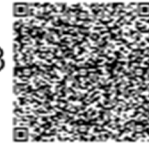


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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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CRM-M-31275-2025 (O&M)

Date of decision : 10.09.2025

Andaz @ Mintu and another**...Petitioners****Versus****State of Haryana and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Nitish Yadav, Advocate
for the petitioners.

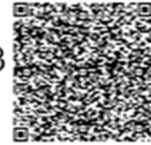
Mr. Apoorv Garg, Addl. A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of order dated 18.11.2023 (Annexure P-3), passed by the Court of learned Chief Judicial Magistrate, Jhajjar in case arising out of FIR No. 182 dated 19.06.2020, registered under Sections 148, 149, 323 and 506 of IPC at Police Station Sadar, District Jhajjar, whereby while allowing an application filed under Section 319 of Cr.P.C., the petitioners were ordered to be summoned as additional accused as well as for quashing of order dated 04.04.2025, passed by the Court of learned Additional Sessions Judge, Jhajjar, whereby, while exercising the powers of revisional jurisdiction, the petition filed by the petitioners under Section 397 of Cr.P.C. had been dismissed.

2. Brief facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of a complaint lodged by one Kuldeep alleging therein that he was married with Poonam, daughter of Azad. On 18.06.2020, he along with his father Shri Prem

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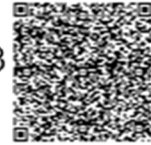


had gone to the parental house of his wife Poonam to take her back to her matrimonial house. At about 02:15 PM, the petitioners, who are his brothers-in-law, and parents of his wife opened an attack upon his father and himself and caused injuries to them by throwing bricks and with *dandas*. They somehow managed to escape. After registration of the FIR, investigation proceedings were initiated. Statements of the witnesses were recorded. Accused Manoj Kumar @ Pamur and Azad were arrested and subsequently released on bail, whereas the present petitioners were found to be innocent. Offences under Sections 148 and 149 of IPC were deleted and offence under Section 34 of IPC was invoked. The names of the petitioners were kept in Column No. 2 of the challan report and the same was presented before the Court.

3. During the course of trial, the injured Prem Singh, who is father of the complainant, appeared as PW-4 and then moved an application under Section 319 of Cr.P.C. for summoning the present petitioners as additional accused. Vide order dated 08.11.2023, the said application had been allowed.

4. It is argued by learned counsel for the petitioners that the impugned orders are not sustainable in the eyes of law as it was after conducting thorough and proper investigation that they were found to be innocent and their names were kept in Column No. 2 of the challan report. No evidence could be collected to connect them with the crime. PW-4 Prem had improved his version while recording his testimony before the learned trial Court. The allegations against the petitioners were general and vague. Neither any specific injury had been attributed to them nor any specific weapon was alleged to be carried by them. In fact, there was matrimonial discord between their sister and the complainant, which resulted into lodging of this FIR. The

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evidence relied upon by the prosecution for issuing process against them is not of sterling quality and the same does not make out any case for allowing the prayer made by the prosecution to summon them as additional accused. It is, thus, urged that the petition deserves to be allowed and the impugned orders are liable to be quashed.

5. Notice of motion.

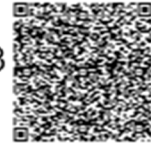
6. Learned State counsel has advance notice of the petition and is ready to argue the matter. It is submitted by him, that there is no illegality in the impugned orders. Hence, the petition is liable to be dismissed.

7. I have heard learned counsel for the parties at considerable length and have also gone through the record carefully.

8. At the outset, it would be proper to refer to the provisions of Section 319 of the Cr.P.C. which read 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. (3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed. (4) Where the Court proceeds against any person under sub-section (1), then- (a) the proceedings in respect of such person shall be commenced afresh, and witnesses reheard; (b)

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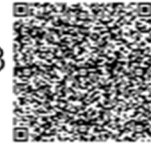


subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

9. Having noted the abovementioned provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court, to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time, could still be summoned and tried together with the accused, for the offence which appears to have been committed by such persons summoned as additional accused.

10. The issue relating to the powers to be exercised under Section 319 of Cr.P.C. had arisen for detailed consideration in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***, wherein the scope, procedure and the stage at which such power was to be exercised was considered and summarized. It was observed by Hon'ble Supreme Court that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. 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 material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong

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evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as has been established at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of Cr.P.C.

11. The legal position on the scope and ambit of powers of the Court under Section 319 of Cr.P.C. has also been summarized by Hon'ble Apex Court in the case cited as *Manjeet Singh v. State of Haryana and others, (2021) 18 Supreme Court Cases 321*, wherein it was observed as under:-

“(i) That while exercising the powers under section 319 CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished.

(ii) For the empowerment of the courts to ensure that the criminal administration of justice works properly.

(iii) The law has been properly codified and modified by the legislature under CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law.

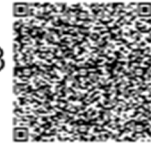
(iv) To discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished.

(v) Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial.

(vi) Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it.

(vii) The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with

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the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency.

(viii) Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial.

(ix) The power under section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion.

(x) The court can exercise the power under section 319 CrPC only after the trial proceeds and commences with the recording of the evidence.

(xi) The word "evidence" in section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents.

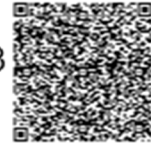
(xii) It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section 319 CrPC is to be exercised and not on the basis of material collected during the investigation.

(xiii) If the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section 319 CrPC and can proceed against such other person(s).

(xiv) That the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under section 319 CrPC can be exercised.

(xv) That power under section 319 CrPC can be exercised even at the stage of completion of examination-in-chief

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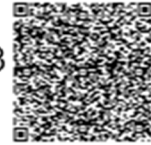
and the court need not to wait till the said evidence is tested on cross-examination.

(xvi) Even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses).

(xvii) While exercising the powers under section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.”

12. On applying the aforementioned proposition of law to the peculiar facts and circumstances of the present case, it is observed that the petitioners were specifically named in the FIR, which was registered without any delay on the basis of the complaint lodged by complainant Kuldeep. It was specifically alleged therein that the petitioners along with co-accused already arraigned had opened an assault upon the complainant and his father and had caused injuries to them. As per medico-legal reports, both of them had sustained three injuries. When the chargesheet was filed, only accused Manoj Kumar @ Pamur, Azad and Pawan were challaned. It was mentioned that the present petitioners were found to be innocent. A copy of sworn deposition as recorded by injured Prem by way of examination in chief has been placed on record and on a perusal of the same, it is revealed that he specifically named the petitioners while stating that they had caused injuries

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to him and also stated that petitioner Babal had hurled abuses to complainant Kuldeep and along with co-accused Pamur had thrown stones and kicked his son. He is also shown to have deposed that petitioner No. 1 also extended beatings to them. The evidence of this witness as recorded before the Court is of course having a great evidentiary value and in view of the well settled proposition of law to the effect that unless compelling reasons exist, statements of such witnesses cannot be discarded lightly, there is no reason to disbelieve the evidence led by PW-4, who was one of the victims. At the stage of exercising power under Section 319 Cr.P.C., the Court is not required to enter on the merits of the allegations. The evidence produced on record is of such nature which is more than a prima facie case but short of satisfaction to an extent that this evidence if goes unrebutted, would lead to conviction. The learned trial Court while appreciating the evidence so produced had rightly summoned the petitioners as additional accused and I see no reason to come to a different conclusion. Accordingly, finding no merit in the petition, the same is dismissed.

10.09.2025*Waseem Ansari***(MANISHA BATRA)
JUDGE***Whether speaking/reasoned**Yes/No**Whether reportable**Yes/No*