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

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CRR No. 1569 of 2026 (O&M)

Date of decision : 09.07.2026

Pritam Kumar

...Petitioner

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Surinder Gandhi, Advocate
for the petitioner.

Mr. Apoorv Garg, Addl. A.G., Haryana.

MANISHA BATRA, J. (Oral)

1. CRM-25868-2026

Prayer in this application is for condonation of delay of 80 days
in filing the present revision petition.

For the reasons stated in the application, the same is allowed and
the aforesaid delay in filing the present revision petition is hereby condoned.

2. CRR-1569-2026 (O&M)

The present criminal revision has been filed for setting aside the
order dated 12.01.2026 passed by the learned Additional Sessions Judge,
Narnaul, in case arising out of FIR No. 410 dated 09.10.2021, registered under
Sections 148, 149, 302 and 341 of IPC at Police Station Sadar Kanina, District
Mahendergarh, whereby the petitioner has been summoned as an additional
accused under Section 319 Cr.P.C.

3. Brief facts of the case relevant for the purpose of disposal of this
petition are that the aforementioned FIR was registered with the allegations

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that son of the complainant, namely Gaurav, was returning home on his motorcycle when he was intercepted near the canal of village Malda by Ravi alias Langda, Mohan, Ajay, Pritam, Sukhdev alias Bhanja and certain other persons. It was alleged that the assailants forcibly took Gaurav to the Royal Chicken Corner Hotel, where they brutally assaulted him with lathis and dandas. Upon receiving information from Gaurav over a phone call, the complainant and his father rushed to the spot, rescued him from the assailants and shifted him towards the hospital for medical treatment. However, Gaurav succumbed to the injuries while being taken to a higher medical centre. The FIR further alleges that the occurrence was the outcome of previous enmity arising out of an altercation during a Jagran held about a month earlier, pursuant to which the accused had allegedly conspired to eliminate Gaurav. After conducting investigation, the police presented the final report against six accused persons, namely Vicky, Ravi, Satender, Harsh, Yogesh Kumar and Ajay, while the present petitioner was found innocent and was not sent up for trial. Charges were framed against the said six accused on 29.09.2022 and the trial commenced.

4. During the course of trial, the prosecution initially moved an application under Section 319 Cr.P.C. seeking summoning of the petitioner and other proposed accused. However, the said application was withdrawn on 20.12.2023. Subsequently, after about two years, the prosecution filed a fresh application under Section 319 Cr.P.C., which was allowed by the learned Additional Sessions Judge, Narnaul vide order dated 12.01.2026, summoning

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the petitioner as an additional accused. Aggrieved by the said order, the petitioner has preferred the present criminal revision.

5. Learned counsel for the petitioner has argued that the impugned order is not sustainable in the eyes of law. The petitioner had already been thoroughly investigated by the police and was found innocent. Consequently, no charge-sheet was filed against him, whereas six other accused alone were sent to face trial. The Trial Court ignored the police investigation without there being any fresh or compelling material warranting a different conclusion. It is further argued that an earlier application under Section 319 Cr.P.C. against the petitioner had already been withdrawn by the prosecution on 20.12.2023, as the electronic evidence in the form of pen drives did not disclose his presence. Despite withdrawal of the earlier application, the learned trial Court entertained a fresh application after nearly two years without recording any reasons as to how the same was maintainable or what fresh evidence had emerged in the meantime. It is also argued that the impugned order rests primarily upon statements of co-accused and witnesses recorded during trial, none of whom specifically implicated the petitioner in the commission of the offence. It is also submitted that compelling the petitioner to face a murder trial despite his exoneration during investigation and in the absence of legally admissible evidence would result in grave prejudice and miscarriage of justice. Hence, it is urged that the petition deserves to be allowed and the impugned order is liable to be dismissed.

6. Notice of motion.

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7. Learned State counsel, who has advance notice of the petition, has argued that there is no infirmity or illegality in the impugned order and the learned trial Court had rightly exercised its jurisdiction under Section 319 Cr.P.C. after appreciating the evidence that had surfaced during trial. The testimonies of the prosecution witnesses recorded before the Court disclosed the involvement of the petitioner in the occurrence, thereby furnishing sufficient material for invoking the power under Section 319 Cr.P.C. The opinion formed by the investigating agency while filing the charge-sheet is not binding upon the Court and does not prevent the trial Court from summoning any other person if evidence recorded during trial indicates his complicity. Hence, it is urged that the petition is liable to be dismissed.

