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

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**CRR No. 1744 of 2025 (O&M)
Date of decision: 31.07.2025**

Sachin

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Surinder Singh Duhan, Advocate
for the petitioner.

Mr. Apoorv Garg, Addl. A. G., Haryana.

MANISHA BATRA, J. (Oral)

1. This revision petition has been filed by the petitioner against the order dated 21.05.2025, passed by the Court of learned Additional Sessions Judge, Bhiwani in Sessions Case No. 259 of 2021, titled as ***State of Haryana vs. Paramjeet @ Maddu and another***, arising out of FIR No. 239 dated 02.10.2021, registered under Sections 323, 506 and 34 of Indian Penal Code (for short 'IPC') and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short 'the Act, 1989') at Police Station Industrial Area, Bhiwani, District Bhiwan, whereby an application filed by the respondent No. 2/complainant under Section 319 of the Code of Criminal Procedure (*for short 'the Code'*) had been allowed and the petitioner had been ordered to be summoned as an additional accused.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a written complaint submitted by respondent No. 2/complainant alleging therein that on 30.09.2021, he was travelling in a Haryana Roadways bus and was

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going towards his house at village Bass, District Bhiwani after attending his college at Bhiwani. The petitioner and co-accused Maddu, who were also present in the same bus, started misbehaving with him. They made an exhortation thereby calling him in the name of his caste and told him to alight from the vehicle and otherwise to kill him. Thereafter, both of them gave fists blows on his face and called two unknown persons and all of them assaulted him and extended beatings to him by kicks and fists blows with an intent to kill him. He was saved with the intervention of the fellow passengers of the bus. While leaving the vehicle, the petitioner and his companions proclaimed that he had been saved but they would kill him on finding opportunity. He had gone to the hospital and was given treatment. After registration of the FIR, investigation proceedings were initiated. During investigation, co-accused Paramjeet @ Maddu and Jaideep @ Khaddu were arrested and were subsequently released on bail. The petitioner was found to be innocent and his name was kept under Column No. 12 of the challan report.

3. During trial of the above named co-accused, namely Paramjeet @ Maddu and Jaideep @ Khaddu, respondent No. 2/complainant appeared as a witness. After recording of his examination-in-chief, the prosecution/respondent No. 2/complainant moved an application under Section 319 of the Code (*which is pari materia with Section 358 of BNSS*) for summoning the present petitioner as an additional accused. The said application was allowed by the learned trial Court by passing the impugned order dated 21.05.2025. Feeling aggrieved, the petitioner has filed this petition.

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4. It is argued by learned counsel for the petitioner that the impugned order passed by the learned trial Court thereby summoning him as an 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 his complicity in the subject offences, had not been taken into consideration. The petitioner was declared to be innocent by the police after conducting a thorough investigation in the matter. His summoning at a subsequent stage was not warranted. The evidence which was relied upon for issuing process against him was not of sterling quality and did not make out a case for allowing the prayer made by the prosecution to summon him 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.

5. Notice of motion.

6. Learned Additional Advocate General, Haryana, who has advance notice of the petition and is ready to argue the matter, has submitted that there is no illegality or infirmity in the impugned order as a detailed and speaking order has been passed by the learned trial Court. Therefore, the petition is liable to be dismissed.

7. I have heard learned counsel for the parties at considerable length and have also gone through the material placed on record carefully.

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. –

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

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10. 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 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.

11. 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:-

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“(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

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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

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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.”

12. On applying the above discussed principles of law to the peculiar facts of the present case, this Court is of the considered opinion that there is no illegality or infirmity in the impugned order passed by the learned trial Court. The name of the petitioner was specifically mentioned in the FIR and specific overt act had also been attributed to him. No doubt, during the course of investigation, he was found to be innocent and had not been arrested and challaned, however, on a perusal of the record, it is revealed that no reason whatsoever had been given in the challan report as to on what basis he was found to be innocent. The contents of the FIR as well as the evidence, which has come on record so far, are *prima facie* sufficient to prove the complicity of the petitioner in commission of subject crime and it cannot be stated at this stage that his prosecution would amount to abuse of process of Court or there is no likelihood of his conviction.

13. It is well settled proposition of law that the provisions of Section 319 of the Code, being salutary one, the same cannot be diluted by importing within its scope the principles of natural justice which in any case would be followed during the trial. It is the duty of the Court to give further effect to the words used by the Legislature in Section 319 of the Code, so as to encompass any situation which the Court may have to deal with while proceeding to try an offence and not to allow the person, who deserved to be tried, to go scot

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free by not being summoned for the commission of crime which can be gathered from the material presented by the prosecution. 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. The evidence produced on record by the prosecution in the form of testimony of the complainant is prima facie sufficient to prove the complicity of the accused and it is this evidence that has to be taken into consideration. Reference in this regard can be made to the observations made by Hon’ble Supreme Court in *Saeeda Khatoon Arshi vs. State of U.P. and another : (2020) Supreme Court Cases 323* and *Suman vs. State of Rajasthan and another : 2010 AIR (Supreme Court) 518*.

14. In view of the discussion as made above, no illegality or infirmity is found in the impugned order, as the same has been passed by the learned trial Court after analyzing the facts of the case in a proper perspective. Accordingly, finding no merit in the petition, the same is dismissed.

15. However, it is made clear that any observation made herein above shall have no bearing on the merits of the case as the same are only for the purpose of deciding the present petition.

31.07.2025
Waseem Ansari

(MANISHA BATRA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>