



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

245

**CRR-2963-2019 (O&M)  
Date of decision: 14.05.2025**

Dharambir

....Petitioner

Versus

Mukesh and another

....Respondents

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

**Present:** Ms. Nirmala Jangra, Advocate  
for Mr. Deepak Girotra, Advocate  
for the petitioner.

None for the respondents.

**HARPREET SINGH BRAR J. (Oral)**

1. The present revision petition has been preferred against the judgment dated 03.07.2019 passed by learned Judicial Magistrate Ist Class, Rohtak, vide which respondents No.1 and 2 have been acquitted in complaint No.COMI-1267 of 2013 dated 04.05.2007, filed by the petitioner/complainant.

2. Briefly stated, the facts of the case are that the petitioner Dharambir filed a criminal complaint under Section 200 Cr.P.C. after an incident which took place on 28.01.2007 in Village Kakrana, Rohtak, where multiple accused persons namely Vikas, Mahender, Yogesh, Rajesh, Guddi, Devender, Mukesh, Om Parkash, and Rakesh allegedly assaulted the petitioner and his relatives. An FIR No.56 dated 23.02.2007 under Sections 323/325/34 IPC was registered at Police Station Kalanaur, Rohtak, in this regard. Upon investigation, Vikas



Mahender, Rajesh, Guddi, Mukesh, Yogesh and Devinder Singh were challaned and cognizance was taken against them, however, Devinder Singh, Mukesh and Yogesh were kept in Column No.2. The petitioner subsequently filed a complaint case against the remaining accused persons. The learned trial Court initially summoned Mukesh, Yogesh, Om Parkash, Rakesh and Devender as additional accused. Later on, the summoning order qua Devender was quashed by this Court vide order dated 06.09.2018 passed in CRM-M No.23723 of 2014. The complaint proceedings continued against the remaining four additional accused namely Mukesh, Yogesh, Om Parkash, and Rakesh. On 03.07.2019, the learned Judicial Magistrate, First Class, Rohtak dismissed the complaint. Hence this petition.

3. Learned counsel for the petitioner, inter alia, contends that the learned trial Court has gravely erred in dismissing the petitioner's complaint vide order dated 03.07.2019 by misapplying the provisions of Section 210(2) Cr.P.C. The said provision is inapplicable in the present case as no cognizance was ever taken against the accused persons kept in Column No.2 of the final report. The learned trial Court has also erred in stating that the petitioner failed to invoke the provisions of Section 319 Cr.P.C. Once the petitioner had independently filed a complaint and the learned Magistrate had summoned the accused based on *prima facie* satisfaction, there was no requirement to invoke the provisions of Section 319 Cr.P.C. Section 319 Cr.P.C. applies during



trial when fresh evidence comes to light, which was not the scenario here. Hence, the impugned order is illegal and liable to be set aside.

4. Having heard the learned counsel for the petitioner and after perusing the record of the case with their able assistance, it transpires that the main reason for acquittal of the accused persons is that the learned Judicial Magistrate First Class, Rohtak had already taken cognizance of the offence based on the police report in the year 2007, and the accused Mukesh, Yogesh, and Om Parkash were kept in Column No.2, meaning the police did not find sufficient evidence against them. The complainant did not challenge this order nor invoke the provisions of Section 319 Cr.P.C. during the course of trial in order to summon them as additional accused. Instead, a separate complaint case was filed later regarding the same incident, which the learned trial Court held that the same was not legally permissible, as cognizance of the same offence cannot be taken twice under Section 210(2) Cr.P.C. The learned trial Court viewed this as a misuse of the process of law, especially since the High Court had already quashed a similar summoning order against co-accused Devinder on identical grounds. Consequently, no *prima facie* case was found, and the accused were discharged.

5. The power of the Appellate Court to unsettle the order of acquittal on the basis of re-appreciation of the evidence is subject to the settled law that where two views are possible and out of the two, one points towards the innocence of the accused, the view which favours the



accused should prevail over the other pointing towards his guilt. Furthermore, the learned Court below has the additional advantage of closely observing the prosecution witnesses and their demeanour, while deciding about the reliability of the version of prosecution witnesses. (*See H.D. Sundara and others vs. State of Karnataka, Criminal Appeal No.247 of 2011 decided on 26.09.2023; Kali Ram vs. State of H.P., 1973 (2) SCC 808 and Chandrappa and others vs. State of Karnataka, (2007) 4 SCC 415*). A Division bench of this Court in the judgment of *State of Haryana vs. Ankit and others* passed in *CRM-A No.3 of 2022* decided on **06.07.2023** has held that presumption of innocence further gets entrenched on the acquittal of accused by the Court below.

6. In view of the facts and circumstances of the case, this Court finds that learned counsel for the petitioner has failed to point out any perversity or illegality in the findings recorded by the learned trial Court which warrants interference by this Court. As such, there is no merit in the present revision petition and hence, the same is hereby dismissed.

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

**(HARPREET SINGH BRAR)**  
**JUDGE**

**14.05.2025**

*yakub*

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No