



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

**CRR-579-2021 (O&M)
Date of Decision: 25.05.2026**

Pankaj Saini

...Petitioner(s)

Vs.

State of Punjab and another

...Respondent(s)

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

Present: Mr. Navkiran Singh, Advocate and
Mr. Harmeet Singh, Advocate
for the petitioner.

Mr. M.S. Bajwa, DAG, Punjab.

Ms. Saloni Chhabra, Advocate
for respondent no.2.

N.S.Shekhawat J.

1. The petitioner has filed the present petition against the impugned order dated 20.04.2021, passed by the Court of Additional Sessions Judge, Gurdaspur, whereby the petitioner was summoned as an additional accused under Section 319 Cr.P.C.

2. Learned counsel for the petitioner contends that the petitioner was falsely involved in the present case on the basis of the statement made by Piara Singh, Lambardar and the FIR has been reproduced as under:-

“Statement of Piara Singh Lambardar son of Swaran Singh, caste Jat, resident of village Magrala, aged around 65 years. It is stated that I am resident of above mentioned address and I am the present Lambardar of the village. My nephew Sukhwinder Singh son of Balwinder

Singh and his friend Rahul Kumar son of Sudarshan Kumar resident of Kali Mata Mandir Road, Dinanagar and Suraj Kumar son of Raj Kumar resident of Kali Mata Mandir Road, Dinanagar were standing at Magrala Road Chungi Dinanagar Chowk. I alongwith my brother Prem Singh were going to Dinanagar for buying household items because of yesterday's Diwali Festival on 07.11.18. When we were behind Sukhwinder Singh etc., then it was around 8:45 PM that Davinder Saini son of Vijay Saini, near DAV School Dinanagar armed with pistol, Kaka son of Kishan Chand resident of Harijan Colony Dinanagar armed with pistol, Pankaj Saini son of Babbi Saini resident of Jani Chak, Police Station Taragarh empty handed, Bunty son of Pappu resident of village Magrala empty handed, Sajjan resident of Magrala empty handed, Ankush son of Surjit Kumar resident of Magrala empty handed and one unknown person whom I can identify if he comes before me, came on motorcycles while raising exhortations. They started hurling abuses at Sukhwinder Singh etc and Davinder Saini and Kaka started firing gunshots. When we raised hue and cry then above mentioned all persons fled on their motorcycles with their weapons. I and some other persons arranged for a vehicle and got the injured Sukhwinder Singh, Rahul Kumar and Suraj Kumar admitted at hospital Kotli Pathankot, where doctor declared my nephew Sukhwinder Singh as dead and referred Rahul Kumar to Amritsar and Suraj Kumar was taken by his brother Satish Kumar to Civil Hospital, Gurdaspur for treatment. Reason for enmity is that sometime ago Jatinder Singh brother of deceased Sukhwinder Singh had a fight with above mentioned persons, due to which Jatinder Singh got an FIR registered at Police Station Taragarh on dated 17.10.2018. Because of the grudge of the case, they have killed my nephew by firing gunshots and have inflicted injuries on Rahul Kumar and Suraj Kumar. Legal action be taken against Davinder Saini, Kaka, Pankaj Saini, Bunty, Ankush, Sajjan and unknown persons. Statement got recorded, which was heard and is correct. sd/- Piara Singh Numberdar 9888525857. Verified by Baldev Raj Insp/SHO, Police Station Dinanagar dated 8.11.18.”

