



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

**CRM-9181-2025 in/and
CRM-M-10494-2025
Date of decision: 06.03.2025**

KASHMIR SINGH ALIAS KASHMEER SINGH

...PETITIONER

V/S

STATE OF HARYANA AND ANOTHER

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Sushil K. Verma, Advocate
for the applicant/petitioner.

HARPREET SINGH BRAR, J. (ORAL)

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This application has been filed under Section 528 BNSS, 2023 seeking pre-ponement of the main case from 21.07.2025 to an earlier date.

For the reasons stated in the application, the same is allowed.

Main case is taken on board today itself.

MAIN CASE

1. Prayer in the present petition filed under Section 528 BNSS, 2023 is for setting aside impugned order dated 23.01.2025 (Annexure P-7) passed by learned Sessions Judge, Sirsa, vide which, order dated 19.11.2024 (Annexure P-6) passed by learned Additional Chief Judicial Magistrate, Sirsa dismissing the application under Section 319 Cr.P.C., has been upheld.

2. In brief, the facts of prosecution case are that petitioner/complainant Kashmir Singh, who was also an injured, stated that on 19.09.2017 at about 1:00/1:30 P.M., he was taking rest in the room of his floor-mill. In the meantime, a jeep came there, from which, Mangi (respondent



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No.2 herein), Veeru, Laddi and Subhash alighted. They were armed with handle of *kassi* and entered in his room. First of all, respondent No.2-Mangi inflicted a blow by handle of *kassi* on his left elbow and 2-3 blows on his back. Thereafter, Veeru gave a blow of handle of *kassi* on his right wrist and 3-4 blows on his back. Laadi and Subhash inflicted blows by handles of *kassi* upon his shoulders and back. The complainant/petitioner raised alarm which attracted his daughter Manpreet Kaur and son Harpreet Singh and on seeing them the assailants fled away from the spot, in the jeep, along with their weapons. They threatened him to kill on getting a chance. 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 respondent No.2 as he was declared innocent during investigation. The learned trial Court framed charges against the co-accused. After the testimony of PW-1 i.e. petitioner/complainant, the prosecution moved an application under Section 319 Cr.P.C. before the learned trial Court for summoning respondent No.2 as additional accused, which was dismissed vide order dated 19.11.2024 (Annexure P-6). Aggrieved thereof, the petitioner filed a revision petition before learned Additional Sessions Judge, Sirsa, which was also dismissed vide order impugned order dated 23.01.2025. Aggrieved thereof, the petitioner has filed the present petition.

4. Learned counsel for the petitioner *inter alia* contends that a specific role has been attributed to respondent No.2 in the FIR (*supra*) itself. He further contends that there are specific injuries attributed to respondent



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No.2 i.e. a blow of handle of *kassi* on left elbow of petitioner and 2/3 blows on his back and the same were fully corroborated by the medical evidence. Learned counsel furthermore contends that both the Courts below have not considered the case of the petitioner, even after advertng to the factual matrix and refused to invoke the power under Section 319 Cr.P.C. He submits that the investigating agency has wrongly declared respondent No.2 as innocent and the petitioner while deposing as PW-1, has reiterated his specific allegations against respondent No.2. As such, in view of the deposition of the petitioner as PW-1, there is sufficient evidence available on record to summon respondent No.2 as an additional accused.

5. Having heard learned counsel for the petitioner and after appreciating the material available on record, this Court finds no force in the arguments advanced by learned counsel for the petitioner as the petitioner while appearing in the witness-box as PW-1, has merely reiterated the version of his earlier statement given by him before the police and the veracity of the allegations made by the petitioner was thoroughly investigated by the investigating agency. There is no fresh material or any other evidence on record, which would satisfy the principal as culled out by a Constitution Bench of Hon'ble Supreme Court in case titled ***Hardeep Singh Vs. State of Punjab, SC 2014(1) RCR (Criminal) 623***. In the case at hand, a perusal of the case material reveals that there is no credible and cogent evidence on record to establish that more than a *prima facie* case is made out against respondent No.2 to summon him as additional accused.



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6. Discussing the scope of Section 319 Cr.P.C., the Constitution Bench of Hon'ble Supreme Court in case titled ***Hardeep Singh*** (*supra*) has laid down that:

"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."

7. Similarly, the 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*) laid down that:

"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



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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."

8. 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.”

9. In view of the above discussion, this Court finds no reason to interfere with the above-mentioned impugned order dated 23.01.2025 passed by learned Sessions Judge, Sirsa. Hence, the present petition stands dismissed.

March 06, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

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