



CRM-M-28825-2018

1

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

124

CRM-M-28825-2018

Date of Decision:21.07.2026

HARMANJOT SINGH @ GOLU**....PETITIONER****VERSUS****STATE OF PUNJAB AND ANR****.....RESPONDENTS****CORAM: HON'BLE MR. JUSTICE H.S.GREWAL.**

Present: Mr. Gurcharan Dass, Advocate for the petitioner.
Mr. P.S.Pandher, AAG, Punjab
Mr. Pankaj Bali, Advocate for respondent No.2.

H.S. GREWAL, J. (ORAL)

1. This petition has been filed under section under Section 482 Cr.P.C for quashing of order dated 06.07.2017 passed by Id. trial Court in FIR No. 64 dated 16.04.2013 under Sections 323, 427, 452, 506, 148, 149 IPC registered at Police Station Sadar Khanna, Police District Khanna, District Ludhiana and judgment dated 05.04.2018 passed in Criminal Revision No. 28 dated 17.10.2017 passed by Id. Addl. Sessions Judge, Ludhiana with further prayer for staying further proceedings before the Id. trial Court.

2. Brief facts of the case are that the present FIR was registered on the statement of Rizak Mohammad, alleging that on 15.04.2013, 15/18 persons, armed with baseball bats, dandas, sottas and rods, entered his Dhaba, assaulted him, damaged the articles lying outside the Dhaba and a parked car, and extended threats. The occurrence was allegedly the result of a previous altercation between the complainant and some of the accused. During investigation, Rajan Kainth and Harjot Singh were declared innocent



by the DSP, Khanna. The trial concluded vide judgment dated 09.03.2022, whereby Kulwant Singh and Kulwinder Singh were acquitted, while Satvir Singh, Preet Singh and Arshdeep Singh were released on probation.

3. Learned counsel for the petitioner submits that the petitioner was not found involved by the investigating agency and, accordingly, was not sent up for trial in the final report submitted under Section 173 Cr.P.C. It is further submitted that the petitioner was initially discharged by the learned trial Court vide order dated 12.12.2013. Thereafter the petitioner was summoned to face the trial on the basis of application under Section 319 Cr.P.C vide order dated 03.06.2015. The said order was assailed by the petitioner by way of filing the criminal revision before the Id. ASJ, Ludhiana which was accepted vide order dated 25.01.2016 (Annexure P-7) and the trial Court was directed to decide the matter afresh. The Id. trial Court in compliance to the order dated 25.01.2016 passed fresh order thereby summoning the petitioner again to face trial along with the other co-accused. Aggrieved thereto, the petitioner has approached the Court of Id. Addl. Sessions Judge by way of criminal revision which was declined vide order dated 05.04.2018. Both the Courts have overlooked the reports dated 19.08.2013 wherein the petitioner was found innocent and kept in column No.2. The Id. trial Court even failed to consider the findings recorded by the Id. ASJ, Revisional Court, Ludhiana while remanding the case back to the Id. trial Court to decide afresh. He further submits that even the version of the complainant before the police as well as in the statement recorded in the Court are contradictory and no cogent or legally admissible material was subsequently brought on record warranting his summoning under Section



319 Cr.P.C. Learned counsel contends that the learned trial Court, while passing the impugned order, has merely recorded a conclusion that sufficient evidence had come on record against the petitioner, without discussing the nature and quality of such evidence or recording any reasons as to how the material available on record constituted a prima facie case against him.

4. Learned counsel further submits that the power under Section 319 Cr.P.C. is an extraordinary and discretionary power, which cannot be exercised mechanically. The Court is required to carefully examine the evidence available on record and record reasons to demonstrate that the evidence is of such quality that, if left unrebutted, it would reasonably lead to the conviction of the person sought to be summoned.

5. Learned counsel contends that the mere fact that the complainant has named a person in his statement cannot, by itself, constitute sufficient ground for exercising the power under Section 319 Cr.P.C. The evidence required for summoning a person as an additional accused under Section 319 Cr.P.C. must be of such quality that it satisfies the Court that there is a stronger degree of satisfaction than that required at the stage of framing of charge, though falling short of the satisfaction required for recording a conviction. It is, therefore, submitted that the petitioner has been wrongly summoned by the learned trial Court and that the impugned order is liable to be set aside.

6. Per contra, learned State counsel, as well as learned counsel for the complainant, contend that the complainant has categorically stated in his statement recorded before the Court that the petitioner, along with the other co-accused, actively participated in the commission of the alleged offence. It



is further submitted that the Courts below have rightly passed the impugned orders after duly appreciating the evidence available on record, and there is no infirmity or illegality therein warranting interference by this Court. Therefore, the present petition is liable to be dismissed.

7. I have heard the learned counsel for the parties.

8. It is important to note that during the investigation, the police examined the matter and did not find sufficient evidence to establish the petitioner's involvement in the occurrence. Rather, the investigating agency exonerated the petitioner and kept him in Column No.2 in the final report submitted under Section 173 Cr.P.C, meaning thereby that no prime facie case was found to be made out against him at that stage. Moreover, the trial against other co-accused has already been concluded vide order dated 09.03.2022 by Id. SDJM, Khanna whereby Kulwant Singh and Kulwinder Singh were acquitted whereas Satvir Singh, Preet Singh and Arshdeep Singh were released on probation for a period of one year and imposed fine of Rs. 1000/- on them.

