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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
S. ABDUL NAZEER; J., B.R. GAVAI; J., A.S. BOPANNA; J., V. RAMASUBRAMANIAN; J., B.V. NAGARATHNA; J.
CRIMINAL APPEAL NO.885 OF 2019; December 05, 2022
Sukhpal Singh Khaira *versus* **The State of Punjab**

Code of Criminal Procedure 1973; Section 319 - Supreme Court Constitution Bench issues elaborate guidelines on the exercise of powers to summon additional accused. *(Para 33)*

Code of Criminal Procedure 1973; Section 319 - The power under Section 319 of Cr.P.C. is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. *(Para 33)*

Code of Criminal Procedure 1973; Section 319 - The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion. *(Para 33)*

Code of Criminal Procedure 1973; Section 319- Power has to be excercised before the conclusion of the trial, which means before the pronouncement of the judgment. *(Para 33)*

WITH SLP (CRL.) No. 6960/2021, CRL. APPEAL No.886/2019 & SLP (CRL.) No. 5933/2019

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J U D G M E N T

A.S. Bopanna, J.

1. In the above appeal, the order dated 17.11.2017 passed by the High Court of Punjab and Haryana in Criminal Revision No.4070 of 2017 and Criminal Revision No.4113 of 2017 are assailed. Through the said order, the High Court has dismissed the Criminal Revision Petitions and upheld the order dated 31.10.2017 passed by the Trial Court summoning the appellant as an additional accused by exercising the power under Section 319 of the Criminal Procedure Code, 1973 ('CrPC' for short). For the purpose of narration of facts the case in Criminal Appeal No.885 of 2019 is noted.

2. The position which led to the appellant being summoned is that on 05.03.2015 a First Information Report was lodged in the Police Station Sadar, Jalalabad against 11 accused for the offence under Sections 21, 24, 25, 27, 28, 29 and 30 of Narcotic Drugs and Psychotropic Substance Act, 1985 ('NDPS' for short), Section 25-A of Arms Act and Section 66 of the Information Technology Act, 2000 ('IT Act' for short). In the charge sheet dated 06.09.2015, 10 accused were summoned and put to trial in Sessions Case No. 289 of 2015. Though the second charge sheet was filed by the police, the same did not name the appellant herein as an accused.

3. In the trial conducted before the learned Sessions Judge also, initially the name of the appellant was not mentioned by the witnesses. After the initial recording of evidence, the prosecution filed an application dated 31.07.2017 under Section 311 of CrPC for recalling PW-4 and PW-5, which was allowed. In the further examination of the said recalled witnesses, they named the appellant herein. The prosecution thereafter filed an application on 21.09.2017 invoking Section 319 of CrPC in the said Sessions Case No.289 of 2015 for summoning additional 5 accused, including the appellant herein. The summoning of additional accused was sought based on the evidence tendered by PW-4, PW-5 and PW-13.

4. It is to be noted that out of the 11 accused, the proceedings in Sessions Case No.289 of 2015 were against the 10 accused and since one of the accused was not available, the case in that regard was split up (bifurcated) and was subsequently numbered as Sessions Case No.217 of 2019 on 03.09.2019. In that background, it is seen that as on the date when the application under Section 319 CrPC was filed on 21.09.2017, the only proceeding pending was Sessions Case No.289 of 2015. In that regard, in respect of the proceedings against the 10 accused, the learned Sessions Judge pronounced the judgment on 31.10.2017 whereby one of the accused was acquitted, while the remaining 9 accused were convicted and sentence was imposed on 31.10.2017. The learned Sessions Judge, also allowed the application filed under Section 319 of CrPC on the same day i.e., 31.10.2017 and summoned the appellant to face trial. It is in that backdrop the appellant assailed the order dated 31.10.2017 summoning him to face trial, since according to him such order is not sustainable in law as the same was not passed in a proceeding pending before the learned Sessions Court as at the stage when the power to summon was exercised by learned Sessions Judge, the judgment of conviction and sentence had already been passed earlier on 31.10.2017. The said order assailed in Revision Petition No.4070 and 4113 of 2017 was dismissed by the High Court, which has led to the present proceedings.

