



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

132

**CRM-M-11366-2025
RESERVED ON: 08.04.2025
PRONOUNCED ON:02.07.2025**

JATINDER SINGH AND ORS.

.....PETITIONERS

Versus

STATE OF PUNJAB AND ANR

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. H.P.S. Ishar, Advocate
for the petitioners.

Mr. Jaspal Singh Guru, AAG, Punjab.

SANDEEP MOUDGIL, J

RELIEF SOUGHT

1. The petitioners have come to this Court invoking the jurisdiction under Section 528 of BNSS, 2023 to seek quashing of:-

(i) Criminal complaint No.COMI/02/2023-Narinder Singh vs. Jatinder Singh and others (Annexure P-2) dated 12.01.2023;

(ii) Summoning order dated 02.09.2024 passed by JMIC, Fatehgarh Sahib (Annexure P-3);

(iii) The order dated 05.01.2024 passed by the Sessions Judge, Fatehgarh Sahib vide which the revision petition preferred by the petitioners stands dismissed (Annexure P-5); and

(iv) the order dated 24.10.2024 (Annexure P-6) passed by JMIC, Fatehgarh Sahib whereby the complaint case has been committed to the Court of Sessions clubbing the same to be tried together with FIR No.72, dated 08.07.2022, under Section 307, 323, 324, 325, 506 and 34 IPC, (now Sections

109, 115(2), 118(1), 117(2), 351(2), 3(5) of BNS, 2023) Police Station Badali Alla Singh, District Fatehgarh Sahib which was lodged by the present petitioners against the complainant-respondent.

FACTUAL MATRIX

2. Briefly stated the facts of the present case could be culminated to say that an alleged incident took place on 07.07.2022 which the accusation that Narinder Singh-complainant along with his father Sh. Harwinder Singh was sowing the paddy crops in the fields at about 11:00 a.m. At that time, the petitioners-accused persons came there under the influence of liquor armed with danda in the hands of Jatinder Singh and Kahi being carried by Amninder Singh, who attacked the complainant and his father. The lalkara was allegedly raised by one Balwinder Singh that the complainant and his father should not be spared. It is further alleged that the petitioner-Jatinder Singh gave a danda blow towards the head of the complainant, which hit on his right shoulder and Amninder Singh caused blow with backside of Kahi upon the complainant injuring his right ankle whereas other accused persons caused multiple injuries on the person of the complainant. It is also the allegation that thereafter hurting the religious sentiments of complainant and his father, his turban was removed and thrown away and pulled the beard of his father. Again, a danda blow was alleged to have been given by Jatinder Singh on right side of the forehead of complainant's father and Kahi blow by Amninder Singh again on the father of the complainant hitting on his left hand. Subsequent danda blow by Jatinder Singh on both forearms of the complainant's father made him to fell down on the ground and then all the accused persons allegedly gave blows together with danda and Kahi on the back near the shoulder of complainant's father and upon other parts of the body. It was only after the alarm was raised

by the complainant and his father, number of persons gathered at the spot, who saved the complainant from the clutches of accused persons. Finally, all the accused persons-petitioners along with their respective weapons are started to have been fled away from the place of occurrence while advancing threat to kill the complainant and his father on the next occasion.

3. It is on the above said version the impugned complaint came to be lodged by respondents on 12.01.2023 before the Court of JMIC, Fatehgarh Sahib.

4. The JMIC, Fatehgarh Sahib issued summoning to the accused persons only under Section 323 and 506 IPC (now Sections 115(2), 351(2) of BNS 2023) read with Section 34 of Indian Penal Code (now Section 3(5) of BNS 2023) whereas it did not found sufficient reasons to summon them under Section 325, 295-A and 307 IPC (now Sections 117(2), 299, 109(1) of BNS 2023) while dismissing the complaint for these offences.

5. The petitioners preferred a criminal revision under Section 438(1) of BNSS, 2023 assailing the order of summoning which stands dismissed by the Court of Sessions Judge, Fatehgarh Sahib vide order dated 05.01.2024 (Annexure P-5).

6. In the intervening period when the revision petition was pending the JMIC, Fatehgarh Sahib has committed the complaint to the Court of Sessions vide its order dated 30.10.2024 (Annexure P-6) wherein the trial was already underway in FIR No.72, dated 08.07.2022, under Section 307, 323, 324, 325, 506 and 34 IPC (now Sections 109, 115(2), 118(1), 117(2), 351(2), 3(5) of BNS, 2023), Police Station Badali Alla Singh, District Fatehgarh Sahib.

