

Criminal Procedure Code, 1973, Section 319 - Power u/s 319 Code of Criminal Procedure is a discretionary and an extra-ordinary 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.

Held, 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 u/s 319 Code of Criminal Procedure In Section 319 Code of Criminal Procedure 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 u/s 319 Code of Criminal Procedure to form any opinion as to the guilt of the accused.

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