

R.C. Kumar and ors. Vs. State of Andhra Pradesh and anr.

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Court : Andhra Pradesh

Decided On : Aug-01-1990

Reported in : 1991CriLJ887

Judge : Bhaskara Rao, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173(2), 173(6), 178 and 319; [Indian Penal Code \(IPC\), 1860](#); Evidence Act - Sections 3

Appeal No. : Cri. R.C. No. 20 of 1990

Appellant : R.C. Kumar and ors.

Respondent : State of Andhra Pradesh and anr.

Advocate for Def. : Public Prosecutor and M.N. Narasimha Reddy, Adv.

Advocate for Pet/Ap. : C. Padmanabha Reddy, Adv.

Judgement :

ORDER

1. In this revision, the question that arises for consideration is, whether a criminal Court after taking cognizance of an offence and before any evidence is let in subsequent to such taking cognizance can proceed against any person by impleading him as an accused.

2. The brief facts that gave rise to the question are : The de facto-complainant (Respondent No. 2) filed a report before the police making allegations against petitioners Nos. 1 to 3 and seeking their prosecution u/S. 420, IPC. The police, however, filed a charge-sheet arraying petitioner No. 1 alone as an accused. The Court below took cognizance of the offence against petitioner No. 1 alone. Thereafter, the Public Prosecutor filed a petition in the Court below to implead petitioners Nos. 2 and 3 as accused u/S. 190, Cr.P.C., making certain allegations specifically against them. The important contents of the petition are that the FIR, and the statements of the witnesses given to the police recite clear overt acts against them and that the investigating officer did not give any reason for not charging these two petitioners. On this petition the Court made the order :

'Heard. Allowed the petition.'

Thus, the Court below impleaded petitioners Nos. 2 & 3 after taking cognizance of the offence and before any evidence is let-in thereafter. Hence this revision.

3. The learned counsel, Sri Padmanabha Reddy, contended that after taking cognizance of an offence u/S. 190, Cr.P.C., the only stage available to a Criminal Court to implead any person as an accused is after letting in of some evidence, oral or documentary, during inquiry or trial as envisaged by S. 319, Cr.P.C. but not at any earlier point of time. The substance of the argument is that there is no power in the Court to implead any person as an accused in the absence of any evidence let-in during inquiry or trial as contemplated by S. 319 after crossing the stage under 190.

4. Mr. M. N. Narasimha Reddy, the learned counsel for the 2nd respondent contended that the Court has ample power to proceed against any person at any point of time since the amended S. 190, Cr.P.C. contemplates taking 'cognizance of any offence' and not taking 'cognizance against a person or persons'. On a perusal of the charge-sheet, S. 161, Cr.P.C., statements and other material available on record, though the offence is taken cognizance of already against the accused, the Court can implead any person as an accused irrespective of the fact that the stage contemplated by S. 319, Cr.P.C. has arrived at or not.

5. The learned Addl. Public Prosecutor made his independent submissions on lines similar to those advanced by Mr. Narasimha Reddy.

6. To appreciate the respective contentions, it is pertinent to notice the general scheme of the Criminal Procedure Code in regard to matters concerning investigation, inquiry and trial.

7. Chapter XII of the Criminal Procedure Code deals with 'Information to the police and their powers to investigate'. Under that chapter whenever information of a crime is received by the police they have to register the same and investigate into the same independently if it is a cognizable offence and with the permission of the Magistrate if non-cognizable. After completion of the investigation, the police officer has to submit a report (either final report or charge-sheet) as contemplated by Section 173(2), Cr.P.C. to the Magistrate empowered to take cognizance of the offence. S. 173(8), Cr.P.C. permits further investigation even after filing of the report u/S. 173(2) and submission of further report on the basis of the evidence obtained during the course of further investigation. Such a further report will receive treatment in terms of Ss. 173(2) to 173(6), Cr.P.C.

