



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

**CRR-208-2023 (O&M)
Date of decision: 09.04.2026**

Varinder Kumar ...Petitioner

vs.

State of Punjab and another ...Respondents

Coram : Hon'ble Mr. Justice N.S.Shekhawat

Present : Mr. Ripudaman Singh, Advocate (through VC)
assisted by Mr. R.S. Sidhu, Advocate
for the petitioner.

Mr.M.S.Bajwa, Deputy Advocate General, Punjab.

Mr. Kamal Narula, Advocate
for respondent No.2.

N.S.Shekhawat J. (Oral)

1. The petitioner has filed the present revision petition against the impugned order dated 01.03.2019 passed by the Court of Additional Sessions Judge, Fazilka, whereby, the petitioner has been summoned as an additional accused, by exercising the powers under Section 319 Cr.P.C.

2. Learned counsel for the petitioner submits that the FIR in the present case was registered on the basis of the statement made by Sukhwinderpal son of Milk Raj and the same has been reproduced below:-

“Statement of Sukhwinderpal son of Milk Raj resident of Arniwala, aged about 24 years, Police station Arniwala, stated that I am resident of above mentioned address and is a driver. Yesterday on 13.03.17, I was standing in the street outside of my house. Then at about 1:00 pm, Gagan son of Mangat Ram resident



of Arniwala was roaming in the street of our house, to whom I asked why are you roaming outside our house, then while abusing me he went to his home. After five minutes, Gagan armed with iron kirch and his elder brother Varinder Kumar empty handed sons of Mangat Ram, both residents of Arniwala, came towards me and abusing me and Varinder Kumar caught hold me from my arms, and pulled back my arms, and Gagan gave a kirch blow on the left side of my chest and due to which blood was oozing from my chest and I fell down and I raised a noise 'marta marta, then on hearing my noise my younger brother Kanwaljit Pal, who was present at home came, outside in the street and my brother also raised a noise 'marta marta', then Gagan along with iron kirch and his brother Varinder Kumar ran away from the spot, then my brother Kanwaljit Pal and my cousin brother Desraj arranged a vehicle and got admitted me in Civil Hospital, Fazilka, where doctor gave me first-aid and referred me to Guru Gobind Singh Medical College Hospital, Faridkot, where I am under treatment. I have recorded my statement, which is read and correct. I am the complainant, action be taken, Sd- Sukhwinderpal, attendant Sd/0 Kanwaljit Pal (Brother) verified by Balbir Singh, ASI, Police Station Arniwala, dated 14.03.2017.”

3. Learned counsel for the petitioner contends that the petitioner has been falsely involved by the complainant in the present case, being the real brother of Gagan, the main accused. In fact, it has been shown that the petitioner was empty handed and had caught hold of the injured from his arms and in the meantime, his brother Gagan gave blows with knife on the left side of his chest. In fact, the petitioner was not present at the place of occurrence and he was working on a cloth shop. After the registration of the FIR, the father of the petitioner moved various representations to Senior Police Officers for



conducting fair investigation. Even a detailed investigation report dated 06.05.2017 (Annexure P-2) was prepared and it was found that the petitioner had not participated in the alleged occurrence. Rather, the police had recorded the statement of Nanak Singh, owner of cloth shop at village Arniwala, who stated that on 13.03.2017, the petitioner was present at his shop. Even the CCTV cameras were also installed at his shop, which conclusively proved that at the time of fight, the petitioner was not present at the spot. However, when the petitioner came to know about the fight, he had gone from the shop.

4. During the course of investigation, the statements of various witnesses were also recorded and the petitioner was kept in column No.2 in the final report of the investigation. However, during the course of trial, the statement of PW-2, Kanwaljitpal was recorded and he had reiterated the same version, as mentioned in the FIR. The statements of PW-1, Sukhwinderpal and PW-2, Kanwaljitpal were recorded and the application under Section 319 Cr.P.C. was moved for summoning the petitioner. Learned counsel further submits that the petitioner has been wrongly summoned by the trial Court by completely overlooking the settled law.

5. On the other hand, learned State counsel as well as learned counsel for respondent No.2 have vehemently opposed the submissions made by learned counsel for the petitioner and submitted that the trial Court had summoned the petitioner after examining the entire evidence against him and the petition may be ordered to be dismissed.

6. I have heard learned counsel for the parties and perused the record carefully.



7. The Hon'ble Supreme Court, while discussing the powers under Section 319 Cr.P.C held in the matter of "**Hardeep Singh Vs.State of Punjab, (2014) 3 SCC 92**" as follows:-

"105. Power under Section 319 Cr.PC is a discretionary and an extraordinary 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.

106. 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 CrPC. In Section 319 CrPC 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 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 CrPC to form any opinion as to the guilt of the accused."

8. Still further, the Hon'ble Supreme Court has held in the matter of "**Omi @ Omkar Rathore & Anr. Vs.State of Madhya Pradesh & Anr., SLP**"



(Crl.) No.(s) 17781 of 2024 held that the powers under Section 319 Cr.P.C empowers the trial court to summon persons to face trial, even they were not named in the charge-sheet, however, this power has to be exercised extraordinarily and must be exercised sparingly and not in a casual manner and held as follows:-

“21.The principles of law as regards Section 319 of the Cr.P.C may be summarised as under:

a. On a careful reading of Section 319 of the CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial.

b. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the chargesheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence.

c. The power of the court under Section 319 of the CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the chargesheet by the police against the person concerned. As regards the contention that the phrase 'any person not being the accused' occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in column No. 2 of the charge sheet, the contention has merely to be stated 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) 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.

d. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the Investigating Officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the Investigating Officer hardly matters. If satisfaction of Investigating Officer is to be treated as determinative then the purpose of Section 319 would be frustrated”.

9. Now, advertent to the facts of the present case, it is clear from the FIR (Annexure P-1) that the petitioner was shown to be present at the place of occurrence. However, he was stated to be empty handed. It was further alleged that he had caught hold of the injured from his arms and in the meantime, his brother Gagan gave blows with knife on his chest. The said statement of the complainant was subject matter of investigation and it was found during investigation that the petitioner was present at the shop of Nanak Singh, where he was employed and even the CCTV footage clearly proved that he was present at the shop at the time of the occurrence and had gone at the place of occurrence afterwards.

10. Even a detailed report of investigation (Annexure P-2) was prepared in this regard, after taking into consideration the evidence and the statements of various witnesses. Still further, during the course of trial, the statements of PW-1, Sukhwinderpal, complainant and PW-2 Kanwaljitpal have



been recorded and they have reiterated the same statements, which have already been found to be incorrect qua the present petitioner. Except that, no fresh evidence has been produced on record before the trial Court to show that even the petitioner could be involved in the present crime. In fact, while passing the impugned order, the trial Court had completely overlooked the settled law, which clearly lays down that the powers under Section 319 Cr.P.C. should be used sparingly and only in extra-ordinary circumstances. In fact, it may be exercised, when there is a strong and cogent evidence to show that the persons sought to be summoned may also be involved in the crime.

11. Thus, in view of the above discussion, the present petition succeeds and the impugned order dated 01.03.2019 passed by the Court of Additional Sessions Judge, Fazilka, whereby, the petitioner has been summoned as additional accused, by exercising the powers under Section 319 Cr.P.C is ordered to be set aside.

12. The present petition is allowed.

13. Pending applications, if any, stand also disposed of, accordingly.

09.04.2026

hemlata

(N.S.SHEKHAWAT)
JUDGE

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