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

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CRM-M-6049-2019 (O&M)

Date of decision : 18.02.2026

Mahender Singh**...Petitioner****Versus****State of Haryana and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. Mansur Ali, Advocate
for the petitioner.

Mr. Varun Gupta, DAG, Haryana.

Dr. Parveen Hans, Advocate
for respondent No.2.

MANISHA BATRA, J. (Oral)

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure (*for short 'the Code'*) seeking quashing of order dated 25.07.2018 (Annexure P-3), passed by the Court of learned Judicial Magistrate First Class, Hansi in case arising out of FIR No. 273 dated 03.05.2014, registered under Sections 379, 447, 506 and 34 of IPC at Police Station Narnaud, District Hisar, whereby an application filed by respondent No.2/complainant under Section 319 of the Code for summoning the petitioner as an additional accused had been allowed, as well as for quashing of order dated 08.01.2019, passed by the Court of learned Additional Sessions Judge, Hisar, whereby the revision petition filed by the petitioner against the order dated 25.07.2018 had been dismissed.

2. Brief facts relevant for the purpose of disposal of the present petition are that the aforementioned FIR was registered on the basis of a

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written complaint filed by respondent No.2/complainant Raghubir Singh on 24.04.2014 alleging therein that there was some dispute qua the partition of land owned by him. His son Tirath Singh had filed applications for partition of the said land before the Tehsildar/Assistant Collector, 2nd Grade, Tehsil Hansi. The partition had been allowed and *Sanad Taqseem* (partition deed) had been got prepared. Warrant of possession were issued as per the orders of the Sub Divisional Magistrate and possession of the property, which had fallen to the share of the complainant/his son, had been given to them. He further alleged that the petitioner and co-accused Partap Singh etc. were harassing the complainant and were interfering in his peaceful possession over the land which was in his lawful possession/ownership. On 21.04.2014 also, they had extended threats to the complainant that they would not let him harvest his crop and if he did so, then he would be killed. He also alleged that the petitioner and co-accused Jagbir Singh were armed with pistols, whereas other co-accused were having jellies and they had criminally intimidated the complainant and his family, had harvested his crop forcibly and had taken away the same with them. On these allegations, a case under Section 147, 149, 379, 447 and 506 of IPC was registered. Investigation proceedings were initiated. During investigation, the petitioner and two more persons named in the FIR i.e. Sunil and Raj Kumar were found to be innocent and their names were ordered to be kept in Column No. 2 of the challan report, whereas other accused were arrested. After completion of investigation, challan was presented against them.

3. As per the record, during the course of trial and after recording of examination-in-chief of the complainant, an application under Section 319

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of the Code was moved by the complainant, which was allowed by the learned trial Court, vide impugned order dated 25.07.2018, thereby summoning the present petitioner as an additional accused and the said order was affirmed by the learned revisional Court, vide impugned order dated 08.01.2019.

4. It is argued by learned counsel for the petitioner that he has been falsely implicated in this case. A thorough and proper investigation was conducted in the matter and it was found that he was neither present at the spot of alleged incident nor any specific or overt act had been committed by him. He was rightly found to be innocent and had not been challaned. However, the learned trial Court, while passing the impugned order, did not take into all these material facts into consideration and passed a non-speaking and perverse order. It is further argued that even the learned revisional Court did not apply its judicious mind and had dismissed the revision petition filed by him by passing a non-speaking order. With these broad submissions, it is, thus, urged that the petition deserves to be allowed and the impugned orders are liable to be quashed.

5. Learned State counsel has not raised any serious objection to the petition.

6. Learned counsel for respondent No.2/complainant has, however, vehemently argued that there is no illegality or infirmity in the impugned orders. The petitioner was not only named in the FIR but his complicity and active participation in commission of subject offences stood established from the evidence produced on record in the form of testimony of the complainant, which was sufficient in this regard. It is, therefore, urged that the petition is devoid of any merit and is liable to be dismissed.

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7. This Court has heard the rival submissions.
8. At the outset, it would be proper to refer to the provisions of Section 319 of the Code, 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."

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

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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.

10. The issue relating to the powers to be exercised under Section 319 of the Code 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 of the Code 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 the Code.

11. The legal position on the scope and ambit of powers of the Court under Section 319 of the Code has also been summarized by Hon'ble Apex

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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.
- (ix) The power under section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and

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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

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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).

(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 aforementioned proposition of law to the peculiar facts and circumstances of the present case, it is not in dispute that the petitioner was specifically named in the FIR and was attributed a clear role in the occurrence. The mere fact that during investigation, he was found innocent and placed in Column No. 2 of the challan, cannot be treated as conclusive or binding on the Court. It is a settled position of law that the opinion of the investigating agency is only tentative and the Court is not denuded of its statutory powers to summon any person who appears, from the evidence recorded during trial, to have committed an offence. In the present case, during the course of trial, the complainant, while appearing as a prosecution witness, categorically deposed about the presence and active participation of the petitioner in the alleged incident. The testimony disclosed specific allegations of intimidation, interference in possession and forcible harvesting of the crop. Such evidence, recorded before the Court in examination-in-chief, constituted “evidence” within the meaning of Section 319 of the Code and was sufficient to prima facie indicate the petitioner’s complicity in the commission of the offences. The contention raised on behalf of the petitioner that there is no specific or overt act attributed to him is misconceived. At the stage of exercising power under Section 319 of the

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Code, the Court is not required to meticulously appreciate or weigh the evidence as would be done at the stage of final adjudication. What is required is the existence of strong and cogent material emerging from the evidence on record which goes beyond mere suspicion and indicates the involvement of the person sought to be summoned. The deposition of the complainant satisfies this threshold. The learned trial Court while appreciating the evidence so produced had rightly summoned the petitioner as additional accused and this Court sees no reason to come to a different conclusion. Accordingly, finding no merit in the petition, the same is dismissed.

18.02.2026

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No