



2026:AHC:124332

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 482 No. - 9380 of 2017

Prahlad Sharan And Another

.....Applicant(s)

Versus

State Of U.P. And 2 Others

.....Opposite
Party(s)

Counsel for Applicant(s) : Manu Khare

Counsel for Opposite Party(s) : Fakhruzzaman, G.A., Tarun Kumar
Srivastava

Court No. - 7

Reserved on :- 03.04.2026

Delivered on:- 01.06.2026

HON'BLE JAI PRAKASH TIWARI, J.

1. Heard learned counsel for the applicant, learned counsel for opposite party and Sri Pradeep Kumar Tripathi, learned AGA for the State.

2. The present application has been filed with the prayer to set-aside the order dated 20.03.2017 in S.T. No.267/2011 (State Vs. Prahlad Sharan and another), under Section- 306 IPC and Section 3/4 of D.P. Act.

3. The present application has been filed by the husband and the brother-in-law of the deceased. The application on behalf of the applicant no.1 has been disposed of vide order dated 29.03.2017.

4. It is stated by learned counsel for the applicant no.2 that the learned Magistrate has summoned the applicants vide order dated 20.03.2017, under Section 306 IPC and Section 3/4 of D.P. Act. It is further submitted that the applicant no.2 was minor at the time of incident. It is further submitted that deceased namely Manju Lata got married to applicant no.1-Prahlad Sharan on 11.05.2003. It is further submitted that as per the FIR, after one year of marriage the in-laws started harassing her for additional demand of dowry. It is further submitted that at the time of incident, the applicant no.2 was only 14 years old.

5. On the other hand, learned AGA for the State has opposed the

submission put forth by learned counsel for the applicant and has submitted that the impugned order passed by the learned Magistrate is correct and legal; the applicant has other alternative remedies available regarding the plea and the grounds mentioned by the applicant for quashing are not sufficient at this stage.

6. Before I deal with the submission put forth by both sides, it is relevant to go through the Section 2 (k)(l) and Section 7 & 7A of The Juvenile Justice (Care And Protection Of Children) Act, 2000:-

" 2.Definitions

(k) juvenile or child means a person who has not completed eighteenth year of age;

(l) juvenile in conflict with law means a juvenile who is alleged to have committed an offence and has not completed eighteenth year of age as on the date of commission of such offence;"

"7. Procedure to be followed by a Magistrate not empowered under the Act

(1) When any Magistrate not empowered to exercise the powers of a Board under this Act is of the opinion that a person brought before him under any of the provisions of this Act (other than for the purpose of giving evidence), is a juvenile or the child, he shall without any delay record such opinion and forward the juvenile or the child and the record of the proceeding to the competent authority having jurisdiction over the proceeding.

(2) The competent authority to which the proceeding is forwarded under sub-section (1) shall hold the inquiry as if the juvenile or the child had originally been brought before it.

7A. [Procedure to be followed when claim of juvenility is raised before any Court. [Inserted by Act 33 of 2006, Section 8 (w.e.f. 22.8.2006).]

(1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the Court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a Court shall be deemed to have no effect.]"

8. It is relevant to quote Section 319 Cr.P.C.:-

"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.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1)

then—

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

9. In **Hardeep Singh Vs. State of Punjab and others (2014) 3 SCC 92** the Hon'ble Apex Court has held that Section 319 of the Code of Criminal Procedure grants courts the power to summon additional persons as accused during trial. The paragraph nos.90 and 117 are quoted as under:-

"90. As held in Mohd. Shafi [Mohd. Shafi v. Mohd. Rafiq, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899] and Harbhajan Singh [(2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135] , all that is required for the exercise of the power under Section 319 CrPC 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 prerequisite 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 straitjacket 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 CrPC 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.

117. We accordingly sum up our conclusions as follows:

Questions (i) and (iii)

— What is the stage at which power under Section 319 CrPC can be exercised?

and

— Whether the word “evidence” used in Section 319(1) CrPC 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?

Answer

Question (v)—Does the power under Section 319 CrPC extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

Answer

117.6. *A person not named in the FIR or a person though named in the FIR but has not been charge-sheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, insofar as an accused who has been discharged is concerned the requirement of Sections 300 and 398 CrPC has to be complied with before he can be summoned afresh."*

10. Considering the facts and circumstances of the present case, it appears that the court concerned after appreciating the *prima facie* evidence available on record during the course of trial, summon the applicant no.2, vide order dated 20.03.2017, under Section 306 IPC and Section 3/4 of D.P. Act. It is also apparent that at the time of summoning, the concerned Magistrate had no knowledge that whether the applicant no.2 is juvenile; as the applicant no.2 has not moved any application before the concerned Magistrate stating the fact regarding his age at the time of incident.

11. Section 7 & 7A of The Juvenile Justice (Care And Protection Of Children) Act, 2000 provides that when a person brought before the Magistrate / court is juvenile in the opinion of Magistrate, the court shall make an inquiry for the determination of age of the accused and such claim can be raised at any stage of the proceedings, even after disposal of the case. So, as per the law, as discussed above, the claim can be raised before the court other than the Board and said court shall make an inquiry to determine the age of the applicant as per provision of J.J. Act and Rules.

12. In this view of the matter, the impugned order is just and valid and does not suffer from infirmity or illegality. Accordingly, the present application is **dismissed** with the liberty to the applicant to move an application before the concerned Magistrate raising all his grievance/claiming juvenility.

(Jai Prakash Tiwari,J.)

June 1, 2026

S.K.