



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

201

CRR-107-2012

Date of decision: 25th March, 2025

Harwinder Singh

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Anupam Bhardwaj, Advocate for the petitioner.

Ms. Sakshi Bakshi, Assistant Advocate General, Punjab.

Mr. Ashish Aggarwal, Advocate for respondent No.2.

MANISHA BATRA, J (ORAL):-

The instant revision petition has been filed by the petitioner challenging the order dated 12.12.2011 as passed by the Court of learned Additional Sessions Judge, Amritsar, in case arising out of FIR No. 14 dated 01.03.2011 registered under Sections 307, 328 read with Section 34 of IPC at Police Station Mehta, whereby an application filed under Section 319 of Cr.P.C. by the petitioner-complainant had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the allegations that on 26.02.2011, at about 07:00 PM, the petitioner was going back to his village on his bike when the co-accused Bikramjit Singh, Nirvair Singh along with the proposed accused Pargat Singh were found standing on the way. They stopped the petitioner and asked him to give some tools from



his motor bike as their motorcycle had broken down. While the petitioner was trying to take out tool from his vehicle, the proposed accused caught hold of him from backside, whereas accused Bikramjit Singh caught hold of his neck and accused Nirvair Singh threw a jug containing acid on the face of the petitioner. The petitioner hit the jug with his hands to save himself and some of the acid had fallen on accused Nirvair Singh and Bikramjit Singh. The rescue alarm raised by him, attracted his brother Narinder at the spot, who rushed towards him and then the assailants fled from the spot. He was taken to hospital. While alleging that the accused Nirvair Singh and Bikramjit Singh suspected that the petitioner-complainant was having illicit relationship with their sister and were offended due to that fact, he prayed for taking action against them and the proposed accused i.e. respondent No.2. Initially, a case under Section 328 read with Section 34 of IPC was registered. Subsequently, offence under Section 307 of IPC was also added on receipt of opinion of the doctor that the petitioner had attained permanent disability, as he had totally lost his vision of both eyes.

3. As per the allegations, during the course of investigation, respondent No.2 was exonerated. His name was kept in column No.2 of the challan report and challan was presented against the co-accused Nirvair Singh and Bikramjit Singh, after completion of usual formalities of investigation qua them. The co-accused were charge-sheeted for commission of offence punishable under Sections 307 and 328 read with Section 34 of IPC. During trial, the petitioner appeared into the witness box as PW-1 and recorded his sworn deposition. Thereafter, an application was moved by the prosecution under Section 319 of Cr.P.C. for summoning the proposed



accused i.e. respondent No.2 as additional accused. This application was dismissed by the learned trial Court and feeling aggrieved from the said order, this petition has been filed.

4. It is argued by learned counsel for the petitioner that while passing the impugned order, the learned trial Court did not appreciate the fact that respondent No.2, who is sought to be summoned as additional accused was not only named specifically in the FIR but even in his sworn deposition, the petitioner had specifically named him along with the specific role played by him. It is submitted that the learned trial Court ought to have exercised the powers under Section 319 of Cr.P.C. and should have summoned respondent No.2 as additional accused and it committed a grave error in not doing so. It is argued that in the unfortunate incident having taken place with the petitioner, he had lost vision of both of his eyes. His statement inspired full confidence and there was no reason for the trial Court to disbelieve the same. There was overwhelming evidence in the form of his testimony to prove the complicity of respondent No.2 in the commission of offences under Sections 328 and 307 of IPC. It is therefore, argued that the impugned order is not sustainable, is liable to be set aside, and the petition deserves to be accepted and respondent No.2 is liable to be summoned as additional accused and to face trial along with accused already arraigned.

