

2026:PHHC:086824



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

105

CRR-869 of 2024 (O&M)
Reserved on:-10.04.2026
Date of Decision: 08.06.2026

Ram Singh and another

...Petitioners

Vs.

State of Punjab and another

...Respondents

CORAM : HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present : Mr. Amandeep Singh, Advocate for
Mr. Sunandan Gaind, Advocate
for the petitioners.

Mr. M.S. Bajwa, DAG, Punjab
for respondent No.1-State.

None for respondent No.2.

N.S.SHEKHAWAT, J.

1. The petitioners have filed the present petition against the impugned order dated 15.02.2024 passed by the Court of Additional Sessions Judge, Ludhiana, whereby, the petitioners were ordered to be summoned by the trial Court while exercising the powers under Section 319 Cr.P.C.

2. Learned counsel for the petitioners contended that a false FIR No. 136 dated 06.09.2021 under Sections 302, 148 and 149 of IPC, Police Station City-I, Khanna, was ordered to be registered against the petitioners on the basis of the statement made by

Rajwinder Singh @ Tikko, respondent No.2 and the same has been reproduced below:-

“Stated that I am resident of above mentioned address and working as a painter. My second brother Kulwinder Singh @ Gandhi is also a painter. My brother was married to Baljeet Kaur daughter of Surjeet Singh resident of Village Khanna Khurd and has two daughters Lovepreet Kaur and Shikha, who are studying. Baljeet Kaur used to quarrel daily with my brother and both daughters Lovepreet Kaur and Shikha support their mother. My brother many times told about this to his brother in laws namely Ram Singh and Baba @ Mukhtiar Singh and also invited them to his house, who after visiting house of Kulwinder Singh instead of making their sister Baljeet Kaur and her daughters understand, intimidated and quarrelled with my brother Kulwinder Singh @ Gandhi. Brother-in-laws of my brother, after some time, left the house, staring at my brother. About a week ago also my sister-in-law Baljeet Kaur and my both nieces quarreled with my brother Kulwinder Singh. Neighbours also do not interfere due to fear by saying that it was a matrimonial dispute. Today at about 8:30 AM myself and my cousin Karnail Singh son of Sadhu Singh resident of Bhattian entered the house and saw that my brother Kulwinder Singh @ Gandhi was lying dead on cot in courtyard and brothers-in-law of my brother Ram Singh and Mukhtiar Singh, who were standing there, fled away from the spot after seeing us. My sister-in-law Baljeet Kaur said that he was died due to heart attack and when we started preparing for last rites of Kulwinder Singh and when we started giving him bath, we noticed a wound on right side of his neck, it seemed like that his neck was strangulated with

rope like material, which led to his death. My brother Kulwinder Singh @ Gandhi was killed by his wife Baljit Kaur and his daughters Lovepreet Kaur and Sikha along with brothers-in-law of my brother, namely, Ram Singh and Mukhtiar Singh son Surjit Singh resident of Khanna Khurd. Then I and Karnail Singh son of Sadhu Singh resident of Bhatian were going to police station to report and you met us and recorded my statement which I heard and is correct and action be taken”.

4. Learned counsel for the petitioners contended that after the registration of the FIR, the representations were made to the higher police officers regarding false implication of the petitioners and the investigation was conducted by SP (1) Khanna and it was found that both the petitioners were not present at the house of Kulwinder Singh alias Gandhi at the time of the occurrence. It was found that Ram Singh, petitioner No.1, was present at his house at Khanna Khurd and he left his house at about 08:50 a.m. to attend the funeral of his brother-in-law Kulwinder Singh alias Gandhi. Similarly, Mukhtiar Singh, petitioner No. 2, was found to be present at Bazigar Basti, Khanna, regarding his work. During the course of investigation, the police also recorded the statements of Hardeep Singh and Charanjit Kaur, both neighbours of Kulwinder Singh @ Gandhi, and they stated that they along with other residents of the neighborhood went to the house of the deceased and, at that time, both the petitioners were not present at the house of Kulwinder Singh @ Gandhi. Apart from that, the CCTV footage was submitted by Paramjit Kaur, which ruled out the presence of the petitioners at that time at the place of occurrence. Further, even the tower location of the

mobile phones of both the petitioners were also taken and they were found at some other place. The police also recorded the statements of the neighbours and both the petitioners, and sufficient evidence was discovered, which conclusively proved that both the petitioners were not present at the spot at the time of the occurrence. In fact, it was found that both the petitioners were implicated in the present case as unfortunately they happened to be brothers of Baljeet Kaur, main accused. In fact, the complainant not only involved both the petitioners, but also two young daughters of the deceased as well, only with a *malafide* intention to grab the residential house of his brother, Kulwinder Singh @ Gandhi. Learned counsel further submitted that even from the testimony of PW1 Rajwinder Singh as well as PW2 Karnail Singh, it is apparent that they had not even witnessed the occurrence and simply stated that after the murder, when they went at the spot, they noticed presence of both the petitioners near the dead body. In fact, none of the witnesses had alleged that the petitioners had also participated in the occurrence or had any concern with the allegations levelled in the FIR. Even, from a bare reading of the statements of PW1 Rajwinder Singh and PW2 Karnail Singh, it is apparent that they had also levelled allegations against Baljeet Kaur, wife of the deceased, sister of the petitioners.

