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

CRM-M No.8092 of 2024
Date of Decision: 20.02.2025
Reserved on: 04.02.2025

Ashok ... Petitioner

Versus

Harish and others ... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Sunil Chaudhary, Advocate,
for the petitioner (through Video Conferencing mode).

Mr. Balraj Gujjar, Advocate,
for respondents No.1 to 5.

Mr. Neeraj Poswal, AAG, Haryana,
for respondent No.6.

MANISHA BATRA, J.

1. The instant petition has been filed by the petitioner seeking quashing of order dated 08.05.2023 passed by the Court of learned Additional Chief Judicial Magistrate, Bhiwani in Criminal case bearing CIS No.CHI-367-2017 titled as *State of Haryana v. Ram Chander* arising out of FIR No.764 dated 19.11.2016 registered under Sections 323, 325, 147, 149, 342 and 506 of IPC at Police Station Bhiwani Sadar, District Bhiwani, whereby an application filed under Section 319 of Cr.P.C. as filed by the petitioner for summoning Harish, Deepak, Amit, Sudhir and Dharambir as additional accused (now to be mentioned as proposed accused) had been dismissed and the order dated 02.01.2024 passed by

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the Court of learned Additional Sessions Judge, Bhiwani whereby revision petition bearing CRR No.80 of 2023 preferred against the order dated 08.05.2023 had been dismissed.

2. Brief facts relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of written complaint submitted by the petitioner-complainant Ashok Kumar alleging therein that on 19.11.2016, he along with his nephew Pritam was going towards his house and while on the way, the accused Narender and Ram Chander were found joining their tractor with a cultivator. As soon as the petitioner passed through them, the accused Narender hurled abuses to him and started following his scooter. The complainant slowed down the speed of his vehicle and then the accused Narender assaulted him due to which Pritam and himself fell down and sustained injuries. Accused Ram Chander caught hold of Narender. The complainant immediately called the police and was informed by the concerned SHO that some police officials would come to the spot. When the complainant was waiting for the police officials to come, the accused Narender accompanied by the proposed accused reached there and started assaulting him. All of them gave kicks and fist blows after pulling him inside the house of accused Ram Chander. The complainant was left only when the police reached there. After registration of FIR, investigation proceedings were initiated. The proposed accused were found to be innocent. The accused Ram Chander and Narender were arrested and subsequently released on bail and presently, they are facing trial for commission of the aforementioned offences. During trial, the statement of

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the complainant was recorded in chief and thereafter an application under Section 319 of Cr.P.C. had been moved for summoning the proposed accused which had been dismissed by the learned trial Court vide order dated 08.05.2023 that has been upheld by the Revisional Court.

3. It was argued by learned counsel for the petitioner that the impugned order dated 08.05.2023 which has been upheld by the Revisional Court is not sustainable in the eyes of law as while passing the same, the learned trial Magistrate did not apply his judicious mind. The proposed accused were not only named in the FIR but in his sworn deposition also, the petitioner took their names and had attributed specific acts to them. He had sustained seven injuries at the hands of accused already arraigned as well as the proposed accused. These injuries were simple as well as grievous in nature. The investigating agency had wrongfully found them to be innocent and that is why they had not been arrested and challaned. The evidence produced by him on record has showed the complicity of the proposed accused in the commission of subject offences. The learned trial Magistrate as well as Revisional Court did not consider this evidence in proper manner. Therefore, it was argued that the impugned orders are not sustainable and are liable to be set aside. The revision petition deserves to be accepted and the application filed by him under Section 319 of Cr.P.C. deserves to be allowed.

4. On the other hand, it was argued by learned counsel for respondents No.1 to 5 that there is no infirmity or illegality in the impugned orders and, therefore, the petition does not deserve to be allowed.

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5. Learned Assistant Advocate General, Haryana had not chosen to contest the petition.

6. Learned counsel for the petitioner as well as learned counsel for respondents No.1 to 5 were heard at considerable length.

7. At the outset, it would be proper to refer to the provisions of Section 319 of the Cr.P.C. 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 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."

8. 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

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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.

9. 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. 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

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

10. 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.

(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.

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(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.

(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

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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.”

11. On applying the aforementioned proposition of law to the peculiar facts and circumstances of the present case, it is observed that though the proposed accused were named in the FIR which was registered on the basis of complaint lodged by the complainant, but after conducting thorough investigation in the matter, they were found to be innocent. Their names were accordingly kept in column No.2 of the challan report and they were not arrested and challaned. The evidence led by the petitioner is simply reiteration of the allegations in the FIR and on the basis of the same allegations, the proposed accused were found to be innocent. As discussed above, the evidence for the purpose of arriving at a finding that there was complicity of the proposed accused in the crime, must be more than prima facie evidence and evidence of such kind which if goes un rebutted would lead to conviction but the statement of the petitioner is not of such nature on the basis of which any such finding can be given. There is absence of satisfaction that the evidence so led was stronger than mere probability of complicity of the proposed accused in the commission of subject offences. As such, in the considered opinion of this Court, the summoning of the proposed accused would be far fetched and they cannot be subjected to trial

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on the basis of statement recorded by the petitioner-complainant qua their complicity. Accordingly, there is no hesitation to hold that there was no scope for the trial Court under Section 319 of Cr.P.C. to form any opinion as to the guilt of the proposed accused and in the absence of such satisfaction, it is held that the trial Court rightly refrained itself from exercising powers under Section 319 of Cr.P.C. as the satisfaction desirable for summoning the proposed accused was not found on record. No irregularity or illegality can be stated to have been committed by the learned trial Court while passing the impugned order and by the learned Revisional Court while upholding the same. Rather these orders have been passed after analyzing the facts of the case and the material produced in evidence, in a proper perspective. This Court, therefore, has no reason to interfere with the findings as given by the learned trial Court. Accordingly, the present petition is dismissed.

20.02.2025
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(MANISHA BATRA)
JUDGE

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