



2026:AHC-LKO:47622

A.F.R.

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

CRIMINAL APPEAL No. - 1895 of 2026

Smt. Chhotka

.....Appellant(s)

Versus

State Of U.P. Thru. Prin. Secy. Home Lko. And 2 Others

.....Respondent(s)

Counsel for Appellant(s)	: Suresh Kumar Mishra, Dharmendra Kumar Bhatt, Manjul Kumar Pathak
Counsel for Respondent(s)	: G.A.

Court No. - 14

HON'BLE SUBHASH VIDYARTHI, J.

1. The appellant has engaged three learned counsel, namely Shri Suresh Kumar Mishra, Shri Dharmendra Kumar Bhatt and Shri Manjul Kumar Pathak, but none of whom is present to assist the court. Shri Rudra Pratap Pal, Advocate made a request for adjournment of the case on the ground that Shri Suresh Kumar Mishra and Shri Dharmendra Kumar Bhatt Advocates are busy in some District Court and therefore they could not come to the High Court. He does not know the whereabouts of Shri Manjul Kumar Pathak, the third learned Counsel for the appellant.

2. The matter was previously listed on 15.07.2026 and on that date also, nobody had appeared on behalf of the appellant and the matter was passed over.

3. The conduct of Shri Suresh Kumar Mishra and Shri Dharmendra Kumar Bhatt, Advocates, in abstaining to appear for advancing submissions in a fresh case for the reason that they are busy in the trial court, is strongly deprecated as it shows lack of respect towards their professional duties as also towards the High Court. The conduct of Shri Manjul Kumar Pathak in abstaining to appear before this Court without assigning any reason and even without giving any intimation, is also deprecated.

4. It is the Court's duty to render justice and the Advocates are entitled to provide assistance to the Court in dispensation of justice. Assistance of Advocates is not a condition precedent for adjudication of a dispute by this Court or by any Court. If the Advocates choose to refrain from providing assistance to the Court without any just and reasonable cause,

the Court has to perform its duty of adjudication of cases and dispensation of justice even without any assistance from the Advocates. When the appellant has engaged as many as three learned counsel and all of them have refrained from appearing to provide assistance to this Court, the Court proceeds to decide the matter after perusal of the record.

5. The instant appeal has been filed under Section 14-A (1) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, challenging the validity of an order dated 08.05.2026, passed by the learned Special Judge, SC/ST Act, Shravasti in Session Case No. 10 of 2023, arising out of Case Crime No. 77 of 2022, under Sections 323, 504, 506 IPC and 3(1) (r), (s) SC/ST Act, Police Station Naveen Modern, District Shravasti, whereby an application under Section 319 CrPC filed by the appellant / complainant has been rejected.

6. The case was instituted on the basis of an FIR lodged by the appellant on 22.08.2022 against Ram Suresh Yadav and Ankit Yadav (opposite parties no.2 and 3, who are father and son) alleging that both of them had assaulted and abused the complainant and her son, causing injuries to both of them.

7. After investigation, the Investigating Officer submitted a charge-sheet dated 16.09.2022 against the opposite party no. 2 Ram Suresh for the offences under Section 323, 504, 506 IPC and 3(1) (r), (s) SC/ST Act and the Investigating Officer stated that on the basis of the evidence collected during investigation, involvement of Ram Suresh's son Ankit Yadav (the opposite party no. 3) in commission of the offences could not be established.

8. The trial commenced against Ram Suresh only and after examination of three prosecution witnesses, the appellant filed an application under Section 319 Cr.P.C. When the impugned order has been passed on the application under Section 319 Cr.P.C., it was necessary to bring its copy on record so as to enable this Court to know its contents, but a copy of the said application has not been brought on record.

9. It is recorded in the impugned order that the complainant had stated in the application under Section 319 Cr.P.C. that she had clearly stated about involvement of both the accused persons in commission of the offence in the FIR, in her statement recorded under Section 161 Cr.P.C. and in her examination-in-chief, but the investigating officer had wrongly submitted the charge-sheet only against Ram Suresh (the opposite party no. 2) and not against his son Ankit Yadav (the opposite party no. 3).

10. The trial court examined the statements. The complainant – appellant had stated that the Ram Suresh and his son Ankit Yadav (the opposite parties no. 2 and 3) both were involved in the incident. PW-2 Taravati stated that she reached the spot half an hour after the incident. Thus, PW-2 is not an eyewitness of the incident and she did not support the allegation of involvement of the opposite party no. 3 in the incident. PW-3, the injured son of the complainant, stated that he and Ram Suresh (the opposite party no.2) both were taken to a hospital by different ambulances. Medical examination of both of them was conducted in Ikauna Shrivasti. No person other than PW-3 and Suresh (the opposite party no.2) was present on the spot.

11. The trial court referred to the judgment of the Hon'ble Supreme Court in the case of **Krishnappa v. State of Karnataka**: (2004) 7 SCC 792 = AIR 2004 SC 4298, wherein it has been held that: -

“6. It has been repeatedly held that the power to summon an accused is an extraordinary power conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken.

