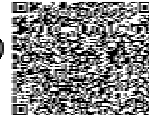


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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

208

CRR-1236-2024 (O&M)

Reserved on:02.08.2025

Pronounced on:12.08.2025

Harbhajan Singh and others

...Petitioners

Versus

State of Punjab and another

...Respondents

Coram : Hon'ble Mr. Justice Rajesh Bhardwaj

Present: Mr. S.S.Saron, Advocate, and
Mr. M.B. Rajwade, Advocate, for the petitioners.

Mr. Raj Karan Singh, AAG, Punjab.

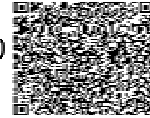
Mr. S.P.S. Sidhu, Advocate, and
Mr. Udayveer Singh, Advocate, for respondent no.2.

Rajesh Bhardwaj, J.

1. Prayer in the present revision petition is for setting aside the judgment dated 07.06.2024 passed by the learned Sessions Judge, Tarn Taran, whereby an application under Section 319 Cr.P.C. filed by the prosecution has been allowed and the petitioners have been ordered to be summoned to face trial along with the other accused persons who are already facing trial in case FIR No.0173 dated 11.10.2020, registered under Sections 302, 506, 120-B, 201, 148 and 149 of the IPC, at Police Station Bhikhiwind, District Tarn Taran, Punjab.

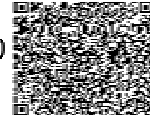
2. Succinctly, the facts of the case are that the FIR in the present case was registered on the statement of the complainant/respondent no.2 Dinesh Kumar, in which he alleged that on 11.10.2020, at around 6.00/7.00 pm, he along with Mandeep Kumar alias Monu (deceased), who was his brother-in-law, his father-in-law's younger brother, namely, Paramjit Kumar and an employee of the petrol pump, namely, Deepak Kumar were sitting at the petrol pump, namely, Raj Kumar Brothers Pump on Khemkaran road. In the meantime,

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Satwinder Singh alias Satinder Singh Pasi armed with a .315 bore rifle, Gurpreet Singh alias Gopi armed with a pistol, Charanjit Singh armed with a .12 bore gun, Harbhajan Singh armed with a .12 bore gun, Surjit Singh alias Vicky armed with a *datar* and 15-20 other unknown persons armed with their respective weapons came there. The complainant side had already a dispute going on with Satwinder Singh @ Satinder Singh Pasi regarding a passage adjoining the petrol pump. As he and Mandeep Kumar alias Monu (deceased) had gone ahead, in the meantime, Gurpreet Singh alias Gopi fired a shot with his pistol at Mandeep Kumar alias Monu, which hit him on his right side of the waist and resultantly, he fell down. Gurpreet Singh alias Gopi along with his accomplices escaped from the place of occurrence while firing bullets and threatening them. He and Deepak Kumar arranged the conveyance and shifted Mandeep Kumar alias Monu to the hospital, however, he was declared dead by the doctors. It was alleged that Kulbir Singh Pasi and Gurnam Singh Pasi had killed his brother-in-law Mandeep Kumar alias Monu by hatching a conspiracy along with all the accused persons. The motive of the murder of his brother-in-law was a dispute going on between the complainant side and Satwinder Singh alias Satinder Singh Pasi for a passage adjoining the petrol pump. The request was made to take legal action against all the accused. On registration of the FIR, while taking into consideration gravity of the offences, the respondent-State constituted a Special Investigation Team (SIT) on 17.11.2020 for investigation of the case. The SIT, in its first report dated 25.01.2021, concluded that no material was found available for complicity of the accused, namely, Charanjit Singh, Surjit Singh alias Vicky and Jasbir Singh Pasi and, thus, declared them innocent, whereas regarding Satwinder Singh alias Satinder Singh Pasi, Harbhajan Singh, Kulbir Singh Pasi and Gurnam Singh Pasi, the investigation was kept pending and the challan was presented only against Gurpreet Singh alias Gopi on 05.02.2021.