3. As per the allegations levelled by the complainant in the FIR, the petitioner was shown to be present at the place of occurrence empty handed and Davinder Saini and Kaka had fired the gun shots. In the occurrence, Sukhwinder Singh, Rahul Kumar and Suraj Kumar were injured and ultimately Sukhwinder, injured succumbed to the injuries suffered in the incident. Thereafter, the matter was investigated by the police and DSP, Dinanagar was also deputed to conduct the investigation in the present case. DSP, Dinanagar prepared a detailed report, Annexure P4, and on the basis of open and secret inquiry, statements of witnesses and documentary evidence, it was proved that the petitioner was not present at the place of incident. Rather no witness had seen him at the place of occurrence and he was present at some other place. Consequently, the petitioner was declared innocent after the detailed inquiry by Senior Police Officers. Apart from that, it was also found that Sukhwinder had died due to the fire shots, which were attributed to Davinder Saini and Kaka, both the co-accused. Learned counsel further contends that during the course of trial, statement of PW1 Piara Singh was recorded, who allegedly stated that at the time of incident, Pankaj Saini (petitioner) and Jaspreet were carrying deadly weapons and were present at the spot of occurrence. Except the improved version of complainant Piara Singh, no other role has been attributed to the petitioner. Even the petitioner was named in the incident due to previous enmity between the parties. Learned counsel further submits that the trial Court failed to appreciate that the petitioner and complainant party were having old history of enmity with brother of the deceased and there was sufficient evidence on record to show that the petitioner was not present at the place of occurrence rather his tower location and other evidence clearly suggested that

he was present at some other place. Even the trial Court had not followed the law laid down by the Hon'ble Supreme Court in ***Hardeep Singh Versus State of Punjab, 2014 (3) SCC 92***, wherein the Hon'ble Supreme Court had held that the test has to be applied while exercising the powers under Section 319 Cr.P.C., is one which is more than *prima facie* case as exercised at the time of framing of the charge, short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In absence of such evidence, the Court should refrain from exercising powers under Section 319 Cr.P.C. Thus, the petition deserves to be allowed by this Court.

4. On the other hand, learned State counsel vehemently argued that in the present case, the inquiry was conducted by an officer of the level of DSP and the petitioner was found to be innocent. It was concluded that the petitioner was present at some other place and the fire arms were used by some other accused. However, learned counsel appearing on behalf of respondent no.2 submits that the petitioner was specifically named in the FIR as well as in the statement of PW1 Piara Singh. In both the statements, it was specifically mentioned that the petitioner was present at the place of occurrence and had formed an unlawful assembly with the co-accused. Even as per PW1 Piara Singh, petitioner was armed with deadly weapons, though, he may not have used the weapons in the incident. However, he was shown to be present alongwith other co-accused and had actively participated in the commission of crime. Thus, the petition deserves to be dismissed by this Court.

5. I have heard learned counsel for the parties and have perused the record with their able assistance.

6. Section 319 Cr.P.C. confers the power of a trial Court to proceed against other persons, who appeared to be involved in the offence and the said provision of law has been reproduced below:-

“the powers under Section 319 Cr.P.C. is an extraordinary and exceptional power and should not be exercised in routine to summon a person as additional accused. Even the word "evidence" used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and has to be broadly understood and not literally that is as evidence brought during trial.”

8. From a bare perusal of the aforesaid provision, it is apparent that the power under Section 319 Cr.P.C. is an extra ordinary power and the said power has to be exercised sparingly and with circumspection. The Court can summon the additional accused in cases where *prima facie* strong and cogent evidence is there to make them to stand trial for the offence under Section 319 of the Code. Even, mere probability of complicity is not enough to add a person as an additional accused and standard of proof employed for summoning a person as an accused is higher than the standard of proof employed for framing a charge against the accused.

9. While discussing the powers of a Court under Section 319 Cr.P.C., the Hon’ble Supreme Court has held in the matter of **Hardeep Singh’s** case (supra) as under:-

“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."

7. 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. Still further, the Hon'ble Supreme Court has held in the matter of ***"Sarabjit Singh and another Vs. State of Punjab & another"***, in CrI. Appeal No.998 of 2009, decided on 12.05.2009, held as follows:-

"12. The extent of the power of a Sessions Judge to summon persons other than the accused to stand trial in a pending case came up for consideration before this Court in [Municipal Corporation of Delhi v. Ram Kishan Rastogi](#) [(1983) 1 SCC 1]. Therein, this Court while holding that the provision confers a discretionary jurisdiction on the court added "this is really an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken".

13. Interpretation of the aforementioned provision, in the light of [the said decision](#), came up for consideration before various courts from time to time. We may take note of some of them.

