

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3978 of 2019**

Arising Out of PS. Case No.-106 Year-2015 Thana- HATHUA District- Gopalganj

Sharvan Kumar Pandey Sri Kant Pandey Resident of Mohalla-A- 276,
Block-A North Vinod Nagar, P.S.- Mandawali, New Delhi.

... .. Petitioner

Versus

1. The State of Bihar
2. Surendra Nath Pandey Late Mahadev Pandey Resident of Village-
Gilwaniya, P.S.- Kutaiya, Distt.- Gopalganj.

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar No1. Advocate
For the Opposite Party/s : Mr.Ashok Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 20-07-2026

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The present quashing petition has been filed for
quashing the impugned order dated 13.07.2018 passed by
learned Chief Judicial Magistrate, Gopalganj in connection
with Tr. No. 1640/18 arising out of Hathua P.S. Case No.
106 of 2015 registered for the offences punishable under
Sections 420 & 379 of the I.P.C. and Section 66(C) of the
Information Technology Act, whereby and whereunder on
application of accused Rahul Kumar Jha, learned C.J.M.
issued summon against the petitioner to face the trial under
Section 319 of the Code of Criminal Procedure.



3. The brief facts of the case is that as per FIR, informant alleged that Rs. 11,00,000/- has been withdrawn in between 30.04.2015 to 22.06.2015 by the IRCTC from his Bank Account No. 11453719697, of State Bank of India, Hathua Branch. It is alleged that informant is a retired teacher and when he came to the Bank and verify his account, then, he came to know that fraud which has been committed with his account.

4. On the basis of aforesaid written report, above-mentioned First Information Report has been lodged with Hathua Police Station. After lodging the FIR, police started investigation and submitted charge-sheet only against co-accused Rahul Kumar Jha for the offences punishable under Sections 420 & 379 of the I.P.C. and section 66(C) of the I.T. Act and investigation was kept pending to verify the I.P. address and on other points. Thereafter, learned trial court took cognizance only against accused Rahul Kumar Jha for the offences under sections 420 & 379 of the I.P.C. and Section 66(C) of the I.T. Act.

5. Learned counsel appearing on behalf of the petitioner submitted that after taking cognizance the trial of



this case begins with Tr. No. 1640/18 before the court of learned CJM, Gopalganj, where altogether seven (7) prosecution witnesses were examined and out of seven prosecution witnesses, this petitioner was also examined as PW-7 on 03.04.2018.

6. It is pointed out that none of the prosecution witnesses, PW-1 to PW-6 named this petitioner *qua* his any involvement with the crime in question during the trial and this petitioner was examined as prosecution witness No.7, for the reason that he was the distributor of Cable Internet Connection through his company namely, M/s ANI Network Pvt. Ltd. to co-accused Rahul Kumar Jha, who alleged to misappropriate the amount of Rs. 11 Lakhs from the account of the informant for purchasing railway tickets and, thereafter, transferring the amount to his own account after cancellation of purchased railway tickets. It is submitted that co-accused Rahul Kumar Jha was not examined before the learned trial court in view of section 315 of the Cr.P.C., rather he made one application before the court of learned CJM, Gopalganj on 03.04.2018, stating therein that this petitioner may be summoned as an accused,



which was allowed by the impugned order dated 13.07.2018.

7. At this stage, it would be apposite to reproduce the impugned order dated 13.07.2018, which are as under:

“न्यायालय मुख्य न्यायिक दण्डाधिकारी गोपालगंज
विचारण सं० 1640/2018
राज्य बनाम राहुल कुमार झा
जी०आर० 1864/15
बी० 1640/18
न्यायालय मुख्य न्यायिक दण्डाधिकारी गोपालगंज
विचारण वाद सं० 1640/18

13.07.18 काराधीन अभियुक्त को कारा से प्रस्तुत किया गया है। प्रस्तुत आवेदन काराधीन अभियुक्त राहुल कुमार झा की ओर से अन्तर्गत धारा 319 दं.प्र.सं. इस आशय का प्रस्तुत किया गया है कि डायरी के पैरा नं.51 वो 70 के अवलोकन से स्पष्ट है कि इस केस के मुख्य अभियुक्त श्रवण कुमार पाण्डेय है, जैसा कि कांड दैनिकी के पैरा 70 में अपराध इकाई, पटना के ज्ञापांक 299/शा. का ज्ञापांक अपराध इकाई (साइबर सेल) का कार्यालय, बिहार पटना के दिनांक 09.06.16 से एस.पी. गोपालगंज के नाम का प्रतिवेदन प्राप्त हुआ था कि टिकटों की बुकिंग अवैध रूप से वादी के खाता से की गई थी तथा ट्रांजेक्शन डिटेल में उल्लिखित टी.पी.एड के लिए यूजर डिटेल हेतु एअरटेल, बोडाफोन एवं आईडिया को भेजा गया है जिसमें ई-मेल के मोबाईल डिटेल उपलब्ध कराया गया है। जिसमें एनेक्स्चर 3 पेज सं. 151 से 153 में नाम श्रवण कुमार पता— ए. 276ए. ब्लॉक नार्थ विनोद नगर पाया गया है। केस डायरी के पैरा—51 में ही श्रवण कुमार पाण्डेय एवं खगेन्द्र प्रसाद की संलिप्ता होने का पर्याप्त साक्ष्य है। इस आधार पर अभियुक्त के द्वारा अनुरोध किया गया है कि उपरोक्त कांड में गहराई से जांच कर दोनों अभियुक्त श्रवण कुमार पाण्डेय तथा खगेन्द्र प्रसाद को धारा 319 दं.प्र.सं. के आलोक में अभियुक्त बनाने की कृपा की जाए।