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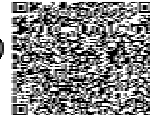


The prosecution filed an application under Section 193 Cr.P.C. before the learned trial Court for summoning the three accused, namely, Charanjit Singh, Surjit Singh alias Vicky and Jasbir Singh Pasi, who were declared innocent by the SIT. However, on consideration, the learned trial Court declined the same vide its order dated 05.07.2021. The complainant/respondent no.2 assailed the said order dated 05.07.2021 before this Court by way of filing the revision petition bearing CRR-1591-2021, however, the same was dismissed by this Court vide order dated 02.06.2023 and, thus, the order passed by the learned trial Court dated 05.07.2021 was upheld by this Court.

The SIT filed its supplementary report dated 24.07.2021, wherein, in addition to the three accused, namely, Charanjit Singh, Surjit Singh alias Vicky and Jasbir Singh Pasi, another two accused, namely, Kulbir Singh Pasi and Gurnam Singh Pasi, were also declared to be innocent. In its third supplementary report dated 18.01.2024, the SIT declared accused Harbhajan Singh as well to be innocent. The SIT filed supplementary challan under Section 173(8) Cr.P.C. on 20.01.2024, wherein accused Satwinder Singh alias Satinder Singh Pasi was challaned and the accused, namely, Harbhajan Singh, Charanjit Singh, Kulbir Singh Passi, Gurnam Singh Passi, Surjit Singh @ Vicky and Jasbir Singh Passi were declared innocent. Thus, it is discernible from the records that only two accused, namely, Gurpreet Singh alias Gopi and Satwinder Singh alias Satinder Singh Pasi were sent for the trial, whereas rest of the six accused were kept in column no.2 declaring them to be innocent. On presentation of the challan(s), the learned trial Court framed the charges and, thereafter, the trial commenced.

During trial, complainant Dinesh Kumar appeared as PW1 and in his examination-in-chief recorded by the learned trial Court, he reiterated his allegations qua all the accused, i.e. the accused sent for the trial and the others who were declared innocent by the SIT. On his deposition recorded in the

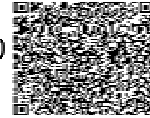
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examination-in-chief, the prosecution filed an application under Section 319 Cr.P.C. for summoning all the six accused who were declared innocent by the SIT to face trial along with the other two accused. The learned trial Court, on hearing both the sides, accepted the same vide the impugned order dated 07.06.2024. Hence aggrieved, out of total six accused, who have been summoned under Section 319 Cr.P.C., five accused are petitioners before this Court in the present revision petition.

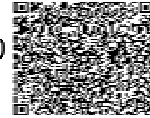
3. Learned counsel for the petitioners has vehemently contended that the impugned order dated 07.06.2024 passed by the learned trial Court is illegal, perverse and being unsustainable in the eyes of law, deserves to be set aside. It has been contended that an *inter se* civil dispute between Paramjit and another (complainant side) and Jasbir Singh and others (accused side) is pending adjudication and the learned Civil Judge (Junior Division), Patti, had directed the parties to maintain *status quo* regarding possession vide its interim order dated 29.09.2020. The FIR was lodged on the statement of the complainant/respondent no.2, in which the petitioners have been roped in a due deliberated manner. He further contended that the SIT had duly verified the allegations made by the complainant/respondent no.2 and the CCTV footages and Call Detail Reports had also been got examined from the FSL and it is on the basis of a detailed investigation, the SIT had concluded that the petitioners were not present at the place of occurrence at the relevant time, rather they were present at a different place and, thus, their complicity is not proved. Hence, they were declared innocent by the SIT. He further contended that initially, the SIT declared three accused, i.e. petitioner nos.3, 4 and 5, as innocent and the challan was presented only against Gurpreet Singh alias Gopi. It is submitted that on presentation of the challan, the prosecution had filed an application under Section 193 Cr.P.C. before the learned trial Court for taking cognizance and summoning all the three petitioner nos.3, 4 and 5 to face the

