

ITEM NO.102

COURT NO.3

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No.885/2019

SUKHPAL SINGH KHAIRA

Appellant(s)

VERSUS

THE STATE OF PUNJAB

Respondent(s)

(IA No. 124389/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT AND IA No. 124391/2017 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

Cr1.A. No. 886/2019 (II-B)

(IA No. 125568/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT & IA No. 125569/2017 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 05-09-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR
HON'BLE MR. JUSTICE AJAY RASTOGI

For Appellant(s)

Mr. Amit K. Nain, AOR

Mr. P.S. Patwalia, Sr. Adv.
Mr. Dhruv Sheoran, Adv.
Mr. Nikhil Jain, AOR

For Respondent(s)

Mr. Harin P. Raval, Sr. Adv.
Mr. Karan Bharihoke, AOR
Mr. Siddhant Sharma, Adv.
Mr. Navkiran Bolay, Adv.
Mr. Mehak Jaggi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Heard learned Senior counsel appearing for the parties.

At the outset, we may refer to the earlier order, dated 10.05.2019, passed by this Court, which notes as under:

26. The appellant herein contended that, the observations made in the Hardeep Singh Case (supra), cannot be diluted by a Bench of this strength. We have considered the averments made by the counsel on behalf of both parties, we feel that it would be appropriate to place the same for consideration before a larger Bench. However, we are of the considered opinion that, power under Section 319, Cr.P.C being extraordinary in nature, the trial courts should be cautious while summoning accused to avoid complexities and to ensure fair trial. We must remind ourselves that, timely disposal of the matters furthers the interest of justice.

27. After pursuing the relevant facts and circumstances, the following substantial questions of law arise for further consideration:-

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

Squarely, the question before this Court is that whether the order summoning the accused-appellant, under Section 319 of CrPC, passed simultaneously with the judgment in the main trial, could be sustained under Section 319 of CrPC?

While the accused-appellant, relying on the judgment of *Hardeep Singh Case*, has contended that the summoning order which was passed after conclusion of the trial, cannot be done under

Section 319 of CrPC. On the other hand, the respondent-State has interpreted Section 319 of CrPC, wherein the application of mind before the end of the main trial is argued to be sufficient, without the requirement of the actual summoning order, under Section 319, to be passed before the end of the trial. Having regards to competing principles involved herein, namely 'an order of court cannot prejudice anyone' and strict interpretation of Section 319 of CrPC, we observe that there is a requirement for this Court to provide clarification on the aforesaid aspects.

Having considered the matter at length, we are of the view, that the opinion expressed in *Hardeep Singh's Case*, which is a constitution bench judgment, needs further enunciation in light of the circumstances occurring in this case. In this regard, it is appropriate that a constitution bench clarifies the same. Accordingly, we direct the Registry to lay the papers before the Hon'ble the Chief Justice of India for appropriate orders.

(VISHAL ANAND)
COURT MASTER (SH)

(RAJ RANI NEGI)
ASSISTANT REGISTRAR