7. It is at this stage the present petition came to be filed aggrieved of the above-stated round of litigation impugning the complaint, the summoning order passed therein, the dismissal order of the revision petition and the order of commitment for trial to the Court of Sessions.

CONTENTIONS OF THE PETITIONERS

8. Mr. HPS Ishar, learned Advocate on behalf of the petitioners would vehemently contend that the petitioners are the real victims and aggrieved persons of the incident dated 07.07.2022 wherein petitioners No.1 & 2 suffered head injuries which was declared grievous by the doctor and the said FIR No.72, dated 08.07.2022, under Section 307, 323, 324, 325, 506 and 34 IPC (now Sections 109, 115(2), 118(1), 117(2), 351(2), 3(5) of BNS, 2023), Police Station Badali Alla Singh, District Fatehgarh Sahib, which was on the very next day of the occurrence.

9. He would submit that the instant complaint tantamount to an abuse of process of law which is only a counter blast to an above said FIR as it also suffers from inordinate delay by six months from the date of alleged occurrence. Mr. Ishar, learned Advocate also drew attention of this Court to the order dated 02.09.2024 (Annexure P-3) passed by JMIC, Fatehgarh Sahib to argue that the summoning order has been passed mechanically as a safeguard by the JMIC while ordering the summoning under section 323, 506 and 34 IPC (now Sections 115(2), 351(2) & 3(5) of BNS) whereas it did not found any material or evidence to corroborate the allegations of the complainant against the present petitioners for commissioning of offence under Section 307, 325 and 295-A of IPC (now Sections 109(1), 117(2), 299 of BNS, 2023), who dismissed the said complaint for said offences.

10. On the strength of such impugned order itself, Mr. Ishar, learned Advocate argues that in fact no offence is made out having no evidence at all against the present petitioners even to make out a case for offence under Sections 323, 506 read with Section 34 IPC (now Sections 115(2), 351(2) & 3(5) of BNS) once the trial Court could not find any injury on the person of the complainant and his father to summon and try the petitioners under Section 307, 325, 295-A IPC, (now Sections 109(1), 117(2), 299 of BNS, 2023) which should have been appreciated by the trial Court to hold that the version of the complainant in itself is a bundle of lies who also fails to explain the delay of almost 06 months while lodging the instant complaint.

11. It is also asserted on behalf of the petitioners that the instant complaint is preferred with ulterior motive to cause delay in the trial proceedings which were at the stage of defence evidence in the aforesaid FIR. The order of JMIC committing the said complaint for trial dated 24.10.2024 (Annexure P-6) is absolutely illegal and against the well-established procedure laid in the Criminal Procedure Code. The stage of trial ought to have been considered wherein the entire prosecution evidence stands concluded and statement under Section 313 Cr.P.C. (now Section 351 BNSS) was recorded on 16.03.2024 in the said trial case in above-stated FIR before the Court of Sessions as has been argued on behalf of the petitioners. The counsel would further submit that in the instant complaint, as per the procedure under Section 244 Cr.P.C. (now Section 267 of BNSS, 2023), the trial Court is required to take prosecution evidence as pre-charge evidence after appearance of the accused persons and thereafter if the Court comes to the conclusion that no case is made out against the accused persons, which, if un-rebutted, the

Magistrate shall discharge them under Section 245 Cr.P.C. (now Section 268 of BNSS, 2023).

12. No other argument was raised on behalf of the petitioners.

DISCUSSION

13. Before proceeding with the matter, it is apposite to reproduce what has been contemplated in Section 319 Cr.P.C (now Section 358 of BNSS 2023) which reads as under:-

“....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.”

14. The Constitution Bench of the Supreme Court in ***Hardeep Singh vs. State of Punjab, (2014) 3 SCC 92***, while illuminating the scope of Section 319 Cr.PC (now Section 358 of BNSS), laid down that:-

“57. Thus, the application of the provisions of Section 319 Cr.PC (now Section 358 of BNSS), at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 Cr.PC (now Section 358 of BNSS) can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in Column 2 of the chargesheet or any other person who might be an accomplice.” xxxxxxxxxxxxxx

“105. Power under Section 319 Cr.PC (now Section 358 of BNSS) 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319 CrPC](#). In [Section 319 Cr.PC](#) 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 CrPC](#) to form any opinion as to the guilt of the accused.”