5. The instant petition was heard before a bench consisting of two Hon'ble Judges of this Court on 10.05.2019 wherein, in the course of assailing the summoning order, the decisions of this Court in the case of ***Shashikant Singh vs. Tarkeshwar Singh*** (2002) 5 SCC 738 and the decision in the case of ***Hardeep Singh vs. State of Punjab*** (2014) 3 SCC 92 rendered in the context of the power exercisable under Section 319 of CrPC were noted. In that context, the Bench of two Hon'ble Judges of this Court was of the opinion that the question with regard to the actual stage at which the trial is said to have concluded is required to be authoritatively considered since the power under Section 319 of CrPC is extraordinary in nature.

6. In that view, the following substantial questions of law were raised for further consideration and the matters were placed before Hon'ble the Chief Justice of India for constitution of a Bench of appropriate strength to consider the questions raised.

Hon'ble the Chief Justice has accordingly constituted this Bench to consider the questions raised, which read as hereunder: -

"I. Whether the trial court has the power under Section 319 of CrPC for summoning additional accused when the trial with respect to other coaccused 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 CrPC?"

7. In order to answer the above questions, we have heard Shri P.S. Patwalia, learned senior counsel for the appellant and also Shri Puneet Singh Bindra, learned counsel who appeared on behalf of the appellant in the tagged matter. Shri S. Nagamuthu, learned senior counsel has assisted this Court as Amicus Curiae. Shri Vinod Ghai, Advocate General appeared for the State of Punjab while Shri A.K. Prasad, learned Additional Advocate General appeared for the State of U.P. Shri S.V. Raju, Additional Solicitor General has appeared for the Union of India since a case is said to have also been registered against the appellant under the Prevention of Money Laundering Act, 2002. We have also heard Shri Ashish Dixit, learned counsel who appeared for the Intervener-Prosecutors Association.

8. The gist of the contention put forth by Shri P.S. Patwalia, learned Senior Counsel is as hereunder: -

Order summoning a person (appellant herein) as an accused under Section 319 of CrPC was passed at a stage when the trial had already concluded and even judgment and order on sentence had been pronounced. It is contended that the said order is, therefore in violation of Section 319 of CrPC and ***Hardeep Singh*** (supra), wherein in *Para 47* it was held that power has to be exercised before pronouncement of judgment. It can only be exercised during the pendency of the trial, which is a stage anterior to the date of pronouncement of judgment. In fact this is also consistent with Section 353(1) of CrPC, which states that after perusal of the evidence, the judgment is to be pronounced after termination of trial, and therefore, Section 319 of CrPC mandates that the power can be exercised only during trial and it follows that once trial is concluded and judgment is pronounced, the Court cannot exercise power under Section 319 of CrPC at that stage.

Contending that it can be simultaneous is also equally violative of Section 319 of CrPC and the law laid down is clear that it has to be done before judgment. In a nutshell, if an accused is to be summoned, it has to be done when the trial is alive. The moment trial is concluded and the matter is kept for judgment, then the stage for exercising power under Section 319 of CrPC goes and the Court thereafter becomes *functus officio*. When the trial is pending, the Court can add an accused under Section 319 of CrPC but the moment the trial concludes and judgment is pronounced, then no proceedings remain before the Court. When the Court pronounces the judgment acquitting or convicting the accused, thereafter, no proceedings which commenced with the filing of the original charge sheet remain pending. It is also contended that it

is not a mere procedural violation, rather, substantive violation since the power is circumscribed by the stage during which it can be exercised, i.e. inquiry/trial.

9. The gist of the contentions urged by Shri S. Nagamuthu, learned Amicus Curiae is as follows:-

Before taking cognizance under Section 190 of CrPC and after pronouncement of judgment, Court has no power under Section 319 of CrPC and in view of ***Hardeep Singh*** (supra) the trial court does not have the power for summoning additional accused when trial with respect to other co-accused has ended and judgment of conviction has been rendered on the same date. In Sessions Trial, accused can be acquitted by an order of acquittal and if accused is acquitted either under Section 232 or 235 of CrPC, by passing an order or pronouncing a judgment, the proceeding gets terminated. While, if the accused is convicted, proceeding still continues because he is to be heard on sentence and he is entitled to lead evidence at that stage. Therefore, when accused is convicted, trial is terminated after sentence is passed. Section 353 of CrPC should be understood in this background and so, it cannot be argued that after arguments are heard, trial gets terminated.

