



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

CRR-656-2025

Date of decision: 10.03.2025

ANIL KUMAR

...PETITIONER

V/S

STATE OF HARYANA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Ajit Sihag, Advocate
for the petitioner.

HARPREET SINGH BRAR, J. (ORAL)

1. Prayer in the present petition filed under Section 528 BNSS, 2023 is for setting aside impugned order dated 15.01.2025 passed by learned Sessions Judge, Bhiwani, vide which, application filed under Section 358 BNSS, 2023 (Erstwhile Section 319 Cr.P.C.) dated 24.09.2024 for summoning respondent Nos.2 to 5, as additional accused was dismissed.

2. In brief, the facts of prosecution case are that on 22.02.2024, petitioner/complainant Anil recorded his statement before the police to the effect that on 21.02.2024 at around 3:30 PM, his son went to market to buy some vegetables and fruits but did not return. The complainant searched his son at many places but he was not found. Thereafter, the complainant dialed No.112 and filed a missing report of his son. When the complainant and his family along with police, saw CCTV footage in the village and nearby area, Hariom son of Bajrang was seen taking his son on his bike CD Deluxe Hero bearing No.HR-16R-0631 on Baliali road and on the next morning i.e. on 22.02.2024, dead body of son of the complainant was found buried into the field of



Hariom. The complainant stated that due to his enmity with Hariom, he and his family murdered the son of the complainant and buried the dead body in the field. 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 to 5 as they were declared innocent during investigation. The learned trial Court framed charges against the co-accused. After the testimony of PW-6 i.e. petitioner/complainant, the prosecution moved an application under Section 358 BNSS, 2023 (erstwhile Section 319 Cr.P.C.) before the learned trial Court for summoning respondent Nos.2 to 5 as additional accused, which was dismissed vide order dated 15.01.2025. Aggrieved thereof, the petitioner filed the instant revision petition.

4. Learned counsel for the petitioner *inter alia* contends that the petitioner has specifically accused the private respondents and assigned specific roles for causing injuries to the deceased as well as giving threats to the petitioner. The jurisdictional police authorities have declared them innocent persons and petitioner has also moved a representation dated 22.02.2024 (Annexure P-3) to Director General of Police, Rohtak regarding investigation by the higher rank officer. Admittedly, the names of the proposed accused have been mentioned in the FIR (*supra*) as well as in the statement of the petitioner, recorded under Section 161 Cr.P.C. and the entire allegations have been reiterated when the petitioner appeared as PW-6 before the learned trial Court. As such, there is sufficient evidence which clearly indicates that the private respondents have participated in the alleged incident



and have caused injuries to the deceased. Thus, they are liable to be summoned as accused to face trial in the FIR (*supra*) and the learned trial Court ought to have exercised the power under Section 358 BNSS, 2023 (erstwhile Section 319 Cr.P.C.) and summoned them as 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 in the CCTV footage, main accused Hari Om was last seen in the company of the deceased son of the petitioner and even the motive provided by the petitioner was attributed to Hari Om alone. Further, the dead body was also recovered from the agricultural fields of Hari Om and the matter was thoroughly investigated by the jurisdictional police authorities. Moreover, during investigation, the private respondents were subjected to Polygraph Test, however, nothing indicating their complicity was detected during the Polygraph Test. Furthermore, except the statement of the petitioner, there is no other evidence, 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 Nos.2 to 5, to summon them as additional accused.

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 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 15.01.2025 passed by learned Sessions Judge, Bhiwani. Hence, the present petition stands dismissed.

March 10, 2025
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(HARPREET SINGH BRAR)
JUDGE

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