



2026:AHC:129370

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 35708 of 2025

Dr. Neeraj Kumar Singh Patel Alias Neeraj

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s)	:	Imran Ullah, Vineet Vikram
Counsel for Opposite Party(s)	:	G.A.

Court No. - 72

HON'BLE DEVENDRA SINGH-I, J.

1. Heard Shri Vineet Vikram, learned counsel for the applicant, learned AGA for the State and perused the record. None appears on behalf of opposite party no.2.

4. The instant Application u/s 528 BNSS has been filed on behalf of the applicant with a prayer to quash and set-aside the summoning order dated 28.08.2025 passed by the learned Special Judge POCSO/ Additional Sessions Judge, Chitrakoot, in an application of informant/opposite party No.2, filed u/s 319 Cr.P.C. in SST No.16 of 2018 (State Vs. Chhotu @ Deependra) arising out of Case Crime No.642 of 2017, under Section 313 IPC, Police Station-Karvi Kotwali, District-Chitrakoot, whereby the applicant has been summoned to face the trial.

5. BRIEF FACTS OF THE CASE:

(a) The informant /opposite party no.2 has lodged the impugned First Information Reprot on 10.06.2017, under Sections 376, 313 and 506 IPC against the applicant and co-accused Chhotu @ Deependra with the allegations that on 06.06.2017 his daughter Geeta Devi got injured by the fire when she was alone at home, thereafter, she was referred to district hospital, Karvi where as soon as she gained consciousness, she told that six months back while she was bathing at the river, co-accused Chhotu @ Deependra has taken her pictures and on pretext of that, he has raped her several times, and when she got pregnant, co-accused Chhotu @ Deependra has taken her to the applicant, who is his uncle and was doctor at C.H.C., Naraini, where applicant aborted the pregnancy, due to which, she has immolated herself.

(b) After registration of FIR, the victim has recorded her statement before the SDM, Karvi on 10.06.2017 whereby she has repeated the same version as stated by the Opposite Party No.2 while lodging the FIR.

(c) During the investigation, while recording her statement under Section 161 CrPC, the victim stated that she was about four months pregnant when the applicant aborted her pregnancy.

(d) During the investigation, the learned Magistrate also went to the hospital to record the victim's statement under Section 164 CrPC, wherein she added the name of one more accused, namely Raghuvansh, who is the father of Chhotu @ Deependra..

(e) During the treatment of the victim, a team of doctors examined her on 26.07.2017 and opined that her uterus was normal in size and shape and she was not pregnant. The Investigating Officer also recorded the statement of Dr. Shweta Mishra, who conducted the medical examination of the victim, wherein she has stated that neither any abortion procedure had been conducted on the victim two months earlier nor she was pregnant with a fetus of four months..

(f) During the investigation, the Investigating Officer recorded the second statement of the victim on 26.07.2017, wherein specific questions were asked regarding the date, time, and place of the alleged incident and when the abortion was conducted by the applicant, but she could not disclose the same.

(g) During her treatment, the victim succumbed to burn injuries and died on 29.07.2017, i.e., 23 days after the incident. During the post-mortem examination, the doctors opined that the cause of death of the victim was ante-mortem injuries.

(h) During the investigation, Investigating Officer has not found any evidence of pregnancy of the victim. No witness had seen either the victim or the co-accused Chhotu @ Deependra with the applicant or at the place where he was posted. The medical examination as well as the post-mortem of the victim also ruled out the possibility of pregnancy. Further, apart from the allegation of abortion, no other allegation was made against the applicant. Due to which, the police exonerated the name of the applicant and filed a charge-sheet only against the co-accused Chhotu @ Deependra, under Sections 376, 306 and 506 IPC on 07.08.2017.

(i) During the trial of the co-accused Chhotu @ Deependra, while charges were being framed against him, the learned Trial Court, after framing

charges, also summoned the applicant and co-accused Raghuvansh @ Bhambhu under Sections 313, 306 and 506 IPC vide order dated 05.05.2018. Thereafter, the present applicant challenged the aforesaid summoning order dated 05.05.2018 by filing an application under Section 482 CrPC bearing No. 19013 of 2018, wherein a Coordinate Bench of this Court, vide order dated 01.06.2018, granted interim protection to the applicant, leaving it open to the prosecution that at an appropriate stage, if an application under Section 319 CrPC is filed against the applicant, he can be summoned. Subsequently, the learned Trial Court examined the informant/Opposite Party No. 2 as PW-1 and his brother Raj Kumar as PW-2. Thereafter, the informant/Opposite Party No. 2 filed an application under Section 319 CrPC for summoning the applicant on 22.07.2025, which was allowed by the learned Trial Court vide the impugned order dated 28.08.2025, and the applicant was summoned to face trial under Section 313 IPC.

