employee of the Bank after his election, he is not liable to be removed from office either. The argument of the learned counsel for the petitioner has, therefore, to be rejected.

(4) In the result, it must be held that respondent 4 was eligible when he contested the election as a member of the Committee and that he has not incurred any post election disqualification so as to render him ineligible from continuing as a member of the Committee.

(5) It may be observed that the petitioner has to be non-suited on another ground as well. He is a member of the Rasulpur Co-operative Credit and Service Society Ltd. and has no *locus standi* to challenge the election of respondent 4 muchless to ask for a direction to remove the said respondent from his office. Rasulpur Co-operative Society is one of the members of the Bank and the petitioner is not an authorised representative of that society who could participate in the elections as he is not a voter. Moreover, even if the election was to be challenged, it was open to an aggrieved party to raise an election dispute under Section 102 of the Act. This remedy not having been resorted to, it is not open to the petitioner to approach this court directly under Article 226 of the Constitution.

(6) For the reasons recorded above, there is no merit in the writ petition and the same stands dismissed with no order as to costs.

J.S.T.

Before Dr. Sarojnei Saksena, J.

VED PARKASH AND ANOTHER,—*Petitioners*

versus

THE STATE OF HARYANA,—*Respondent*

Crl. R. 638 of 1997

The 16th April, 1998

Code of Criminal Procedure, 1973-S. 319—Power to proceed against other persons—Such power to be exercised on evidence recorded during trial—Evidence—Meaning of.

Held that the accused who are facing the trial have themselves declined to cross-examine PW 1 Bal Kishan. Therefore, by their conduct they are estopped from challenging the said order. They cannot approbate and reprobate in the same breath. So far as the petitioners are concerned they had no right of cross-examination at the stage when the impugned order was passed because till that date they were not summoned as accused persons. The statement of PW1 Bal Kishan was, thus, "evidence" within the meaning of Section 319 of the Code.

(Para 24 & 25)

R.S. Rai, Advocate, *for the Petitioner*

Gobind Dhanda, A.A.G., *for the Respondent.*

JUDGMENT

Dr. Sarojnei Saksena, J.

(1) Petitioners/accused Ved Parkash and Rajesh have assailed the impugned order dated 7th July, 1997 passed by Addl. Sessions Judge, Faridabad, whereby the application filed under Section 319 of the Code of Criminal Procedure (for short the 'Code') has been allowed and the petitioners have been summoned in a pending Sessions Case.

(2) Brief facts of the case are that there was a dispute over a *Shisham* tree between the accused party and the complainant party, which was settled through a compromise but the accused party still nursed a grudge against the complainant party. On 25th November, 1996 at about 4.00 P.M. complainant's younger brother Ved Ram had gone to his field, Accused Mohinder, Pawan Kumar, Ram Sarup, Hans Raj and petitioners Ved Parkash and Rajesh attempted to way lay him. Anyhow he managed to escape. He narrated the incident to the complainant. A few minutes later all the aforesaid six persons came there. Rajesh (petitioner) and the accused Mahender caught hold of Harbans Lal, the deceased while Ved Parkash (Petitioner) and Ram Sarup caused injuries to him by means of *ballam*, Ved Parkash caused injuries on the mouth of Harbans Lal. Ram Sarup caused *ballam* injuries to him below the left wrist. When the complainant tried to intervene, accused Pawan and Hans Raj inflicted injuries on his head with *ballam*. The complainant fell down. His shrieks attracted Satish, Manoj and Ved Parkash, who came and rescued Harbans Lal and the complainant, from the accused persons. All the accused persons also caused injuries

to Ved Ram, Satish, Manoj and Ved Parkash removed the injured to General Hospital, Palwal, wherefrom Harbans Lal was referred to Safdarjung Hospital, New Delhi. While on the way to Hospital Harbans Lal succumbed to his injuries. On the basis of the statement of the complainant the F.I.R. was registered against all the six accused persons under Sections 148/149/323/324/302 IPC.

