facts

A petition was filed in the Supreme Court of India and was heard by a two-judge bench of the Court. The petition was to seek clarification for the course of assailing the summoning order in the context of the power exercisable under Section 319 of the Code of Criminal Procedure. However, the two-judge bench expressed the need to refer this petition to the larger bench of the Court and was then heard by a five-judge bench. The court while hearing the petition formulated the following questions for consideration in the matter.

Citation – AIR 2023 SC 1: AIROnline 2022 SC 1078

Court – Supreme Court of India

Bench – Justice S. Abdul Nazeer

Justice B. R. Gavai

Justice A.S. Bopanna

Justice V. Ramasubramanian

Justice B. V. Nagarathna



Legal Questions in the Case

1. Whether the trial court has the power under Section 319 of the Code of Criminal Procedure for summoning an additional accused when the trial with respect to the other co-accused has ended and the judgement of conviction rendered on the same date before the pronouncement of the judgement?
2. Whether the trial court has the power under Section 319 of CrPC for summoning an additional accused when the trial in respect of the other absconding accused is either pending or ongoing, having been bifurcated from the main trial?

3. What are the guidelines that the competent court must follow while exercising power under Section 319 of CrPC?

Laws Involved in the Case

Sections 190, 319, 351 and 354 of CrPC are the main legislations that this case mainly deals with. Since, the case mainly revolves around the interpretation of Section 319, it is important to understand the said Section. Section 319 provides that 'where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not rendered powerless in the matter, the power to summon material witness can be exercised by the court at any stage of the inquiry, trial or other proceeding so that justice is done.'¹

Contentions of the Appellant

It was contended by the counsel appearing for the appellant that the order under Section 319 can only be exercised during the pendency of the trial, hence, before the pronouncement of judgement. One of the contentions of the appellants was also made in reference to Section 351(1) of CrPC. Under Section 351(1) of CrPC, after the perusal of evidence, the judgement is to be pronounced after the termination of trial.

Contentions of the 'Amicus Curiae'

The major contention of the Amicus Curiae appointed in this case was that before taking the cognizance under Section 190 of CrPC and after the pronouncement of judgement, Court has no power under Section 319 to issue the order summoning the new additional accused. The trial court does not have the power under Section 319 of CrPC for summoning an additional accused when the trial with respect to other co-accused has ended and the judgement of conviction rendered on the same date of before pronouncing the summoning order.

Also under Section 319(4), the trial against the newly added accused should be a fresh trial. The Court has to decide whether there is a need for joint or fresh trial. In case of a joint trial, fresh trials should be conducted against all the accused persons including the

¹ Title- Criminal Procedure Code, Author- S. N. Mishra

existing accused. New evidence should be recorded and the previously recorded evidence must not be used for the fresh trials.

Contentions of the Respondent

The Respondent, the State of Punjab, mainly relied their contention on the intent and object behind the legislation of the Section concerned, which is, primarily, to find the actual accused. The main contention was that the principle of purposive interpretation should be adopted and the scope of the section should not be limited so as to deliver justice.

To the question of period as to when an order under Section 319 can be issued, the main contention of the respondent was that a summoning order does not become ineffective just because the trial has been concluded. When such evidence is produced before the Court that necessitates the summoning of the additional accused, it is valid to do so.

Another contention of the respondent was the trial court has the power to issue an order under Section 319 of the CrPC to summon the other co-accused when the trial of the already accused persons has ended and the judgement of conviction is rendered on the same date before pronouncing the summoning order, in view of the fact that, under Section 354 of CrPC, 'an order on quantum of sentence is an integral part of the judgement and any judgement of conviction without such an order is incomplete.

Judgement

The Court after analyzing the arguments put forth by both the parties to the case answered each of the three questions raised before the Court in a sequential manner.

The judgement of the Court stated that in a criminal case, there could be mainly two possibilities – acquittal or the conviction of the accused. In case of an acquittal, the power of the Court under Section 319 of CrPC to summon an additional accused has to be exercised before the order of acquittal is pronounced. Whereas in case of conviction of the accused, the order under Section 319 of the CrPC has to be issued before the order of sentence is pronounced.

The Court while dealing with the question of summoning additional accused when the trial in respect of other absconding accused is pending/ongoing, having been bifurcated

from the main trial held that the Court has the power to do so but it is subject to the evidence which is recorded in the bifurcated trial pointing to the involvement of the accused. The Court also held that the evidence recorded in the main trial cannot be the basis of order under Section 319 if such a power has not been exercised in the main trial till its conclusion.

The Court also issued some guidelines which must be followed while exercising the power under Section 319 of CrPC. The major guidelines that were issued includes the following guidelines:

Guidelines to be followed while exercising the power under Section 319

When the Court finds the evidence which is an essential element under Section 319, the Court has to pause the already ongoing trial till the fresh trial is started. After considering the evidence, the Court shall determine whether there is a need for summoning the accused or not. If the Court deems it fit that the accused should be summoned, the Court shall determine whether the new accused should be tried along with the other accused or separately. In case the Court decides that joint trial should take place, the fresh trial have to be started only after the presence of the summoned accused has been secured by the Court. For separate trials of the summoned accused, the judgement in the main case can be delivered.

Cases Referred

1. Manjit Singh v. State of Haryana and others AIR 2021 SC 4274
2. Shashikant Singh v. Tarkeshwar Singh AIR 2002 SC 2031
3. Hardeep Singh v. State of Punjab AIR 2014 SC 1400
4. Rajendra Singh v. State of U.P. and Another AIR 2007 SC 2786
5. Rama Narang v. Ramesh Narang and Others (1995) 2 SCC 513