6. The submissions made by the learned counsel for the applicant are as follow:

(a) that the applicant has been falsely implicated in the present case only because he and the co-accused Chhotu @ Deependra share a common ancestor and are distant relatives. Since the applicant is in Government Service (Uttar Pradesh Health Services), Opposite Party No. 2 wants to ruin his career and, therefore, has come up with an imaginary story of pregnancy and abortion.

(b) that the applicant, at the relevant time when the alleged incident occurred was posted at Community Health Centre (CHC) Narini, however, the CHC provides only basic medical care and does not have facility of abortion.

(c) that neither the co-accused Chhotu @ Deependra nor the victim has ever visited his CHC, nor has any eye-witness seen them there, hence, their meeting/presence at the said place are highly doubtful.

(d) that the applicant is a MBBS doctor having no surgical course such as Master of Surgery (MS).

(e) that the victim, in her statement, recorded under Section 164 Cr.P.C. has specifically stated that she did not know how many months, she was pregnant and when the applicant had allegedly aborted her pregnancy, and even she has not disclosed any date or time of the alleged incident.

(f) that the medical examination of the victim and the statement of the doctor had demolished the allegation of pregnancy, as her body shows no signs of pregnancy.

(g) that while recording her second statement, victim did not disclose the date, time, and place of the incident.

(h) that the opposite party no.2, in his cross-examination before the trial court, has clearly stated that he did not notice any sign of pregnancy in his daughter (the victim), and further states that he had no knowledge of what had happened in C.H.C., Naraini.

(i) that, in the present case, the pregnancy of the victim has not been proved, and neither the police nor the Opposite Party has produced any evidence of pregnancy or abortion of the victim. In such circumstances, prosecuting the applicant for abortion is illegal and contrary to the law.

(j) that the learned trial court while allowing the application u/s 319 CrPC has failed to keep in mind the law with regard to Section 319 CrPC as laid down in the case of **HARDEEP SINGH Vs. STATE OF PUNJAB, 2014(3) SCC92**, whereby Hon'ble Apex Court has held that "the degree of satisfaction for invoking section 319 CrPC should be more than prima-facie case, the satisfaction to an extent that evidence, if not rebutted, may lead to conviction of person sought to be added as an accused."

7. In view of the aforesaid submissions, learned counsel for the applicant submitted that the impugned order dated 28.08.2025 passed by the learned Special Judge POCSO/ Additional Sessions Judge, Chitrakoot, over an application of informant/opposite party No.2, filed u/s 319 Cr.P.C., on the face of record appears to be unjustified and is passed without application of judicial mind, therefore, the same is liable to be rejected and the present Application may be allowed.

8. On the other hand, learned A.G.A. appearing on behalf of the State has opposed the submissions advanced by the learned counsel for the applicant and has submitted that the applicant was involved in commission of the aforesaid offence. It is further submitted that the impugned summoning order dated 28.08.2025, passed by the learned trial court, under Section 319 Cr.P.C., is as per law and does not call for any interference at this stage, and as such, the present Application U/S 528 BNSS filed by the applicant is liable to be rejected.

CONCLUSION.

9. Having heard learned counsel for the parties and perusal of record, it appears that applicant has been summoned merely on the application given by the opposite party no.2/informant, under Section 319 Cr.P.C. whereas, from perusal of records, it is evident that during investigation, the name of

the applicant has been exonerated by the I.O. as he had not found any evidence against the applicant. Even Medical examination of the victim also does not support the allegations of pregnancy, as her body shows no signs of pregnancy, which is fatal for the prosecution. It appears that applicant is a Government employee and opposite party No. 2 with a view to ruin his career, has come up with an imaginary story of pregnancy and abortion against the applicant.

