



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

**126**

**CRM-M No.59612 of 2024 (O&M)**

**Date of decision: 26.03.2025**

Kulwinder Singh @ Kindi

....Petitioner

Versus

State of Punjab and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR**

**Present:** Mr. Aditya Narayan Arya Garg, Advocate  
for Mr. Rahul Sharma, Advocate  
for the petitioner.

Mr. Sandeep Kumar, DAG, Punjab.

Mr. Naveen Sharma (Moudgil), Advocate  
for respondent No.2.

**HARPREET SINGH BRAR J. (Oral)**

1. The present petition has been preferred under Section 528 of the Bharatiya Nagarik Suraksha Sahinta, 2023(hyereinafter 'BNSS') seeking quashing of order dated 11.11.2024 (Annexure P-12) passed by the learned Additional Sessions Judge, Rupnagar whereby order dated 02.01.2023 (Annexure P-10) passed by the learned Judicial Magistrate Ist Class, Nangal dismissing the application filed by respondent No.2 under Section 319 of the Criminal Procedure Code, 1973 (hereinafter 'Cr.P.C.') (*now Section 358 BNSS*), has been set aside and the petitioner has been summoned as an additional accused in the case stemming from FIR No.127 dated 23.06.2020 registered under Sections 324, 506, 148, 149, 147 of the Indian Penal Code, 1860 (hereinafter 'IPC').



2. Learned counsel for the petitioner *inter alia* contends that the petitioner has solely been summoned on the basis of the FIR(supra) even though the learned trial Court had categorically noted that no new evidence or material has been presented to necessitate arraignment of the petitioner as an accused. Moreover, the learned trial Court had also mentioned the fact that prior animosity existed between the parties. No specific injuries have been attributed to the petitioner either. Pertinently, the petitioner was summoned under Section 319 Cr.P.C. without serving any notice or allowing him the opportunity to be heard. Finally, the petitioner has neither been named in the FIR(supra) or the final report filed under Section 173 Cr.P.C. Reliance in this regard can be placed on the judgments rendered by the Hon'ble Supreme Court in ***Vikas Rathi vs. State of Uttar Pradesh and another (2023) 6 SCC 702*** and ***Mohit alias Sonu and another vs. State of U.P. 2013 AIR SC 2248*** and this Court in ***Jasbir Kaur vs. State of Punjab and others 2017(4) CriCC 16, Varinder Singh vs. State of Punjab and another 2024(1) R.C.R. (Criminal) 118, Nirmal Singh vs. State of Haryana 2015(26) R.C.R. (Criminal) 16*** and ***Varun Gupta vs. State of Haryana and others, passed in CRM-M No.11219 of 2021, decided on 19.11.2024.***

3. *Per contra* learned State counsel submits that the petitioner has contributed in inflicting an injury of the head of respondent No.2, as such he has been correctly summoned by the learned Court below.

4. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that allegedly, the petitioner



gave kick and fist blows to respondent No.2-complainant. However, he was declared innocent on inquiry, but respondent No.2 was not joined in the same. It appears that the application moved by respondent No.2 under Section 319 Cr.P.C. was dismissed by the learned trial Court on the ground that no new evidence indicating his guilt has come to the fore. However, the learned Revisional Court has overturned the same and summoned the petitioner without giving him an opportunity to be heard.

5. Recently, a two Judge bench of the Hon’ble Supreme Court in *Jamin vs. State of Uttar Pradesh, passed in Criminal Appeal No.1184 of 2025 arising out of SLP (Crl.) No.6320 of 2024, decided on 06.03.2025*, speaking through Justice J.B. Pardiwala, made the following observations:

*(vii) Right of the proposed accused to be heard at the stage of summoning under Section 319 of CrPC*

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*110. However, in the facts of the present case, the application under Section 319 was rejected by the Trial Court but the revision against such rejection was entertained by the High Court without allegedly putting the proposed accused to notice. Upon a careful perusal of the decision in **Yashodhan Singh (supra)**, we are of the view that the right of hearing is not available to the proposed accused only in the first instance, that is only at the stage when the application is being heard for the first time.*

*111. However, after the rejection of an application under Section 319, a right ensures in favour of the proposed accused. Thereafter, if in exercise of revisional jurisdiction, the High Court is to pass an order which is prejudicial to the benefit which has ensured in favour of the proposed accused, then the High Court is required to provide an opportunity of hearing to the proposed accused. This is also the mandate as contained in sub-section (2) of Section 401 of the CrPC. The said provision is reproduced hereinbelow:*

2025:PHHC:043191



"401. High Court's powers of revision.

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.

**(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.**

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of Justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

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113. In view of the principles explained in **Manharbhai Muljibhai Kakadia (supra), the right of hearing is available to the proposed accused at the stage of revision as the High Court by setting aside the order rejecting the application under Section 319 may revive the proceedings against the proposed accused under Section 319. Providing the proposed accused with a mandatory right of hearing allows him to defend himself against a prejudicial order that may be passed in the course of the hearing of the revision petition.**" (emphasis added)

6. In view of the above, the present revision petition is allowed and the impugned order dated 11.11.2024 (Annexure P-12) passed by the learned Additional Sessions Judge, Rupnagar, is set-aside

2025:PHHC:043191



and the matter is remanded back to the learned Court below to decide the application filed by respondent No.2, under Section 319 Cr.P.C., afresh after affording an opportunity of hearing to the petitioner.

7. Pending miscellaneous application(s), if any, shall also stand disposed of.

**(HARPREET SINGH BRAR)**  
**JUDGE**

**26.03.2025**  
*yakub*

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