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trial, however, the learned trial Court, after examining the whole case judiciously, found no merit in the said application and, thus, dismissed the same vide order dated 05.07.2021. He further went on to argue that this order was assailed by the complainant/respondent no.2 before this Court by way of filing CRR-1591-2021, which equally met the same fate as this Court also dismissed the said revision petition vide its order dated 02.06.2023. It is submitted that in its subsequent reports, the SIT found another three accused, namely, Harbhajan Singh, Kulbir Singh Pasi and Gurnam Singh Pasi as innocent. He contended that the petitioners had taken a specific plea of *alibi* as they were not present at the place of occurrence at the time of commission of offence. This fact had been verified by the SIT by scientifically examining the CCTV footages and Call Detail Reports and their complicity was not established. He further submitted that the power enshrined under Section 319 Cr.P.C. is a discretionary power which cannot be invoked by the Courts in a casual and cavalier manner and once the application filed under Section 193 Cr.P.C. had been declined by the learned trial Court, which had even been upheld by this Court, there was no fresh evidence brought on record by the complainant-respondent no.2 while deposing as PW1, hence, there was no occasion for the learned trial Court for accepting the application filed by the prosecution under Section 319 Cr.P.C. It is further submitted that petitioner no.5 Charanjit Singh had also filed a complaint dated 11.01.2022 against complainant/ respondent no.2 Dinesh Kumar and other accused, however, the same was closed vide report dated 01.07.2022. Thereafter, petitioner no.5 Charanjit Singh filed a complaint dated 22.08.2022 under Sections 307, 452, 295, 323, 506, 427, 148 and 149 of IPC and 25/27 of the Arms Act and the learned JMIC, Patti had summoned the accused therein to face trial vide its order dated 11.04.2023. It is submitted that CRR-1591-2023 had already been dismissed by this Court vide order dated 02.06.2023 and the same had attained

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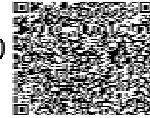


finality. Thus, summoning the petitioners under Section 319 Cr.P.C. by virtue of the impugned order is totally unsustainable in the eyes of law. He further submitted that the learned trial Court had summoned the petitioners only on the basis of deposition of the complainant-respondent no.2 in his examination-in-chief, however, there was no new evidence provided by the complainant-respondent, which could have compelled the learned trial Court to invoke its jurisdiction under Section 319 Cr.P.C.

To buttress his arguments, learned counsel for the petitioners has relied upon a Constitutional Bench judgment of the Supreme Court rendered in the case of **Hardeep Singh vs. State of Punjab & Ors.**, 2014(3) SCC 92 and has submitted that it has been held by the Supreme Court that the satisfaction required for summoning the additional person should be more than what is required at the time of framing of the charge. He, thus, submitted that the impugned order is totally in contravention of the law settled by the Supreme Court in **Hardeep Singh's case (supra)** and, thus, deserves to be set aside.

4. *Per contra*, learned counsel for the complainant-respondent no.2 has opposed the submissions made by learned counsel for the petitioners and it has been submitted that the complainant-respondent no.2 is not only the author of the FIR but he is an eye-witness to the occurrence and besides him, brother of his father-in-law, namely, Paramjit Kumar and an employee of the petrol pump Deepak Kumar were also present at the time of occurrence. It is submitted that the SIT had carried out a biased investigation. Faced with the same, the complainant/respondent no.2 had also filed a petition before this Court for entrusting the investigation to the CBI or some other independent agency. He further submitted that primarily, the reason given by the SIT for declaring the petitioners innocent is based on their plea of *alibi* and the same has illegally been approved by the SIT on the basis of some CCTV footages and Call Detail Reports. It is submitted that the CCTV footages collected are of different