15. In **Hardeep Singh** (supra), the Supreme Court eloquently held that the word “evidence” in [Section 319 Cr.PC](#) (now Section 358 of BNSS 2023) has to be broadly understood and thus materials which have come before the Court, in course of enquiry, can be used for (i) corroboration of evidence recorded by Court after commencement of trial; (ii) for exercise of power under [Section 319 Cr.P.C.](#) (now Section 358 of BNSS 2023); and (iii) also to add an accused whose name is shown in column no.2 of the charge-sheet.

16. In **Sukhpal Singh Khaira vs. The State of Punjab, (2023) 1 SCC 289**, the Supreme Court succinctly explained the powers bestowed on the

Court under [Section 319](#) CrPC (now Section 358 of BNSS 2023) and ruled that:-

“15. At the outset, having noted the 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.”

17. The Constitution Bench refreshed the guidelines which, the competent court, must follow while exercising powers under [Section 319](#) CrPC (now Section 358 of BNSS 2023) and further ruled that:-

(i) if the competent court finds evidence or if application under [Section 319](#) Cr.P.C. (now Section 358 of BNSS) is filed, regarding involvement of any other person in committing the offence based on evidence “recorded at any stage in the trial” before passing of the order on acquittal or sentence, it shall pause the trial at that stage and the Court shall proceed to decide the fate of the application under [Section 319](#) Cr.P.C. (now Section 358 of BNSS);

(ii) if the Court decides to summon an accused under Section 319 Cr.P.C. (now Section 358 of BNSS), such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and

(iii) if the power under [Section 319](#) Cr.P.C. (now Section 358 of BNSS) is not invoked or exercised in the main trial till its

conclusion and if there is a split up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated trial).

18. After analyzing the *dicta* of the Constitution Benches in **Hardeep Singh** (supra) and **Sukhpal Singh Khaira** (supra), the Supreme Court in **Juhru v. Karim, 2023 SCC OnLine SC 171**, unequivocally held that:-

“17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under [Section 319](#) Cr.P.C. (now Section 358 of BNSS) is not to be exercised routinely and the existence of more than a prima facie case is sine qua 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., (now Section 358 of BNSS) 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. (now Section 358 Cr.P.C.) ought not to be invoked.”

19. It, thus, comes out that the power of summoning under [Section 319](#) CrPC (now Section 358 of BNSS 2023) is not to be exercised in a routine manner and the existence of more than a *prima facie* case is *sine qua non* to summon an additional accused and with a view to prevent the frequent misuse of power to summon, ordinarily, the Court should also discourage itself from summoning the person, at the very threshold of the trial, and must evaluate

such material which has to be testified vis-à-vis the material against the accused who is already facing trial. In the absence of any credible evidence, the power under [Section 319](#) CrPC, (now Section 358 of BNSS 2023) ought not to be invoked.

20. Having heard learned counsel for the petitioners and after going through the record placed before this Court, the petitioners have claimed to be the victims and aggrieved persons of the incident dated 07.07.2022, the occurrence of which is an admitted fact. It is also material on record that the aforesaid FIR was lodged at the first instance by the petitioners on account of suffering head injuries which were declared grievous by the doctors.

21. The complaint impugned by the petitioners was lodged at the behest of respondents after a delay of 06 months wherein summoning order has been passed for offence under Sections 323, 506, 34 IPC (now Sections 115(2), 351(2), 3(5) of BNS, 2023) though it was dismissed for offences under Sections 307, 325 and 295-A IPC (now Sections 109(1), 117(2), 299 of BNS, 2023).

22. The said complaint along with the summoning order and clubbing of the same with the trial in the aforesaid FIR has been assailed before this Court on the ground of inordinate delay of 06 months for filing of the impugned complaint dated 12.01.2023 (Annexure P-2) with all subsequent proceedings held so far. The said complaint is also challenged as a counter-blast to the said FIR which was lodged by the petitioners immediately after the occurrence.

