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

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CRM-M No.4658 of 2025 (O&M)
Date of Decision: 28.01.2025

Surinder Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Punyaveet, Advocate,
for the petitioner.

MANISHA BATRA, J. (Oral)

CRM-3276-2025

The application is allowed, as prayed for subject to all just exceptions.

CRM-M No.4658 of 2025 (O&M)

1. The instant petition has been filed by the petitioner seeking quashing of common order dated 15.01.2025 passed by the Court of learned Additional Sessions Judge, Hisar in two Criminal Revisions bearing CIS No.CRR-138 of 2022 titled as *Ramesh v. State of Haryana*, and CIS No.CRR-155 of 2022 titled as *Surender Kumar v. Manoj and others* respectively whereby, the revision filed by the complainant-Surender against the order dated 08.09.2022 in case arising out of FIR No.450 dated 05.12.2015 registered under Sections 147, 148, 323 and

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506 of IPC at Police Station Hansi Sadar, District Hansi and pending before the Court of Judicial Magistrate 1st Class, Hansi, had been dismissed whereas the revision petition filed by the accused Ramesh against the same order had been allowed as well as the order dated 08.09.2022 passed by the Magistrate.

2. For the sake of continuity and coherence, the parties shall be nominated as per their original nomenclature as given before the learned trial Court.

3. The factual matrix of the case as briefly narrated is that the aforementioned FIR had been registered on the basis of statement recorded by the complainant Surender that on 04.12.2015, he had gone to his fields along with one Pawan. His father was already present in the fields. Some construction work of the watercourse was going in the fields on that time. The accused Manoj and Mukesh had reached there and made some illegal openings in the watercourse. His father had objected to the same. The above named Manoj and Mukesh then brought 6-7 persons and opened an assault upon the complainant and his father. While going back, they had extended threats to him by brandishing pistols. The complainant could identify the accused Sanjeev, Mukesh, Manoj, Virender and Ramesh. Two-three unknown persons had accompanied them. After registration of FIR, investigation proceedings were initiated. The accused Manoj, Sanjeev, Sunil, Mukesh and Virender were arrested and subsequently they were released on bail. Ramesh named in the FIR was found to be innocent and had not been

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arrested and challaned. The challan was presented against the aforementioned five accused.

4. As revealed from the record, during the pendency of the trial, the complainant Surender was examined in chief as PW-1. Thereafter, an application under Section 319 of Cr.P.C. had been moved by the prosecution for summoning Ramesh son of Tara Chand and Rajbir son of Sh. Ram Sarup as additional accused. The said application had been partly allowed and Ramesh was ordered to be summoned as additional accused.

5. Dissatisfied with the order dated 08.09.2022 as passed by the learned Magistrate, the complainant as well as accused Ramesh filed revision petitions. The petition filed by the complainant for summoning Rajbir as additional accused was dismissed whereas the petition filed by the accused Ramesh was allowed by passing the impugned common order dated 15.01.2025 by learned Additional Sessions Judge.

6. It is argued by learned counsel for the petitioner-complainant that the impugned order is liable to be set aside as the same is not sustainable in the eyes of law. While passing the same, the learned Revisional Court did not apply its judicious mind. A non-speaking order has been passed. The learned Revisional Court ignored the fact that there was sufficient and rather overwhelming evidence on record in the form of testimony of the complainant to prove that by forming membership of unlawful assembly with the co-accused, the above named Ramesh and Rajbir had opened an assault upon his father and himself and voluntarily

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caused injuries to them and criminally intimidated them. The learned Revisional Court acted beyond its jurisdiction while dismissing the revision petition as filed by the complainant and allowing the petition as filed by the accused Ramesh. Accordingly, it is urged that the impugned order is liable to be set aside, the present petition deserves to be accepted and the prayer made by the petitioner for summoning the above named Ramesh and Rajbir as additional accused deserves to be allowed.

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

8. Section 319 of Cr.P.C. empowers the Court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. The principle of law with reference to exercise of jurisdiction under this Section has been well settled by the Constitution Bench of Hon'ble Supreme Court in a celebrated pronouncement cited as **Hardeep Singh and others Vs. State of Punjab and others**, (2014) 3 SCC 92, wherein it was observed that the powers under Section 319 Cr.P.C. are to be exercised where strong and cogent evidence occurs against a person from the material placed before the Court. 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 but it also requires much strong evidence than mere probability of complicity of the person sought to be summoned as additional accused. The test that has to

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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 un rebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of Cr.P.C.

9. It is also well settled proposition of law that if the prosecution at any stage produces evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them and try them along with the other accused. It must appear to the Court from the evidence tendered in the course of any enquiry or trial that any person not being the accused, has committed any offence for which he could be tried together with the accused even though he might not have been chargesheeted by the investigating agency or may have been discharged at an earlier stage. It is equally well settled that the powers under Section 319 of Cr.P.C. are extraordinary and discretionary powers which are to be exercised sparingly and by applying the test that there is more than prima facie case for exercise of such power, 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 instant case, at the time of lodging of the FIR, the complainant had not taken the name of accused Rajbir at all. Though he had taken the name of the accused Ramesh but he had been found to be innocent and had not been arrested and challaned. The

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learned Revisional Court after assessing the evidence produced on record observed that since apart from the statement of the complainant, no other evidence was available on record to prove the complicity of accused Ramesh and his own statement was also a mere reiteration of the contents of the FIR that by itself could not be construed as fresh evidence, it was sine qua non to summon the accused under Section 319 Cr.P.C. On a perusal of the testimony of the complainant, I am also of the considered opinion that the complainant had levelled general and omnibus allegations against the accused Ramesh without attributing any specific role to him in commission of the subject offences. His statement cannot be considered to be sufficient for holding that there was more than a prima facie case as against the proposed accused Ramesh. As such, no illegality or irregularity can be stated to have been committed by learned Revisional Court by allowing the revision petition as filed by the accused Ramesh and holding that he was not liable to be summoned as an additional accused.

10. Similarly, so far as the proposed accused Rajbir is concerned, as already mentioned, neither his name was not mentioned in the FIR. The complainant did not attribute any specific role to him while naming him in his sworn deposition. The explanation shown to have been given by the petitioner at the time of recording his statement to the effect that he could not recognize the accused Rajbir at the time of occurrence or lodging FIR as he has tied a angochha (small towel) on his head, does not appear to be convincing at all because it has not been explained by him as to how he

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could identify him subsequently. The name of the proposed accused Rajbir had been taken by the complainant for the first time in his deposition recorded before the Court and the learned Revisional Court rightly observed that his solitary statement was not sufficient to issue process against him under Section 319 of Cr.P.C. In view of the discussion as made above, no perversity, irregularity or illegality can be stated to have been committed by it by passing the impugned order. As such, I see no reason to come to a contrary conclusion. Accordingly, finding no merit, the petition is dismissed.

11. Miscellaneous application(s), if any, also stand disposed of.

28.01.2025
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(MANISHA BATRA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No