आवेदन की कॉपी जिला अभियोजन पदाधिकारी को प्राप्त कराया गया है जिसमें जिला अभियोजन पदाधिकारी के द्वारा अभियुक्त के आवेदन का कोई विरोध नहीं किया गया है तथा न्यायालय को बताया गया है कि सह अभियुक्त के विरुद्ध अनुसंधान लम्बित है तथा काराधीन अभियुक्त राहुल कुमार झा के विरुद्ध प्रस्तुत केस डायरी Fuly funtory तथा पूर्ण नहीं है। समय सीमा से बचने के लिए पुलिस के द्वारा अनान-फानन में जल्दीबादी करते हुए बिना वैज्ञानिक तथा तार्किक ढंग से अनुसंधान को पूर्ण दिखाते हुए आरोप पत्र काराधीन अभियुक्त के विरुद्ध समर्पित किया गया है। ऐसी स्थिति में अन्य अभियुक्तगण जो काराधीन अभियुक्त के सहयोगी है जो कमशः श्रवण कुमार पाण्डेय तथा खगेन्द्र प्रसाद को भी अभियुक्त बनाना जाना आवश्यक है क्योंकि दोनो अभियुक्तों के विरुद्ध पर्याप्त साक्ष्य उपलब्ध है।

उभयपक्षों के विद्वान अधिवक्ताओं के तर्कों को सुना गया तथा अभिलेख का अवलोकन किया। जिससे स्पष्ट होता है कि काराधीन अभियुक्त राहुल कुमार झा के विरुद्ध दिनांक 30.10.16 को आरोप पत्र समर्पित किया गया है तथा अन्य अभियुक्तों को आई.पी.ए.डी.जी. के सत्यापन के लिए पुरक अनुसंधान जारी रखा गया है। अभिलेख पर उपलब्ध मौखिक तथा दस्तावेजी साक्ष्य के अवलोकन से स्पष्ट है कि इस केस में श्रवण कुमार पाण्डेय तथा खगेन्द्र प्रसाद के विरुद्ध भी प्रबल साक्ष्य उपलब्ध है। जिसके आलोक में इन अभियुक्तों का विचारण किया जाना न्यायहित में आवश्यक है।

उपरोक्त तथ्यों एवं परिस्थितियों के आलोक में काराधीन अभियुक्त राहुल कुमार झा की ओर से प्रस्तुत आवेदन धारा 319 दं.प्र.सं. स्वीकृत किया जाता है। कार्यालय अभियुक्तों की उपस्थिति हेतु सम्मन निर्गत करें। अभिलेख दिनांक 27.7.18 को प्रस्तुत करें।

लेखापित



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मुख्य न्यायिक दण्डाधिकारी ”

8. It would further be apposite to reproduce Section 319 of the Cr.P.C., which reads as under:

“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 subsection (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. Learned counsel also relied upon ‘**Para 7**’ of the legal report of Hon’ble Supreme Court as available through **Neeraj Kumar @ Neeraj Yadav Vs. State of U.P. & Ors.** reported in **2025 SCC OnLine SC 2639**, which reads as under for better appreciation of the legal position in connection with issuance of summon under **section 319 Cr.P.C. :-**



“7. It is no longer *res integra* that the power conferred under this Section is extraordinary and discretionary in nature, intended to be exercised sparingly and with due circumspection. While invoking it, the Court must be satisfied that the evidence appearing against the person sought to be summoned is such that it *prima facie* necessitates bringing such person to face trial. The degree of satisfaction required is higher than that warranted at the stage of framing of charge, yet short of the satisfaction necessary to record a conviction. Such satisfaction must rest on cogent and credible material brought on record during the trial, and not based on conjectures or speculations. In this regard, reference to a few judicial pronouncements of this Court would be apposite.

7.1. The Constitution Bench of this Court in *Hardeep Singh v. State of Punjab [(2014) 3 SCC 92]* extensively discussed the power conferred under Section 319 CrPC. Relevant part is extracted hereunder:

“90. ... 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.

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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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. ...

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110. In *Lal Suraj* [*Lal Suraj v. State of Jharkhand*, (2009) 2 SCC 696 : (2009) 1 SCC (Cri) 844], a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been chargesheeted, he may come within the purview of the description of such a person as contained in Section 319 CrPC. A similar view had been taken in *Lok Ram* [*Lok Ram v. Nihal Singh*, (2006) 10 SCC 192 : (2006) 3 SCC (Cri) 532 : AIR 2006 SC 1892], wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.”

10. In view of aforesaid, it is clear that only on the basis of evidences as surfaced during any **inquiry or trial** of an offence, a summon can be issued to any person not being accused has committed any offence for which such person could be tried together with the accused.

11. In the present case, summon was not issued against petitioner on the basis of evidences surfaced during the trial. None of the prosecution witnesses have said anything incriminating during the trial against this petitioner, rather petitioner himself examined as PW-7. Interestingly, on the basis of petition of accused only, otherwise having all opportunity to examine himself on oath under section 315 of the Cr.P.C., this petitioner was



summoned as an accused through impugned order, which is a perverse finding contrary to the settled position of law.

12. In view of aforesaid and by taking legal report of Hon’ble Apex Court in **Neeraj Kumar**’ case (supra), the impugned order dated 13.07.2018 as passed by learned Chief Judicial Magistrate, Gopalganj in connection with T.R. No. 1640/2018 arising out of Hathua P.S. Case No. 106 of 2015, is hereby quashed and set-aside *qua* petitioner.

13. Accordingly, this quashing petition stands allowed.

14. Let a copy of this judgment alongwith TCR, if any, be sent to the learned trial court.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	NA
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