23. Before proceeding further, a glance at the factual aspects of the complaint against the present petitioners need to be looked into in all fairness, wherein it is alleged that the accused persons-petitioners under the influence

of liquor came to the fields at around 11:00 am when the complainant along with his father Harwinder Singh were sowing the paddy crop and irrigating the field. The petitioner Jatinder Singh was carrying a danda whereas Amninder was armed with Kahi to attack the complainant and his father after accused Balwinder Singh gave lalkara shouting that the complainant and his father should not be spared. It is the case set up by the complainant-respondent that Jatinder Singh gave a danda blow on the head of the complainant with an intention to kill which fortunately landed on the right shoulder of the complainant Narinder Singh whereas petitioner Amninder Singh-accused is attributed with injury caused on right ankle of the complainant with back side of kahi. Accused Jatinder Singh gave another danda blow on the right side of forehead of the complainant's father followed by kahi blow by Amninder Singh which hurt his left hand. The act of causing injury continued according to the complainant as petitioner-accused namely Jatinder Singh gave danda blows on both forearms of the complainant's father due to which he fell down on the ground and all the accused persons collectively gave beatings to him on various parts of the body. It was only after cries were raised "martamarta". Number of persons gathered at the spot who saved complainant and his father, upon which, accused persons allegedly ran away from the spot along with their respective weapons advancing threat to kill them on next occasion.

24. It is also the version of the complainant-respondent that he got his father medically examined at CHC, Khera, where from he was referred to Civil Hospital, Fatehgarh Sahib on 08.07.2022, the next day of the occurrence. He along with the complainant was again got medically examined. The delay for registering the instant complaint has been explained with the support of the fact that the petitioners got registered an FIR on 08.07.2022 against the

complainant-respondent and his father, wherein they both were arrested on 16.07.2022. They were also got medically examined on an application moved by mother of the complainant before the Illaqa Magistrate, Fatehgarh Sahib and were given treatment from Civil Hospital, Nabha while in judicial custody. Since, various complaints were allegedly made before the Police authorities even by the mother of the complainant and the same were not being addressed by the police authorities, the impugned complaint came to be lodged.

25. It is under this backdrop of circumstances, the JMIC, Fatehgarh Sahib after examining the preliminary evidence though dismissed the complaint vide order dated 02.09.2024 qua the offences under Sections 325, 295-A and 307 IPC (now Sections 117(2), 299, 109(1), of BNS, 2023) but summoned the present petitioners as accused for committing the offence under Section 323, 506 and 34 of IPC (now Sections 115(2), 351(2), 3(5) of BNS, 2023) of which, the petitioners are aggrieved.

26. Perusal of the record would demonstrate that complainant Narinder Singh examined himself as CW-1 along with his father Harwinder Singh as CW-2 reiterating the contents of the complaint and the allegations alleged therein. The support to the said version has been made through the examination of Doctor Vijay Kumar-CW3 who treated the father of the complainant categorically deposing that the weapon used with respect to the injuries on the person of Harwinder Singh is blunt and the injuries are simple in nature. The record keeper of Civil Hospital, Fatehgarh Sahib namely Parminder Singh was also examined as CW-4 who attested the OPD Slips of the complainant as CW-4/A. Parminder Singh also stated that the complainant was medically examined by the doctor and was given medicine

with the advice to get X-ray, who also produced OPD Slip as PW4/B which is a computer generated and cannot be doubted. The version of complainant i.e. the mother has submitted complaint to the police authorities was also got corroborated through ASI Baldev Singh No.343/FGS, posted at complaint Branch, office of Senior Superintendent of Police, Fatehgarh Sahib as witness PW-5, who produced the record qua the complaint No.1402/peshi dated 20.07.2022 moved by complainant's mother namely Baljit Kaur. The fracture has been detected on the right shoulder of the complainant's father as per X-ray films Ex. CW6/A. Dr. Vinay Kumar-CW3 is on record to say that Harwinder Singh-father of the complainant was medically examined by him at around 01:45 pm. on 07.07.2022 i.e. the date of alleged incident itself with the following injuries present on his person:-

1. Red abrasion of size 5 X 0.5 cm, linear in shape, over right cheek.
2. Pain over right parieto temporal region of head. No external mark of injury seen. Advised surgery opinion.
3. Pain over left hand. Mild swelling was present. Advised ortho opinion.
4. Pain + swelling over left forearm, near to wrist, Advised ortho opinion.
5. Multiple red abrasions of size ranging from 5 x 1 cm to 4 x 1 cm, linear shaped over upper back. Advised ortho opinion.
6. Red abrasion 1 x 0.5 cm over right forearm. Pain and swelling was present. Advised ortho opinion.

