

CASE NO.:
Appeal (crl.) 1019 of 2007

PETITIONER:
Rajendra Singh

RESPONDENT:
State of U.P. & Anr

DATE OF JUDGMENT: 06/08/2007

BENCH:
G.P. Mathur & P.K. Balasubramanyan

JUDGMENT:
J U D G M E N T

CRIMINAL APPEAL NO. 1019 OF 2007
(Arising out of Special Leave Petition (Crl.) No.3182 of 2006)

P.K. BALASUBRAMANYAN, J.

1. I very respectfully agree with the reasoning and conclusion of my learned Brother. But, I would like to add a few words on Section 319 of the Code of Criminal Procedure with a view at least to kindle a thought.

2. Section 319 (1), which is relevant for our purpose reads:

"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."

As I see it, the words are plain and the meaning clear. When in the course of the enquiry or trial, it appears to the court from the evidence that a person, not arrayed as an accused, appears to have committed any offence for which that person could be tried together with the accused, the court may proceed against that person. Surely, it must appear to the Court from the evidence that someone not arrayed as an accused, appears to have committed an offence. Be it noted, the Court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion not to proceed, since the expression used is 'may' and not 'shall'. The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression 'appears' indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not. With great respect, I see no reason to describe the power as an extraordinary power or to confine the exercise of it only if compelling reasons exist for

taking cognizance against any other person against whom action has not been taken. After all, the section only gives power to the court to ensure that all those apparently involved in the commission of an offence are tried together and none left out. I see no reason to curtail this power of the court to do justice to the victim and to the society. It appears to me that it is left to the judicial discretion of the court, judicially trained, to decide to proceed or not to proceed against a person in terms of Section 319 of the Code.

3. The decision in *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi & ors.* [(1983) 1 S.C.C. 1] which described the power as an extraordinary power to be exercised very sparingly and only if compelling reasons exist proceeded on its own peculiar facts. The broad statement contained in that decision cannot be understood out of context. That was a case where the very same proceeding against certain persons initially arrayed as accused, had been quashed. But, thereafter from the evidence, it appeared to the court that some of them have to be tried as accused in exercise of power under Section 319 of the Code. This Court in that context after referring to *Joginder Singh Vs. State of Punjab* [(1979) 2 S.C.R. 306] held that 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. This Court thus upheld the power of the court to invoke Section 319 of the Code even in such a case. Their Lordships then added: "But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken."

With respect, I understand this sentence as relating to exercise of the power under Section 319 of the Code in a case where the prosecution against the person sought to be arraigned, had earlier been quashed by the court, but still he is to be roped in, in exercise of power under Section 319 of the Code.

4. These observations have unfortunately led to some decisions using these expressions, even in cases where there has not been a prior quashing of the charge and a proceeding is taken in terms of Section 319 of the Code. With respect, it appears to me that there is no warrant for such narrowing down of the power of the court. After all, an authority has to be understood in the context of the facts based on which the observations therein are made. The ratio of a decision is generally *secundum subjectam materiam*.

5. In *Quinn Vs. Leathem* (1901) A.C. 495, Earl of Halsbury L.C. stated:
"Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for

what it actually decides."

The above dictum, as regards the first proposition, was quoted and adopted by the Privy Council in Punjab Cooperative Bank Ltd. Vs. Commissioner of Income Tax, Lahore [A.I.R. 1940 P.C. 230]

6. 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 in 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.

7. 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.