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**(2015) 10 MP CK 0003**  
**In the Madhya Pradesh High Court**  
**Case No : MCRC-15446-2015**

Rajaram Chaturvedi

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

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**Date of Decision :** 19-10-2015

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 161, 193, 200, 201, 202

**Citation :** (2015) 10 MP CK 0003

**Hon'ble Judges :** Ravi Shankar Jha, J.

**Bench :** Single Bench

**Advocate :** J.N. Tripathi, Learned Counsel, for the Appellant; Devendra Shukla, Learned P.L., for the Respondent

**Final Decision :** Dismissed

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## Judgement

Ravi Shankar Jha, J.—Heard on the question of admission.

2. This petition under section 482 of the Cr. P.C. has been filed by the petitioner being aggrieved by order dated 22.08.2015 passed by the Additional Sessions Judge, Rewa in Cr. Revision No. 15/2015 whereby the order passed by the trial court dated 22.12.2014 in Cr. Case No. 1105/2013 under section 319 of the Cr.P.C. impleading one Rajneesh Chaturvedi as an accused, has been affirmed and confirmed.

3. The learned counsel for the petitioner submits that the alleged offence is said to have been committed by the petitioner and others on 19.03.2013 and an FIR in that respect was lodged on 11.04.2013. It is stated that thereafter an investigation was conducted and a charge sheet was filed against the petitioner and others but not against Rajneesh Chaturvedi as there was no evidence against him in the charge sheet or any evidence collected by the prosecution agency and no statement in that regard had been made by any person in their case diary statements.

4. It is stated that subsequently, Rajneesh Chaturvedi was named as a person

who was involved in the incident by the prosecution witnesses Brajesh Chaturvedi, Ramkali and Vivek Chaturvedi and on the basis of the statements of these three witnesses, the prosecution filed an application under section 319 of the Cr.P.C. for impleading Rajneesh Chaturvedi as an accused which was allowed by the trial court by order dated 22.12.2014 and the revision filed by the petitioner against the said order has also been dismissed by order dated 22.08.2015, hence this application under section 482 of the Cr.P.C.

5. The learned counsel for the petitioner by placing reliance on a decision rendered by the Supreme Court in the case of Hardeep Singh Vs. State of Punjab and Others etc. etc., submits that the standard proof required for impleading a person under section 319 of the Cr.P.C., in case where there is no evidence against him during investigation but his name turns up for the first time while recording the statements of the witnesses in the court, is different and unless and until the court is convinced that there is possibility of the person being convicted, the court should not exercise powers under section 319 of the Cr.P.C.

6. It is submitted that in view of the aforesaid law laid down by the Supreme Court, the trial court as well as the revisional court has failed to appreciate the fact that in the absence of any evidence against Rajneesh Chaturvedi in the charge sheet namely in the F.I.R., statements recorded under section 161 of the Cr.P.C. or documents filed by the prosecution, there are extremely rare chances of his being convicted simply on the basis of the evidence of the witnesses recorded during the trial and therefore, the impugned order deserves to be set aside.

7. Having heard the learned counsel for the petitioner, it is observed from a perusal of order dated 22.12.2014 passed by the trial court, that the trial court has clearly quoted the relevant part of the statement of Brajesh Chaturvedi recorded in the court as well as the relevant parts of the statements of Ramkali and Vivek Chaturvedi recorded in the court. A perusal of the statements which have been quoted by the trial court makes it clear that the aforesaid three witnesses have specifically named Rajneesh Chaturvedi in their statements.

8. Section 319 of the Cr.P.C. stipulates that where, in the course of any enquiry into, or trial of, an offence, it appears from the evidence that any person who is not made an accused, has committed any offence for which such person could be tried together with the accused who have been named as accused, the court may proceed against such person for the offence which he appears to have committed and the manner in which the court may proceed against such person has also been specified in subsection (4) of section 319 .

9. In the instant case, in view of the statements of Brajesh Chaturvedi, Ramkali and Vivek Chaturvedi, I do not find any illegality or perversity in the finding recorded by the trial court or the revisional court that there is a prima facie evidence against Ranjeesh Chaturvedi and therefore, I do not find any fault with the exercise of powers under section 319 of the Cr.P.C. of the court below.

10. As far as reliance placed by the learned counsel for the petitioner on the decision of the Supreme Court rendered in the case of Hardeep Singh (supra) is concerned, it would be appropriate to take into consideration the conclusions recorded by the Supreme court in paragraph 110 of the said judgment which are in the following terms:--

"110. We accordingly sum up our conclusions as follows:

Question Nos. 1 & III

Q.1 What is the stage at which power under Section 319 Cr.P.C. can be exercised?

AND

Q. III Whether the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under Section 193 Cr.P.C. and the Sessions Judge need not wait till "evidence" under Cr.P.C. becomes available for summoning an additional accused.

Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200 ,201 , 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the chargesheet.

In view of the above position the word "evidence" in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q. II Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence

against the accused proposed to be summoned to be tested by cross-examination.

#### Question No. IV

Q. IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though under Section 319(4)(b) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different. Question No. V

Q. V Does the power under Section 319 Cr.P.C. extend to persons not named in the FIR or named in the FIR but not chargesheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C. has to be complied with before he can be summoned afresh.

The matters be placed before the appropriate Bench for final disposal in accordance with law explained hereinabove."

11. From a perusal of the aforesaid conclusion it is clear that the trial court can exercise its powers under section 319 of the Cr.P.C. if, in the course of trial it appears from the evidence that a person needs to be arrayed as an accused on the basis of the statements of the witnesses recorded during the trial.

12. The present case is one where there is prima facie evidence against Rajneesh Chaturvedi and therefore the orders of the trial court and revisional court are in accordance with law laid down by the Supreme Court in the case of Hardeep Singh (supra) and nothing in the conclusion recorded therein helps the case of the petitioner.

13. The petition being meritless is accordingly dismissed.