8. Chapter XIV deals with 'Conditions requisite for initiation of proceedings'. As per S. 190, Cr.P.C., a Magistrate is empowered to take cognizance of any offence (a) on receipt of a complaint of facts constituting an offence, (b) on receipt of a police report under S. 173 and (c) on receipt of information from any person other than a police officer or upon his own knowledge that an offence has been committed. On receipt of a police report u/S. 173, Cr.P.C., the Magistrate has to apply his judicial mind to the report and the material filed along with it and if he finds that there is sufficient material to constitute an offence, he will take cognizance of the same. It is equally open to the Magistrate to take cognizance of the offence against all of the accused arrayed in the charge-sheet. So much so, the Magistrate can take cognizance of the offence against a person, who is not sent-up as an accused in the report filed u/S. 173, and implead him as accused at the time of taking cognizance of the offence u/S. 190 Cr.P.C. The aggrieved party against such an impleading has again the right to challenge it in a revision. In cases where the offence is one triable by a Court of Session, the Magistrate may take cognizance

of the offence u/S. 190, Cr.P.C. and thereafter commit the accused u/S. 209, Cr.P.C., to the Court of Session. After such a committal, the Court of Session can take cognizance of the offence u/S. 193, Cr.P.C. In cases where the complaint is one made by a private party, the Magistrate shall follow the procedure envisaged by Ss. 200 to 204, Cr.P.C. Incidentally, if the Magistrate so thinks it proper he can direct investigation by police u/S. 156(3), Cr.P.C. in a private complaint. Thus, at the time of taking cognizance of the offence itself, the Magistrate applies his judicial mind to the entire material before him.

9. The next stage in the proceedings covered by a warrant case is discharging the accused or framing of charge against whom the offence is taken cognizance of. U/S. 239, Cr.P.C., on a consideration of the police-report, the documents sent with it u/S. 173, and making such examination of the accused as the Magistrate thinks necessary and after giving the prosecution as well the accused an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused after recording reasons therefor. In cases where upon such consideration, examination and hearing the Magistrate feels that there is ground for presuming that the accused has committed an offence triable by him, he shall frame a charge against the accused u/S. 240 Cr.P.C. For situations similar to Ss. 239 and 240, Cr.P.C., the provisions relevant to a Sessions Case triable by a Sessions Court are Ss. 227 and 228, Cr.P.C. After framing of the charge, the next stage that follows in the proceedings is the commencement of trial. It is worth noticing here that in a private complaint inquiry intervenes in between framing of charge or discharging the accused and taking cognizance of the offence.

10. The sum and substance of the above narration reveals that before commencement of Inquiry or trial, there are two stages u/S. 190, Cr.P.C., for the Magistrate to take cognizance of the offence. They are (i) on receipt of the report (charge-sheet) filed u/S. 173(2), Cr.P.C., and (ii) on receipt of a further report filed by the police u/S. 173(8) Cr.P.C. At both the stages, it is open to the Magistrate on an application of judicial mind to take cognizance of the offence against all the accused arrayed and against such person or persons put sent up as accused in the charge-sheet.

11. After passing through the stage u/S. 190, Cr.P.C., in a case triable by a Sessions Court, the Magistrate commits the case u/S. 209, Cr.P.C., to the Sessions Court. Pursuant thereto the Court of Sessions takes cognizance of the offence u/S. 193, Cr.P.C.

12. The third stage available to a Magistrate for taking cognizance of an offence as envisaged by S. 319, Cr.P.C., against a person or persons not impleaded as an accused is in the course of inquiry into or trial of an offence. S. 319, Cr.P.C. corresponds to S. 351 of the Old Cr.P.C., of 1898. S. 351 was reading :

'351. Detention of offenders attending Courts (1) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of inquiry into or trial of any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though had been arrested or summoned.

(2) When the detention takes place in the course of an inquiry under Chapter XVIII or after a trial has been begun the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard.'

13. S. 319 of the present Cr.P.C. 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.

(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.'

