HIGH COURT OF MADHYA PRADESH

BENCH AT GWALIOR

SINGLE BENCH

PRESENT:

HON'BLE MR. JUSTICE G.S. AHLUWALIA

Miscellaneous Criminal Case No.693 of 2016

Ajay Khemaria & anr.

-Vs-

State of M.P. & anr.

Shri S.K.Sharma, counsel for the appellant.

Ms. Sudha Shrivastava, Panel Lawyer for the respondent no.1/State.

J U D G M E N T
(08/12/2016)

The applicants have filed this petition under Section 482 of Criminal Procedure Code challenging the order dated 30/11/2015 passed by Additional Sessions Judge/Special Judge, Shivpuri in Criminal Revision No.136/2015 arising out of order dated 21/05/2015 passed by JMFC, Shivpuri in Criminal Case No.718/2013.

2. The facts of the case necessary for the disposal of the application are that on 09/02/2013 at about 12:30 PM, the complainant Kamaljeet Singh Gill lodged a FIR alleging that he is carrying on the business of property in Priyadarshini Colony. The applicant Ajay Khemaria has an adjacent plot. On the said plot, the applicant is constructing a house. Today, at about 11:30 in the afternoon, when the complainant Kamaljeet Singh Gill came out of his house for going to the market, at that time, the applicant Ajay Khemaria alongwith co-accused Gabbar Singh, Rinku Jain and others came there and due to previous enmity with regard to an old plot which is

adjoining to the plot of applicant no.1 Ajay Khemaria, all started assaulting the complainant by fists and blows. The applicant no.1 Ajay Khemaria gave a knife blow on the left hand as a result of which he sustained injury. Gabbar Singh assaulted the complainant by means of *lathi* and co-accused Rinku Jain assaulted the complainant Kamaljeet Singh Gill by fists and blows. They were saying that the complainant should hand over the plot to them. They were also abusing him. On the alarm raised by the complainant Kamaljeet Singh Gill, Virendra Kashyap and Chhotu Rajak came on the spot and intervened in the matter. Accordingly, the police registered Crime No.102/2013 for offence under Sections 294, 323, 324, 506-B, 34 of IPC.

3. The complainant Kamaljeet Singh Gill was sent for medical examination and in MLC, the doctor found the following injuries:-

(1) dressed wound, after opening wound, incised wound 6cmx1cm muscle deep over left mid forearm,

(2) abrasion 1cmx1cm over left knee joint,

(3) abrasion 1cmx1cm over left forehead,

(4) complain of pain in left eye,

(5) complain of pain on lower back however no mark of external injury was seen,

(6) contusion 1cmx1/2cm on front of left knee,

(7) contusion 1/2cmx1/4cm over left side of tongue,

(8) complain of pain over left lateral incisor and canine upper,

(9) 1/2cmx1/2cm over left cheek.

4. All the injuries were found to have been caused within 24 hours of the preparation of the MLC. A query was put to the doctor that whether the injury no.1 can be caused by the

complainant himself or not and in reply to the said query, the doctor opined that the injury can be self inflicted.

5. During investigation, the police recorded the statements of complainant Kamaljeet Singh Gill, Virendra Kumar, Alok Indoria, Neeraj Sharma, Ranjeet Gupta, Ashish, Krishn Ballav Sharma, Praveen Goyal, Ashok and Chhhotu Rajak.

6. On 20/02/2013, the applicant no. 2 Rinku Jain submitted an application to SDO(P), Shivpuri stating that he is working as a correspondent in Jagran. On 09/02/2013, he alongwith applicant no.1 Ajay Khemaria had gone to cover the seminar organized by police in Hotel Sunrise on the topic " Sensitive Working Culture for Women". It was further stated that, in this program, the administration had called them as well as other correspondents also. On 10/02/2013, they got an information through the newspapers that one Kamaljeet Singh Gill has got an offence registered against them. It was found that the false case has been registered. Various persons were present in the function and, therefore, an application was made for fair and impartial investigation. It appears that on the basis of this application, the police recorded the statements of Alok Indoria, Narendra Sharma, Ranjeet Gupta, Ashish, Krishn Ballabh Sharma, Praveen Goyal, Ashok who have stated that on 09/02/2013, the police had organized a seminar in Hotel Sunrise which started at 10:00AM and continued till 4:00PM in which these witnesses alongwith the applicants were invited by the police and they were covering this program and during the entire program, the applicants were present in the hotel. Whereas, the statement of the complainant Kamaljeet Singh Gill is corroborated by the Statement of Virendra Kumar and Chhotu Rajak. Chhotu Rajak has specifically stated that the applicant no.1 Ajay Khemaria caused an injury on the left forearm of the complainant by means of a knife and the applicant no.2 Rinku

