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

Sr. No.106+203

**CRR-1613-2018 (O&M)  
Date of decision : 24.03.2025**

Sucha Singh and others

..... Petitioners

VERSUS

State of Haryana and another

..... Respondents

**CORAM: HON'BLE MS. JUSTICE KIRTI SINGH**

Present: Mr. Ankur Lal, Advocate for the applicants-petitioners.

Mr. Anmol Malik, DAG, Haryana

Respondent No.2 in person.

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**KIRTI SINGH, J. (Oral)**

**CRM-5168-2025**

This application has been filed for placing on record judgment of acquittal dated 06.01.2022 passed by the learned Addl. Sessions Judge, Sirsa in FIR No.246 dated 11.07.2016, registered at Police Station Rania, Sirsa as Annexue P-9.

The application is allowed as prayed for and judgment of acquittal dated 06.01.2022 passed by the learned Addl. Sessions Judge, Sirsa is taken on record.

**CRR-1613-2018**

1. The challenge in the revision petition is to the impugned order dated 18.04.2018, whereby application under Section 319 Cr.P.C. for summoning the petitioners as additional accused, was allowed by the learned Addl. Sessions Judge, Sirsa.

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2. An FIR under Sections 363, 366-A read with Section 120-B IPC was lodged on 11.07.2016 on the statement of the father of the prosecutrix, alleging that Ajay Singh, Lovedeep Singh @ Lovely and Balwinder Singh had allured the prosecutrix and had taken her away. Subsequently, investigation in the case was conducted and the accused were arrested. The victim was got medico-legally examined and her two statements under Section 164 Cr.P.C., both being contradictory, were recorded. Thereafter, challan was prepared and the trial commenced, during which an application was moved under Section 319 Cr.P.C. to summon and join the present petitioners in the trial as additional accused, which stood allowed vide impugned order dated 18.04.2018. Against the same, the present petition has been preferred.

3. Learned counsel for the petitioners vehemently contends that the learned trial Court erred in summoning the petitioners as accused by observing that the statement dated 31.03.2018 contained the same allegations as were made by the prosecutrix in her statement under Section 164 Cr.P.C. dated 13.07.2016. He submits that the prosecutrix in her first statement recorded before the Magistrate, leveled no allegation, and even disclosed that accused Ajay had financial transactions with her father. The learned Magistrate even gave his categorical observation qua the same that the prosecutrix was very confident throughout the recording of the statement and had prayed to be sent back with petitioner No.1. However, in her subsequent statement under Section 164 Cr.P.C. she gave a completely different version, and reiterated the same in her testimony, which was made the basis of summoning the petitioners under Section 319 Cr.P.C.

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Learned counsel, to buttress his submissions, places reliance upon the judgment passed in *Hardeep Singh (supra) Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623*, and contends that even as per the MLR of the victim, no fresh marks of injury on her person were found and even the FSL report does not corroborate the allegations. He further submits that even the trial Court in the acquittal order of the four main accused, dated 06.01.2022, has given observations to the effect that there exists material discrepancies in the otherwise improvised statements of the prosecutrix and the complainant. Therefore, he submits that the contradictory and inconsistent statements, in absence of in corroborative evidence, fail to disclose even a *prima facie* case, let alone meeting the criteria of more than a *prima facie* case, as is imperative to summon a proposed accused under Section 319 Cr.P.C.

4. *Per contra*, learned State counsel contends that there are specific and serious allegations leveled against the petitioners by the prosecutrix both in her second statement recorded under Section 164 Cr.P.C.as also in her deposition as a prosecution witness. Therefore, the impugned order has been rightly passed by the learned Addl. Sessions Judge, Sirsa and deserves to be upheld.

5. Heard learned counsel appearing for the parties and perused the paper book.

6. Before proceeding further, it is pertinent to discuss the observations made by the Hon'ble Supreme Court in some of its recent judgements. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in *Hardeep Singh (supra)* has laid down that:

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*"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 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."*

7. Hon'ble the Supreme Court in ***Brijendra Singh and Others Vs. State of Rajasthan, (2017) 7 SCC 706***, while summing up the ratio as laid down in Hardeep Singh's case (supra) has held as under:

*"Power under Section 319 Cr.P.C. can be exercised by the trial Court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial Court finds that there is some*

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*'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 Cr.P.C. No doubt, such evidence that has surfaced in examination-in-chief, without cross examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under Section 319 Cr.P.C. and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect - of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima-facie opinion which is to be formed requires stronger evidence than mere probability of his complicity."*

8. Hon'ble the Supreme Court later in 2019 relying on ***Hardeep Singh (supra) held in Periyasami and Others Vs. S.Nallasamy (2019) SCC Online SC 379*** that:

*"The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused."*

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9. Recently Hon'ble the 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. The principles of law with reference to exercise of jurisdiction under 319 Cr.P.C. are well settled. As has been opined in a plethora of judgments, it is clear that the objective to invoke the powers under Section 319 Cr.P.C., is to not allow the real perpetrators of an offence to get away unpunished. However, a proposed accused cannot be summoned to face trial under Section 319 Cr.P.C. in a mechanical manner, without due appreciation of the facts of the case and the material on record. The litmus test of more than a *prima facie* case must be adhered to in letter and spirit.

11. Reverting to the case at hand, vague and unfounded allegations based on summaries and conjectures cannot be made the grounds for

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summoning the petitioners, especially so when the prosecutrix cannot be taken to be sterling witness, given the two diametrically opposite narratives of the entire incident in her statements. More so, the four main accused in the case also stand acquitted vide order dated 06.01.2022

12. In the light of facts and circumstances, viewed in light of the legal principles governing Section 319 Cr.P.C., this Court finds that the material adduced in the present case fails to establish the existence of even a *prima facie* case against the proposed accused. Trite to say that the power under Section 319 Cr.P.C. is extra-ordinary and must be exercised sparingly, only when there is strong evidence on record indicating the existence of more than a *prima facie* case against the person sought to be summoned. In the present case, the evidence presented does not meet the threshold required for summoning the petitioner as additional accused, since mere mention of a person's name in the witness statement or allegations, without substantially corroboration, is insufficient.

13. Accordingly, the petition is allowed and impugned order dated 18.04.2018 passed by the learned Addl. Sessions Judge, Sirsa is set aside qua the petitioners.

Pending miscellaneous application(s), if any, also stands disposed of.

**(KIRTI SINGH)**  
**JUDGE**

**24.03.2025**

Ramandeep Singh

Whether speaking / reasoned

Yes/No

Whether Reportable

Yes/No