14. Sub-section (1) of S. 319 of the present Cr.P.C., as seen is a new provision authorising the Court to proceed against any person as an accused not named as such and not present also in the Court subject, of-course, to the consideration that it must appear so from the evidence. Sub-section (2) authorises the Court to procure his attendance and Court may issue warrant for such appearance and can get him arrested. Sub-ss. (3) and (4) are substantially the same as those covered by sub-ss. (1) and (2) of S. 351 of the Old Cr.P.C. Therefore, in cases where it appears from the evidence during the course of inquiry or trial of an offence that a person not impleaded as an accused has committed any offence, the Magistrate concerned is empowered u/S. 319, Cr.P.C. to proceed against such a person. The three stages, thus, are (i) u/S. 190, Cr.P.C. in relation to S. 173(2), (ii) u/S. 190, Cr.P.C., in relation to S. 173(8) and (iii) u/S. 319, Cr.P.C. during the course of inquiry or trial, subject of course to the condition that from the evidence the person not impleaded as an Accused appears to be guilty of the offence. The three stages as noted are specific and demarcative in their spheres as envisaged by the Code. It is noteworthy at this juncture that a simple petition or memo filed by the prosecution before advent of the stage covered by S. 319 and not disclosing any further ground as contemplated by S. 173(8) cannot form basis for acting again u/S. 190, Cr.P.C., as it is incumbent upon the Magistrate to wait till the matter ripens in the light of S. 319, Cr.P.C., lest it amounts to review of his earlier order taking cognizance of the offence, which is barred by the provisions of the Criminal Procedure Code. Therefore, the argument of the learned counsel Sri M. N. Narasimha Reddy, that irrespective (de hors) of S. 319 Cr.P.C., the Court by applying judicial mind can take cognizance of an offence on the basis of the material filed before it u/S. 173, Cr.P.C., at any point of time, does not merit

appreciation.

15. Incidentally, we may refer to the definition part of the Code to note as to what is 'inquiry' and 'trial', since it is during the course of these two that proceeding against a person is contemplated by S. 319, Cr.P.C. S. 2(g), Cr.P.C., defines inquiry :

'(g) 'inquiry' means every inquiry, other than a trial conducted under this Code by a Magistrate or Court.'

Thus, inquiry is different from trial and both are conducted by a Magistrate or a Court.

16. The crucial requirement contemplated by S. 319, Cr.P.C., is that it should appear 'from the evidence' that a person not being the accused has committed an offence. Therefore, the primary requirement for application of S. 319, Cr.P.C., is availability of 'evidence' in contradistinction from the 'police-report and documents enclosed thereto' as contemplated, by S. 173, Criminal Procedure Code. Before so distinguishing, no doubt, the question in the forefront is what is meant by evidence. The word 'evidence' is defined neither in the Criminal Procedure Code nor in the Indian Penal Code. However, S. 3 of the Evidence Act defined 'evidence' thus :

"Evidence' means and includes

(1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry : such statements are called oral evidence

(2) all documents produced for the inspection of the Court; such documents are called documentary evidence.'

17. In this background of the definition, the contention of Mr. Narsimha Reddy is that S. 161, Cr.P.C., statements, the confessional statement, the inquest report, etc., are all documents in the form of 'evidence' and therefore basing on those documents, the Magistrate can act u/S. 319, Cr.P.C. It should at first be noticed that no document by its filing simpliciter does carry the value of inspection of the

Court unless and until it is proved by someone and marked as an exhibit as per the provisions of the Evidence Act. A document produced should necessarily undergo the process of proof as a prerequisite for gaining the value of deservedness for purposes of inspection of the Court. It is not the case of Mr. Narasimha Reddy that the documents he has been referring to had undergone the process of proof. Still more interesting to notice is that the statements recorded u/S. 161, Cr.P.C., are inadmissible in evidence, except for purposes of contradiction or omission in view of the specific bar imposed by S. 162, Cr.P.C. S. 162, Cr.P.C., to the extent relevant runs :

'162. Statements to police not to be signed : Use of statements in evidence.

(1) No statement made by any person to a police officer shall be used for any purpose, save as hereinafter provided, at any inquiry or trial

The savings provided by S. 162, Cr.P.C., are (i) contradiction and (ii) omission.

18. As regards the statements in the inquest report are concerned, the decision of the Supreme Court in Sadasib Prakash v. State of Orissa, : [1956]1SCR43 is categorical and positive in holding that 'A statement in the inquest report is not evidence

19. Coming to confessional statement, it is held by the Supreme Court in Kashmira Singh v. State of M.P. : 1952 CriLJ839 that 'The confession of an accused person is not evidence in the ordinary term as defined in S. 3' and that it may be used to lend assurance to the other evidence.

20. The Privy Council in Dal Singh v. Emperor, AIR 1917 PC 25 had occasion to consider whether police-diaries including S. 161, Cr.P.C. statement could be used as evidence. In the case before the Privy Council the Court of Appeal while affirming the conviction imposed by the Sessions Judge, though the evidence on record was enough to warrant conviction, had gone on still further by reading the earlier statements of the witnesses made to the police and entered in the police diary with a view to make their opinion still more conclusive. This was held to be inconsistent with the provisions of S. 162, Cr.P.C.

