



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

**CRM-12692-2025 in/and
CRM-M-16850-2025
Date of decision: 27.03.2025**

NARESH WALIA

...PETITIONER

V/S

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sunil Chaudhary, Advocate
for the petitioner (through video conferencing).

Mr. Subhash Godara, Addl. A.G., Punjab.

HARPREET SINGH BRAR, J. (ORAL)

1. Prayer in the present petition filed under Section 528 BNSS, 2023 is for setting aside impugned order dated 29.05.2024 passed by learned Additional Sessions Judge, Bhiwani, vide which, revision petition against order dated 25.04.2022 dismissing the application filed under Section 319 Cr.P.C. for summoning private respondents, as additional accused, was dismissed.

2. Brief facts of the present case are that complainant Naresh Kumar recorded his statement to the effect that on 22.03.2018 at about 07:00 PM, while he was going from BTM Chowk to his house and reached near the shop of Kamlesh in D.C. Colony, then Sachin armed with *danda*, Deepak armed with iron rod, Pankaj, Chhatar Singh both armed with *danda*, Mukesh armed with iron rod, Neeraj (respondent No.2 herein), armed with *danda* and Khem Chand came together and stopped his path and exhorted that they will teach him a lesson for demanding money from them. They gave injuries with their



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different weapons on various parts of body of the complainant. Thereafter, Sunil (respondent No.3 herein) and Pawan also came there and gave kick and fist blows to the complainant. The complainant fell down and raised commotions *Bachao-Bachao*, then his real brother Manoj came at the spot. On seeing Manoj coming, all the accused person along with their respective weapons left the place of occurrence and ran away. Hence, the FIR (*supra*) was registered.

3. In consequence of the FIR (*supra*) and after completion of the investigation by the concerned police, final report under Section 173 Cr.P.C. was presented in the learned trial Court against co-accused but not against respondent Nos.2 and 3 as they were declared innocent during investigation. The learned trial Court framed charges against the co-accused. After the testimony of PW-1 i.e. petitioner/complainant, the prosecution moved an application under Section 319 Cr.P.C. before the learned trial Court for summoning respondent Nos.2 and 3 as additional accused, which was dismissed vide order dated 25.04.2022 (Annexure P-6). Aggrieved thereof, the petitioner filed a revision petition before learned Additional Sessions Judge, Bhiwani, which was also dismissed vide impugned order dated 29.05.2024 (Annexure P-8). Aggrieved thereof, the petitioner has filed the present petition.

4. Learned counsel for the petitioner *inter alia* contends that the complicity of the private respondents is writ large as all of them joined hands together and in a determined manner, lodged their brutal attack on the petitioner and he suffered six injuries. Out of those, two injuries were inflicted on the head of the petitioner and he suffered Sub-Dural hemorrhage and was



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referred to a medical college for his treatment. He further contends that initially, 09 persons were named in the FIR (*supra*) and the investigating agency, without any justifiable cause, has declared respondent Nos.2 and 3 as innocent and placed them in column No.2 of the final report filed under Section 173 Cr.P.C. Learned counsel submits that both the Courts below have fallen into grave error by not choosing to invoke the provisions of Section 319 Cr.P.C. Further, the private respondents were duly named in the FIR (*supra*) and specific injuries have been attributed to them. Learned counsel furthermore submits that respondent No.2 has been specifically attributed injury on the head of the petitioner with a wooden stick and respondent No.3 has given a stick blow and fist blows. Learned counsel still further submits that both the Courts have not considered the disclosure statements i.e. Ex.PW3/A, Ex.PW3/B and Ex.PW3/C made by the accused Deepak, Mukesh and Pawan respectively and all three of them have admitted the involvement of respondent Nos.2 and 3 and the petitioner. Moreover, while deposing before the learned trial Court on oath, as a prosecution witness, the petitioner has reiterated the specific allegations made against respondent Nos.2 and 3. As such, the learned trial Court ought to have exercised the power under Section 319 Cr.P.C. by summoning respondent Nos.2 and 3 as additional accused.

5. Learned State counsel, appears on advance notice and *per contra*, opposes the prayer made by the petitioner on the ground the learned Court below has passed a well-reasoned order based on proper appreciation of material available on record.

6. Having heard learned counsel for the petitioner and after appreciating the material available on record, this Court finds no force in the



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arguments advanced by him. As per the case set up by the petitioner, in the FIR (*supra*) itself, he has alleged that Deepak, who was armed with an iron rod has caused injuries on right side of his hand. Thereafter, Sachin armed with a stick, has caused another blow on his hand. Further, Pankaj, Khem Chand and Chhatar Singh inflicted injuries upon the petitioner. Thereafter, respondent No.3-Sunil came there and gave kick and fist blows and respondent No.2-Neeraj gave a *danda* blow on his head. The perusal of the prosecution case and the material available on record does not indicate that the injuries suffered by the petitioner in the head are only attributable to the private respondents. The investigating agency, after conclusion of the trial, has presented the final report against seven accused persons under Sections 323/325/341/506/148/149 of IPC. There is no fresh material or any other evidence on record, which would satisfy the principal as culled out by a Constitution Bench of Hon'ble Supreme Court in case titled ***Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623***. In the case at hand, admittedly, the petitioner suffered six injuries and seven persons have already been challaned by the investigating agency, as such, there is no credible and cogent evidence on record to establish that more than a *prima facie* case is made out against respondent Nos.2 and 3, to summon them as additional accused.

7. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled ***Hardeep Singh (supra)*** has laid down that:

"105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those



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cases where the circumstances of the case so warrant. 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 evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold 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 stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima-facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if "it appears from the evidence that any person not being the accused has committed any offence" is clear from the words "for which such person could be tried together with the accused". The words used are not "for which such person could be convicted". There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused."

8. Similarly, the Hon'ble Supreme Court in the case of ***Sagar Vs. State of Uttar Pradesh and another Criminal Appeal No. 397 of 2022 (Arising out of SLP(Crl) No.7373 of 2021)***, referring to ***Hardeep Singh (supra)*** laid down that:

"The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction."



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9. Recently Hon'ble Supreme Court in case of ***Juhru & Ors. Versus Karim & Anr. 2023 AIR (Supreme Court) 1160*** observing the scope of section 319 Cr.P.C held that:

“It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima-facie case is sine quo non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial Court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material is, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.”

10. In view of the above discussion, this Court finds no reason to interfere with the above-mentioned impugned order dated 29.05.2024 (Annexure P-8) passed by learned Additional Sessions Judge, Bhiwani. Hence, the present petition stands dismissed.

March 27, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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|------|---------------------------|--------|
| (i) | Whether speaking/reasoned | Yes/No |
| (ii) | Whether reportable | Yes/No |