Evidence which have been brought on record during inquiry/trial including evidence collected during investigation such as FIR, Section 161, Section 164 statements, cannot be treated as evidence for the purpose of Section 319 of CrPC. Applying this, it will emerge that the evidence recorded in a separate trial held against the other accused cannot be considered as evidence in the present case. But, in the split up case (bifurcated) where there is a separate trial, and during the course of that trial, if any evidence comes on record against a person who is not already an accused, based on that evidence alone, he can be arrayed as an accused under Section 319 of CrPC. When a person is summoned as an additional accused, it is the discretion of the Court whether to charge and try two or more persons together in the same trial.

As per Section 319(4) of CrPC, as against the newly added accused, trial should be a fresh trial. However, if there is joint trial, fresh trial should be conducted against all the accused including the existing accused. In such an event, evidence already recorded is no evidence against the added accused in view of Section 273 of CrPC. In a case, there cannot be two sets of evidence, one against the existing accused and the other against the added accused. As a consequence, evidence already recorded is no evidence against any accused including the existing accused. Fresh trial is to be conducted.

10. The gist of the contentions put forth by Shri Vinod Ghai, learned Advocate General for the State of Punjab is as follows:-

The intent behind the legislature in introducing Section 319 of CrPC is to check that no culprit should go scot-free and to bring home the guilt of actual accused. It is in this context that the Courts have been empowered to summon any person, who appears to have committed an offence, for which the already charge-sheeted accused are facing trial. Giving a narrow interpretation to such a provision and putting unwarranted restrictions would circumvent the very purpose of this power and would only result in travesty of justice. It is with the said object in mind that a constructive and purposive interpretation should be adopted which advances the cause of justice and does not dilute the intention of the statute conferring powers on the Court to carry out the above-mentioned avowed object and purpose to try the person to the

satisfaction of the Court as an accused in the commission of the offence that is the subject matter of the trial.

Section 319(1) of CrPC explains as to who/which type of person can be summoned as an additional accused to face trial. The word "could be tried together with other accused" has been used to identify the person who can be summoned and tried as an additional accused. Conclusion of main trial during pendency of revision/appeal before the Higher Courts against Section 319 of CrPC order will not make the order inoperative/ineffective merely because the trial in which such order was passed has been concluded.

The Court has exercised the power under Section 319 of CrPC for summoning additional accused when the trial in respect of other absconding accused is ongoing/pending having been bifurcated from the main trial. The trial *qua* accused who were earlier absconding, is pending and some evidence has come which necessitates the summoning of additional accused by the Court. When application under Section 319 of CrPC is decided simultaneously on the same day when trial is concluded, then the Court below does not become *functus officio* and is competent to exercise power under Section 319 of CrPC in view of Section 354 of CrPC which expressly provides that an order on quantum of sentence is an integral part of the judgment and any judgment of conviction without such order would be referred as incomplete.

11. The gist of the contention put forth by Shri A.K. Prasad, learned Additional Advocate General for the State of U.P. is essentially in the same line as contended by the learned Advocate General for the respondent-State of Punjab. Insofar as the aspect relating to the power that could be exercised under Section 319 of CrPC, with the connotation of such power being exercised before completion of trial it was contended by the learned counsel that the trial does not conclude with the pronouncement of conviction, since sentence also being a part of the judgment. The court becomes *functus officio* only after the sentence is imposed. It is contended that it will have to be held that the power can be exercised till the sentence is pronounced, which is the point at which the judgment is complete in all respects and trial gets concluded.

12. Shri S.V. Raju, learned Additional Solicitor General though argued in similar lines as put forth by the learned Advocate General and Additional Advocate General for the respective States, he, in fact, went a step further to contend that the power under Section 319 of CrPC can be invoked at any stage even after the sentence is pronounced since the involvement of an accused may come to light at a later stage and in that circumstance if the recommendation of the Law Commission to bring in the provision is kept in view, the only objective is that no accused should go scot-free and therefore steps can be taken at any stage to bring the accused to book. Shri Ashish Dixit, the learned counsel for the intervenor has complemented the arguments on behalf of States by putting forth similar contentions.

13. In the background of the rival contentions, in order to determine the question referred to us, it would be appropriate for us to at the outset, take note of the provision as contained in Section 319 of CrPC, which reads as hereunder: -

"**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 afresh, and 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."

14. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused.