8. This Court has heard the rival submissions.

9. At the outset, it would be proper to refer to the provisions of Section 319 of the Cr.P.C. (*which is pari materia with Section 358 of BNSS, 2023*) which read as under:-

"319. Power to proceed against other persons appearing to be guilty of offence. - (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid. (3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such

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Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed. (4) Where the Court proceeds against any person under sub-section (1), then- (a) the proceedings in respect of such person shall be commenced afresh, and witnesses reheard; (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced."

10. Having noted the abovementioned provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court, to have committed any offence and such accused has been excluded in the charge sheet or in the process of trial till such time, could still be summoned and tried together with the accused, for the offence which appears to have been committed by such persons summoned as additional accused.

11. The issue relating to the powers to be exercised under Section 319 of Cr.P.C. had arisen for detailed consideration in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***, wherein the scope, procedure and the stage at which such power was to be exercised was considered and summarized. It was observed by Hon'ble Supreme Court that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. 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.

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Only where strong and cogent evidence occurs against a person from the material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as has been established at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of Cr.P.C.

12. 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 v. 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 CrPC 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 CrPC 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.

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- (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 CrPC allows the court 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 CrPC 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) CrPC 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 CrPC, 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 CrPC only after the trial proceeds and commences with the recording of the evidence.
- (xi) The word "evidence" in section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents.

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(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 CrPC 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 CrPC 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 CrPC can be exercised.

(xv) That power under section 319 CrPC 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 CrPC 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 CrPC 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.”

13. On applying the aforementioned proposition of law to the peculiar facts and circumstances of the present case, it is observed that the

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learned trial Court has committed no illegality in invoking the jurisdiction under Section 319 Cr.P.C. Merely because the petitioner was found innocent during investigation and was not sent up for trial would not create any embargo upon the powers of the trial Court to summon him subsequently, if evidence recorded before the Court discloses his involvement in the commission of the offence. It is now well settled that the opinion of the investigating agency is not conclusive and the Court is required to independently assess only the evidence that has emerged during the course of trial while exercising jurisdiction under Section 319 Cr.P.C.

14. In the present case, the petitioner was not only specifically named in the FIR as one of the assailants but the prosecution witnesses, namely Krishan Kumar (PW-1) and Devender (PW-8), have also consistently attributed a specific role to him while deposing before the trial Court. Their depositions prima facie indicate that the petitioner was present at the place of occurrence and actively participated in the assault upon the deceased. The learned trial Court has also noticed that the name of the petitioner finds mention in the earliest version of the prosecution and that no convincing reason was forthcoming from the investigating agency for declaring him innocent. Thus, the evidence which surfaced during trial was not a mere reiteration of the material collected during investigation but constituted substantive evidence before the Court capable of being considered under Section 319 Cr.P.C.

15. The contention raised on behalf of the petitioner that an earlier application under Section 319 Cr.P.C. had been withdrawn also does not

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advance his case. Withdrawal of the earlier application did not result in any adjudication on merits nor did it create any legal bar against consideration of a subsequent application founded on the evidence that had emerged during the course of trial. The power under Section 319 Cr.P.C. remains available to the Court till the conclusion of trial and if the evidence adduced before it satisfies the threshold laid down by the Hon'ble Supreme Court, the Court is fully competent to summon a person who was not charge-sheeted.

16. Further, the submission that the impugned order is based only upon inadmissible electronic evidence or the disclosure statements of co-accused cannot be accepted as a perusal of the impugned order would show that the learned trial Court has primarily relied upon the ocular testimony of the prosecution witnesses recorded before it and has referred to the other material only as corroborative circumstances. At the stage of Section 319 Cr.P.C., the Court is not expected to undertake a meticulous appreciation of evidence or record findings regarding its ultimate admissibility or probative value as those are matters to be examined during the course of trial after the proposed accused joins the proceedings.

17. The revisional jurisdiction of this Court is supervisory in nature and interference with an order passed under Section 319 Cr.P.C. is warranted only where the order suffers from patent illegality, perversity or jurisdictional error. However, the impugned order reflects due consideration of the evidence led before the Court as well as the legal principles governing exercise of power under Section 319 Cr.P.C. It cannot, therefore, be said that the learned

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trial Court exercised its discretion arbitrarily or on irrelevant considerations warranting interference by this Court in exercise of its revisional jurisdiction.

18. In view of the discussion made above, this Court is of the considered opinion that the present petition is devoid of any merit. Accordingly, the same is hereby dismissed.

09.07.2026
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>