(3) After holding investigation, report under Section 173 of the Code was submitted in the Court but petitioners Ved Parkash and Rajesh were shown in column No. 2. Case was committed, charges were framed against found accused persons who were sent for trial.

(4) During trial, statement of Bal Krishan, PW 1, was recorded. At that very time, the prosecution filed an application under-section 319 of the Code. The learned defence counsel declined to cross-examine Bal Krishan at that stage in view of the fact that Learned Public Prosecutor has moved an application for summoning Ved Parkash and Rajesh also as accused in this case. Thus after hearing arguments, the impugned order was passed and the petitioners Ved Parkash and Rajesh were summoned for facing the aforesaid trial.

(5) Learned counsel for the petitioner argued that under Section 319 of the Code any person can be summoned as an accused to face trial alongwith other accused persons only when evidence is completely recorded. He pointed out that the cross-examination of Bal Krishan was not done and, therefore, the Sessions Court has fallen into an error in allowing the petition under Section 319 of the Code only on the basis of examination-in-Chief/statement of Bal Krishan. To support this contention he has relied on a S.B. judgment of this Court rendered in Cr. Revision No. 279 of 1998 *(Barkat Ali and another* v. *State of Haryana)* decided on 24th March, 1998.

(6) Learned Assistant Advocate General contended that accused persons themselves declined to cross-examine PW 1 Bal Krishan, and therefore, the learned Sessions Judge had no other option but to pass the impugned order.

(7) After hearing the rival contentions, my considered view is that the revision deserves to be dismissed.

(8) For proper appraisal of the controversy involved in this revision, Section 319 of the code is reproduced 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."

The power given to the Court under Section 319 of the Code is considered by various High Courts as well as by the Apex Court. A brief resume of all those judgments will be helpful in deciding this revision.

(9) In *Raghubans Dubey* v. *State of Bihar* (1), the Apex Court has held that once cognizance of an offence is taken it becomes the Court's duty to find out who the offenders are and if the Court finds "that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons, by summoning them because the summoning of the additional accused as party to the proceedings initiated by taking cognizance of the offence."

(10) The ratio of this judgement was re-affirmed in *Hareram Satpat* v. *Tika Ram Aggarwal* (2).

(11) In *Margoobul Hasan* v. *State of Uttar Pradesh* (3), a Single Bench of the Allahabad High Court has held that if summoning order under Section 319 of the Code is passed on the basis of mere examination-in-chief of a witness, the order is not illegal.

(12) In *Joginder Singh* v. *State of Punjab* (4), the facts were that during investigation police found Joginder Singh and

(1) A.I.R. 1967 S.C. 1167.
(2) A.I.R. 1978 S.C. 1568.
(3) 1988 Cr. L.J. 1467.
(4) A.I.R. 1979 S.C. 339.

Ram Singh to be innocent and submitted charge-sheet against the three remaining accused persons. Those three accused persons were committed to the Court of Sessions by the Magistrate. Charges were framed against them. At the trial two witnesses were recorded during the course of which both of them implicated Joginder Singh and Ram Singh in the incident. Thereupon a petition under Section 319 of the Code was filed. It was opposed by the accused persons on the premises that the Sessions Judge has no jurisdiction or power of summoning the two accused and hold them to stand their trial along with the three persons already named in the police report. The objection was over-ruled by the Addl. Sessions Judge and application under Section 319 was allowed directing Joginder Singh and Ram Singh to appear as an accused in the said trial, along with the three accused already arraigned before the court. The High Court dismissed the revision application. They approached the Apex Court by Special Leave Petition. The Apex Court considered the relevant provisions of the old Code and the New one and observed as under :—

> "It will thus appear clear that under Section 193 read with Section 209 of the Code when a case is committed to the Court of Sessions in respect of an offence the Court of Sessions takes cognizance of an offence and not of the accused and once the Sessions Court is ceased of the case as a result of the committal order against some accused the powers under Section 319 (1) can come into play and such court can add any person not appearing as an accused and direct him to be tried along with the other accused for the offence which such added accused appears to have committed from the "evidence" recorded at the trial.