5. On the other hand, learned State counsel also referred to the detailed reply filed on behalf of the State of Punjab. Learned State counsel submitted that the representations were moved to the IG, Ludhiana Range, and the said representations were marked to the SP

(1) Khanna, who inquired the matter and declared both the petitioners innocent. Learned State counsel submitted that even from the statements of PW1 Rajwinder Singh, complainant and PW2 Karnail Singh, it is apparent that they had arrived at the scene after the incident and had discovered dead body of the deceased. However, they were not the eyewitnesses to the actual act of murder.

6. Even though, respondent No.2 was served personally, yet there was no representation on behalf of respondent No.2.

7. Learned counsel for the petitioners has referred to the law laid down by the Hon'ble Supreme Court in the matter of ***"Hardeep Singh Vs. State of Punjab, (2014) 3 SCC, 1992***, wherein, it has been held that there has to be more than a *prima facie* evidence to summon a person as an additional accused to face trial, while dealing with an application under Section 319 Cr.P.C. The relevant extract of the said judgment has been reproduced below:-

"57. Thus, the application of the provisions of Section 319 CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319 CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to herein above, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice."

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

9. The Hon'ble Supreme Court has summarized the principles, which govern the disposal of an application under Section 319 Cr.P.C by the Courts in a judgment passed in "Omi @ Omkar Rathore and another Vs. State of Madhya Pradesh and another, SLP (Crl). No.(s) 17781 of 2024" 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”.

10. Even, the Hon’ble Supreme Court in the matter of Hardeep Singh (supra) as well as all other subsequent judgments has held that the powers under Section 319 Cr.P.C envisages a discretionary power, which empowers the Court holding a trial to proceed against any person not shown or mentioned as an accused, if it appears from the evidence that such person had committed a crime for which he must be tried together with the accused, who were already arrayed as an accused, before the Trial Court. Even, the Court holding a trial and intending to exercise the power conferred by Section 319 Cr.P.C should not act mechanically only on the ground that some evidence has come on record implicating the person, who is sought to be summoned by way of such application. Even, the Court has to record its satisfaction preceding the order thereunder that more than *prima facie* evidence had been found against such accused, who is sought to be summoned. Even, such power has to be exercised sparingly and not in a casual manner.

11. Now, adverting to the facts of the present case in the light of the settled law, this Court has no hesitation to hold that the present petition deserves to be allowed in view of the following conclusions:-

(i) The investigation was conducted by SP (1) Khanna and it was found that both the petitioners were not present at the house of Kulwinder Singh alias Gandhi at the time of the occurrence. It was found that Ram Singh, petitioner No.1, was present at his house at Khanna Khurd and he left his house at about 08:50 a.m. to attend the funeral of his brother-in-law Kulwinder Singh alias Gandhi. Similarly, Mukhtiar Singh, petitioner No. 2, was found to be present at Bazigar Basti, Khanna, regarding his work.

(ii) During the course of investigation, the police also recorded the statements of Hardeep Singh and Charanjit Kaur, both neighbours of Kulwinder Singh @ Gandhi, and they stated that they along with other residents of the neighborhood went to the house of the deceased and, at that time, both the petitioners were not present at the house of Kulwinder Singh @ Gandhi.

(iii) The CCTV footage submitted by Paramjit Kaur, ruled out the presence of the petitioners at that time at the place of occurrence. Even, the tower location of the mobile phones of both the petitioners were also taken and they were found at some other place.

(iv) The FIR in the present case was registered on the basis of the statement made by respondent No. 2, who was not even eyewitness of the occurrence. He alleged that after the murder of his brother Kulwinder Singh alias Gandhi, he along with Karnail Singh went at the spot and found that the dead body of his brother was lying on a cot in his house. They had seen that both the petitioners were also standing there and on seeing them, they fled away from the spot. Except the said attribution, no other role was assigned to both the petitioners. Even, Rajwinder Singh, complainant, appeared in the witness box as PW-1 and again reiterated the same statement. Karnail Singh, PW-2, also deposed on similar lines. However, from the statements of both the witnesses, it cannot be said that the said witnesses had also attributed any specific role to the petitioners in the commission of murder of Kulwinder Singh alias Gandhi. Even otherwise, the Hon'ble Supreme Court has held in the matter of **Juhru and others versus Karim and another (2023) 5 SCC 406** that the power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is a *sine qua non* to summon an additional accused. Further, with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., and in conformity with the

binding judicial dictums, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319 Cr.P.C. ought not to be invoked.

12. In view of the above discussion and applying the aforesaid principles laid down by the Hon'ble Supreme Court to the facts of the instant case, I find that the petition deserves to be allowed by this Court. Consequently, the present petition is allowed and the impugned order dated 15.02.2024 passed by the Court of Additional Sessions Judge, Ludhiana, is ordered to be set aside.

13. All pending applications, if any, are disposed off, accordingly.

08.06.2026
amit rana

(N.S.SHEKHAWAT)
JUDGE

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