Jain had assaulted the complainant on his face by fists and blows. Virendra Kumar has also stated that he had seen some persons assaulting the complainant Kamaljeet Singh Gill and he intervened in the matter. He was informed by the complainant Kamaljeet Singh Gill that applicant no.1 Ajay Khemaria had assaulted him by means of a knife causing injury on the left hand of the complainant whereas the applicant no.2 Rinku Jain had beaten the complainant by fists and blows.

7. It appears that the police filed the charge-sheet only against Gabbar Singh and relying on the statements of the witnesses that the applicants were present in the Hotel Sunrise, the applicants were not charge-sheeted before the trial Court. After evidence of the complainant Kamaljeet Singh Gill was recorded, he filed an application under Section 319 to proceed against the applicants as they appears to be guilty of offence. The trial Court, by order dated 21/05/2015, allowed the said application holding that on perusal of the record, it is clear that the complainant in his FIR, Police Statement as well as Court Evidence has specifically stated that the applicants had also beaten him, abused him and had extended the threat to his life. Thus, the trial Court held that *prima facie,* it is found that the applicants have also committed the offence. Therefore, cognizance was taken against them and the bailable arrest warrants were issued against the applicants.

8. Being aggrieved by the order dated 21/05/2015, the applicants filed a criminal revision. The Revisional Court held that for exercising powers under Section 319 of CrPC, it is not required that the witness should have been cross-examined. It cannot be said that there is no sufficient material to proceed against the applicants. Accordingly, the revision was dismissed. Being aggrieved by the order of the Revisional Court as well as the trial Court, the present petition under

Section 482 of CrPC has been filed.

9. Heard the learned counsel for the applicants and the learned counsel for the State as well as the counsel for the respondent no.2.

10. It is submitted by the counsel for the applicants that for invoking jurisdiction under Section 319 of CrPC, the trial Court must come to a conclusion that there is a sufficient material to record the conviction. It was further submitted by him that the power under Section 319 of CrPC can be exercised only after the witness is cross-examined. Merely on the basis of the Examination-in-Chief of a witness, the Court could not have entertained the application under Section 319 of CrPC. It was further submitted that before invoking jurisdiction under Section 319 of CrPC, the trial Court should have issued notice to the applicants and only after considering their reply, should have decided the application filed under Section 319 of CrPC. It was further submitted by the counsel for the applicants that they have been falsely implicated. They were covering the program organized by the police in Hotel Sunrise and they were not present on the spot at the time of the alleged incident.

11. Per contra, the counsel for the respondents submitted that there is no provision in CrPC which necessitate giving an opportunity of hearing to a person before deciding an application under Section 319 of CrPC. The trial Court has passed the impugned order after considering the FIR, Case Diary Statement, Medical Report as well as the evidence of the complainant. The *plea of alibi* is required to be proved before the trial Court and the cross-examination of the witness is not necessary before exercising powers under Section 319 of CrPC.

12. Heard the learned counsel for the parties.

13. It was contended by the counsel for the applicants that

before exercising power under Section 319 of CrPC, the trial Court ought to have issued show cause notice to the applicants, giving them an opportunity of hearing. To buttress his contention, he placed reliance on the judgment of Supreme Court passed in the case of **Jogendra Yadav and Ors. Vs. State of Bihar and Anr.** Reported in **(2015) 9 SCC 244**. In the case of **Joginder Yadav (Supra)**, the Supreme Court has held as under:-