15. In that regard, the object of incorporating the provision in the CrPC and bestowing such power to the Court was based on the recommendation made by the Law Commission of India in its Forty-First Report to which all the learned senior counsel have made extensive reference, read as hereunder:-

24.80. It happens sometimes, though not very often, that a Magistrate hearing a case against certain accused finds from the evidence that some person, other than the accused before him, is also concerned in that very offence or in a connected offence. It is only proper that the Magistrate should have the power to call and join him in the proceedings. Section 351 provides for such a situation, but only if that person happens to be attending the Court. He can then be detained and proceeded against. There is no express provision in section 351 for summoning such a person if he is not present in Court. Such a provision would make section 351 fairly comprehensive, and we think it proper to expressly provide for that situation.

24.81. Section 351 assumes that the Magistrate proceeding under it has the power of taking cognizance of the new case. It does not, however, say in what manner cognizance is taken by the Magistrate. The modes of taking cognizance are mentioned in section 190, and are, apparently, exhaustive. The question is, whether against the newly added accused, cognizance will be supposed to have been taken on the Magistrate's own information under section 190(1)(c), or only in the manner in which cognizance was first taken of the offence against the other accused. In concrete terms, if the original case was instituted on a police report, i.e. under section 190(1)(b), will cognizance against the new accused be supposed to have been taken in the same manner, or under section 190(1)(c)? The question is important, because the methods of enquiry and trial in the two cases differ. About the true position under the existing law, there has been difference of opinion, and we think it should be made clear. It seems to us that the main purpose of this particular provision is, that the whole case against all known suspects should be proceeded with expeditiously, and convenience requires that cognizance against the newly added accused should be taken in the same manner as against the other accused. We, therefore, propose to re-cast section 351 making it comprehensive and providing that there will be no difference in the mode of taking cognizance if a new person

is added as an accused during the proceedings. It is, of course, necessary (as is already provided) that in such a situation the evidence must be re-heard in the presence of the newly added accused.

24.82 The offence for which the newly added accused can be tried is not indicated in precise terms in the section. Obviously, that offence should be connected with the one for which the original accused is under trial. To bring that out, a small verbal amendment is recommended.

16. In the above backdrop, the issue relating to the power to be exercised under Section 319 of CrPC had arisen for detailed consideration in ***Hardeep Singh*** (supra) wherein the scope, procedure and the stage at which such power was to be exercised was considered and summarised as follows:-

12. Section 319 CrPC springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

15. It would be necessary to put on record that the power conferred under Section 319 CrPC is only on the court. This has to be understood in the context that Section 319 CrPC empowers only the court to proceed against such person. The word “court” in our hierarchy of criminal courts has been defined under Section 6 CrPC, which includes the Courts of Session, Judicial Magistrates, Metropolitan Magistrates as well as Executive Magistrates. The Court of Session is defined in Section 9 CrPC and the Courts of the Judicial Magistrates have been defined under Section 11 thereof. The Courts of the Metropolitan Magistrates have been defined under Section 16 CrPC. The courts which can try offences committed under the Penal Code, 1860 or any offence under any other law, have been specified under Section 26 CrPC read with the First Schedule. The Explanatory Note (2) under the heading of “Classification of offences” under the First Schedule specifies the expression “Magistrate of First Class” and “any Magistrate” to include Metropolitan Magistrates who are empowered to try the offences under the said Schedule but excludes Executive Magistrates.

40. Even the word “course” occurring in Section 319 CrPC, clearly indicates that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial and the trial stage. The word “course” therefore, allows the court to invoke this power to proceed against any person from the initial stage of inquiry up to the stage of the conclusion of the trial. The court does not become functus officio even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused. The word “course” ordinarily conveys a meaning of a continuous progress from one point to the next in time and conveys the idea of a period of time : duration and not a fixed point of time.

42. To say that powers under Section 319 CrPC can be exercised only during trial would be reducing the impact of the word “inquiry” by the court. It is a settled principle of law that an interpretation which leads to the conclusion that a word used by the legislature is redundant, should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim a verbis legis non est recedendum which means, “from the words of law, there must be no departure” has to be kept in mind.

47. Since after the 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(1) CrPC can be exercised at any time after the chargesheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pretrial 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. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance with Sections 207 and 208 CrPC, and committing the matter if it is exclusively triable by the Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 CrPC is forbidden, by express provision of Section 319 CrPC, to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Session.

57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. **The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial.** So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the chargesheet or any other person who might be an accomplice.