(13) In *Kishun Singh and others* v. *State of Bihar* (5), the Apex Court has held that :—

> "On a plain reading of sub-section (1) of Section 319 there can be no doubt that it must appear from the evidence tendered in the course of an enquiry or trial that any person not being the accused has committed any offence for which he could be tried together with the accused. This power, it seems clear to us, can be exercised only if it so appears from the evidence at the trial and not otherwise. Therefore, this sub-section contemplates existence of some evidence

(5) 1993 S.C.C. (Crl.) 470.

appearing in the course of trial wherefrom the Court can *prima facie* conclude that the person not arraigned before it is also involved in the commission of the crime for which he can be tried with those persons already named by the police. Even a person who has earlier been discharged would fall within the sweep of the power conferred by Section 319 of the Code. Therefrom, *stricto sensu,* Section 319 of the Code cannot be invoked in a case like the present one where no evidence has been led at a *trial* wherefrom it can be said that the appellants appear to have been involved in the commission of the crime alongwith those already sent up for trial by the prosecution."

It is further observed as under :—

"The sweep of Section 319 is, therefore, limited, in that, it is an enabling provision which can be invoked only if evidence surfaces in the course of an enquiry or a trial disclosing the complicity of a person or persons other than the persons already arraigned before it."

(14) In Criminal Misc. No. 5484-M of 1980 *(Gamdoor Singh* v. *State of Punjab),* the facts were that only the examination-in-chief of witness Subhash Chander complainant, was recorded. He named Gamdoor Singh, Vinod Kumar, Joginder Singh, Amar Singh etc. as accused and specific injuries were attributed to these accused persons but they were not challaned by the police. At that stage petition under Section 319 of the Code was filed to summon these accused persons as well. Without giving an opportunity to the accused persons to cross-examine the complaint Subhash Chander, the petition under Section 319 of the Code was allowed by the Judicial Magistrate Ist Class, Samrala,—*vide* order dated 20th October, 1980. In the Criminal Revision No. 5484 of 1980 order was challenged before the High Court. It was pointed out that the impugned order is not in conformity as only examination-in-chief of Subhash Chander was recorded and no opportunity was given to the accused persons to cross-examine this witness and to bring relevant facts on record. It was argued that incomplete statement of Subhash Chander could not be termed "evidence". The learned Single Judge while deciding this criminal misc. petition, held as under :—

The word "Evidence" appears to have been used in Section 319 of the Code is meaning "admissible evidence". The

statement of Subhash Chander in the examination-in-Chief alone cannot be said to be such "evidence" upon which the Magistrate could act. The Magistrate has thus been hasty informing his opinion. Any way there was no proper material before him unless he had concluded the statement of Subhash Chander before he could proceed against the petitioner and his other relatives who were summoned by the impugned order".

(15) On that basis the petition was accepted and the impugned order was quashed.

(16) This judgment of Gamdoor Singh was relied upon in Criminal Misc. No. 3762-M of 1982 *Amarjit Singh* v. *State of Punjab and another.* In that case accused Amarjit Singh was discharged by the trial Magistrate after considering the documents filed along with the report under Section 173 of the Code. When the trial proceeded against the other two accused and one of the witness namely Santosh Kumari complainant in her examination-in-Chief attributed a positive act of criminality, the prosecution filed an application for summoning Amarjit Singh to face the trial along with the other two accused. The Chief Judicial Magistrate *vide* his order dated 25th January, 1982 dismissed the application. This order was challenged in revision. The revisional court *vide* its order dated 14th June, 1982 accepted the revision and allowed the petition of the prosecution for summoning Amarjit Singh as an accused. This order was assailed before the High Court on two counts that unless the order dated 2nd July, 1981 whereby the petitioner was discharged by the trial court is set aside, the petitioner could not be summoned as an accused in the case and second that mere examination-in-chief statement of Santosh Kumari cannot be considered evidence which could be taken into consideration for deciding as such whether a person implicated has to be summoned or not.

