

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

2025:PHHC:077598



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CRM-M-33266-2025 (O&M)
Date of Decision: 01.07.2025.

Anoop Singh

...Petitioner.

Versus

State of Punjab and others

...Respondents.

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR

.....

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

Ms. Gagandeep Kaur, DAG, Punjab.

SUKHVINDER KAUR, J.

Present petition has been filed under Section 528 of BNSS for setting aside the order dated 29.05.2025 (Annexure P-8) passed by learned Additional Sessions Judge, Kapurthala, and the order dated 01.04.2019 (Annexure P-5) passed by learned Sub Divisional Judicial Magistrate, Bholath, in FIR No.106 dated 09.05.2008 under Sections 420, 467, 468, 471 of IPC, registered at Police Station Bholath, District Kapurthala, whereby an application filed by the petitioner under Section 319 of Cr.P.C. was dismissed. The petitioner has also challenged the order dated 29.05.2025 passed by learned Additional Sessions Judge-II, Kapurthala in Revision Petition No. 54 of 2019, whereby the prayer made by the petitioner

for setting aside the order dated 01.04.2019 had also been rejected.

Brief facts relevant for the purpose of disposal of the present petition are that the present case was registered against accused Karnail Singh on the basis of complaint moved by complainant Anoop Singh, with the allegations that after the death of mother of the petitioner, respondent No.2 along with his accomplices prepared forged and fabricated Will dated 06.08.2006 and produced the same before Sub Divisional Magistrate, Bholath, for getting the mutation sanctioned. After presentation of challan, trial commenced and charges were framed against respondent No.2 on 25.11.2009.

PW4-Chand Lal witness to aforesaid Will, during his examination-in-chief before the Court deposed that respondent No.3-Gurmeet Kaur, who is wife of main accused Karnail Singh (respondent No.2) impersonated herself to be Veer Kaur by appending her thumb impressions on the disputed unregistered Will dated 06.08.2006. Thereafter, an application under Section 319 Cr.P.C. was moved for summoning Gurmeet Kaur as an additional accused. The said application was dismissed by learned trial Court, vide order dated 01.04.2019. The petitioner filed revision petition against the said order, which was also dismissed vide order dated 29.05.2025.

Learned counsel for the petitioner has contended that the impugned orders passed by learned trial Magistrate as well as Revisional Court are not sustainable in the eyes of law since from the inception of lodging of the complaint, the petitioner levelled allegations with regard to forgery and fabrication of unregistered Will dated 06.08.2006, by main accused Karnail Singh along with his accomplice. There was overwhelming

evidence in the form of testimonies of PW4-Chand Lal and PW5-Balbir Singh regarding aforesaid forgery committed by respondent No.3 by impersonating herself to be Veer Kaur, in connivance with main accused respondent No.2-Karnail Singh and furnishing their affidavits before Sub Divisional Magistrate, Bholath. The revision petition filed by the petitioner was kept pending even after decision of trial on 09.8.2019, vide which the main accused respondent No.2 was convicted for the offences under Sections 465, 468, 467, 471 of IPC. Despite conviction of respondent No.2, the application under Section 319 Cr.P.C. for summoning respondent No.3 has been dismissed, vide the impugned order dated 29.05.2025. The Courts below also failed to consider the material evidence adduced before the Court i.e. expert opinion given by PW7-Sukhjinder Singh, which corroborated the fact that the thumb impressions upon the Will in dispute was different from standard thumb impressions and rather super imposed in a suspicious manner, which was sufficient to summon Gurpreet Kaur (respondent No.3) as an additional accused, being wife of main accused Karnail Singh (respondent No.2). He argued that non-summoning of Gurmeet Kaur as an additional accused, despite direct deposition and corroborative expert evidence, severely prejudices the petitioner's right to fair trial and has prayed that the impugned orders be set aside and Gurmeet Kaur (respondent No.3) be summoned as an additional accused.

I have heard learned counsel for the petitioner at considerable length and have gone through the material placed on record.