* * *

9. In *Michael Machado v. Central Bureau of Investigation* [(2000) 3 SCC 262] construing the words “the court may proceed against such person” in Section 319 CrPC, this Court held that the power is discretionary and should be exercised only to achieve criminal justice and that the court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. This Court further held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has already proceeded and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. The court, while examining an application under Section 319 CrPC, has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, it means that for exercise of discretion under Section 319 CrPC, all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.”

12. The trial court relied on the judgment of this court in the case of **Ramakant Tripathi Vs. State of U.P.**: 2009 Cr.L.J. 459 wherein a coordinate Bench of this Court referred to the precedents in the cases of **Michael Machado and Anr.**: (2000) 3 SCC 609, **Anil Singh and Anr. v. State of Bihar**: (2008) 1 SCC 708, **Rajendra Singh v. State of U.P. and Anr.**: (2007) 7 SCC 378, **Rakesh and Anr. v. State of Haryana**: 2001

Cr.L.J. 3511 and **Lok Ram v. Nihal Singh**: (2006) 10 SCC 192 and concluded that: -

“16. In view of the aforesaid discussion it is clear that the basic requirement of Section 319 Cr.P.C. is that the court must have reasonable satisfaction from the evidence collected during inquiry or trial to the fact that some other persons against whom no charge sheet have been submitted, had committed an offence and for such offence he should be tried along with those accused who have been charge sheeted. The aforesaid power, by the trial court, no doubt should be exercised sparingly and that should be exercised only to achieve criminal justice. If there is even no remote possibility or likelihood of conviction, the court will refuse to exercise the power.

17. There is no compelling duty of the court to proceed against the other persons. Merely on the basis of the suspicious of the involvement in the offence, might not be enough, to exercise the power, for summoning the other person under Section 319 Cr.P.C. unless there is prospect of the conviction. If from the evidence collected during inquiry or trial prima facie commission of offence is disclosed against other person then after satisfaction the trial court in exercise of judicial discretion can summon the other person, under Section 319 Cr.P.C., to face the trial along with other accused.

13. In **Municipal Corpn. of Delhi v. Ram Kishan Rohtagi**: (1983) 1 SCC 1, the Hon’ble Supreme Court held that: -

*“19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. **But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken...**”*

(emphasis added)

14. The aforesaid principles laid down in **Municipal Corpn. of Delhi v. Ram Kishan Rohtagi** (supra) have been followed and reaffirmed in **Jamin v. State of U.P.**: 2025 SCC OnLine SC 506.

15. In **Hardeep Singh v. State of Punjab**: (2014) 3 SCC 92, a Constitution Bench consisting of five Hon’ble Judges held that: -

*“105. Power under Section 319 CrPC is a discretionary and an extraordinary 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.

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 un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC 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 under Section 319 CrPC to form any opinion as to the guilt of the accused.”

(emphasis added)

16. The trial court observed that the complainant Smt. Chhotka has not assigned any specific role to the opposite party no. 3 and the injured witness PW-3 has clearly denied the presence of any person other than the opposite party no. 2, at the time of the incident. In these circumstances, the trial court found no good ground to summon the opposite party no. 3 as an additional accused to be tried.

17. The aforesaid reasoning assigned by the trial court after due consideration of the facts and circumstances of the case and the relevant law, does not suffer from any error or illegality warranting interference by this court in exercise of its appellate power.

18. The appeal lacks merit and the same is **dismissed** at the admission stage.

19. Before parting with the case, the Court is constrained to put it on record that this Court has come across several requests for adjournment of cases on the ground of the learned Counsel being engaged before the District Courts or Tribunals. There has been a practice to give precedence to attending to professional duties to provide assistance to the High Court as compared to the subordinate Courts and Tribunals. The Advocates generally themselves give priority to attending fresh matters before the High Courts. However, at times they deliberately avoid attending the hearing of fresh cases in order to get the matter passed over without any hearing and without any order being passed, so as to merely keep the matter pending, even though it does not deserve admission. This gives rise to an artificial and unwarranted increase in pendency of matters before the High Court. Further, the proceedings of trial pending before the

trial Court are adjourned repetitively on the pretext of pendency of the matter before the High Court, though no interim order has been passed by the High Court and this causes unwarranted delay in conclusion of the trial.

20. Repetitive adjournments on the ground of the Advocates being engaged in the subordinate Courts or Tribunals and their non-appearance without assigning any reason, shows lack of respect towards the professional duties of Advocates, besides showing lack of respect towards the High Court. It also highlights the falling standards in the profession of Advocacy. Therefore, the Court requests the learned members of the bar to realize the importance of their role as responsible officers of the Court, improve the standards of assistance being provided by them and refrain from seeking adjournments on unreasonable and frivolous grounds, which results in decreased productivity of the Court and creates hurdles in speedy dispensation of justice.

July 17, 2026
Ram.

(Subhash Vidyarthi,J.)

Whether the order is speaking – Yes

Whether the order is reportable – Yes

(Subhash Vidyarthi,J.)