(17) The first contention did not prevail with the learned Single Judge of this High Court. Relying on Gamdoor Singh, case supra, the revision-petition was accepted. The impugned order was set aside and the Magistrate was directed to consider the application of the prosecution for summoning the petitioner as accused on the basis of the completed statement of Santosh Kumari. In this judgment, the learned Single Judge has observed as under :—

"The order allowing the application of the prosecution is quashed and the impugned order is modified to that extent

with the result that the trial Magistrate shall complete the statement of Santosh Kumari by giving opportunity to the accused party already standing trial to cross-examine her. However, it may be observed that in case the accused already standing trial decline to cross-examine the said witness then her statement in examination-in-chief would constitute a statement and the same would be considered as a statement in terms of Section 319 Cr. P.C.

(18) In *Irshad and others* v. *State of U.P. and another* (6), a Single Judge of Allahabad High Court has held as under :—

The contention of the learned counsel for the revisionist cannot be sustained that cross-examination should be a condition precedent prior to summoning all the additional accused persons named in the first information report but subsequently dropped during investigation. Section 319 Cr. P.C. provides jurisdiction to the trial court to include some other persons when *prima facie* case against whom is established I do not consider that cross-examination of such witnesses is required at this stage. Provisions of S. 319 Cr. P.C. is alike to Section 202 Cr. P.C. The difference being that under Section 319 of the Code jurisdiction of the trial court can be invoked when *prima facie* case against some other persons besides accused persons is established. Under Section 200 of the Code a Magistrate exercise its jurisdiction at the out-set to find out whether *prima facie* case is there or not. But there is one similarity that in both situations persons against whom trial Court or Magistrate is proceeding are not before the said Court. Hence, the question of cross-examination does not arise."

(19) In *Sannarevannappa Bharamajappa Kalal @Kuncharakar and others* v. *State of Karnataka* (7), the Karnataka High Court has held that the Court can take cognizance of offences against the persons other than the accused, on the basis of "evidence" of witness before it. Mere evidence of witness in examination-in-chief does not constitute "evidence" and Court cannot take cognizance on the basis of it, unless the witness is cross-examined, it cannot be said that there is complete evidence as contemplated in Section 319 of the Code. By analogy it may be stated that if the witness does

(6) 1996 Crl. L.J. 749
(7) 1991 Crl. L.J. 21

not submit to cross examination after he is examine in-chief, the Court would be precluded from acting on such incomplete evidence as it cannot be said that there is "evidence" against the accused person only from the examination in-chief.

(20) In *Virendra Singh* v. *State of U.P.* (8), it is held that "there may be cases where evidence against a person is already there is ample measure and it would by unnecessary waiting for cross-examination of the prosecution witness to conclude for passing the summoning order. All that is really necessary is that there has to be application of judicial mind to the allegations against the person sought to be summoned and the "evidence" gathered and intended to be led and this satisfaction that there is a *prima facie* case against him.

(21) In *HKL Bhagat* v. *State* (9), Satnami stated on oath that her husband was allegedly killed during what is came to be known as 1984 riots. Satnami Bai was examined as a witness in the case on 15th January, 1996. She stated that besides the accused persons facing the trial two more accused persons were also involved in the rioting, looting and killing of her husband and what is more she specifically named them. This led the prosecutor to move an application for proceeding against them too. The Additional Sessions Judge, taking note of the statement, came to the conclusion that there was a *prima facie* case of rioting, killing and looting against the said two. Petition filed under Section 319 Cr. P.C. was allowed and those persons were directed to be brought before the court for trial.