He also proved computer generated medico legal report, pictorial diagram and his handwritten MLR as Ex. CW3/A, Ex. CW3/B and Ex. CW3/C.

ANALYSIS

27. After examination of the material on record, it is evident that according to Medico Legal Report, 06 injuries have been verified by Dr. Vinay Kumar-CW3 on the person of Harwinder Singh, father of the complainant and there is sufficient support through the evidence in the form of X-ray film and OPD Slip which are computer generated with the doctors opinion that there is a fracture on the right shoulder of Harwinder Singh, though the same is opined to be recovering and may be the old injury but the petitioners have failed to show any material evidence to strengthen the case of such injuries to be that of self-inflicted. It is only a bald assertion made herein in the instant petition and there is no attempt of raising such argument before the revisional Court as well which was only an afterthought to cover up the flaw.

28. I am of the considered view that there is sufficient reason to summon the petitioners for offences under Section 323 and 506 (now Sections 115(2), 351(2) of BNS, 2023) read with Section 34 IPC (now Section 3(5) of BNS, 2023) since all the three petitioners have the common intention and specific allegations are present qua them in the complaint as well as the complaint submitted to the police authorities even by mother of the complainant namely Baljit Kaur, which was also proved on record by CW-5 ASI Baldev Singh.

29. The fact of medical treatment of the complainant and his father is also evident from the jail record wherein they were given treatment in judicial custody.

30. According to the above witnesses and the documents produced before the JMJC, Fatehgarh Sahib, a prima facie case of causing injuries on the person of the complainant and his father is quite evident which need to be

tested in the trial after clinical examination of the evidence likely to be produced by both the parties to the dispute.

31. As far as the challenge to order dated 24.10.2024 (Annexure P-6) is concerned, the stress has been laid to the stage of trial proceedings in the FIR No.72, dated 08.07.2022, under Section 307, 323, 324, 325, 506 and 34 IPC (now Sections 109, 115(2), 118(1), 117(2), 351(2), 3(5) of BNS, 2023) Police Station Badali Alla Singh, District Fatehgarh Sahib, wherein prosecution evidence is complete and statement of the accused under Section 313 Cr.P.C. (now Section 351 BNSS, 2023) stands recorded, the argument carries weight that committal of the present complaint to the Court of Sessions clubbing the same with the aforesaid FIR would not only be unjust but will cause undue delay in the completion of trial therein.

32. The fact can also be not lost sight that the instant complaint with the counter allegations is to be tested separately which would be justifiable to demonstrate that justice has been done after providing ample opportunity to lead exhaustive evidence to the parties whereas in the trial proceedings before the Sessions Court in the above-stated FIR are almost towards the conclusion and the evidence is open and exposed qua the allegations involved in that FIR amongst the parties.

33. Hence, this prayer deserves to be accepted for the petitioners.

CONCLUSION

34. I am of the considered opinion after having tested the documentary evidence and the submissions made on behalf of the petitioners that the order dated 02.09.2024 (Annexure P-3), 05.01.2024 (Annexure P-5) are just and legal, which do not suffer from any illegality of infirmity. The present petition is dismissed qua the prayer for quashing of complaint dated

12.01.2023 (Annexure P-2), summoning order dated 02.09.2024 (Annexure P-3) and the revisional Court order dated 05.01.2024 (Annexure P-5).

35. However, the last prayer made in the petition qua the wrong clubbing of the present complaint with the trial proceedings in the FIR No.72, dated 08.07.2022, under Section 307, 323, 324, 325, 506 and 34 IPC (now Sections 109, 115(2), 118(1), 117(2), 351(2), 3(5) of BNS, 2023), Police Station Badali Alla Singh, District Fatehgarh Sahib is concerned, the same is hereby accepted. The order dated 24.10.2024 (Annexure P-6) is hereby quashed qua the petitioners. The JMIC, Fatehgarh Sahib shall proceed with the trial in the instant complaint separately.

36. The petition is partly allowed in the aforesaid terms.

(SANDEEP MOUDGIL)
JUDGE

02.07.2025

Poonam Negi/Meenu

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| 1. Whether speaking/ reasoned : | Yes /No |
| 2. Whether reportable : | Yes /No |