

2025:PHHC:087868



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

**CRM-M-17215-2025 (O&M)
Date of Decision:11.07.2025**

Dinesh

...Petitioner

Versus

Krishan @ Bittu and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. S.K. Chauhan, Advocate
for the petitioner(s).

RAJESH BHARDWAJ, J. (ORAL)

CRM-12984-2025

Application for exemption is allowed as prayed for.

CRM-17994-2025

Application under Section 528 of BNSS has been filed for placing on record copy of FIR No.934 dated 05.12.2019, Police Station City Bhiwani as Annexure P-5, which is taken on record subject to all just exceptions.

Main case

1. Instant petition has been filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 seeking quashing of impugned order dated 17.12.2024 (Annexure P-2) passed by the Ld. Additional Sessions Judge, Bhiwani whereby revision petition filed by the petitioner against order dated 15.02.2023 (Annexure P-4) passed by the Ld. JMIC, Bhiwani in application under Section 319 Cr.PC, has been dismissed.

2. Succinctly, facts of the case are that the petitioner before this

Court is the complainant, who lodged FIR No.934 dated 05.12.2019 under Sections 147/148/323/341/325/506 of IPC, 1860 registered at Police Station City Bhiwani, District Bhiwani. It has been alleged by the petitioner-complainant that on 03.12.2019 he along with Joni Jangra came to a marriage function. In the night there took a quarrel between Joni, Sugan and Bittu. Bittu was having rod in his hand and 6-7 boys along with him were having iron rods with them. One of the boys was having a screw-driver. The boy armed with screw-driver assaulted him with the screw-driver on his back and neck. Bittu gave iron rod blow on his head whereas the remaining boys assaulted him. On raising alarm the person gathered around to rescue him and hence, the assailants escaped from there. He was shifted to PGIMS, Rohtak. The request was made to take the legal action against the accused. On registration of the FIR, the investigation commenced. On completion of investigation, challan was presented against the accused. The petitioner filed the application under Section 319 Cr.PC for summoning respondent Nos.1 to 8. However, on hearing the learned trial Court declined the same vide its order dated 15.02.2023 (Annexure P-4). However, on hearing both the sides, revision petition was declined by the revisional Court vide impugned order dated 17.12.2024 (Annexure P-2) and thus, upheld the order passed by the JMIC. Thus, both the Courts have given concurrent view on declining the application filed by the petitioner under Section 319 Cr.PC.

3. Learned counsel for the petitioner vehemently contended that both the Courts have fallen in error in declining the petition under Section 319 Cr.PC. He submits that during the investigation the co-accused had made a disclosure statement about the respondents Deepak, Sonu and Yogesh @ Lala but they were not charge-sheeted being influential person. He submits that the investigating agency have not disclosed any reason for not charge-sheeting

these accused respondents. He submits that the view taken by the Courts below is unsustainable in view of the law settled by the Hon'ble Supreme Court and thus, both the impugned orders being illegal and unjust deserve to be set aside.

4. I have heard the learned counsel for the petitioner and perused the record. Admittedly, the petitioner before this Court is the complainant at whose behest the FIR had been lodged. The investigating agency had investigated the allegations made by the complainant, however no material was found to substantiate the allegations against the proposed accused, who are sought to be summoned in the application filed under Section 319 Cr.PC. The appreciation of the medical record proved that the complainant suffered 03 injuries out of which injury No.2 was grievous in nature whereas injury Nos.1 and 3 were simple in nature. In the FIR, complainant made allegations against 08 assailants, however, as per MLR injuries were found to be only 03. The allegations made by the complainant could not be substantiated from the investigation and thus, the respondents sought to be summoned were declared innocent during the investigation. The revisional Court re-appreciated the view taken by the Ld. JMIC, Bhiwani and found no infirmity in the same.

5. To understand the controversy in hand, the statutory provisions of Section 319 Cr.P.C. is necessary to be considered, which reproduced 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 the witnesses re-heard;

(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.”

6. For invoking the power under Section 319 Cr.P.C., Hon'ble the Supreme Court in ***Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623*** has held as under:-

“98. 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.

99. 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. It has been held by the Hon'ble Supreme Court that summoning under Section 319 Cr.P.C. is an extraordinary power which cannot be used in a cavalier manner and the same has to be used sparingly. In all its humility, there is no dispute regarding the judgment relied upon by counsel for the petitioner. However, in the facts and circumstances of the same, the same is distinguishable. As per the judgment relied upon by the petitioner, Hon'ble the Supreme Court had laid down the guidelines for invoking the power under Section 319 Cr.P.C. There is no dispute regarding the power of jurisdiction of Court invoking its powers under Section 319 Cr.P.C. however, the same is subject to the fulfillment of the requisite parameters which the petitioner has failed to qualify.

8. Thus, weighing the facts and circumstances of the case on the anvil of the law settled by the Hon'ble Supreme Court in ***Hardeep Singh*** case (supra), this Court finds that the view taken by the learned Additional Sessions Judge, Bhiwani vide order dated 17.12.2024 (Annexure P-2) suffers from no infirmity and hence, the petition being devoid of any merits is hereby dismissed. Pending application, if any also stands dismissed. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

11.07.2025

Parveen kumar

(RAJESH BHARDWAJ)
JUDGE

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