21. The Rajasthan High Court had a similar occasion in *Hukamaram v. State of Rajasthan*, 1982 (2) Cri LJ 2341 wherein it is held that the police-statements recorded u/S. 161 cannot be treated as 'evidence' for the limited purpose of S. 319 and that the expression 'evidence' as used in S. 319 means evidence recorded' by the Sessions Judge in trial.

22. The Gauhati High Court had also the occasion to consider the meaning of 'evidence' as occurring in S. 319, Cr.P.C. in *Gunaram Tanti v. State of Assam* 1983 Cri LJ 289. It is held therein that the power u/S. 319 to proceed against a person other than the accused can be exercised by the Court only if from the evidence recorded by the court it appears that any person has committed an offence for which he could be tried together with the other accused. The word 'evidence' in S. 319 read along with other provisions of the section means the statements of the witnesses as recorded by the court and the same would not include a police statement.

23. Furthermore, it needs to be borne in mind is that uptill and including the stage of framing of charge or discharging the accused nowhere the Criminal Procedure Code has used the word 'evidence', except in provisions relating to investigation for purposes of collection of evidence. Inquiry or trial, as the case may be, will commence only after taking cognizance of the offence, and that inquiry precedes framing of charge while trial follows the framing of the charge.

24. One more factor noteworthy is that sub-section (4) of S. 319 mandates that in cases where the Court proceeds against any person in terms of sub-section (1) thereof (extracted supra), such proceedings in respect of that person shall be commenced afresh and the witnesses re-heard. Commencement of proceedings afresh and re-hearing of the witnesses pre-supposes that the evidence contemplated by sub-section (1) is only that which has been recorded by the Magistrate or Judge. In this view of the matter, the contention that the material filed along with charge-sheet under S. 173, Cr.P.C., is 'evidence' as envisaged by S. 319, Cr.P.C. is devoid of substance. The 'evidence' contemplated by S. 319 is therefore that which is recorded by the Magistrate or Judge during the course of examination of witnesses and such documents that are marked during the course

of such examination and not at all the statements recorded by the Police.

25. Adverting to the scope of S. 319, Cr.P.C., the Supreme Court was to consider the legality of an order proceeding against a person not committed by the committal Court, but found to have been prima facie involved in the offence according to the evidence let in by the Sessions Judge in *Joginder Singh v. State of Punjab*, : 1979 CriLJ333 . The Supreme Court therein held :

'The summoning of additional persons by the Sessions Court u/S. 319 of those who appear to be involved in the crime from the evidence led during the trial and directing them to stand their trial along with those who have been committed, must be regarded as incidental to the cognizance under section 193 and part of the normal process that follows it. S. 319(4)(b) enacts a deeming provision in that behalf dispensing with the formal committal order against the newly added accused'.

The Supreme Court further held :

'The phrase 'any person not being the accused' in S. 319 does not exclude from its operation an accused who has been released by the police u/S. 169'.

Therefore, non-committal of a person under S. 209, Cr.P.C., and release of the person by the police for want of evidence u/S. 169, Cr.P.C., are held to be no bar for exercising the power u/S. 319, Cr.P.C., by the Sessions Court to proceed against such a person.

26. Justice Ratnavel Pandian, as a Judge of the Madras High Court, was to deal with the applicability of S. 319 at a stage of the proceedings where the prosecution has closed its evidence and the defence commenced examining its witnesses in *Govindarajan v. Food Inspector* 1982 (1) Cri LJ NOC 131 page 52. In that context, it is held that the condition precedent for the application of S. 319(1) is that the proceedings should be taken against a person for an offence which he appears to have committed 'in the course of any inquiry into, or trial of, an offence' provided it appears from the evidence that the person proposed to be impleaded has committed any offence for which such person could be tried together with the other

accused. It is also held that the trial of a case legally does not cease till the proceedings come to an end by the conviction or acquittal and till then the proceedings are in the course of the trial and enable the Magistrate to exercise power u/S. 319, Cr.P.C.

27. The relevant facts in the decision of the Supreme Court in *S. S. Khanna v. Chief Secretary*, : [1983]2SCR724 are that the Magistrate after an inquiry u/S. 202 did not proceed against one of the arrayed accused by declining to issue process. The complainant filed a revision against the order dropping proceedings against the said arrayed accused and that revision was dismissed. However, during the course of trial the prosecution witnesses deposed on oath that the accused against whom the proceedings were dropped involved in the crime and therefore exercising powers u/S. 319, Cr.P.C., the Magistrate summoned the said accused for being proceeded against. In the background of these facts, the Supreme Court held that the order dropping proceedings u/S. 202 and its confirmation by the higher Court has no effect on the exercise of powers u/S. 319, Cr.P.C.

