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

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**CRR No.695 of 2017 (O&M)
Date of Decision: 15.02.2025**

Javed and others

... Petitioners

Versus

State of Haryana and another

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Rajesh Lamba, Advocate,
for the petitioners.

Mr. Neeraj Poswal, AAG, Haryana,
for the respondent-State.

Mr. Jamshed Ahmed, Advocate,
for respondent No.2.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed challenging the order dated 11.01.2017 passed by the Court of learned Additional Sessions Judge, Nuh in case arising out of FIR No.536 dated 11.12.2014 registered under Sections 285, 323, 356, 379 and 506 read with Section 34 of IPC and Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (For short "SC&ST Act") at Police Station Punhana, District Mewat, whereby an application as filed under Section 319 of the Code of Criminal Procedure (For short "Cr.P.C.") by the respondent No.2 had been allowed.

2. Brief facts relevant for the purpose of disposal of the present

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petition are that the aforementioned FIR was registered on the basis of complaint lodged by the respondent No.2-complainant Charan Singh on the allegations that on 11.12.2014, his mother who was Sarpanch of Gram Panchayat Village Badholi Tikri was distributing old age pension in the premises of co-villager Deenu. He was also present with his mother. They had declared that the pension would be given only to the concerned person individually. At about 11 AM, the accused Sabir and Juned came to them and told them to give the pension amount of their mother Khatuni. The complainant told them that they would give the pension amount only after obtaining thumb impressions of Smt. Khatuni, on the register. The accused Sabir and Juned felt offended and while calling bad names to them and hurling abuses in the name of their caste, they left the spot. Sometime thereafter, they reached at the spot along with the present petitioners and other co-accused. All of them were armed with weapons and opened an assault upon them. They snatched the entire amount of pension which was to be distributed by the mother of the complainant and started extending beatings to them. The accused Jamaluddin and Sabbir opened fire in the air with a countrymade pistol and gun which they were carrying, in order to intimidate the complainant and his mother. Rescue alarm raised by them attracted other persons who saved them.

3. As per the further allegations, after registration of FIR, investigation proceedings were initiated. During investigation, accused Mubin and Jamaluddin were arrested on 12.12.2014. The present petitioners

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and other persons named in the FIR could not be arrested. After completion of necessary investigation, challan under Section 173 of Cr.P.C was prepared as against the accused Mubin and Jamaluddin and was presented in the Court. During trial of the aforementioned two accused, the respondent No.2-complainant had been examined as a witness and thereafter an application under Section 319 of the Cr.P.C. had been moved by the respondent No.2 for summoning the present petitioners as additional accused.

4. As revealed from the record, the aforementioned application under Section 319 of Cr.P.C. was partly allowed and Javed, Jaikam, Juber and Tahir named in the FIR i.e. the present petitioners were ordered to be summoned to stand trial for commission of offences punishable under Sections 323, 392 and 506 read with Section 34 of IPC. However, the relief claimed by the prosecution for summoning one Jameel as additional accused had been declined.

5. Feeling aggrieved from the impugned order, the petitioners have filed the present revision petition.

6. It is argued by learned counsel for the petitioners that the impugned order passed by the learned trial Court thereby summoning them as additional accused is not sustainable in the eyes of law as while passing the same, the learned trial Court did not apply its judicious mind. The fact that there was no cogent and convincing evidence on record to prove their complicity in the subject offences, had not been taken into consideration.

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The petitioners had never been tried to join into investigation by the Investigating Officer nor they were declared to be innocent. Their summoning at a subsequent stage was not warranted. The evidence which was relied upon for issuing process against them was not of sterling quality and did not make out a case for allowing the prayer made by the prosecution to summon them as additional accused. It is, accordingly, urged that the impugned order is liable to be set aside and the revision petition deserves to be accepted.

7. The respondent No.1 has filed reply by way of affidavit submitting that during the course of verification of facts conducted by the DSP Punhana, no incriminating evidence had come forth against the petitioners. Learned State counsel, however, has not raised any serious objection to the allowing of the petition.

8. Learned counsel for the respondent No.2, on the other hand, argued that for the purpose of issuance of process against the petitioners, it was the evidence which was produced during trial was to be taken into consideration and the same had been so considered by the learned trial Court while passing the impugned order which is well reasoned. There is no illegality or infirmity in the same and, therefore, it is urged by him that the petition does not deserve to be allowed.

9. I have heard learned counsel for the parties at considerable length and have gone through the record carefully.

10. At the outset, it would be proper to refer to the provisions of

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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."

11. Having noted the abovementioned 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

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with the accused, for the offence which appears to have been committed by such persons summoned as additional accused.

12. 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 warrants. 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of Cr.P.C.

13. The legal position on the scope and ambit of powers of the

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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.

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(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).*

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(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.”

14. On applying the aforementioned proposition of law to the peculiar facts and circumstances of the present case, it is observed that the present petitioners were specifically named in the FIR which was registered without any delay on the basis of complaint lodged by the complainant Charan Singh. It was also alleged in the complaint that they were carrying lathis, dandas and illicit weapons and had assaulted the complainant while snatching the pension amount from him. Despite the specific allegations, when the charge-sheet/final report came to be filed, only the accused Mubin, Sabbir, Junaid and Jamaluddin were charge-sheeted. It was mentioned in the challan report that the present petitioners were yet to be arrested. Though in the reply filed by the respondent-State, it has been mentioned that the petitioners were not found to be involved in the offence on verification of facts and their names were kept in Column No.2 of the challan report, there was no plea that they were found to be innocent and it was simply stated that they were yet to be arrested. While appearing as PW-2, the complainant Charan Singh specifically named them and stated that they had come along with the accused already arraigned and had extended beatings to him. The evidence of this witness as recorded before the Court is ofcourse having a great evidentiary value and in view of the well settled proposition of law to the effect that unless compelling reasons exist, statement of such witness



cannot be discarded lightly, there is no reason to disbelieve the evidence led by the complainant. At the stage of exercising power under Section 319 Cr.P.C., the Court is not required to enter on the merits of the allegations. The evidence produced on record is of such nature which is more than a prima facie case but short of satisfaction to an extent that this evidence if goes unrebutted, would lead to conviction. The learned trial Court while appreciating the evidence so produced had rightly summoned the petitioners as additional accused and I see no reason to come to a different conclusion. Accordingly, finding no merit in the petition, the same is dismissed.

15. Miscellaneous application(s), if any, also stand disposed of.

15.02.2025
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(MANISHA BATRA)
JUDGE

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