(emphasis supplied)

17. In view of the reference contained in the order passed by the Bench consisting of two Hon'ble Judges seeking clarity in the matter due to the view taken by another Bench of two Hon'ble Judges in ***Shashikant Singh*** (supra) where, purportedly the summoned accused was proceeded against after the judgment was passed against the accused who were originally charged, it is necessary to take note of the situation that had arisen therein and the conclusion reached in that case. It is noted that in a case under Section 302/34 of IPC wherein Shivakant Singh, the brother of Shashikant Singh (supra) was murdered, the trial proceeded against one Chandra Shekar Singh. When the evidence was recorded it was found that Tarkeshwar Singh and two others had also committed the offence of murder of Shivakant Singh. The learned Additional Sessions Judge by order dated 07.04.2001 exercised the power under Section 319 of CrPC and ordered to issue a warrant of arrest so that they may be tried together with Chandra Shekar Singh, the accused against whom the trial was proceeding. The said order dated 07.04.2001 summoning the accused came to be assailed by Tarkeshwar Singh before the High Court in Criminal Revision No.269 of 2001. During the pendency of the said Revision Petition before the High Court the learned Additional Sessions Judge concluded the pending trial against the originally charged accused Chander Shekar Singh and convicted him by the judgment dated 16.07.2001. The question which therefore arose in that context was as to whether the trial in the case in which additional accused were summoned under Section 319 of CrPC including Tarkeshwar Singh can proceed in view of the phrase "could be tried together with the accused" contained in Section 319(1) of CrPC after the trial against other accused had concluded with the order of conviction.

18. In that context the Bench of two Hon'ble Judges which allowed the trial to proceed against the summoned accused, Tarkeshwar Singh and others held as hereunder:

"9. The intention of the provision here is that where in the course of any enquiry into, or trial of, an offence, it appears to the court from the evidence that any person not being the accused has committed any offence, the court may proceed against him for the offence which he appears to have committed. At that stage, the court would consider that such a person could

be tried together with the accused who is already before the court facing the 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. It vitally affects the rights of a person so brought before the court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. Fresh examination-in-chief and not only their presentation for the purpose of the crossexamination of the newly added accused is the mandate of Section 319(4). The words "could be tried together with the accused" in Section 319(1), appear to be only directory. "Could be" cannot under these circumstances be held to be "must be". The provision cannot be interpreted to mean that since the trial in respect of a person who was before the court has concluded with the result that the newly added person cannot be tried together with the accused who was before the court when order under Section 319(1) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the court on the basis of the evidence before it that the newly added person appears to have committed the offence resulting in an order for his being brought before the court.**"

(emphasis supplied)

19. Thus, to put the matter in perspective, a perusal of the recommendation of the Law Commission would indicate the intention that an accused who is not charge sheeted but if is found to be involved should not go scotfree. Hence, Section 319 of CrPC was incorporated which provides for the Court to exercise the power to ensure the same before the conclusion of trial so as to try such accused by summoning and being proceeded along with the other accused. In ***Shashikant Singh*** (supra), a Bench of two Hon'ble Judges, on holding that the joint trial is not a must has held the requirement as contained in Section 319(1) of CrPC as only directory, and as such the judgment of conviction dated 16.07.2001 against the charge-sheeted accused was considered not to be an impediment for the court to proceed against the accused who was added by the summoning order dated 07.04.2001, which in any case was prior to the conclusion of the trial which in our view satisfies the requirement since the summoning order was before the judgment. In the case of ***Hardeep Singh*** (supra) also the power of the Court under Section 319 of CrPC has been upheld, reiterated, and it has been held that such power is available to be exercised at any time before the pronouncement of judgment. Therefore, there is no conflict or diverse view in the said decisions insofar as the exercise of power, the manner and the stage at which power is to be exercised. However, a certain amount of ironing the crease is required to explain the connotation of the phrase "could be tried together with the accused" appearing in sub-section (1) read with the requirement in sub-section 4(a) to Section 319 of CrPC and to understand the true purport of exercising the power as per the phrase "before the pronouncement of judgment".

20. A close perusal of Section 319 of CrPC indicates that the power bestowed on the court to summon any person who is not an accused in the case is, when in the course of the trial it appears from the evidence that such person has a role in committing the offence. Therefore, it would be open for the Court to summon such a person so that he could be tried together with the accused and such power is exclusively of the Court. Obviously, when such power is to summon the additional accused and try such a person with the already charged accused against whom the trial is proceeding, it will have to be exercised before the conclusion of trial. The connotation 'conclusion of trial' in the present case cannot be reckoned as the stage till the evidence is recorded, but, is to be understood as the stage before

pronouncement of the judgment as already held in ***Hardeep Singh*** (supra) since on judgment being pronounced the trial comes to a conclusion since until such time the accused is being tried by the Court.

