

CrPC S. 319 -

Q.1 What is the stage at which power u/s 319 Code of Criminal Procedure can be exercised?

AND

Q. III Whether the word “evidence” used in Section 319(1) Code of Criminal Procedure has been used in a comprehensive sense and includes the evidence collected during investigation or the word “evidence” is limited to the evidence recorded during trial?

A. In Dharam Pal's case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken u/s 193 Code of Criminal Procedure and the Sessions Judge need not wait till "evidence" u/s 319 Code of Criminal Procedure becomes available for summoning an additional accused.

Section 319 Code of Criminal Procedure, significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Code of Criminal Procedure; and u/s 398 Code of Criminal Procedure are species of the inquiry contemplated by Section 319 Code of Criminal Procedure. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power u/s 319 Code of Criminal Procedure, and also to add an accused whose name has been shown in Column 2 of the chargesheet.

In view of the above position the word "evidence" in Section 319 Code of Criminal Procedure has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No. II

Q. II Whether the word “evidence” used in Section 319(1) Code of Criminal Procedure could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

A. Considering the fact that u/s 319 Code of Criminal Procedure a person against whom material is disclosed is only summoned to face the trial and in such an event u/s 319(4) Code of Criminal Procedure the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. IV

Q. IV What is the nature of the satisfaction required to invoke the power u/s 319 Code of Criminal Procedure to arraign an accused? Whether the power u/s 319(1) Code of Criminal Procedure can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

A. Though u/s 319(4)(b) Code of Criminal Procedure the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person u/s 319 Code of Criminal Procedure would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial- therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No. V

Q. V Does the power u/s 319 Code of Criminal Procedure extend to persons not named in the FIR or named in the FIR but not charge-sheeted or who have been discharged?

A. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned u/s 319 Code of Criminal Procedure provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Code of Criminal Procedure has to be complied with before he can be summoned afresh.

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