

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 885/2019

SUKHPAL SINGH KHAIRA

APPELLANT(S)

VERSUS

THE STATE OF PUNJAB

RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 886/2019

O R D E R

1. Indisputably, in the present cases the order under Section 319 Cr.P.C. was passed by the learned High Court after the learned Trial Judge had pronounced the order of conviction and sentence against the accused, who were being tried by the learned Trial Judge.

2. The order passed under Section 319 Cr.P.C. against the present appellants was challenged before the learned Single Judge vide judgment dated 17th November, 2017 of the High Court by way of revision petitions. The learned Single Judge rejected the revisions. Aggrieved thereby present appeals were filed.

3. Since the Bench hearing the matter in this Court found that it involves an important issue, the matters were referred to a Larger Bench. The Constitution Bench vide its judgment dated 05.12.2022 rendered in Sukhpal Singh Khaira v. The State of Punjab, reported in (2022) 17 SCC 246, has held that once the learned Trial Judge passes an order on sentence, the Court become *functus officio* and it is not within its jurisdiction to pass an order under Section 319 Cr.P.C.

4. Indisputably, in the present case, the orders under Section 319 Cr.P.C. has been passed after the accused, who were facing trial, were convicted and sentenced.

5. In view of the law laid down by the Constitution Bench in Sukhpal Singh Khaira (Supra) these appeals are allowed. The order passed by the learned Trial Judge under Section 319 Cr.P.C. against the appellants as well as by the learned Single Judge of the High Court are quashed and set aside.

6. These appeals are, accordingly, disposed of.

7. Pending application(s), if any, shall stand disposed of.

.....J
(B.R. GAVAI)

.....J
(VIKRAM NATH)

NEW DELHI;
FEBRUARY 09, 2023

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. @ SLP(Crl) No. 5933/2019

KARAN SINGH AND ORS.

APPELLANT(S)

VERSUS

THE STATE OF MADHYA PRADESH AND ORS.

RESPONDENT(S)

O R D E R

1. Leave granted.
2. We have heard Mr. Chinmoy Khladadkar, learned counsel for the appellant and Mr. Sunny Choudhary, learned counsel appearing for the respondent.
3. In the present case, certain dates are very peculiar. The original accused were facing trial for the offences punishable under Sections 302, 147, 148 and 149 of the IPC.
4. During the pendency of the trial, after the evidence of certain witnesses were recorded, the respondent No.1-State of Madhya Pradesh filed an application under Section 319 Cr.P.C. seeking the appellants to be arraigned as additional accused, on 29.08.2017. The said application came to be rejected on 18.12.2017, by an elaborate reasoning, stating therein that from the materials placed on record, no *prima facie* case was made out against the present appellants.
5. It appears that another application came to be filed by

the first informant on 17.01.2018 for the very same purpose. However, the same was also dismissed by a reasoned order dated 24.03.2018.

6. Being aggrieved thereby, a revision petition was filed before the High Court of Madhya Pradesh by the Respondent No.1-State of Madhya Pradesh. During the pendency of the revision, the learned Trial Court acquitted the accused against whom the trial was proceeded by the judgment and order dated 27.11.2018.

7. After the order of acquittal was recorded in the Sessions Case, the learned Single Judge of the High Court allowed the revision and directed the present appellants to be arraigned as accused.

8. It can thus clearly be seen that the order allowing the revision and arraigning the present appellants as accused has been passed by the learned High Court after the trial was concluded and the accused, who were tried, had been acquitted.

9. On a specific query, as to whether an appeal has been preferred by the State against the acquittal, the learned counsel appearing for the respondent/State states that he has no information.

10. When the trial had concluded and it resulted in acquittal and when no appeal against acquittal was preferred, in our considered view, the High Court was not justified in directing the present appellants to be arraigned as accused.

11. On this short ground, the appeal is liable to be allowed. Accordingly, the appeal is allowed and the impugned order is quashed and set aside.

12. Pending application(s), if any, shall stand disposed of.

.....J
(B.R. GAVAI)

.....J
(VIKRAM NATH)

NEW DELHI;
FEBRUARY 09, 2023

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO. 885/2019

SUKHPAL SINGH KHAIRA

APPELLANT(S)

VERSUS

THE STATE OF PUNJAB

RESPONDENT(S)

(IA No. 124389/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT, IA No. 134538/2022 - INTERVENTION/IMPLEADMENT
IA No. 124391/2017 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

WITH

CrI.A. No. 886/2019 (II-B)

(IA No. 125568/2017 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT, IA No. 125569/2017 - PERMISSION TO FILE ADDITIONAL
DOCUMENTS/FACTS/ANNEXURES)

SLP(CrI) No. 5933/2019 (II-A)

(IA No. 88903/2019 - EXEMPTION FROM FILING O.T.)

SLP(CrI) No. 6960/2021 (II)

Date : 09-02-2023 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.R. GAVAI
HON'BLE MR. JUSTICE VIKRAM NATH

For Appellant(s)

Mr. P.S. Patwalia, Sr. Adv.
Mr. Sudhir Walia, Adv.
Ms. Niharika Ahluwalia, AOR
Mr. Harshit Sethi, Adv.
Mr. Mehtab Singh Khaira, Adv.
Mr. Arpit Sharma, Adv.

Mr. Harshit Sethi, Adv.
Mr. Amit K. Nain, AOR

Mr. Puneet Singh Bindra, AOR
Mr. Rishabh Gupta, Adv.

Mr. Chinmoy Khaladkar, Adv.
Mr. B.K. Pal, AOR

Mrs. Suresh Kumari, Adv.
Ms. Salonee Pranjape, Adv.

For Respondent(s) Mr. Shekhar Naphade, Sr. Adv.
Mr. Shekhar Naphade, Adv.
Ms. Kanika Ahuja, Adv.
Mr. Karan Sharma, AOR
Mr. Rishabh Sharma, Adv.
Mr. Mohit Siwach, Adv.

Mr. Vishnu Shankar Jain, AOR
Mr. Sunny Choudhary, AOR

Mr. Mukesh Kumar Maroria, AOR
Mr. Anirudh Bhat, Adv.
Mr. Udai Khanna, Adv.
Mr. Adit Khorana, Adv.
Mr. Padmesh Mishra, Adv.
Mr. Kanu Agarwal, Adv.
Mr. Zoheb Hussain, Adv.

UPON hearing the counsel the Court made the following
O R D E R

CRIMINAL APPEAL NO. 885/2019 WITH CRIMINAL APPEAL NO. 886/2019

These appeals are disposed of, in terms of the signed order.

CRIMINAL APPEAL NO. _____ @ SLP(Crl) No. 5933/2019

Leave granted.

The appeal is allowed, in terms of the signed order.

SLP(Crl) No. 6960/2021

List after two weeks.

Pleadings be completed in the meantime.

(NARENDRA PRASAD)
ASTT. REGISTRAR-cum-PS

(ANJU KAPOOR)
COURT MASTER (NSH)

(Two separate signed orders, as mentioned above, are placed on the
file)