

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

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CRM-M-10326-2019(O&M)

Date of decision: 16.03.2026

Onkar Singh

....Petitioner

Versus

Rajwant Kaur and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

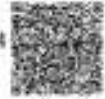
Present : Mr. Maneesh Dadwal, Advocate for
Mr. K.S. Dadwal, Advocate for the petitioner.

Mr. Jagdish Manchanda, Sr. Advocate with
Mr. Devyansh, Advocate for the respondents.

AMAN CHAUDHARY, J.

1. Prayer made in the present petition filed under Section 482 CrPC is to quash the order dated 07.02.2019 passed by learned Additional Sessions Judge, Hoshiarpur, setting aside the the order dated 25.04.2018 passed by Sub Divisional Judicial Magistrate, Mukerian, dismissing the application under Section 319 CrPC filed by the complainant for summoning the petitioner as an additional accused in FIR No.50 dated 03.05.2014, under Sections 447, 506, 34 IPC at Police Station-Mukerian, District Hoshiarpur.

2. Learned counsel submits that petitioner had been found innocent by the police, as at the time of occurrence he was present at his duty in government office. Thus, the lower revisional Court has wrongly reversed the order passed by SDJM. He relies on the judgment passed in **Brijendra Singh and others vs. State**



of Rajasthan, 2017(3) RCR (Criminal) 374. Moreover, during the interregnum, other co-accused were acquitted by the trial Court vide judgment dated 27.01.2026.

3. Learned Senior counsel on the other hand, while supporting the impugned order, submitted that the same has been rightly passed, since there are specific allegations against him in the FIR.

4. Heard.

5. Before advertng to the facts of the case, it would be apposite to make a reference to the provision of Section 319 CrPC, which reads thus:

“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.

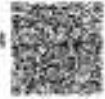
(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;

(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.”

6. Constitution Bench of Hon’ble the Supreme Court in **Hardeep Singh vs. State of Punjab and Others**, 2014 (3) SCC 92, while explaining the ambit



and the spirit underlying the enactment of the provision of Section 319 CrPC observed and held thus:

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two- Judge Bench of this Court in *Vikas v. State of Rajasthan*, held that on the *objective satisfaction* of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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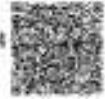
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105. Power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions 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.

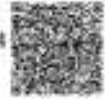
106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more 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 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 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.”

7. In **Brijendra Singh** (supra), Hon’ble the Supreme Court had set aside



the summoning order while relying on the judgment in the case of **Hardeep Singh** (supra) and deliberating the degree of satisfaction that is required for invoking the powers under Section 319 CrPC and observed that such power should be exercised in circumstances where the trial Court finds that some “evidence” exists against a person on the basis of which it can be gathered that he appears to be guilty of the offence, thus should be summoned to face trial. The term “evidence” in this context pertains to the material presented during the trial. Insofar as the evidence collected by the Investigating Officer at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by court to invoke the power under Section 319 CrPC. Apart from being discretionary, the power under this Section is also an extraordinary one, thus has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. Para relevant of the aforesaid judgment reads thus:

“15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so- called verbal/ocular version. Thus, the ‘evidence’ recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether ‘much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even



when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.”

8. Encapsulating the essence of the provision of Section 319 CrPC while relying on **Hardeep Singh** (supra) in **Sagar vs. State of UP**, 2022 (6) SCC 389, Hon’ble the Supreme Court observed that, “The Constitution Bench has given a caution that power under Section 319 of the Code is a discretionary and extraordinary power which should be exercised sparingly and only in those cases where the circumstances of the case so warrant and the crucial test as noticed above 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 learned Single Judge of the High Court has even failed to consider the basic principles laid down by this Court while invoking Section 319 of the Code, which has been considered by the learned trial Judge under its order dated 30-01-2018.”

9. The revisional Court while passing the impugned order failed to take into consideration the investigation conducted by the SHO, which clearly records that the petitioner was not involved in the occurrence, as he was not present at the spot. Further, the evidence led during trial did not disclose any new or independent incriminating material as the statements are only a reiteration of allegations contained in the FIR. Moreover, the main accused, namely, Jagjit Singh, Jaspal



Singh and Jagtar Singh, against whom specific allegations were made, have already been acquitted vide order dated 27.01.2026. Ergo, the present case does not meet the threshold to exercise powers under Section 319 CrPC as no satisfaction was recorded by the revisional Court that the evidence against the petitioner would lead to conviction, if it remains uncontroverted.

10. On the anvil of the above discussion, the present petition is allowed and the impugned order dated 25.04.2018 is hereby set aside.

(AMAN CHAUDHARY)
JUDGE

16.03.2026
ashok

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