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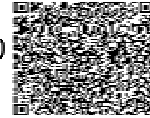
places and the same cannot be relied upon for accepting the plea of *alibi* raised by the petitioners. He further submitted that the onus to prove the plea of *alibi* is upon the accused and not upon the prosecution, however, at threshold, the SIT had declared them innocent in a premeditated manner. It is further submitted that the complainant had an independent right to avail his remedy under Section 319 Cr.P.C. even if the application filed by the prosecution under Section 193 Cr.P.C. was dismissed. The same cannot be a bar for filing an application under Section 319 Cr.P.C. It is further submitted that admittedly, there is a civil suit going on between both the sides and *status quo* had been granted by the Civil Court and the same was a strong motive with the petitioners for the murder of Mandeep Kumar alias Monu. He further submitted that the case of the prosecution is based on eye-witness account and the tainted investigation conducted by the SIT has totally vitiated the process of law. Hence, the learned trial Court has rightly summoned the petitioners to face trial along with the accused already facing trial. It is submitted that there being no infirmity in the order dated 07.06.2024 passed by the learned trial Court, the present revision petition deserves to be dismissed being devoid of any merit.

5. Learned Stated counsel also argued in the lines of the learned counsel for the complainant-respondent no.2 and submitted that the learned trial Court has rightly summoned the petitioners to face trial.

6. I have heard learned counsel for the parties and perused the available records with their able assistance.

7. Admittedly, a civil suit is already pending between Paramjit and another (complainant side) and Jasbir Singh and others (accused side) regarding a passage adjoining the petrol pump owned by the complainant side. The occurrence in the present case had taken place on 11.10.2020 at about 6.00/7.00 pm. The complainant-respondent no.2 lodged the FIR, wherein he named seven accused, namely, Satwinder Singh alias Satinder Singh Pasi,

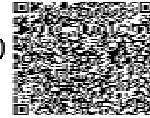
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Gurpreet Singh alias Gopi, Charanjit Singh, Harbhajan Singh, Surjit Singh alias Vicky, Kulbir Singh Pasi and Gurnam Singh Pasi along with 15-20 unknown persons. The investigation was handed over to the SIT and in its first report; it declared three accused, namely, **Charanjit Singh, Surjit Singh alias Vicky and Jasbir Singh Pasi as innocent.** Thereafter, in its second and third reports, three more accused, namely, **Harbhajan Singh, Kulbir Singh Pasi and Gurnam Singh Pasi were also declared innocent** and, thus, **out of the total eight accused persons, six were declared to be innocent.** Admittedly, the prosecution filed an application under Section 193 Cr.P.C. for taking cognizance and summoning the three accused, namely, Charanjit Singh, Surjit Singh alias Vicky and Jasbir Singh Pasi, who were declared innocent at the initial stage in the first report of the SIT. The said application was dismissed and the said order was upheld by this Court while dismissing the revision petition filed by the complainant-respondent no.2.

8. It is apparent that primarily the main ground for declaring the petitioners as innocent was the examination of the CCTV footages and the Call Detail Records by the SIT. The petitioners had raised the plea of *alibi* and the SIT had declared six persons, out of eight, as innocent only on the basis of CCTV footages. However, the Court cannot ignore the fact that the case of the prosecution is based on the eye-witnesses account of the complainant-respondent no.2, Paramjit Kumar and Deepak Kumar. The cross-version regarding this incident itself had been got lodged by petitioner-accused Charanjit Singh. Though the DDR was registered in that regard but the same was subsequently closed. However, perusal of the records would show that a complaint was filed by petitioner Charanjit Singh against the complainant-respondent no.2 and others and admittedly, there is a judicial order dated 11.04.2023 summoning the accused (complainant-respondent no.2 and others) in the said complaint filed by petitioner Charanjit Singh regarding the same

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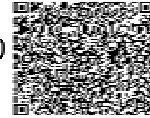


occurrence. Thus, there are two different versions; one by the complainant-respondent no.2 got recorded in the FIR and another by petitioner Charanjit Singh regarding the same murder of Mandeep Kumar alias Monu but in both versions, the place of occurrence is stated to be different and it would be the matter of trial that which version is correct. The truthfulness of the plea of *alibi* raised by the petitioners can be verified on the appreciation of the evidence led by the parties. There is no gainsaying that the findings arrived at by the SIT are not binding on the Court and every investigation has to be judicially examined. Hon'ble the Supreme Court in **Hardeep Singh's case (supra)** had settled the issue involved regarding summoning under Section 319 Cr.P.C. and held as under:-

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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

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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.

