

III. What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?”

- (i) If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.
- (ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.
- (iii) If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.
- (iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.
- (v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.
- (vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.
- (vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be

no impediment to pass the judgment of acquittal in the main case.

- (viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.
- (ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.
- (x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.
- (xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and *de novo* proceedings be held.
- (xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;
 - (a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.
 - (b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

34. Having answered the questions referred, in the above manner, we direct the Registry to obtain orders from Hon'ble the Chief Justice and place before the