5. Learned State counsel has not contested the petition.

6. Learned counsel for respondent No.2, on the other hand has vehemently argued that after conducting thorough investigation in the matter, the investigating agency had exonerated him as no incriminating material could be found against him and he was found to be innocent. It is



submitted that except the bare statement of the petitioner, which is reiteration of the allegations in the complaint, there is no further material/evidence on record and therefore, the learned trial Court had rightly refused to summon him as an accused. The impugned order is well reasoned and does not warrant any interference. With these broad submissions, it is urged that the petition is devoid of any merits and is liable to be dismissed.

7. It is relevant to mention here that since the status of the trial qua the co-accused was not clear therefore, report of the trial Court had been called and as per the report, received while letter No. 479 dated 17.12.2024 from the trial Court i.e. Court of learned Additional Sessions Judge, Amritsar, the co-accused Bikramjit Singh and Nirvair Singh absconded during trial. Ultimately proclamation proceedings were initiated against them and they were declared as proclaimed offenders vide order dated 27.03.2023. The matter was ordered to be adjourned as state *sine die* and file had been ordered to be consigned to record.

8. At the outset, it would be proper to refer to the provisions of Section 319 of the Cr.P.C. which read 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 witnesses reheard;

(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."

9. Having noted the above-mentioned 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. The issue relating to the powers to be exercised under Section 319 of Cr.P.C. had arisen for detailed consideration in *Hardeep Singh v. State of Punjab, (2014) 3 SCC 92*, wherein the scope, procedure and the stage at which such power was to be



exercised, was considered and summarized. It was observed by Hon'ble Supreme Court that the power under Section 319 Cr.P.C. is discretionary and an extraordinary power. It has 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 material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than *prima facie* case as has been established 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 of Cr.P.C.

10. The legal position on the scope and ambit of powers of the Court under Section 319 of Cr.P.C. has also been summarized by Hon'ble Apex Court in the case cited as ***Manjeet Singh v. State of Haryana and others, (2021) 18 Supreme Court Cases 321***, wherein it was observed as under:-

“(i) That while exercising the powers under section 319 CrPC and to summon the persons not charge-sheeted, the entire effort is not to



allow the real perpetrator of an offence to get away unpunished.

(ii) For the empowerment of the courts to ensure that the criminal administration of justice works properly.

(iii) The law has been properly codified and modified by the legislature under CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law.

(iv) To discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished.

(v) Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial.

(vi) Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it.

(vii) The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency.

(viii) Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial.

(ix) The power under section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion.



(x) *The court can exercise the power under section 319 CrPC only after the trial proceeds and commences with the recording of the evidence.*

(xi) *The word "evidence" in section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents.*

(xii) *It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section 319 CrPC is to be exercised and not on the basis of material collected during the investigation.*

(xiii) *If the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section 319 CrPC and can proceed against such other person(s).*

(xiv) *That the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under section 319 CrPC can be exercised.*

(xv) *That power under section 319 CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not to wait till the said evidence is tested on cross-examination.*

(xvi) *Even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses).*

(xvii) *While exercising the powers under section 319 CrPC the Court is not required and/or justified in appreciating the*



deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.”

11. In view of the ratio of law as laid down in the above cited authorities, it is apparent that Section 319 of Cr.P.C. is an enabling provision empowering a Court to take appropriate steps for proceeding against any person not being an accused for having committed the offence under trial. This provision allows a Court to proceed against any person, who is not an accused in a case before it. A person against whom summons are issued or sought to be issued in exercise of such powers, has to necessarily not be an accused already facing trial. He can either be a person named in column No.2 of the charge-sheet filed under Section 173 of Cr.P.C. or a person whose name has been disclosed and any material before the Court i.e. to be considered for the purpose of trying the offence, but not investigated. He has to be a person whose complicity may be indicated and connected with the commission of the offence. The Court can exercise power under Section 319 of Cr.P.C. only after the trial proceeds and commences with the recording of evidence. What is essential for the purpose of this Section is that there should appear some evidence against a person not proceeded against. The stage of proceedings is irrelevant. The purpose of this Section is to do complete justice and to ensure that persons, who ought to have been tried as well are also tried. The word ‘evidence’ in Section 319 of Cr.P.C. means only such evidence as is made before the Court, in relation to the statements, and as produced before the Court, in relation to the documents. It is only such evidence that can be taken into account by the Magistrate or the Court to decide whether the power under Section 319 of Cr.P.C. is to be exercised



or not.