21. In that context, the rival contentions are to be analysed to arrive at the conclusion as to which is the stage at which it can be said that the trial has concluded. Is it at the stage when the judgment is pronounced and the conviction is ordered or is it when the sentence is imposed and the trial is complete in all respects? In order to arrive at a conclusion on this aspect the provision in the code relating to judgment is required to be noted. In Chapter XVIII regulating the trial before a Court of Session the procedure to be adopted and the conclusion of trial is indicated. What is relevant for our purpose is Section 232 and 235 of CrPC which read as hereunder:-

"232. Acquittal.—If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal."

"**235. Judgment of acquittal or conviction.**—(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law."

Further Chapter XXVII deals with regard to judgment as contained in Section 353 of CrPC, while Section 354 of CrPC relates to the language and contents of the judgment. They read as hereunder:-

"**353. Judgment.**—(1) The judgment in every trial in any Criminal Court or original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,—

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under clause (a) of sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under clause (b) or clause (c) of sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in clause (c) of sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 465."

"**354. Language and contents of judgment.**—(1) Except as otherwise expressly provided by this Code, every judgment referred to in section 353,—

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted, and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860) and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Code.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under section 117 or sub-section (2) of section 138 and every final order made under section 125, section 145 or section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision."

22. From a perusal of the provisions extracted above, it is seen that if the Sessions Court while analysing the evidence recorded finds that there is no evidence to hold the accused for having committed the offence, the judge is required to record an order of acquittal. In that case, there is nothing further to be done by the learned Judge and therefore the trial concludes at that stage. In such cases where it arises under Section 232 of CrPC and an order of acquittal is recorded and when there are more than one accused or the sole accused, have/has been acquitted, in such cases, that being the end of the trial by drawing the curtain, the power of the court to summon an accused based on the evidence as contemplated under Section 319 of CrPC will have to be

invoked and exercised before pronouncement of judgment of acquittal. There shall be application of mind also, as to whether separate trial or joint trial is to be held while trying him afresh. After such order it will be open to pronounce the judgment of acquittal of the accused who was tried earlier.

23. However, if the learned Judge arrives at the conclusion that the accused is to be convicted, the conviction shall be ordered through the judgment as contemplated under Section 235 of CrPC. Sub-section (2) thereto provides that if the learned Judge does not proceed to give the benefit to the accused of being released on probation under Section 360 of CrPC, the learned Judge shall hear the accused on the question of sentence and then impose a sentence on him according to law. Therefore it is seen that Section 235 of CrPC, is divided into two parts, firstly to record the conviction and if the conviction is recorded the sentence is to be imposed only after providing an opportunity of being heard. While hearing on sentence if it is found that the accused was previously convicted and if the accused does not admit the same, the learned Judge is required to record a finding on that aspect as contemplated under Section 236 of CrPC. Further, Section 353 of CrPC provides for the manner in which the judgment is required to be pronounced and Section 354 of CrPC refers to the language and contents of the judgment. Sub-section 1(c) and sub-section (2) to (6) to Section 354 CrPC indicate that even after the conviction is ordered, the specified procedure is required to be followed by the learned Judge to impose the sentence and the reason for the severity of the punishment which shows that it is a continuation of the process requiring the learned Judge to apply her/his mind to the evidence available on record to assess the nature of involvement in committing the offence, gravity of the same and impose the sentence, unlike in a civil proceeding where drawing up the decree is a ministerial act though based on the judgment.

24. The above aspects would indicate that even after the pronouncement of the judgment of conviction, the trial is not complete since the learned Sessions Judge is required to apply her/his mind to the evidence which is available on record to determine the gravity of the charge for which the accused is found guilty; the role of the particular accused when there is more than one accused involved in an offence and in that light, to award an appropriate sentence. Therefore, it cannot be said that the trial is complete on the pronouncement of the judgment of conviction alone, though it may be so in the case of acquittal as contemplated under Section 232 of CrPC, since in that case there is nothing further to be done by the learned Judge except to record an order of acquittal which results in conclusion of trial.