9. It is apposite to note that the petitioner does not figure as an accused either in the complaint lodged by PW-1, the FIR and has been kept in column No.2 in the final report submitted under Section 173 Cr.P.C. From the testimony of PW-1, it is evident that he was aware that the petitioner has actively participated in the occurrence. If such version were indeed true, it is significant that PW-1 did not file any protest petition under sub-section (8) of Section 173 Cr.P.C. when the petitioner was not arraigned as an accused along with the other co-accused in the charge-sheet. This leads to only one inference that PW-1 neither suspected the petitioner nor was aware of his



involvement in the commission of the crime.

10. Admittedly, the powers under Section 319 Cr.P.C. are extraordinary in nature but it should be used only when strong and convincing evidence comes before the Court during trial. In the present case, apart from the allegations already contained in the FIR, there is no separate, independent, or stronger evidence to show that the petitioner had actively participated in the commission of the alleged offence.

11. Hon'ble the Supreme Court in the case of [Brijendra Singh and Others Vs. State of Rajasthan](#) 2017 (100) ACC 601 , while deciding the similar issue, has held as under:-

“13. In order to answer the question, some of the principles enunciated in Hardeep Singh’s case may be recapitulated:- 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 ‘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 chargesheet 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.

14. xxxxxxxxx

15. *This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so- called verbal/ocular version. Thus, the ‘evidence’ recorded during trial was nothing more than the statements which was already there under [Section 161](#) Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether ‘much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.”*

12. Reference can also be made to the judgment of the Hon’ble Supreme Court in ***Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92*** wherein following observations have been made:-

“Power under [Section 319](#) CrPC 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.”

13. Moreover, while dealing with the similar case, a Coordinate Bench of this Court in **Varinder Singh versus State of Punjab, 2024(1) RCR (Criminal) 118**, relied upon the aforesaid judgments of the Hon’ble Supreme Court and held that mere reiteration of allegations without any credible and strong material is not sufficient for summoning an accused under Section 319 Cr.P.C. The relevant extract thereof is as under:-

*“7. xxxxxxx. Therefore, in the opinion of this Court, summoning of the petitioner under Section 319 Cr.P.C. merely on the statement made by the complainant without taking into consideration documentary and other evidence during the course of investigation warrants interference by this Court. The trial Court was at least duty-bound to look into the material/evidence collected by the investigating agency, while forming prima facie opinion and to see as to whether much stronger evidence than mere possibility of complicity of the petitioner has come on record. The Hon’ble Supreme Court in **Brijendra Singh’s case (supra)** has held that the trial Court cannot summon a person as accused on the basis of examination-in-chief of the complainant and his witness in case where the complainant lodged FIR against three persons in a murder case, who were found away to a distance place on day of occurrence on the basis of documents by the investigating agency.*

8. The FIR is not supposed to be an encyclopaedia of the entire events and cannot contain the minute details of the events. Mere statement of the complainant reiterating the contents of FIR/complaint not substantiated by any credible material, cannot be a ground to invoke the discretionary and extraordinary power of this Court to summon an additional accused under Section 319 Cr.P.C. In the absence of any material suggesting existence of more than prima facie case available during the course of trial of an offence, courts ought to refrain themselves from exercising its discretionary and extraordinary power under Section 319 Cr.P.C. The Constitution Bench of the Hon’ble



Supreme of India in **Hardeep Singh Vs. State of Punjab (2014) 3 SCC 92** has held that the power under Section 319 Cr.P.C is a discretionary and an extraordinary power. It is to be exercised only on the basis of the material available before the Court during a trial and not because the Magistrate or the Sessions Judge is of the opinion that some other accused/person may also be guilty of committing that offence.

9. The trial Court must evaluate the material against the persons sought to be summoned and then adjudge whether such material, 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 material, the power under Section 319 Cr.P.C. ought not to be invoked. A two Judge Bench of the Hon'ble Supreme Court in **Juhru and others Vs. Karim and another (2023) 5 SCC 406**, while relying upon **Hardeep Singh's case (supra)** has held as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decision that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than prima facie case is sine qua 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 CrPC, 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, 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.”

(emphasis supplied)

14. In light of the above, this Court is of the considered view that the impugned summoning order (Annexure P-4) is unsustainable and liable to be set aside.

15. Consequently, this petition is allowed and the summoning order

**CRM-M-28825-2018****9**

dated 06.07.2017 passed by Id. trial Court in FIR No. 64 dated 16.04.2013 under Sections 323,427,452,506,148,149 IPC registered at Police Station Sadar Khanna, Police District Khanna, District Ludhiana and judgment dated 05.04.2018 passed in Criminal Revision No. 28 dated 17.10.2017 passed by Id. Addl. Sessions Judge, Ludhiana are hereby quashed qua the petitioner only.

16. Pending application, if any, shall stand disposed of accordingly.

21.07.2026
renu

(H.S.GREWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether Reportable: Yes/No