In [Shashikant Singh v. Tarkeshwar Singh](#) [(2002) 5 SCC 738], this Court held:

"9. The intention of the provision here is that where in the course of any enquiry into, or trial of, an offence, it appears to the court from the evidence that any person not being the accused has committed any offence, the court may proceed against him for the offence which he appears to have committed. At that stage, the court would consider that such a person could be tried together with the accused who is already before the court facing the trial. The safeguard provided in respect of such person is that, the proceedings right from the beginning have mandatorily to be commenced afresh and the witnesses reheard. In short, there has to be a de novo trial against him. The provision of de novo trial is mandatory. It vitally affects the rights of a person so brought before the court. It would not be sufficient to only tender the witnesses for the cross-examination of such a person. They have to be examined afresh. Fresh examination-in-chief and not only their presentation for the purpose of the cross-examination of the newly added accused is the mandate of [Section 319\(4\)](#). The words "could be tried together with the accused" in [Section 319\(1\)](#), appear to be only directory. "Could be" cannot under these circumstances be held to be "must be".

The provision cannot be interpreted to mean that since the trial in respect of a person who was before the court has concluded with the result that the newly added person cannot be tried together with the accused who was before the court when order under [Section 319\(1\)](#) was passed, the order would become ineffective and inoperative, nullifying the opinion earlier formed by the court on the basis of the evidence before it that the

newly added person appears to have committed the offence resulting in an order for his being brought before the court."

It was furthermore held:

"14. A Magistrate is empowered to take cognizance of an offence in the manner provided under [Section 190](#) of the Code. [Section 209](#) enjoins upon a Magistrate to commit the case to the Court of Session when it appears to the Magistrate that the offence is triable exclusively by the Court of Session. [Section 193](#) provides for the power of the Court of Session to take cognizance of any offence. It uses the expression "cognizance of any offence" and not that of "offender". These three provisions read with [Section 319](#) make it clear that the words "could be tried together with the accused" in [Section 319](#) are only for the purpose of finding out whether such a person could be put on trial for the offence..." In [Rakesh v. State of Haryana](#) [(2001) 6 SCC 248], this Court held:

"13. Hence, it is difficult to accept the contention of the learned counsel for the appellants that the term "evidence" as used in [Section 319](#) of the Criminal Procedure Code would mean evidence which is tested by cross-examination. The question of testing the evidence by cross-examination would arise only after addition of the accused. There is no question of cross-examining the witness prior to adding such person as accused. The section does not contemplate an additional stage of first summoning the person and giving him an opportunity of cross-examining the witness who has deposed against him and thereafter deciding whether such person is to be added as accused or not. The word "evidence"

occurring in sub-section (1) is used in a comprehensive and broad sense which would also include the material collected by the investigating officer and the material or evidence which comes before the court and from which the court can prima facie conclude that the person not arraigned before it is involved in the commission of the crime."

In [Ranjit Singh v. State of Punjab](#) [(1998) 7 SCC 149], this Court opined:

"20. Thus, once the Sessions Court takes cognizance of the offence pursuant to the committal order, the only other stage when the court is empowered to add any other person to the array of the accused is after reaching evidence collection when powers under [Section 319](#) of the Code can be invoked. We are unable to find any other power for the Sessions Court to permit addition of new person or persons to the array of the accused. Of course it is not necessary for the court to wait until the entire evidence is collected for exercising the said powers.

21. But then one more question may survive. In a situation where the Sessions Judge notices from the materials produced but before any evidence is taken, that any other person should also have necessarily

been made an accused (without which the framing of the charge would be defective or that it might lead to a miscarriage of justice), is the Sessions Court completely powerless to deal with such a contingency? One such situation is cited by the learned Judges through an illustration narrated in Kishun Singh case¹ as follows: (SCC pp. 29- 30, para 15) "[W]here two persons A and B attack and kill X and it is found from the material placed before the Judge that the fatal blow was given by A whereas the blow inflicted by B had fallen on a non-vital part of the body of X. If A is not challaned by the police, the Judge may find it difficult to charge B for the murder of X with the aid of [Section 34](#) IPC. If he cannot summon A, how does he frame the charge against B?"

