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

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CRM-M-19103-2023 (O&M)

Date of decision : 27.04.2026

Ahwani Sharma and others**...Petitioners****Versus****State of Punjab and another****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. R. S. Chahal, Advocate
for the petitioners.

Mr. Durgesh Garg, AAG, Punjab.

Mr. H. P. S. Sandhu, 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 DDR No. 23 dated 07.08.2015, registered under Sections 323, 341, 325 and 34 of IPC at Police Station Sahnewal, District Ludhiana, registered as cross case in FIR No. 148 dated 07.08.2015, under Sections 324, 323, 341, 506 and 34 of IPC at Police Station Sahnewal, District Ludhiana and also for quashing of order dated 20.03.2023 (Annexure P-16), whereby the petitioners have been summoned as additional accused in the cross case under Section 319 of the Code for facing trial for commission of aforementioned offences.

2. Adumbrated facts as emanating from the record are that the aforementioned FIR was registered on the basis of a written complaint submitted by complainant Deepak Sharma alleging that he was married with

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one Meenakshi on 19.04.2013. There was a matrimonial discord between them, due to which, his father had disowned him from his properties and he had started living alone in a rented accommodation. On 06.08.2015, when he was going towards Sahnewal on his motorbike, he was intercepted by respondent No.2 Harvinder Kumar, who is maternal uncle (*Massad*) of his wife Meenakshi. He was accompanied by two persons, who were unknown to the complainant. They opened an assault upon him. Harvinder Kumar struck a blow on the left side of complainant's chest with some sharp edged weapon and his companions also caused injuries to him with baseball bats. He raised clamour, on hearing which, some persons had reached at the spot and then the assailants had fled away. The cause of grudge, as narrated by the complainant, was his strained relationship with his wife, who had lodged an FIR under Sections 498-A, 323 and 406 of IPC against him at Sahnewal.

3. After registration of the FIR, investigation proceedings were initiated. Respondent No. 2 Harvinder Kumar recorded his statement on 07.08.2015 alleging that the present petitioners along with Deepak Sharma, i.e. the complainant in the FIR, had caused injuries to him in furtherance of their common intention and had then fled away. The impugned cross case bearing DDR No. 23 was registered against the petitioners. However, they were declared innocent during the course of investigation and the final report in the cross case was submitted against Deepak Sharma and Suresh Sharma only.

4. As revealed from the record, during trial of the cross case, an application under Section 319 of the Code was filed by respondent No. 2 Harvinder Kumar for summoning the present petitioners as additional

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accused. The said application was allowed by the learned trial Court, vide impugned order dated 20.03.2023. Feeling aggrieved from the same, the petitioners have filed the present petition seeking quashing of impugned DDR/cross case as well as the summoning order passed under Section 319 of the Code.

5. It is argued by learned counsel for the petitioners that they have been falsely implicated in this case. Petitioner No. 1 is father of accused Deepak Sharma, whereas petitioner No. 2 is his neighbor and petitioner No. 3 is a distant relative of petitioner No.1. They were neither present at the spot at the time of occurrence nor they had participated in the same. It is only on account the matrimonial dispute between abovenamed Deepak Sharma and his wife and only because of the petitioners being close relatives of Deepak Sharma that they have been falsely implicated in this case. After conducting thorough investigation in the matter, the investigating agency had found them to be innocent and had not arrested and challaned them. The allegations did not make out any case for summoning them as additional accused. It is, thus, urged that the petition deserves to be allowed and the impugned DDR as well as the summoning order is liable to be quashed.

6. Learned State counsel has not disputed the factual assertions.

7. On the other hand, learned counsel for respondent No.2/complainant has argued that there is not illegality or infirmity in the impugned order, which is well reasoned and based on true facts of the case. It is also argued that a prima facie case for commission of alleged offences is made out against the petitioner. No case is made out for quashing the DDR or summoning order. Hence, it is urged that the petition is liable to be dismissed.

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8. This Court has heard the rival submissions.
9. 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."

10. 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.

11. 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.

12. 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.

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

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virtue of section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be 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.”

13. On applying the above discussed proposition of law to the peculiar facts and circumstances of the present case, this Court finds that the impugned order passed by the learned trial Court does not suffer from any illegality or perversity warranting interference in exercise of inherent jurisdiction. It is evident from the record that during the course of trial, specific allegations have surfaced against the present petitioners in the deposition of prosecution witnesses, thereby disclosing their active participation in the occurrence. The contention of the petitioners that they were found innocent during investigation and were not challaned loses significance at this stage, inasmuch as the power under Section 319 of the Code is to be exercised on the basis of evidence that emerges before the Court during trial and not merely on the material collected during investigation. The law laid down by the Hon’ble Supreme Court clearly postulates that even persons not charge-sheeted can be summoned if strong and cogent evidence indicating their involvement comes on record. In the present case, the testimony brought forth before the trial Court cannot be said to be vague or merely suggestive. Rather, it *prima facie* discloses the complicity of the

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petitioners, thus satisfying the threshold required for invoking powers under Section 319 of the Code. At this stage, a meticulous appreciation of evidence or adjudication on its probative value is neither warranted nor permissible.

14. The plea of false implication on account of matrimonial discord also does not persuade this Court as the same constitutes a matter of defence, which is to be tested during the course of trial. Similarly, the relationship of the petitioners with the main accused cannot be a ground to discard the evidence that has surfaced during trial. In view of the settled legal position and the material available on record, it cannot be said that the learned trial Court has exercised its discretion in a casual manner. Rather, the impugned order reflects due application of mind to the evidence brought on record and the parameters governing the exercise of jurisdiction under Section 319 of the Code. Consequently, no ground is made out for quashing of the impugned DDR or the summoning order. The present petition, being devoid of merit, is accordingly dismissed.

27.04.2026

Waseem R. Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No