28. The next important decision of the Supreme Court as regards the scope of S. 319 Cr.P.C., is the one in *Delhi Municipality v. Ram Kishan*, : 1983 CriLJ159 . There it is held that even an order passed u/S. 482, Cr.P.C. of the High Court quashing the proceedings against an accused on the ground that the allegations in the complaint make out no offence against him is no bar for impleading him u/S. 319, Cr.P.C., if there is evidence led satisfying the Court that the said accused had involved in the crime. Their Lordships of the Supreme Court made it plain :

'..... the mere fact that the proceedings have been quashed against respondents No. 2 to 5 will not prevent the Court from exercising its discretion if it is fully satisfied that a case for taking cognizance against them had been made out on the additional evidence led before it.'

It is further observed that the power u/S. 319 Cr.P.C., is an extraordinary one and has to be used very, sparingly.

29. From the case-law noted supra, it is manifest that the Court while taking cognizance of the offence u/S. 190, Cr.P.C. has to first apply its judicial mind to

the charge-sheet and the material filed along with it u/S. 173 Cr.P.C., so as to find out whether the case could be taken cognizance of against all the arrayed accused, and against persons other than those arrayed as accused, and would act accordingly. On account of this judicial function, if any party is aggrieved the remedy open is a revision. When once the proceedings cross the stage of S. 190, Cr.P.C., the trial or committal Court has to necessarily wait till the production of evidence during inquiry or trial and in the meanwhile it has no power to review its order made u/S. 190, Cr.P.C., in view of the clear bar imposed by S. 362, Cr.P.C., and it is during the course of inquiry or trial if it appears from the evidence that any person not being the accused has committed the offence, it may proceed against such person by exercising the powers u/S. 319 Cr.P.C. Further, the 'evidence' contemplated by S. 319 is not the material envisaged by Ss. 173, 227, 228, 239 or 240 since in none of those sections the word 'evidence' is used. Had the Legislature intended the material covered by Ss. 173, 227, 228, 239 or 240 to be 'evidence' it would have repeated the terminology used in those provisions and would not have guardedly introduced the word 'evidence' in S. 319, Cr.P.C. Therefore, 'evidence' as contemplated by S. 319, Cr.P.C., cannot be understood to be the material covered by Ss. 173, 227, 228, 239 or 240, Cr.P.C.

30. In this view of the matter, the contention of the learned counsel Sri Narasimha Reddy that irrespective of the powers u/S. 319, Cr.P.C., the powers u/S. 190, Cr.P.C., survive and therefore even after taking cognizance of an offence new persons can be proceeded against on the basis of the material submitted along the charge-sheet u/S. 173 Cr.P.C., is devoid of merit, particularly in the face of specific provisions covered by S. 319 Cr.P.C. The powers u/S. 190, Cr.P.C., cannot be overstretched or permitted to be overlapped on those covered by S. 319, Cr.P.C.

31. Mr. Narasimha Reddy, brought to my notice two Full Bench decisions, one of the Rajasthan High Court and the other of the Patna High Court, in support of his contention that 'evidence' occurring in S. 319, Cr.P.C., takes in the statements recorded by the police or the documents filed along with the charge-sheet for purposes of exercising the power thereunder.

32. As pointed out by the learned counsel, the Full Bench of the Rajasthan High Court in Dalip Singh v. State of Rajasthan, 1989 Cri LJ 600 held :

'The word 'evidence' in S. 319 has to be given general and not narrow meaning. The term cannot be limited to evidence recorded by Court during the course of inquiry into trial of the case and not the statements recorded by police or the documents filed along with the charge-sheet.'

33. So also, the Full Bench of the Patna High Court in Sk. Latfur Rahman v. State 1985 Cri LJ 1238 held that the Sessions Court can, without itself recording evidence and independently of S. 319, summon additional accused on the basis of document furnished u/S. 173, Cr.P.C.

