



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

CRR-269-2021

Date of decision: 30.01.2025

PARMOD KUMAR AND ANOTHER

...PETITIONERS

V/S

STATE OF HARYANA

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. A.P.S. Sandhu, Advocate with
Mr. Ashish Kaushik, Advocate for the petitioners.
Mr. Ramesh Kumar Ambavta, AAG, Haryana.

HARPREET SINGH BRAR, J. (ORAL)

1. The instant revision petition has been preferred against the impugned order dated 17.02.2021 passed by learned Additional Sessions Judge, Ambala, vide which, the petitioners have been summoned as an additional accused and subsequently charge-sheeted with offences falling under Sections 148/149/323/325/341/427/506 IPC and Section 3(x) of SC/ST Act, 1989 in case bearing FIR No.39 dated 13.03.2017 registered at Police Station Shahzadpur, District Ambala.

2. In brief, the facts of prosecution case are that on 13.03.2017, on receipt of telephonic information regarding quarrel in Village Patterheri, SI Surender Kumar alongwith HC Rajinder Singh reached in the village and came to know that injured were taken to CHC, Shahzadpur. When they went to CHC, Shahzadpur, they came to know that injured were referred to Civil Hospital, Ambala City and Civil Hospital, Sector-6, Panchkula. Thereafter, the police party reached at Civil Hospital, Ambala City and recorded the statement of injured Phool Chand, who stated therein that due to *panchayat* elections, present *Sarpanch* was having grudge against him and in this regard, on



11.03.2017, an altercation took place between them and in continuation of that, on 13.03.2017 at about 1.30 P.M., when he was coming back to his village from the fields on his cycle and reached in front of Farm of Pappu Rana, Veenu son of Leelu Sarpanch, Arvind Singh, Narender Singh, Amandeep, Navneet, Sonu, Ashu, younger son of Madan Pal, son of Balia, two sons of Madan Singh, son of Kaka Singh, two grandsons of Pala, two sons of Pal, Kaka and Leelu encircled him. They were armed with iron rods (*saria*), swords and *gandasi* (axe) at that time. They attacked on him and caused injuries. On receiving information, his relatives Raj Kumar, Naresh, Harbans, Ram Lal and Banta Ram came at the spot. The assailants encircled his family members also and caused injuries to them as well. People belonging to Rajput community also gathered at the spot and attacked on them, only because they belong to schedule caste. In order to suppress them, these Rajputs caused them injuries. They raised hue and cry which attracted Ronki Ram, Shiran and other people of Village. The accused fled away from the spot while abusing and threatening to kill them on getting a chance. Accused also damaged motorcycles belonging to his family members which were parked at the spot. Hence the FIR (*supra*) was registered.

3. In consequence of the FIR (*supra*) and after completion of the investigation by the concerned police, final report under Section 173 Cr.P.C. was presented in the learned trial Court against co-accused but not against the present petitioners. The learned trial Court framed charges against the co-accused. After the examination-in-chief of PW-1 i.e. injured/complainant, the prosecution moved an application under Section 319 Cr.P.C. before the learned trial Court for summoning the petitioners as additional accused and the same was allowed vide impugned order dated 17.02.2021. Subsequently, charges



against the petitioners were framed. Hence, the present revision petition.

4. Learned counsel for the petitioners *inter alia* contends that the petitioners were not named in the FIR (*supra*) and the alleged incident had taken place on 13.03.2017. Learned counsel further submits that in the supplementary statement, no overt act or injury has been attributed to the petitioners and the only allegations are that petitioner No.1 was present at the place of occurrence, armed with a sword and petitioner No.2 was also present there armed with an iron rod. The jurisdictional police authorities, after a detailed investigation, have exonerated the petitioners and presented the final report under Section 173 Cr.P.C. against twelve persons, who were sent for trial by the investigating officer. Thereafter, the complainant appeared as PW-1 and an application for summoning the petitioners as additional accused was filed under Section 319 Cr.P.C. It is further contended that no new fact or evidence has come on record, which warrants the summoning of the petitioners as additional accused. The learned Court below has passed the impugned order in a mechanical manner. Even the basic ingredients for the offence under Section 3(x) of SC/ST Act are not present in the case in hand and any offending word used against the complainant cannot be taken as a ground for summoning the petitioners as additional accused. Learned counsel further submits that learned trial Court has passed the impugned order in a mechanical manner without appreciating the facts of the case whether it satisfies the test of more than *prima facie* case as laid down by the Constitutional Bench of the Hon'ble Supreme Court in ***Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623.***

5. *Per contra*, learned State counsel submits that it would be a matter of trial as to whether the petitioners can be held liable with the aid of Section



149 of Indian Penal Code or not and according to the case set up by the prosecution, the petitioners were alleged to have been present at the time of occurrence. He submits that the impugned order has been passed in accordance with law and due appreciation of the entire evidence on record and thus, no interference is warranted by this Court.

6. I have heard the learned counsel for the parties and perused the material available on record. It transpires that twelve persons have been placed in column No.1 of the final report filed under Section 173 Cr.P.C. to face trial and name of the petitioners is not mentioned in the FIR (*supra*). Even in the supplementary statement or the statement before the learned trial Court, no specific injury or overt act has been attributed to the petitioners.

7. Mere statement of the prosecutrix or complainant, which is 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, the 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 Court in ***Hardeep Singh's case*** (*supra*) has held that the power under Section 319 Cr.P.C is a discretionary and extraordinary power. It is to be exercised only on the basis of the material available before the Court during the 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. Speaking through Justice B.S. Chauhan, the following was observed :

"105. Power under Section 319 Cr.P.C. 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.

106. 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."

8. Subsequently, Hon'ble Supreme Court in the case of **Sagar Vs. State of Uttar Pradesh and another** Criminal Appeal No. 397 of 2022 (Arising out of SLP(Crl) No.7373 of 2021), referring to **Hardeep Singh** (supra) made the following observations:

"The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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."

9. Recently Hon'ble Supreme Court in case of **Juhru & Ors. Versus**



Karim & Anr. 2023 AIR (Supreme Court) 1160 observing the scope of section 319 Cr.P.C held that:

“It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima-facie case is sine quo 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 Cr.P.C., 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 is, 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.”

10. In view of the discussion made hereinabove, the present revision petition is allowed in the following terms: -

(i) The impugned order dated 17.02.2021 passed by learned Additional Sessions Judge, Ambala, vide which, the petitioners have been summoned as additional accused is hereby, set aside, along with all consequential proceedings.

(ii) Nothing observed herein shall be construed as a comment on the merits of the case at hand, thereby, causing prejudice to the case of the prosecution.

January 30, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No