(22) This order was challenged before the High Court on the premise that since Satnami Bai was not cross-examined on the basis of her statement alone the accused persons could not have been summoned under Section 319 of the Code. Repelling the contention the learned Single Judge held that Sub-section (1) of Section 319 of the Code does not relate to the evidence as between the parties having the right to cross-examine the witness. It relates to a person who is yet not an accused and thus has no right to cross-examine the witness. He is a stranger to the proceedings and thus unconcerned with the question as to whether the witness in the proceedings has been cross-examined or not by the already arrangned accused. He would come into the picture only when

(8) 1992 Crl. L.J. 2825.
(9) 1996 Crl. L.J. 1889.

process is issued. Even at this stage when the court is considering the question as to whether he should be summoned or not, he remains a stranger because that is a question which concern the court and perhaps the complainant only. Looked at from that angle one may think of provisions relating to complaints (Chapter 15 of the Code) where under the statements are only in the form of examination-in-chief and are not tested on the anvil of corss-examination. The court under Section 319 (1) acts like-wise and thus may form its *prima facie* view on the basis of the examination-in-chief itself. Thus much with regard to the dispute raised around the word "Evidence".

(23) Thus no infirmity was found in the order whereby the petition under Section 319 of the Code was allowed on the basis of the statement i.e. examination-in-chief of witness Satnami Bai.

(24) So far as those four accused persons who are facing Sessions trial have not assailed the impugned order as they are not the petitioners in this Criminal Revision and rightly so because they themselves declined to cross-examine PW 1 Bal Krishan. Therefore, by their conduct they are estopped from challenging the said order. They cannot approbate and reprobate in the same breath.

(25) So far as the petitioners are concerned they had no right of cross-examination at the stage when the impugned order was passed because till that date they were not summoned as accused persons.

(26) Relying on *R.J. Lakhia* v. *State of Gujarat* (10), petitioners' learned counsel submitted that even the petitioners had a right to be noticed and to be heard before they could be summoned as an accused under Section 319 of the Code. No doubt in R.J. Lakhia's case (supra). a Senior Advocate was summoned as an accused under Section 319 Cr. P.C. when trial under Sections 420, 366/34 I.P.C. was going on against other accused persons. In the course of Sessions trial Bai Kamla was examined and in her examination-in-chief she narrated the facts. She was not cross-examined. Another witness Girish Pandya, a Clerk of the bank was also examined. His cross-examination was also deferred. At this stage, an application was filed by the Public Prosecutor under Section 319 of the Code for summoning the Senior Advocate as an accused. The Sessions Court without hearing the Advocate and even

(10) 1982 Crl. L.J. 1687.

when the evidence was not yet completed as the witnesses were not cross-examined, allowed the application and summoned the accused. On these facts the summoning order was quashed by a Single Bench of the Gujarat High Court. But, with due respect, I am unable to concur with the same view. Recently, in *Raj Kishore Prasad* v. *State of Bihar* (11), the Apex Court has held as under :—

> "Addition of an accused by summoning or resummoning a discharged accused, and that too without hearing the accused, has only been permitted in the manner provided by Section 319 Cr. P.C. on evidence adduced during the course of trial, and in no other way."

Thus it is apparent that the petitioners till they are summoned by the trial Court under Section 319 of the Code they had no right to cross-examine the witness Bal Krishan.

(27) Thus, in view of the above judgment of the Apex Court it is no more *res-integra* that such an accused against whom an order under Section 319 of the Code is passed has no right of hearing before that order is passed.

(28) Accordingly, finding no merit in the petition, it is dismissed.

(29) Copy of the order be conveyed to the trial Judge so that he may proceed with the trial.

S.C.K.

Before Arun B. Saharya, C.J. & H.S. Bedi, J

STATE BANK OF INDIA & ANOTHER,—*Appellants*

versus

D.C. AGGARWAL,—*Respondent*

L.P.A. No. 364 of 1998

The 9th March, 1999

Constitution of India, 1950—Art. 226—Letters Patent Appeal, 1919—Cl. X—Promotion policy of the Bank dated 8th June, 1982 as modified by the policy dated 23rd February, 1984—

(11) A.I.R. 1996 S.C. 1931.