> "13. We are not unmindful of the fact that the interpretation placed by us on the scheme of Sections 319 and 227 makes Section 227 unavailable to an accused who has been added under Section 319 Cr.P.C. We are of the view, for the reasons given above, that this must necessarily be so since a view to the contrary would render the exercise undertaken by a Court under Section 319 Cr.P.C., for summoning an accused, on the basis of a higher standard of proof totally infructuous and futile if the same court were to subsequently discharge the same accused by exercise of the power under Section 227 Cr.P.C., on the basis of a mere prima facie view. The exercise of the power under Section 319 Cr.P.C., must be placed on a higher pedestal. Needless to say the accused summoned under Section 319 Cr.P.C., are entitled to invoke remedy under law against an illegal or improper exercise of the power under Section 319, but cannot have the effect of the order undone by seeking a discharge under Section 227 of the Cr.P.C. If allowed to, such an action of discharge would not be in accordance with the purpose of criminal procedure code in enacting Section 319 which empowers the Court to summon a person for being tried along with the other accused where it appears from the evidence that he has committed an offence "

14. The Supreme Court in the case of **Anju Chaudhary Vs. State of Uttar Pradesh and Anr.** reported in **(2013) 6 SCC 384** has held as under:-

> "30. Section 154 of the Code places an

unequivocal duty upon the police officer in charge of a police station to register FIR upon receipt of the information that a cognizable offence has been committed. It hardly gives any discretion to the said police officer. The genesis of this provision in our country in this regard is that he must register the FIR and proceed with the investigation forthwith. While the position of law cannot be dispelled in view of the three-Judge Bench Judgment of this Court in State of U.P. vs. Bhagwant Kishore Joshi, [AIR 1964 SC 221], a limited discretion is vested in the investigating officer to conduct a preliminary inquiry pre-registration of an FIR as there is absence of any specific prohibition in the Code, express or implied. The subsequent judgments of this Court have clearly stated the proposition that such discretion hardly exists. In fact the view taken is that he is duty-bound to register an FIR. Then the question that arises is whether a suspect is entitled to any pre-registration hearing or any such right is vested in the suspect.

31. The rule of audi alteram partem is subject to exceptions. Such exceptions may be provided by law or by such necessary implications where no other interpretation is possible. Thus rule of natural justice has an application, both under the civil and criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this doctrine can be excluded by exercise of legislative powers which shall with stand judicial scrutiny. The purpose of the Criminal Procedure Code and the Penal Code, 1816 is to effectively execute administration of the criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly, to ensure prevention of crime. On examination, the scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the First Information Report. As already noticed, the registration forthwith of a cognizable offence is the statutory duty of a police officer

in charge of the police station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the Officer In-charge of a police station is informed of a heinous or cognizable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the pre-dominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of bail and anticipatory bail to claim his liberty in accordance with law. It cannot be said to be a violation of the principles of natural justice for two different reasons: firstly, the Code does not provide for any such right at that stage. Secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus necessarily implies exclusion of hearing at that stage. This Court in the case of Union of India v. W.N. Chadha (1993) Suppl. (4) SCC 260 clearly spelled out this principle in paragraph 98 of the judgment that reads as under:

> "98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary."

32. In Samaj Parivartan Samuday v. State of Karnataka (2012) 7 SCC 407, a three-Judge Bench of this Court while dealing with the right of hearing to a person termed as 'suspect' or 'likely offender' in the report of the CEC observed that there was no right of hearing. Though the suspects were already interveners in the writ petition, they were heard. Stating the law in regard to the right of hearing, the Court held as under :

> "50. There is no provision in CrPC where an investigating agency must provide a hearing to the affected party before registering an FIR or even before carrying on investigation prior to registration of case against the suspect. CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of investigation by a specialised agency or transfer investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners."

33. While examining the above-stated principles in conjunction with the scheme of the Code, particularly Sections 154 and 156(3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect who attains the status of an accused only when a case is registered for committing a particular offence or the report under Section 173 of the Code is filed terming the suspect an accused that his rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that

> hearing is not any right of any suspect at that stage.
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> 34. Even in the cases where report under Section 173(2) of the Code is filed in the Court and investigation records the name of a person in column(2), or even does not name the person as an accused at all, the Court in exercise of its powers vested under Section 319 can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law."

15. Thus, it is clear that against the order invoking jurisdiction under Section 319 of CrPC, since the aggrieved person has a remedy under the law, the contention of the counsel for the applicants that the applicants were entitled for pre-hearing at the stage of invoking jurisdiction under Section 319 of CrPC can not be accepted in the light of the judgment passed by the Supreme Court in the case of **Anju Chaudhary (supra)**. Accordingly, this contention is rejected.

