

**Arseeda Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/771045](http://sooperkanoon.com/771045)

**Court :** Rajasthan

**Decided On :** Sep-13-2007

**Reported in :** RLW2008(2)Raj1343

**Judge :** G.S. Sarraf, J.

**Appellant :** Arseeda

**Respondent :** State

**Disposition :** Petition allowed

**Judgement :**

**G.S. Sarraf, J.**

1. The complainant petitioner has filed this criminal revision petition under Section 397 read with Section 401 Cr.P.C. against that part of the order dated 20.4.2006 passed by Additional District & Sessions Judge (Fast Track) No. 4, Bharatpur in sessions case No. 1/2006 whereby his application under Section 319 Cr.P.C. has been dismissed.

2. The short controversy involved in this revision petition is that whether the trial Court is justified in dismissing the application filed by the complainant under Section 319 Cr.P.C. solely on the ground that the application has not been filed by the public prosecutor and, therefore, it is not maintainable.

3. Heard learned Counsel for the petitioner, learned public prosecutor and learned Counsel for the respondent No. 2.

4. On a careful reading of Section 319 Cr.P.C. it becomes clear that the trial Court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial.

5. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier.

6. In AIR 2006 SC 1892 the application under Section 319 Cr.P.C. was filed by the complainant and the Hon'ble Apex Court dismissed the appeal filed by the accused appellant saying that the power under Section 319 Cr.P.C. can be exercised by the court suo motu or on an application by someone including the accused already before it. Learned trial Court was, therefore, not justified in dismissing the application filed under Section 319 Cr.P.C. merely on the ground that the application was not filed by the public prosecutor.

7. Consequently this revision petition is allowed. The impugned order so far as it has been passed under Section 319 Cr.P.C. is set aside and the learned trial Court is directed to pass fresh order in accordance with law after hearing the concerned parties.