10. It appears that learned trial court, while passing the impugned order dated 28.08.2025 did not consider this aspect that the power under Section 319 Cr.P.C. is a discretionary and extraordinary power, which should be sparingly used and only in those cases where the circumstances of the case so warrant, has passed the order in a cursory manner and without application of judicial mind. Time and again, the Hon'ble Apex Court as well as various High Courts have consistently examined the scope of Section 319 Cr.P.C., which empowers the trial court to summon any other person as an accused in a pending trial, where the evidence recorded during trial suggests the involvement of such person in commission of the alleged crime. The said provision reads as under:

Section 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."

11. A reading of the above would show that this Section vests extraordinary power with the trial court to summon any other person as an accused to face trial along with other accused, who are before the trial court, but invariably the Hon'ble Supreme Court as well as different High Courts have held that this discretionary power should be exercised sparingly and with circumspection. At this juncture, when the trial has already commenced, the degree of satisfaction required to be recorded by the trial court while summoning any other person as additional accused, should be more than the standards required at the stage of framing of charges. In other words, the evidence on record must strongly suggest more than a "prima facie" case against such a person and his involvement in commission of the crime.

12. Reference in this regard can be made to the decision of the Constitution Bench judgment of the Hon'ble Apex Court in the case of **Hardeep Singh Vs. State of Punjab & others, (2014) 3 SCC 92**. The relevant paragraph of the aforesaid judgment reads as follows:

"105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319 CrPC to form any opinion as to the guilt of the accused."

13. Further, in a celebrated judgment of Hon'ble Apex Court in the case of Periyasami and others Vs. S. Nallasamy reported in (2019) 4 SCC 342, wherein it has been held that "the additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused."

14. Recently, the Hon'ble Apex court in the case of **Ramesh Chandra Srivastava Vs. State of U.P. in Criminal Appeal no.990 of 2021** vide order dated 13.09.2021 while adjudicating the powers of the court u/s 319 CrPC has held as follows:

"The test as laid down by the Constitution Bench of this court for invoking power u/s 319 CrPC inter alia includes the principle, that only when strong and cogent evidence occurs against a person from the evidence, the power u/s 319 CrPC should be exercised. The power cannot be exercised in a casual and cavalier manner. The test to be applied, as laid down by this court, is one which is more than prima facie case which is applied at the time of framing of charges."

15. In the present case, it is apparent that the impugned order dated 28.08.2025, under Section 319 Cr.PC. is totally based on the statements of P.W.1/informant and the victim, without considering the relevant facts and without recording any satisfaction that there is some cogent evidence which may lead to his conviction rather during her second statement, victim has not disclosed the date, time, and place of the incident; opposite party no.2, in his cross-examination before the trial court, has clearly stated that he did not notice any sign of pregnancy in his daughter (the victim); the applicant has already been expunged by the Investigating Officer and final report was submitted against him; medical report also does not support the prosecution story. In the matter of **Hardeep Singh & Bijendra Singh** (supra) and other judgments, the Apex Court is clearly of the view that evidence should be more than *prima facie* case, if unrebutted, would lead to conviction, here no such satisfaction has been recorded by the learned Special Judge POCSO/Additional Sessions Judge, Chitrakoot, while passing the impugned summoning order dated 28.08.2025.

16. Thus, in view of the law laid down by the Hon'ble Apex Court and the facts and circumstances, as narrated above and from the perusal of the record, the impugned summoning order dated 28.08.2025, passed by the

learned Special Judge POCSO/ Additional Sessions Judge, Chitrakoot, summoning the applicant under Section 319 Cr.P.C., is against the spirit and directions issued by the Hon'ble Apex Court and is liable to be set aside.

17. Accordingly, the order dated 28.08.2025, passed by the learned Special Judge POCSO/ Additional Sessions Judge, Chitrakoot, whereby the applicant has been summoned under Section 319 Cr.P.C. in S.S.T. No.16 of 2018 (State Vs. Chhotu @ Deependra) arising out of Case Crime No.642 of 2017, under Section 313 IPC, Police Station-Karvi Kotwali, District-Chitrakoot is, hereby, quashed.

18. For the reasons discussed above, the instant Application U/S 528 BNSS is **allowed** in respect of present applicant-Dr. Neeraj Kumar Singh Patel @ Neeraj.

19. Let a copy of this order be sent to the concerned Trial Court, forthwith for necessary compliance.

June 25, 2026
S. Singh

(Devendra Singh-I,J.)