34. The Full Benches of both the High Courts have in support of their conclusions - no doubt favourable to Mr. Narasimha Reddy - have placed reliance mainly on two decisions of the Supreme Court in Raghubans Dubey v. State of Bihar, : 1967 CriLJ1081 and Hareram Satpathy v. Tikaram Agarwala, : 1978 CriLJ1687 . While so placing reliance neither of the Full Benches, it needs to be borne in mind, have referred to the facts that took place in the cases before the Supreme Court.

35. In Raghubans Dubey's case, : 1967 CriLJ1081 (supra), the appellant Dubey was one of the assailants in the FIR lodged by police. During, the course of investigation the alibi set up by the appellant therein was accepted by the police and therefore his name was shown under the heading 'not sent up' in the charge-sheet filed under S. 173 Cr.P.C. The Sub Divisional Magistrate discharged the appellant as not sent up and transferred the case for trial to the Judicial Magistrate, later the Judicial Magistrate examined P.W. 1 and P.W. 2 and they both implicated the appellant in the crime. In view of this evidence of P.Ws. 1 and 2, the Magistrate ordered issue of process against the appellant to be proceeded against under S. 319, Cr.P.C. Thus, the case before the Supreme Court was not without any evidence recorded by the Magistrate and culminated in the order made u/S. 351, Cr.P.C. (corresponding to S. 319 of the present Code). Crucially enough, we do not come across this reference to the evidence adduced by examining P.Ws. 1 and 2, in either of the Full Bench decisions.

36. In Hareram Satpathy's case also : 1978 CriLJ1687 (supra) the report of the de facto complainant implicated '13' persons for an offence u/S. 302, IPC, but the police filed charge-sheet only against '6' and did not sent up the balance '7' stating that no offence appears to have been committed by them. Since police did not proceed against all the '13', the de facto complainant made a complaint independently to the Magistrate against all the '13'. It is on this private complaint, the offence was taken cognizance by the Magistrate under Clause (a) of sub-section (1) of S. 190, Cr.P.C., as distinct from Clause (b) of sub-section (1) of S. 190. Therefore, there was sworn statement recorded by the Magistrate u/S. 200, Cr.P.C. Taking cognizance of the offence against the accused in pursuance of a private complaint by the Magistrate in that case is neither u/S. 319, Cr.P.C., nor u/S. 190(1)(b), but u/S. 190(1)(a), Cr.P.C., which is independent and exclusive of the power u/S. 190(1)(b) or 190(1)(c). Cls. (a), (b) and (c) of S. 190(1) are independent by each and exclusive mutually.

37. Thus, a factual examination of the decisions of the Supreme Court relied upon by the Full Benches reveals that there was evidence recorded by the Magistrate of P.Ws. 1 and 2 in Raghubans Dubey's case : 1967 CriLJ1081 (supra) before exercising the power u/S. 319 and in so far as the other decision in Hareram Satpathy's case : 1978 CriLJ1687 is concerned the offence taken cognizance of is on a private complaint u/S. 190(1)(a), Cr.P.C., and not u/S. 319, Cr.P.C. One more fact needs to be noticed is that in neither of the Full Bench decisions there is reference to the Supreme Court's decisions in Delhi Municipality's case, : 1983 CriLJ159 and S. S. Khanna's case, : [1983]2SCR724 . In these circumstances, I am not able to persuade myself to be in agreement, with great respect to the learned Judges therein, with the decisions of the Full Benches.

38. It is lastly submitted by Mr. Narasimha Reddy that a Division Bench of the Madhya Pradesh High Court also in P. N. Dubey v. Union of India, : AIR 1989 MP225 has directed the writ petitioner therein that if they so desire they could move the Public Prosecutor to file a petition under section 319, Cr.P.C., before the Special Judge to implead one of the respondents 1therein as an accused. This direction is only subject to the requirements of S. 319, Cr.P.C., and not de hors the same. As a matter of fact there is an observation in paragraph 9 of the decision to

the effect : 'Under S. 319 of the Code of Criminal Procedure, 1974, the Special Judge has the power to make any person an accused if from evidence it appears that he has also committed an offence.'

This, decision cited is thus of no help to Mr. Narasimha Reddy.

39. For the foregoing reasons, the impleading of petitioners Nos. 2 and 3 as accused by the Magistrate after crossing the stage u/S. 190 and before adducing any evidence, by examining any witness or marking any document as an exhibit, is bad in law and not sustainable. The revision case is accordingly allowed by setting aside the order under revision.

40. Revision allowed.

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