22. Another instance can be this. All the materials produced by the investigating agency would clearly show the positive involvement of a person who was not shown in the array of the accused due to some inadvertence or omission. Should the court wait until evidence is collected to get that person arraigned in the case?

23. Though such situations may arise only in extremely rare cases, the Sessions Court is not altogether powerless to deal with such situations to prevent a miscarriage of justice. It is then open to the Sessions Court to send a report to the High Court detailing the situation so that the High Court can in its inherent powers or revisional powers direct the committing Magistrate to rectify the committal order by issuing process to such left-out accused. But we hasten to add that the said procedure need be resorted to only for rectifying or correcting such grave mistakes.

This Court in [Lok Pal v. Nihal Singh](#) [(2006) 10 SCC 192] observed:

"...The court, while examining an application under [Section 319](#) of the Code, has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, for exercise of discretion under [Section 319](#) of the Code all relevant factors, including those noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused.

It was furthermore observed:

"19. In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be

used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken..."

In [Mohd. Shafi v. Mohd. Rafiq & Anr.](#) [2007 (5) SCALE 611], this Court held:

"7. Before, thus, a trial court seeks to take recourse to the said provision, the requisite ingredients therefore must be fulfilled. Commission of an offence by a person not facing trial, must, therefore, appears to the court concerned. It cannot be ipse dixit on the part of the court. Discretion in this behalf must be judicially exercised. It is incumbent that the court must arrive at its satisfaction in this behalf.

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12. The Trial Judge, as noticed by us, in terms of [Section 319](#) of the Code of Criminal Procedure was required to arrive at his satisfaction. If he thought that the matter should receive his due consideration only after the cross-examination of the witnesses is over, no exception thereto could be taken far less at the instance of a witness and when the State was not aggrieved by the same."

The decision of this Court in [Mohd. Shafi](#) (supra), however, has been explained in [Lal Suraj @ Suraj Singh and Anr. v. State of Jharkhand](#) [2008 (16) SCALE 276], stating:

"...The principle of strong suspicion may be a criterion at the stage of framing of charge as all the materials brought during investigation were required to be taken into consideration, but, for the purpose of summoning a person, who did not figure as accused, a different legal principle is required to be applied. A court framing a charge would have before it all the materials on record which were required to be proved by the prosecution. In a case where, however, the court exercises its jurisdiction under [Section 319](#) of the Code, the power has to be exercised on the basis of the fresh evidence brought before the court. There lies a fine but clear distinction."

12. From the above referred principles, it is apparent that an order under Section 319 Cr.P.C., should not be passed only on the ground that some prosecution witness had named the accused, who is sought to be summoned by the trial Court. Even cogent and convincing reasons have to be assigned before exercising such an extra ordinary jurisdiction by the Court. For the

aforementioned purpose, the Courts are required to apply stringent tests and one of the test being whether the evidence on record is such which would reasonably lead to conviction of the person sought to be summoned. In the present case, the trial Court only considered the fact that complainant Piara Singh PW1, had named the petitioner and had shown his presence at the place of occurrence. In fact, the statement of Piara Singh, complainant had already been investigated in depth by the police and after recording the statements of eye witnesses and examining the documentary evidence, the police had found that the petitioner was not present at the place of occurrence. Even during the course of trial, except the self-serving statement of PW1 Piara Singh, complainant, the prosecution could not lead any fresh evidence to prove the complicity of the petitioner in the crime. The complainant had only reiterated his version, as mentioned in the FIR, which has already been found to be false, qua the petitioner. Thus, the evidence, which was required for exercising the power under Section 319 Cr.P.C., was lacking and the impugned order is legally unsustainable.

13. In view of the above discussion, the present petition is allowed and the impugned order dated 20.04.2021, passed by the Court of Additional Sessions Judge, Gurdaspur, is set aside qua the petitioner.

14. Pending application(s), if any, stand(s), disposed of, accordingly.

25.05.2026

sunil

(N.S.SHEKHAWAT)
JUDGE

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