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**(1994) 10 AHC CK 0056**  
**In the Allahabad High Court**  
**Case No : Criminal Revision No. 911 of 1989**

Gurlabh Singh Magithia Guggi Lal and Anr. APPELLANT  
Vs  
State of U.P. RESPONDENT

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**Date of Decision :** 20-10-1994

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 319

**Citation :** (1994) 10 AHC CK 0056

**Hon'ble Judges :** N.B.Asthana, J

**Final Decision :** Dismissed

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## Judgement

N. B Asthana, J.—This revision has been directed against the order( dated 1941984 passed by the then IV Addl. Sessions Judge, Gorakhpur in Sessions Trial No. 579 of 1987 under Sections 147, 148, 302/149, I P.C., P. S. Chaurichaura, Gorakhpur, summoning the revisionists under Section 319 of Cr. P. C.

2. From the record it appears that the first informant in his statement before the trial Court stated that at the exhortation of the two revisionists the coaccused inflicted injuries causing the death of Ram Narain. In the F.I.R. also the first informant had made this allegation. From the order of trial Court it further appears that the same statement was given by him under Section 161, Cr. P. C. The statement of the first informant is consistent in the F. I. R. in statement under Section 161, Cr. P. C. and in the statement made before the trial Court. The trial court was of the opinion that the offence appears to have been committed at the exhortation of the two revisionists and therefore summoned them under Section 319 (1) of Cr. P. C. Aggrieved by it they have filed this revision.

3. I have beard the learned counsel for the revisionists and the learned A. G. A.

4. Section 319 (1) of Cr. P. C. says that "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." The argument is that the two revisionists were cited in the F. I. R. as accused, the Investigating Officer did not submit any chargesheet against them that the committing court did not take any action against them and since they were the accused in the case they could not have been summoned under Section 319 (1) of Cr. P. C. The contention is that only those persons could be summoned under this provision who were not accused and since the revisionists were named in the F. I. R. as accused, they could not have been summoned under Section 319(1), Cr. P. C. Reliance in this connection has been placed upon *Sahan Lal v. State of Rajasthan*, AIR 1990 SC 2158, in which it was held that the provisions of Section 319 have to be read in consonance with the provisions of Section 398. Once a person is found to have been the accused in the case he goes out of the reach of Section 319. Whether he can be dealt with under any other provision, of the Code is a different question. In the case of the accused who has been discharged under the relevant provisions of the Code, the nature of finality to such order and the resultant protection of the persons discharged subject to revision under Section 393 may not be lost sight of. Once a person was an accused in the case he would be out of reach of Section 319. The crucial words in Section 319 are any person not being the accused." In that case appellants 4 and 5 were discharged vide order, dated 31/01/1980 passed by Judicial Magistrate, Bikaner after taking cognizance and after hearing the arguments. The Magistrate after recording evidence and on the basis of the application moved by A.P.P. summoned the discharged accused under Section 319, Cr. P. C. In these circumstances the Supreme Court held that the provisions of Section 319, Cr. P. C. were not applicable. It is not the case. There is nothing on record to show that appellants were accused before the court and were discharged or not proceeded with the injury. It cannot, therefore, be said that the above ruling would help the revisionists in any way.

5. *Joginder Singh v. State of Punjab*, AIR 1979 SC 339 is an authority for the proposition that expression "any person not being the accused" clearly covers any person who is not being already tried by the Court. A criminal complaint was registered against five persons including the two appellants. The police having found that the two appellants were innocent chargesheeted the remaining three persons and they were committed to trial. At the trial evidence having shown the appellants involvement in the crime the prosecution moved an application that they be tried along with three accused and the Sessions Judge directed the appellants to stand trial together with other accused. Their revision application in the High Court was dismissed. In their appeal in the Supreme Court it was inter alia submitted that Section 319, Cr. P. C. was inapplicable to the facts of this case because the phrase "any person not being the accused" occurring in the section excluded from its operation an accused who had been released by the police. The Supreme Court rejected the contention holding that the said expression clearly covered any person who has not already been tried by the court and the very

purpose of enacting such a provision like Section 319 clearly showed that even a person who had been dropped by the police during investigation but against whom evidence showing his involvement in the offence came before the criminal court were included in the said expression.

