

2025:PHHC:036323



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

**CRM M-28404 of 2024 (O&M)
Date of Decision: 24.02.2025**

Baljit Singh ...Petitioner
Versus
State of Haryana and others ... Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Veeraj Sharma, Advocate, for the petitioner.

Mr. Rajinder Kumar Banku, DAG, Haryana.

N.S.SHEKHAWAT, J. (Oral)

1. The petitioner has filed the present petition under Section 482 Cr.P.C. with a prayer to set aside the impugned order dated 02.01.2024 (Annexure P-1) passed by the Court of Sessions Judge, Ambala as well as the impugned order dated 21.03.2023 (Annexure P-3) passed by the Court of learned Judicial Magistrate 1st Class, Ambala, whereby, the application filed by the petitioner under Section 319 Cr.P.C. for summoning of respondents No. 2 to 8 was ordered to be dismissed.

2. Learned counsel for the petitioner contends that the FIR No. 114 dated 22.10.2016 under Sections 323, 325/34 IPC at Police

Station Panjokhara, District Ambala was got registered by the present petitioner against respondents No. 2 to 8 and five other co-accused. Even, there was sufficient evidence with regard to the involvement of respondents No. 2 to 8, however, the police colluded with the accused and without any reasonable justification, the police had wrongly exonerated the respondents No. 2 to 8. Moreover, the petitioner appeared as PW2 and in his statement he had explained the role of respondents No. 2 to 8 and it was established that they had the motive to commit crime. Thereafter, the petitioner filed an application under Section 319 Cr.P.C., which was dismissed by the trial Court vide the impugned order dated 21.03.2023 (Annexure P-3). Even, the revision petition was dismissed by the Court of Sessions Judge, Ambala vide the impugned order dated 02.01.2024 (Annexure P-1). Learned counsel further submits that both the Courts had overlooked the mandatory provisions of Cr.P.C. and failed to appreciate that there was sufficient evidence to summon the private respondents.

3. On the other hand, learned State counsel submits that the application under Section 319 Cr.P.C. has been rightly declined by the trial Court as well as by the Revisional Court. In fact, the trial Court is conferred with discretionary power under Section 319 Cr.P.C. to summon any accused, who appears to be involved in the offence. However, in the present case, the Courts had clearly observed that the evidence about the involvement of respondents No. 2 to 8 was

completely missing in the facts and circumstances of the present case. Apart from that, the parties were inimical towards each other and there were chances of false implication of respondents No. 2 to 8. Moreover, the statement made by the present petitioner had already been examined by the IO in the present case and no incriminating evidence was found against respondents No. 2 to 8. Thus, the petition deserves to be dismissed by this Court.

4. I have heard learned counsel for the parties and perused the record.

5. The Hon'ble Supreme Court has held in the matter of ***Guriya @ Tabassum Tauquir and Ors. Vs. State of Bihar 2007(4) RCR (Criminal) 497:2008 AIR(Supreme Court) 95*** as follows:-

“13. On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge sheet or the case diary,

*because such materials contained in the charge sheet or the case diary do not constitute evidence. of course, as evident from the decision reported in **Sohan Lal and others v. State of Rajasthan, 1990(3) RCR (Criminal) 610** the position of an accused who has been discharged stands on a different footing.”*

*“14. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates evidence of witnesses given in Court. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub-section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned. (See **Lok Ram v. Nihal Singh and Anr., 2006(2) RCR (Criminal) 707 : 2006(2) Apex Criminal 71.**”*

“15. The factual position noted above goes to show that there was no new material after examination of the accused persons under Section 313 Criminal Procedure Code, which threw any light on the incident. The evidence of PWs 4 and 5 is not the basis of the application under Section 319 Criminal Procedure Code as they have not spoken anything about the appellants.”

6. The Hon’ble Supreme Court of India has dealt with the issue in hand in a number of judgments and two of the most celebrated judgments in this regard are discussed hereinbelow:-

In “Michael Machado and another versus Central Bureau of Investigation and another, 2000 (3) SCC 262”, the Hon’ble Supreme Court of India held as under:-

“11. The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence. In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects. First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.