16. It is contended by the learned counsel for the applicants that before exercising the powers under Section 319 of CrPC mere suspicion is not sufficient but the trial Court is also required to see that whether the evidence which was on record is sufficient to convict the person who is being summoned. It is further submitted that the discretion is to be exercised with great care and perspicacity and the trial Court has not given any reason necessitating exercise of power under Section 319 of CrPC. In support of his contention, the counsel for the applicants relied upon the judgment of Supreme court passed in the case of **Brindavan Das and Ors. Vs. State of West Bengal** reported in **(2009) 3 SCC 329**.

17. The Supreme Court in the case of **Michael Machado and anr. Vs. CBI & anr.** reported in **(2000) 3 SCC 262**, it is held as under:-

> "11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the

> inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.
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> 12. But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons.
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> 14. The court while deciding whether to invoke the power under Section 319 of the Code, must address itself about the other constraints imposed by the first limb of sub- section (4), that proceedings in respect of newly added persons shall be commenced afresh and the witnesses re-examined. The whole proceedings must be re-commenced from the beginning of the trial, summon the witnesses once again and examine them and cross-examine them in order to reach the stage where it had reached earlier. If the witnesses already examined are quite a large in number the court must seriously consider whether the objects sought to be achieved by such exercise is worth wasting the whole labour already undertaken. Unless the court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned we would say that the court should refrain from adopting such a course of action."

18. If the facts of the present case are considered in the light

of well established principle of law then it would be clear that the FIR was lodged within one hour. A specific role has been ascribed to the applicant no.1 of causing injury by means of a knife and to applicant no.2 for assaulting the injured by fists and blows. In the MLC, the doctor has mentioned the corresponding injuries and various other injuries on the body of the injured. The independent witnesses Virendra Kumar and Chhotu Rajak have also supported the complainant. Furthermore, the applicants have filed a copy of the FIR lodged by the co-accused Gabbar on 19/02/2013 at 17:40 against the complainant Kamaljeet Singh Gill and his two companions alleging that at 11:00AM while he was doing some works as the applicant no.1 has given him the contract, he was caught hold by the complainant Kamaljeet Singh Gill and his two companions and they assaulted him by fists and blows.

19. Without commenting on the correctness of the FIR lodged by the complainant and the FIR lodged by the co-accused Gabbar Singh Parihar, it is clear that some incident did take place on 09/12/2013 at 11:00 – 11:30AM.

20. So far as the defence taken by the applicants by making an application to SDO(P), Shivpuri that they were attending a police function in Hotel Sunrise and were covering that seminar is concerned, it is suffice to say that in the said application, it is nowhere mentioned that whether the applicant no.1 is working as a correspondent with any newspaper or not. Although, in the application, it is mentioned that the applicant no.2 is working as a correspondent of Jagran but he did not give any document to the police to substantiate his contention. No document was filed alongwith the application to show that the applicants were invited by the administration to cover the program. Nothing was filed to substantiate that on the next date of the program which was covered by the applicants, anything was

published in any newspaper or magazine. No document was filed to substantiate their contention that both the applicants were present in the program from 10:00AM to 4:00PM.

21. So far as the statements of Alok Indoria, Neeraj Sharma, Rinku Rajak, Ashish, Krishn Ballav Sharma, Praveen Goyal and Ashok are concerned, suffice it to say that unless and until their statements are tested by cross-examination, at this stage, it cannot be said that they have proved their plea of alibi beyond reasonable doubt.

22. It was further submitted by the counsel for the applicants that even doctor had opined that the injuries sustained by the complainant can be self inflicted injury. Therefore, there is a *prima facie* material to show that the complaint of the complainant is false and baseless. The fact that the co-accused Gabbar Singh Parihar has also lodged a report at 17:40 on 09/02/2013 alleging that some incident took place on 11:00AM would clearly show that in fact some incident had taken place on 09/02/2013 at 11:00–11:30 AM. How an injury caused by the means of knife can be said to be self inflicted injury is also not clear. All these questions are the questions of evidence which are required to be considered by the trial Court after recording all the evidence. Hence, at this stage, for the limited purposes of invoking jurisdiction under Section 319 of CrPC, it can not be said that there is no sufficient material available on record to summon the applicants as an additional accused.

