



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

CRR No. 866 of 2024 (O&M)

Jyoti Phulia ...Petitioner

Versus

State of Haryana ...Respondent

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	16.01.2026
2	The date when the judgment is pronounced	20.01.2026
3	The date when the judgment is uploaded on the website	20.01.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Samay Sandhawalia, Advocate
for the petitioner.

Mr. Apoorv Garg, Addl. A.G., Haryana.

Mr. Pankaj Bali, Advocate
for the complainant.

MANISHA BATRA, J.

1. The instant revision petition has been filed by the petitioner challenging the order dated 19.03.2024, passed by the Court of learned Additional Sessions Judge, Karnal in case arising out of FIR No. 80 dated 24.01.2018, registered under Sections 148, 149, 323, 324, 506 and 216 of IPC and Sections 3(2)(va) and 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (*for short 'SC/ST Act'*), whereby the petitioner had been ordered to be summoned as an additional accused on allowing of an application filed by the complainant under Section 319 of

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2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of a complaint filed by complainant Sandeep alleging that accused Sumit was his friend who used to make calls to their other friends by taking cellphone of the complainant. On 09.01.2018, Sumit insisted the complainant to accompany him to Karnal for the purpose of buying some clothes. When they reached in the vicinity of Karnal, Sumit made the complainant to stop at Atal Park on the premise that he had to take money from someone. On reaching the park, he took the phone of the complainant and made a call to the present petitioner, who was already present there. Sumit went towards the petitioner. In the meanwhile, six youths reached there armed with weapons and while proclaiming that they would teach him a lesson for talking with a girl, they opened an attack upon the complainant and caused injuries on his person with knives and by giving kicks and fist blows. On intervention of other persons, who were present in the park, they fled away while extending threats to him. The complainant alleged that he had been admitted in the hospital and the police was informed at that time but no action was taken.

3. After registration of the FIR, investigation proceedings were initiated. The petitioner was found to be innocent. She had not been arrested and challaned. Her name was kept in Column No. 2 of the challan report. Subsequently, during the course of trial, the complainant moved an application under Section 319 of Cr.P.C. for summoning the petitioner as an additional accused, which was allowed, vide impugned order dated 19.03.2024. As such, the petitioner was ordered to be summoned to face trial for commission of offences punishable under Sections 323, 324, 506, 216,

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148, 120-B and 149 of IPC and Sections 3(2)(va) and 3(1)(r) of the SC/ST Act. Feeling aggrieved, the petitioner has filed the present petition.

4. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law as while passing the same, the learned trial Court ignored the fact that the allegations in the FIR, even if believed to be correct on the face of the same, do not make out any case whatsoever for commission of aforementioned offences against her. As per the allegations, she was present at the spot before occurrence and had gone along with co-accused Sumit. However, no specific overt act has been attributed to her. While appearing as a witness, the complainant made material improvements in his version, so as to implicate her. In fact, she is friend of Jyoti Verma, who had lodged an FIR bearing No, 51 dated 24.01.2018, registered under Sections 354-D and 506 of IPC against the complainant, who had been harassing her from quite some time. The complainant had been exerting pressure upon her to ask Jyoti Verma to withdraw that case and on feeling offended due to the reason that she did not do so, he had falsely implicated in this case. Therefore, it is argued that the impugned order is liable to be set aside, the application filed by the complainant under Section 319 of Cr.P.C, is liable to be dismissed and the present petition deserves to be allowed.

5. *Per contra*, learned State counsel, assisted by learned counsel for the complainant, has argued that there is no illegality or infirmity in the impugned order, which is well reasoned. The allegations make out a prima facie case for commission of subject offences against the petitioner. Evidence led by the complainant in the form of his testimony, as recorded before the

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learned trial Court on 18.03.2024 is sufficient to show that the petitioner was accompanying the co-accused on the fateful day and it was she, on whose pointing out towards the complainant, the co-accused had opened assault upon him. It is, thus, argued that the petitioner is devoid of any merits and is liable to be dismissed.

6. This Court has heard the rival submissions.

7. At the outset, it would be proper to refer to the provisions of Section 319 of Cr.P.C. 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."

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8. 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 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.

9. The issue relating to the powers to be exercised under Section 319 of Cr.P.C. 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 Cr.P.C. 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

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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 unrebutted, would lead to conviction. In the absence of such satisfaction, the Court should refrain from exercising power under Section 319 of Cr.P.C.

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

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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 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.

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(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 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.”

11. Now coming to the case in hand. On a perusal of the contents of the FIR, it is revealed that the only allegation levelled against the petitioner by the complainant was that when he had reached at Atal Park, accused Sumit made a call to the petitioner and then went along with her, whereas the complainant remained seated in the park, when he was assaulted. The petitioner has placed on record Annexure P-2, copy of sworn deposition of the complainant, recorded before the learned trial Court while appearing as PW-5. On going through the same, it is revealed that he made material improvements in his version by saying that that the petitioner and Jyoti Verma, who had admittedly got registered aforementioned FIR No. 51 against him, had pointed towards him and had told six boys, who had reached there that the complainant was the same boy from the village. The complainant is further shown to have stated that he had informed father of Jyoti Verma about her involvement with some youths and feeling offended, she had called the above

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mentioned six youths to take revenge. He also stated that on instructions of the petitioner and co-accused, he was assaulted by these six youths. On a perusal of this statement, it is clear that the complainant has made material improvements in his version given in the FIR. He had recorded his statement after a gap of more than six years. During this entire period, no application for summoning the petitioner as an additional accused had been filed by him. Even otherwise, on a perusal of the contents of the challan report, it is revealed that thorough investigation was conducted in the matter and the petitioner was found to be innocent. It is not the case of the complainant that the petitioner had inflicted any injury upon his person or had criminally intimidated him or had harboured other offenders or even that she had committed any such act which brought her within the purview of Sections 3(2)(va) and 3(1)(r) of the SC/ST Act.

12. In view of the discussion made above, this Court is of the considered opinion that the impugned order, whereby the petitioner had been summoned to face trial as an additional accused under Section 319 of Cr.P.C., is liable to be set aside. Accordingly, finding merit in the petition, the same is allowed. The impugned order along with all the subsequent proceedings is hereby set aside.

20.01.2026

Waseem Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No