The Hon'ble Supreme Court in *Hardeep Singh Vs. State of Punjab, (2014) 3, SCC 92*, elaborated the scope, procedure and the stage at which such power under Section 319 Cr.P.C. was to be exercised. It was

observed by Hon'ble Supreme Court that the "Power under Section 319 Cr.P.C. is a discretionary and an extra ordinary power. It is to be exercised sparingly and only in those cases where 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.

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."

The legal position on the scope and ambit of powers of the Court under Section 319 of Cr.P.C. has also been summarized by Hon'ble Apex Court in the case cited as *Manjeet Singh Vs. State of Haryana and others (2021) 18 Supreme Court Cases 321*, wherein it was observed as under:

“(i) That while exercising the powers under section 319 Cr.P.C. and to summon the persons not charge-sheeted, 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 Cr.P.C. 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. allows the courts 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. 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) Cr.P.C. 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 Cr.P.C, 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.

only after the trial proceeds and commences with the recording of the evidence.

(xi) The word "evidence" in section 319 Cr.P.C. 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. 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. 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. can be exercised.

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

Keeping in view the proposition of law laid down in cases (supra) and applying it to the peculiar facts and circumstances of the present case, it transpired that complainant Anoop Singh in his complaint Ex.PA moved to the police, for setting the criminal law into motion, alleged that Will dated 06.08.2006 was forged and fabricated by Karnail Singh in connivance with his accomplice and it was completely silent regarding respondent No.3 Gurmeet Kaur. He did not depose anything even in his statement recorded in the Court against Gurmeet Kaur. The application under Section 319 Cr.P.C. was moved on 31.05.2018 after passing of the period of about nine years, for summoning respondent No.3 Gurmeet Kaur as an additional accused. Beside the statement of PW4-Chand Lal, Deed Writer, there is no other evidence on record to infer that respondent Gurmeet Kaur impersonated his mother Veer Kaur and put her thumb impressions on Will dated 06.08.2006. Again PW4 is silent regarding the fact that how he came to know that Will dated 06.08.2006 was not bearing thumb impressions of Veer Kaur but Gurmeet Kaur, who had appended her thumb impressions on the said Will by impersonating her. His statement is silent regarding the fact that Veer Kaur and Gurmeet Kaur were personally known to him prior to execution of Will. It has not been explained when Chand Lal stated in his statement recorded before the police regarding involvement of Gurmeet Kaur in this case, then why complainant did not utter even a single word qua involvement of Gurmeet Kaur, who is his brother's wife, during his evidence in this case. PW5-Balbir Singh deposed that accused Karnail Singh got his signatures on a blank paper and later on, he had got scribed Will on the above said blank papers on behalf of his

mother, who had already died, which stands falsified when complainant Anoop Singh while appearing as PW1 stated that his mother Veer Kaur had expired on 13.08.2006 after execution of the alleged Will dated 06.08.2006.

Questioned thumb impressions on Will dated 06.08.2006 were got compared from Sukhwinder Singh, Handwriting and Fingerprint Expert with standard thumb impressions of Veer Kaur and it was opined that it was super imposed thumb impression above another thumb impression in suspicious manner with more darker ink to conceal its identity with her standard thumb impression. Whereas no such evidence came on record during the investigation that the thumb impressions affixed on the Will dated 06.08.2006 were pertaining to Gurmeet Kaur and not Veer Kaur and no such evidence was adduced even during the course of trial before the trial Court.

As already observed the well settled proposition of law is that the evidence for the purpose of summoning under Section 319 Cr.P.C. requires much stronger evidence than mere probability of complicity of additional accused and 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. The said satisfaction is lacking in the evidence led on record and in the absence of such satisfaction the Courts below have rightly refrained from exercising powers under Section 319 Cr.P.C. The Revisional Court affirmed the observations made by the trial Court while giving well reasoned findings. No irregularity or illegality can be stated to have been committed by Courts below while passing the impugned orders. So, when

there is no reasonable ground to interfere, the present petition stands dismissed.

However, the observations made hereinabove shall not be construed as an expression of opinion on merits of the case.

(SUKHVINDER KAUR)
JUDGE

01.07.2025.

Komal

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