12. All that is required for exercise of power under this Section is that it must appear to the Court that some other person, who is also not facing trial may also have been involved in the offence. The pre-requisite for the exercise of this power is similar to be *prima facie* view which the Magistrate must come to in order to check cognizance of the offence. No straight jacket formula can, however, be laid with respect to the conditions for arriving at such opinion and the trial Court, if convinced even on the basis of evidence appearing in examination-in-chief, can exercise the power under Section 319 of Cr.P.C. and can proceed against such person. The test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In ***S. Mohammed Ispahani Vs. Yogendra Chandak (2017) 16 SCC 226***, the Hon'ble Supreme Court had observed that when a person is named in the FIR by the complainant but police after investigation, finds no role of that particular person and files the charge sheet without implicating him, the Court is not powerless and at the stage of summoning, if the trial Court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so.

13. On applying the ratio of law as laid down in the above cited authorities and discussed above to the facts of the case in hand, I am of the considered opinion that the learned trial Court has erred in dismissing the application filed under Section 319 of Cr.P.C. by the petitioner and by refusing to summon to respondent No.2 to face trial as additional accused



along with the accused already arraigned. It is required to be noted that respondent No.2 was specifically named in the FIR with specific role attributed to him and it was specifically alleged that he had caught hold of the petitioner from the backside whereas, the co-accused Nirvair Singh had thrown acid on the petitioner and co-accused Bikramjit Singh had caught hold of his neck. Despite the above specific allegations, when the charge sheet/final report was filed, only co-accused were charge-sheeted and the name of respondent No.2 was kept in column No.2. On a perusal of the challan report, it is revealed that no specific reason for exonerating respondent No.2 has been given. In his examination-in-chief, the petitioner specifically named the proposed accused i.e. respondent No.2. His evidence being evidence of the victim itself has greater evidentiary value and in my considered opinion unless compelling reasons existed, his statement was not to be discarded lightly. While passing the impugned order, the only reasoning given by the learned trial Court is that there is no corroboration to the statement of the petitioner for the time being and mere catching hold of the complainant was not a sufficient ground to summon the proposed accused. This reasoning is not sustainable at all. The learned trial Court lost sight of the fact that the allegations against respondent No.2 and the co-accused right from the very beginning were same. While dismissing the application, the learned trial Court has failed to exercise the jurisdiction vested in it in a proper manner. The evidence produced on record in the form of testimony of the petitioner was *prima facie* sufficient to prove to show the complicity of respondent No.2 in the commission of the same offences for which the co-accused have been booked, challaned and charge-sheeted.



14. In view of the discussion as made and for the reasons stated above, the impugned order dismissing the application under Section 319 of Cr.P.C. submitted by the petitioner to summon respondent No.2 as additional accused is unsustainable and is liable to be quashed and set aside. The same is accordingly set aside. Consequently, the petition is allowed and the learned trial Court is directed to summon respondent No.2 as additional accused to face trial in case arising out of FIR No. 14 dated 01.03.2011 at Police Station Mehta for the offences punishable under Sections 307 and 328 read with Section 34 of IPC. Since, the co-accused declared proclaimed person, the learned trial Court shall proceed as against the petitioner only.

15. It is, however, specifically observed that the observations made hereinabove are only *prima facie* for the purpose of exercising the powers under Section 319 of Cr.P.C. and the learned trial Court will decide and dispose of the trial in accordance with law on itself on merits and on the basis of merits laid before it.

[MANISHA BATRA]
JUDGE

25th March, 2025

Parveen Sharma

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