12. *But even then, what is conferred on the court is only a discretion as could be discerned from the words the court may proceed against such person. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person whenever it comes across evidence connecting that another person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. It must be remembered that there is no compelling duty on the court to proceed against other persons”.*

The Hon’ble Supreme Court in **‘Manjeet Singh versus State of Haryana & others, 2021(4) RCR (Criminal) 25’**, held as under:-

“13. The ratio of the aforesaid decisions on the scope and ambit of the powers of the Court under section 319 Cr.P.C, 1973 can be summarized as under:

(i) That while exercising the powers under section 319 Cr.P.C, 1973 and to summon the persons not chargesheeted, 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 the 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 Cr.P.C, 1973 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 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 Cr.P.C, 1973 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, 1973 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 Cr.P.C , 1973 only after the trial proceeds and commences with the recording of the evidence;

(xi) the word "evidence" in section 319 Cr.P.C, 1973 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 Cr.P.C 1973 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 Cr.P.C, 1973 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 Cr.P.C, 1973 can be exercised;

(xv) that power under section 319 Cr.P.C, 1973 can be exercised even at the stage of completion of examination-in-chief and the court need not has 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 Cr.P.C, 1973 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 Cr.P.C, 1973 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”.

7. A perusal of Section 319 Cr.P.C. as also the judgment in Michael Machado case's (supra) and Manjeet Singh's case (supra) would clearly show that the Court has wide powers to summon a person as an additional accused who has been exonerated by the Investigating Agency, if it finds that there is sufficient evidence available against the said person in order to try him along with the accused already facing trial. However, there is no compelling duty to summon an accused. The discretionary power so conferred should only be exercised to achieve justice and must be based on the quality of evidence collected. In fact, the Court being the sole repository of justice, there is a duty cast upon it to uphold the law and ensure that the real accused should not get away by manipulating the Investigating Agency/Prosecuting Agency. What the Court needs to examine while adjudicating upon an application under Section 319 Cr.P.C. is that there should be evidence available on the file in the

shape of oral evidence or documentary evidence in order to invoke its powers to summon an additional accused under Section 319 Cr.P.C.

8. From a perusal of the record, it is apparent that five family members, namely, Jasbir Singh, Suresh Kumar, Gurmail Singh, Balwinder Singh @ Sukha and Dhian Singh of respondents No. 2 to 8 are already facing prosecution before the trial Court. Even, a detailed investigation was conducted in the present case and challan was filed only against five accused and respondents No. 2 to 8 were found to be innocent. It was also found that there was a civil dispute relating to a “*Bara*” between the parties and in the past also, there has been litigation between the parties. Still further, both the Courts found sufficient force in the argument raised by respondents No. 2 to 8 that the present case is a counter blast to FIR No. 111 dated 17.10.2016 under Sections 148, 149, 323, 325 and 506 of IPC, Police Station Panjokhra, which has been got registered by the accused side against the petitioner and his five family members and the complainant side is facing prosecution before the trial Court. Still further, apart from the statement of PW2 Baljit Singh, there was no other evidence to show the involvement of the respondents in the crime. Even, the statement of PW2 Baljit Singh has already been found to be incorrect and respondents No. 2 to 8 were exonerated during investigation. Still further, this Court also finds that the Courts were justified in observing that the possibility of false implication of respondents

No. 2 to 8 cannot be ruled out as they are closely related to the five accused, who are already facing prosecution in the present case. Even otherwise, I have carefully gone through the findings recorded by the trial Court as well as the Revisional Court and the petitioner has failed to point out any illegality, irregularity or perversity in the impugned orders.

9. As an upshot of the above discussion, this Court has no hesitation to hold that there is no substance in the present petition and the same deserves to be dismissed.

10. Dismissed.

11. All pending applications, if any, are disposed off, accordingly.

24.02.2025

(N.S.SHEKHAWAT)

amit rana

JUDGE

Whether reasoned/speaking : Yes/No
Whether reportable : Yes/No