23. The above mentioned observations with regard to the availability of material on record are being made to consider the submissions of the counsel for the applicants that before invoking jurisdiction, the trial Court must come to a conclusion that evidence available on record is sufficient to record conviction against the person.

24. It is made clear that the above-mentioned

observations are confined only to the stage under Section 319 of CrPC and the trial Court must decide the trial on the basis of the evidence which would come on record without getting prejudice by any of the observation made in this part of the judgment.

25. So far as the contention of the applicants that the power under Section 319 of CrPC cannot be invoked unless the evidence of the witness is tested by cross-examination is concerned, suffice it to say that the submission is misconceived and is liable to be rejected

26. In the case of **Hardeep Singh Vs. State of Punjab and ors.** reported in **(2014) 3 SCC 92**, the Supreme Court while answering the reference to a question that "whether the evidence used in Section 319 (1) of CrPC could only main evidence tested by cross-examination of the Court in exercising the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned" and "whether the word evidence used in Section 319 (1) of CrPC has been used in apprehension sense and includes the evidence collected during the investigation of the evidence is limited to the evidence recorded in the trial".

> "89. We have given our thoughtful consideration to the diverse views expressed in the aforementioned cases. Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.
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> 90. As held in Mohd. Shafi vs. Mohd. Rafiq (2007) 14 SCC 544 and Harbhajan Singh

(2009) 13 SCC 608, all that is required for the exercise of the power under Section 319 Cr.P.C. is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. The pre-requisite for the exercise of this power is similar to the prima facie view which the magistrate must come to in order to take cognizance of the offence. Therefore, no straight-jacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/Court is convinced even on the basis of evidence appearing in Examination-in-Chief, it can exercise the power under Section 319 Cr.P.C. and can proceed against such other person(s). It is essential to note that the Section also uses the words 'such person could be tried' instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section 4 of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of Examination- in-Chief, the Court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, Examination-in-Chief untested by Cross Examination, undoubtedly in itself, is an evidence.

91. Further, in our opinion, there does not seem to be any logic behind waiting till the cross-examination of the witness is over. It is to be kept in mind that at the time of exercise of power under Section 319 CrPC., the person sought to be arraigned as an accused, is in no way participating in the trial. Even if the

cross-examination is to be taken into consideration, the person sought to be arraigned as an accused cannot cross examine the witness(es) prior to passing of an order under Section 319 CrPC., as such a procedure is not contemplated by the CrPC. Secondly, invariably the State would not oppose or object to naming of more persons as an accused as it would only help the prosecution in completing the chain of evidence, unless the witness(es) is obliterating the role of persons already facing trial. More so, Section 299 CrPC enables the court to record evidence in absence of the accused in the circumstances mentioned therein.

92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination in chief and court does not need to wait till the said evidence is tested on cross-examination for it is the satisfaction of the court which can be gathered from the reasons recorded by the court, in respect of complicity of some other person(s), not facing the trial in the offence.

117.1. A. In Dharam Pal Vs. State of Haryana, (2014) 3 SCC 306, 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 CrPC and the Sessions Judge need not wait till 'evidence' under Section 319 CrPC becomes available for summoning an additional accused.

117.2. Section 319 CrPC, 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 CrPC, and under Section 398 CrPC are species of the inquiry contemplated by Section 319 CrPC. 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 CrPC, and also to add an accused whose name has been shown in Column 2 of the chargesheet.
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> 117.3. 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."

27. Thus, the contention of the counsel for the applicants that unless and until the evidence of the complainant is tested by cross-examination, the jurisdiction under Section 319 of CrPC, cannot be exercised, is liable to be and is hereby rejected. .

28. As it has already been observed that the *plea of alibi* is required to be proved by leading cogent evidence before the trial Court and, therefore, at this stage, the impugned order cannot be set aside by entertaining the defence of alibi of the applicants.

29. Accordingly, this application under Section 482 of CrPC fails and is hereby dismissed.

(G.S. AHLUWALIA)
Judge
(08.12.2016)

AKS