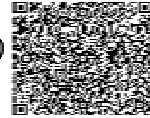
Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?

100. In **Joginder Singh & Anr. v. State of Punjab & Anr.**, AIR 1979 SC 339, a three-Judge Bench of this Court held that as regards the contention that the phrase “any person not being the accused” occurring in Section 319 Cr.P.C. excludes from its operation an accused who has been released by the police under Section 169 Cr.P.C. and has been shown in Column 2 of the charge-sheet, the contention has merely to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) Cr.P.C. clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court, are included in the said expression.

101. In **Anju Chaudhary v. State of U.P. & Anr.**, (2013) 6 SCC 384, a two-Judge Bench of this Court held that even in the cases where report under Section 173(2) Cr.P.C. is filed in the court and investigation records the name of a person in Column 2, or even does not name the person as an accused at all, the court in exercise of its powers vested under Section 319 Cr.P.C. can summon the person as an accused and even at that stage of summoning, no hearing is contemplated under the law.

102. In **Suman v. State of Rajasthan & Anr.**, AIR 2010 SC 518, a two- Judge Bench of this Court observed that there is nothing in the language of this sub-section from which it can be inferred that a person who is named in the FIR or complaint, but against whom charge- sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into

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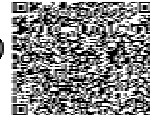
*or trial of any offence, the court finds that such person has committed an offence for which he could be tried together with the other accused. In **Lal Suraj (supra)**, a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been charge-sheeted, he may come within the purview of the description of such a person as contained in Section 319 Cr.P.C. A similar view had been taken in **Lok Ram (supra)**, wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.*

*103. Even the Constitution Bench in **Dharam Pal (CB)** has held that the Sessions Court can also exercise its original jurisdiction and summon a person as an accused in case his name appears in Column 2 of the chargesheet, once the case had been committed to it. It means that a person whose name does not appear even in the FIR or in the chargesheet or whose name appears in the FIR and not in the main part of the chargesheet but in Column 2 and has not been summoned as an accused in exercise of the powers under Section 193 Cr.P.C. can still be summoned by the court, provided the court is satisfied that the conditions provided in the said statutory provisions stand fulfilled.”*

Hon’ble the Supreme Court has also held in the aforesaid judgment that no straight-jacket formula can and should be laid for arriving at the opinion for exercising the powers under Section 319 Cr.P.C. The relevant paragraph of the said judgment is reproduced as under:-

*“83. As held in **Mohd. Shafi (supra)** and **Harbhajan Singh (supra)**, all that is required for the exercise of the power under Section 319 Cr.P.C. is that, it must appear to the court that some other person also who is not facing the trial, may also have been involved in the offence. **The pre-requisite for the exercise of this power is similar to the prima facie view which the magistrate must come to in order to take cognizance of the offence. Therefore, no straight-jacket formula can and should be laid with respect to conditions precedent for arriving at such***

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an opinion and, 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 Cr.P.C. and can proceed against such other person(s). It is essential to note that the Section also uses the words 'such person could be tried' instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section 4 of Section 319 Cr.P.C., the person would be entitled to a fresh trial where he would have all the rights including the right to cross examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of Examination- in-Chief, the Court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, Examination-in-Chief untested by Cross Examination, undoubtedly in itself, is an evidence."

9. Thus, while weighing overall facts and circumstances of the present case on the anvil of the law settled, this Court finds no infirmity in the impugned order passed by the trial Court and hence, the present revision petition is hereby dismissed being denuded of any merit.

10. Nothing said herein shall be treated as an expression of opinion on the merits of the case.

August 12, 2025
vinod*

(Rajesh Bhardwaj)
Judge

Whether Speaking/Reasoned: NO/YES
Whether Reportable: NO/YES