25. In this regard, it would be apposite to refer to the decision in ***Rama Narang vs. Ramesh Narang and Others*** (1995) 2 SCC 513 wherein a bench consisting of three Hon'ble Judges has held as hereunder:-

"12. Chapter XVIII relates to trial before a Court of Session. Sections 225 to 227 relate to the stage prior to the framing of charge. Section 228 provides for the framing of charge against the accused person. If after the charge is framed the accused pleads guilty, Section 229 provides that the Judge shall record the plea and may, in his discretion, convict him thereon. However, if he does not enter a plea of guilty, Sections 230 and 231 provide for leading of prosecution evidence. If, on the completion of the prosecution evidence and examination of the accused, the Judge considers that there is no evidence that the accused committed the offence with which he is charged, the Judge shall record an order of acquittal. If the Judge does not record an acquittal under Section 232, the accused would have to be called upon to enter on his defence as required by Section 233. After the evidencein-defence is completed and the arguments heard as required by Section 234, Section 235 requires the Judge to give

a judgment in the case. **If the accused is convicted, sub-section (2) of Section 235 requires that the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence and then pass sentence on him according to law. It will thus be seen that under the Code after the conviction is recorded, Section 235(2) inter alia provides that the Judge shall hear the accused on the question of sentence and then pass sentence on him according to law. The trial, therefore, comes to an end only after the sentence is awarded to the convicted person.**

13. Chapter XXVII deals with judgment. Section 354 sets out the contents of judgment. It says that every judgment referred to in Section 353 shall, inter alia, specify the offence (if any) of which and the section of the Penal Code, 1860 or other law under which, the accused is convicted and the punishment to which he is sentenced. Thus a judgment is not complete unless the punishment to which the accused person is sentenced is set out therein. Section 356 refers to the making of an order for notifying address of previously convicted offender. Section 357 refers to an order in regard to the payment of compensation. Section 359 provides for an order in regard to the payment of costs in non-cognizable cases and Section 360 refers to release on probation of good conduct. **It will thus be seen from the above provisions that after the court records a conviction, the accused has to be heard on the question of sentence and it is only after the sentence is awarded that the judgment becomes complete and can be appealed against under Section 374 of the Code."**

(emphasis supplied)

26. Similarly while considering the purport of what constitutes a judgment to provide finality to trial, a bench consisting of two Hon'ble Judges in ***Yakub Abdul Razak Memon vs. State of Maharashtra*** (2013) 13 SCC 1 has held as hereunder:-

"**106. It is clear that a conviction order is not a "judgment" as contemplated under Section 353 and that a judgment is pronounced only after the award of sentence.**

113. It is also clear from the judgment that detailed submissions were made by the appellant (A-1) during the pre-sentence hearing and these submissions were considered and, accordingly, reasons have been recorded by the Designated Judge in Part 46 of the final judgment in compliance with the requirement of Section 235(2) and Section 353 of the Code. **It is also relevant to mention that Section 354 makes it clear that "judgment" shall contain the punishment awarded to the accused. It is therefore, complete only after the sentence is determined.**"

(emphasis supplied)

27. Therefore, from a perusal of the provisions and decisions of this Court, it is clear that the conclusion of the trial in a criminal prosecution if it ends in conviction, a judgment is considered to be complete in all respects only when the sentence is imposed on the convict, if the convict is not given the benefit of Section 360 of CrPC. Similarly, in a case where there are more than one accused and if one or more among them are acquitted and the others are convicted, the trial would stand concluded as against the accused who are acquitted and the trial will have to be concluded against the convicted accused with the imposition of sentence. When considered in the context of Section 319 of CrPC, there would be no dichotomy as argued, since what becomes relevant here is only the decision to summon a new accused based on the evidence available on record which would not prejudice the existing accused since in any event they are convicted.

28. In that view of the matter, if the Court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319 of CrPC can be exercised by passing an order to that effect before

the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion. While arriving at such conclusion what is also to be kept in view is the requirement of sub-section (4) to Section 319 of CrPC. From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused. In a case where the learned Sessions Judge exercises the power under Section 319 of CrPC after recording the evidence of the witnesses or after pronouncing the judgment of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of Section 273 of CrPC. As against the accused who has been summoned subsequently a fresh trial is to be held. However while considering the application under Section 319 of CrPC, if the decision by the learned Sessions Judge is to summon the additional accused before passing the judgment of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgment is required to be withheld and the application under Section 319 of CrPC is required to be disposed of and only then the conclusion of the judgment, either to convict the other accused who were before the Court and to sentence them can be proceeded with. This is so since the power under Section 319 of CrPC can be exercised only before the conclusion of the trial by passing the judgment of conviction and sentence.