6. In *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others*, AIR 1983 SC 67, under the Food Adulteration Act, the respondent No. 1 was Manager of the Company and the respondents Nos. 2 to 5 were the Directors of the Company including the Company. The High Court quashed the proceedings against the Directors as also against the Manager. The Supreme Court set aside a part of the judgment of the High Court which quashed the proceedings against the Manager, respondent No. 1. It was held that "In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused."

7. From the above two rulings of the Supreme Court it is clear that a criminal court can summon the accused under Section 319, Cr. P. C. who is not an accused before it irrespective of the fact whether the proceeding against him have been quashed earlier or not, in case it comes to the conclusion that the offence makes out a prima facie case against him. The argument, therefore, that once a person has been arrayed as an accused in the F. I. R. he cannot be summoned under Section 319, Cr. P. C. is an argument devoid of any substance.

8. Placing reliance upon *Sannarevanappa Bharamajappa Kalal @ Knncharkar and others v. State of Karnataka*, 1991 Cr. L. J. 21, it was argued that the court can take cognizance of offences against persons other than accused on the basis of evidence of witness before it. Mere evidence of witness in examination in chief does not constitute evidence and the court cannot take cognizance on the basis of it. Unless the witness is cross-examined it cannot be said that there is complete evidence as contemplated under Section 319, Cr. P. C. By analogy it may be stated that if the witness does not submit to cross-examination after he is examined in chief, the court would be precluded from acting on such incomplete evidence against the accused persons only from the examination in chief." At the stage the order under Section 319, Cr. P. C. is passed, the persons who appeared to have committed the offence are not before the court. Whether the examination in chief of such witness is recorded or his cross-examination is also recorded would be immaterial for the purpose of the persons who are summoned under Section 319, Cr. P. C. because even the examination in chief of such witness has to be recorded after such persons have been summoned and they have to be given an opportunity to cross-examine such witness. The evidence recorded in the absence of such persons would not be admissible against the persons summoned by the court and, therefore, whether as the examination in chief has been recorded or the cross-examination is recorded would make no difference. Section 319 speaks of evidence and not of complete evidence.

It may be noticed that evidence is evidence. The Evidence Act does not speak of complete evidence or incomplete evidence.

9. In *R. N. Bhatt v. Stale*, 1986 A. Cr. R. 44, relied upon by the revisionist it was held that "The order summoning a person before the Court can, therefore, be passed only during the course of the trial by the Sessions Judge and during the course of the inquiry proceeding by a Magistrate, which will mean that before the inquiry or trial no such order can be passed. Another requirement of the law it should appear from the evidence obtained during the course of the trial that some person other than one who is present before the Court, has committed an offence. The expression "evidence", when it is read in the context of the words of the section and in the light of subsection (4), can only mean that the evidence should be the one which is adduced before the court during the trial. If after the trial has already commenced, the court obtains some evidence on record to the effect that some person other than one who is before the court, is also concerned with the commission of the offence, which the court is trying, then the court can summon that other person also." From this ruling it would appear that complete evidence is not required to be recorded in the case whatever complete evidence may mean. If there is some evidence on the record which is adduced before the trial court during trial, the court is competent to summon such persons in exercise of powers under Section 319 Cr. P. C.

10. I have carefully perused the above ruling. It does not help the revisionists in any way.

11. Reliance has also been placed upon *Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others*, 1963 Cr LJ 159. This ruling has already been discussed above. It does not help the revisionists in any way. On the other hand this ruling would justify the order passed by the court below.

12. In view of the discussion made above it is clear that the order passed by the court below is within the ambit of Section 319, Cr. P. C. The trial court was legally and on the basis of the evidence placed before it factually correct in summoning the revisionists under Section 319, Cr. P. C.

13. The revision is devoid of any force and is dismissed. The stay order granted on 16/11/1989 is vacated.