



312.

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

CRR-419-2024 (O&M)

Date of decision: 18.03.2025

Raj Kumar

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Manmeet Singh Rana, Advocate, for the petitioner.

Mr. Amit Rana, Senior DAG, Punjab.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-9282-2024

Application is allowed, as prayed for.

CRR-419-2024

1. The present petition has been filed to challenge the order dated 22.02.2024 passed by learned Additional Sessions Judge, Kapurthala, whereby the application filed by the petitioner under Section 319 Cr.P.C., seeking to summon the private respondents as additional accused, was dismissed.

2. At the outset, it has been submitted that the instant petition has been rendered infructuous qua respondent No.2-Jindu Nayi and respondent No.4-Gung, as they have expired during the pendency of the trial before the trial Court. Said fact has not been disputed by learned State counsel, on instructions from ASI Rajinder Kumar.



3. Present petition qua respondents No.2 and 4 stands dismissed as infructuous.

4. Learned counsel for the petitioner has assailed the impugned order dated 22.02.2024 on the ground that the trial Court failed to appreciate that respondent No.3-Pinka @ Batra was specifically named in the FIR, annexed as Annexure P-1, lodged by the petitioner, an eyewitness to the murder of his son. It has been submitted by the learned counsel that even though respondent No.3 was explicitly named in the FIR, yet the trial Court declined to exercise its power under Section 319 Cr.P.C., citing inordinate delay and insufficiency of new material. It is further submitted that during his examination-in-chief, the petitioner attributed a distinct role to respondent No.3, yet the trial Court ignored this crucial evidence. In support, learned counsel has drawn the attention of this Court to the testimonies of the petitioner, who deposed as PW2 and eyewitness Harpreet Singh, who deposed as PW3, annexed as Annexures P-3 and P-4 respectively. Learned counsel for the petitioner further argues that the Hon'ble Supreme Court has consistently held that a person may be summoned under Section 319 Cr.P.C. at any stage before the pronouncement of judgment, provided there exists prima facie evidence against him. It is urged that the trial Court, therefore, committed a serious error in disregarding the FIR, statements recorded under Section 161 Cr.P.C., and the testimonies of PW2-Raj Kumar (petitioner herein) and PW3-Harpreet Singh, which cumulatively established a prima facie case against respondent No.3.



5. It is further argued that the trial Court failed to appreciate that the petitioner had lost his son in a brutal assault and that the Investigating Agency, despite the clear allegations in the FIR, erroneously declared respondent No.3 innocent. It is contented that the role of respondent No.3, as deposed by the petitioner and PW3, was significant enough to warrant his summoning as an accused, and the refusal by the trial Court to exercise its jurisdiction under Section 319 Cr.P.C. has resulted in a miscarriage of justice.

6. Learned State counsel submits that while it is true that respondent No.3 was declared innocent during the course of the investigation, both the petitioner and PW3-Harpreet Singh have, in their depositions before the learned trial Court, named him and attributed a role to him.

7. I have heard learned counsel for the parties and perused the material placed on record.

8. Before proceeding further, it is necessary to examine the contours of Section 319 Cr.P.C. and the settled legal principles governing its invocation. Section 319 Cr.P.C. empowers a court to summon any person as an accused if, during the course of trial, evidence comes on record suggesting his involvement in the commission of the offence. The provision, being an extraordinary and discretionary power, is to be exercised sparingly and with great caution. The Hon'ble Supreme Court in *Hardeep Singh Versus State of Punjab, 2014(3) SCC 92* held that:

- the standard of evidence required for summoning an additional accused is higher than the threshold required for framing charges but lower than that required for conviction;



- the evidence must be strong and cogent enough to indicate a reasonable probability of conviction if left unrebutted;
- mere suspicion or vague allegations are insufficient; the evidence must be such that it establishes a direct and active role of the proposed accused.

9. In *Ramesh Chandra Srivastava Versus The State of Uttar Pradesh, (2021) 6 S.C.R. 219*, the Hon'ble Supreme Court clarified that while exercising its powers under Section 319 Cr.P.C., the court must be satisfied that the evidence is of a quality that, if unrebutted, would likely result in conviction.

10. Adverting to the present case, respondent No.3-Pinka @ Batra was indeed named in the FIR, which was lodged on the following day of the murder in question. However, a careful examination of the FIR (Annexure P-1) and the evidence adduced during trial reveals that no specific injury was attributed to him. The complainant, while narrating the sequence of events in the FIR, made a generalized assertion that the assailants were responsible for his son's murder but subsequently in the same breath also stated that he had to ascertain the involvement of each accused individually. This element of uncertainty in the initial statement weakens the credibility of the allegations against respondent No.3-Pinka @ Batra. Moreover, although the petitioner did name respondent-Pinka, as one of the assailants, but did not attribute to him any specific injury, nor any distinct role was assigned to him in the assault on the deceased. Furthermore, in his deposition as PW2, the petitioner merely stated that respondent-Pinka caught hold of him and pulled him off his motorcycle, after which, the other accused persons inflicted injuries on the petitioner. Notably, even PW3-Harpreet Singh, alleged eyewitness, does not attribute any direct act



of violence to respondent-Pinka. The allegations, therefore, do not rise to the threshold of “strong and compelling evidence” required for summoning an additional accused under Section 319 Cr.P.C.

11. Another crucial factor is that the Investigating Agency, after carrying out its investigation following the murder in question, found respondent-Pinka innocent and did not challan him. While the court is not bound by the opinion of the Investigating Agency, it is still a relevant consideration, especially when the evidence on record does not substantially contradict the conclusions drawn during the investigation.

12. In view of the settled legal principles and the material on record, this Court finds that the trial Court did not err in declining to exercise its powers under Section 319 Cr.P.C. The evidence against respondent No.3-Pinka @ Batra does not meet the stringent standard required for summoning an additional accused under this provision. The allegations by the petitioner, though made with earnestness, do not constitute sufficient material to justify summoning respondent No.3-Pinka @ Batra.

13. The impugned order of the trial Court does not, therefore, suffer from any infirmity or perversity warranting interference by this Court. Accordingly, the present petition stands dismissed.

(MANJARI NEHRU KAUL)
JUDGE

March 18, 2025

sanjeev

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No