29. Though Section 319 of CrPC provides that such person summoned as per sub-section (1) thereto could be jointly tried together with the other accused, keeping in view the power available to the Court under Section 223 of CrPC to hold a joint trial, it would also be open to the learned Sessions Judge at the point of considering the application under Section 319 of CrPC and deciding to summon the additional accused, to also take a decision as to whether a joint trial is to be held after summoning such accused by deferring the judgment being passed against the tried accused. If a conclusion is reached that the fresh trial to be conducted against the newly added accused could be separately tried, in such event it would be open for the learned Sessions Judge to order so and proceed to pass the judgment and conclude the trial insofar as the accused against whom it had originally proceeded and thereafter proceed in the case of the newly added accused. However, what is important is that the decision to summon an additional accused either *suo-moto* by the Court or on an application under Section 319 of CrPC shall in all eventuality be considered and disposed of before the judgment of conviction and sentence is pronounced, as otherwise, the trial would get concluded and the Court will get divested of the power under Section 319 of CrPC. Since a power is available to the Court to decide as to whether a joint trial is required to be held or not, this Court was justified in holding the phrase, “could be tried together with the accused” as contained in Section 319(1) of CrPC, to be directory as held in ***Shashikant Singh*** (supra) which in our opinion is the correct view.

30. One other aspect which is necessary to be clarified is that if the trial against the absconding accused is split up (bifurcated) and is pending, that by itself will not provide validity to an application filed under Section 319 of CrPC or the order of Court to summon an additional accused in the earlier main trial if such summoning order is made in the earlier concluded trial against the other accused. This is so, since such power is to be exercised by the Court based on the evidence recorded in that case pointing to the involvement of the accused who is sought to be summoned. If in the split up (bifurcated) case, on securing the presence of the absconding accused the

trial is commenced and if in the evidence recorded therein it points to the involvement of any other person as contemplated in Section 319 of CrPC, such power to summon the accused can certainly be invoked in the split up (bifurcated) case before conclusion of the trial therein.

31. In analysing the issue and making the above conclusion on all aspects, we are also persuaded by the view taken by this Court, among others, in the case of ***Rajendra Singh vs. State of U.P. and Another*** (2007) 7 SCC 378 wherein it is concluded with regard to the object of Section 319 of CrPC as hereunder:-

"20. The power under Section 319 of the Code is conferred on the court to ensure that justice is done to the society by bringing to book all those guilty of an offence. One of the aims and purposes of the criminal justice system is to maintain social order. It is necessary in that context to ensure that no one who appears to be guilty escapes a proper trial in relation to that guilt. There is also a duty to render justice to the victim of the offence. It is in recognition of this that the Code has specifically conferred a power on the court to proceed against others not arrayed as accused in the circumstances set out by this section. It is a salutary power enabling the discharge of a court's obligation to the society to bring to book all those guilty of a crime.

21. Exercise of power under Section 319 of the Code, in my view, is left to the court trying the offence based on the evidence that comes before it. The court must be satisfied of the condition precedent for the exercise of power under Section 319 of the Code. There is no reason to assume that a court trained in law would not exercise the power within the confines of the provision and decide whether it may proceed against such person or not. There is no rationale in fettering that power and the discretion, either by calling it extraordinary or by stating that it will be exercised only in exceptional circumstances. It is intended to be used when the occasion envisaged by the section arises."

32. We have also kept in view the point by point analysis of the object and power to be exercised under Section 319 of CrPC, as has been indicated in para 34 of ***Manjit Singh vs. State of Haryana and Others*** (2021) SCC Online SC 632.

33. For all the reasons stated above, we answer the questions referred as hereunder:-

"I. Whether the trial court has the power under Section 319 of CrPC for summoning additional accused when the trial with respect to other coaccused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319 of CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced.

Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

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?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

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

(i) If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and *de novo* proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

34. Having answered the questions referred, in the above manner, we direct the Registry to obtain orders from Hon'ble the Chief Justice and place before the appropriate Bench to take a decision on the factual aspects arising in the case in the background of the legal position and contentions on merits.

35. Before parting, we place on record our appreciation for the assistance rendered by all the learned Senior Counsel/Counsel including Shri S. Nagamuthu, learned Senior Counsel who assisted the Court as an Amicus Curiae.