



109/2 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of Decision: 05.05.2026.

(i) CRR-1344-2023(O&M)

Gurpreet Singh ...Petitioner
VS.

State of Punjab and another ...Respondents

(ii) CRR-761-2023(O&M)

Jiwan Lal Sareen ...Petitioner
VS.

State of Punjab and another ...Respondents

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

Present : Mr. Mitul Singh Rana, Advocate
for the petitioner in CRR-1344-2023.

Mr. Sandeep Sharma, Advocate
for the petitioner in CRR-761-2023.

Mr. M.S.Bajwa, Deputy Advocate General, Punjab.

Mr. Gaurav Pratap Singh Pathania, Advocate
for respondent No.2 in both cases.

N.S.Shekhawat J. (Oral)

1. This order shall dispose of above-said two petitions i.e. CRR-1344-2023 titled as "Gurpreet Singh Vs. State of Punjab and another" and CRR-761-2023 titled as "Jiwan Lal Sareen Vs. State of Punjab and another" as both the petitions have been filed against the common impugned order dated



10.02.2023 passed by the Court of Additional Sessions Judge, Pathankot, whereby, the petitioners have been ordered to be summoned for facing the trial as additional accused for the offences punishable under Sections 302, 148, 149 of IPC, while exercising powers under Section 319 Cr.P.C.

2. Learned counsel appearing on behalf of the petitioner-Gurpreet Singh (in CRR-1344-2023) submits that the petitioner was not named in the present case and his name surfaced for the first time on 14.07.2021 i.e. after about 17 days of the occurrence, in the statement of Jagjit Singh, who claimed himself to be an eye-witness of the present case. The police conducted detailed and thorough investigation in the present case and the challan was presented on 07.10.2021 against five accused and it was concluded during investigation that the petitioner had no concern with the alleged offence. However, during the course of trial, the prosecution examined PW-1 Rajnish Singh and PW-3 Jagjit Singh alleged eye-witnesses and thereafter, the present application under Section 319 Cr.P.C. was moved to summon the petitioner as an additional accused. He further submits that the petitioner is a Transporter and PW-3, Jagjit Singh is also a Transporter and is a business rival of the petitioner. Further, even for allegedly causing five injuries to the deceased, five accused are already facing trial and no injury has been attributed to the petitioner. Rather, it was found that the petitioner was not at all present at the place of occurrence and had no role to play in the alleged incident. Even no weapon was attributed to the petitioner by the prosecution.

3. Even similar arguments have been raised by learned counsel for the petitioner-Jiwan Lal Sareen in CRR-761-2023. He submits that PW-1, Rajnish



Singh during his cross-examination admitted that he had got recorded his statement before the police on 28.06.2021 i.e. next day of the alleged occurrence and further categorically stated that he got his statement recorded as per the instructions of Jagjit Singh. Thus, PW-1 Rajnish Singh had no personal knowledge of the occurrence and made a statement on the asking of Jagjit Singh. Still further, Jagjit Singh PW-3 also made considerable improvements before the trial Court and he was duly confronted with the said improvements. Thus, PW-3 Jagjit Singh was an unreliable witness and had made self-contradictory statement before the trial Court. However, by overlooking the facts of the case and the settled law, the application was wrongly allowed by the trial Court.

4. On the other hand, learned State counsel, assisted by learned counsel for respondent No.2 have vehemently opposed the submissions made by the petitioners on the ground that PW-1, Rajnish Singh as well as PW-3, Jagjit Singh had specifically named both the petitioners and specific role was assigned to them. Even they had caused injuries to the deceased also and at this stage, there was sufficient ground to summon them as additional accused in the present case.

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

6. In fact, the Hon'ble Supreme Court has held in the matter of **"Hardeep Singh versus State of Punjab and others", 2014(2), SCC (Criminal) 86** that 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. Still further, the Hon’ble Supreme Court has held in the matter of **“Juhru and others Vs. Karim and another”, 2023(2) SCC (Criminal) 509** as follows:-

“12. Section 319 Cr.P.C., 1973 contemplates that:

" 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. "

*13. Illuminating the scope of Section 319 Cr.PC, the Constitution Bench of this Court in **Hardeep Singh v. State of Punjab (2014) 3 SCC 92** laid down that:*

"57. Thus, the application of the provisions of section 319 CrPC, 1973 at the stage of inquiry is to be understood in its correct perspective. The power under section 319 CrPC, 1973 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. "

x-x-x-x-x

"105. Power under section 319 Cr.P.C., 1973 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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under section 319 Cr.P.C., 1973. In section 319 Cr.P.C., 1973 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., 1973 to form any opinion as to the guilt of the accused. "

14. This Court has very recently, in Sukhpal Singh Khaira v. The State of Punjab (2023) 1 SCC 289, succinctly explained the powers bestowed on the Court under section 319 Cr.P.C., 1973 and ruled that:

"15. At the outset, having noted the 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."

15. In Hardeep Singh (Supra), it has been eloquently held that the word "evidence" in Section 319 Cr.P.C., 1973 has to be broadly understood and thus materials which have come before the Court in course of enquiry can be used for :

(i) corroboration of evidence recorded by Court after commencement of trial; (ii) for exercise of power under Section 319 Cr.P.C., 1973; and (iii) also to add an accused whose name is shown in column no.2 of the chargesheet.

It was further explained that statement made in examination-in chief also constitutes "evidence" and the Court while exercising power under Section 319 Cr.P.C., 1973 post commencement of trial, need not wait for evidence against person proposed to be summoned, to be tested by cross-examination.

16. In Sukhpal Singh Khaira (Supra), the Constitution Bench refreshed the guidelines that the competent court must follow while exercising power under Section 319 Cr.P.C., 1973 It was ruled that:

(i) if the competent court finds evidence or if application under Section 319 Cr.P.C., 1973 is filed, regarding involvement of any other person in committing the offence based on evidence "recorded at any stage in the trial" before passing of the order on acquittal or sentence, it shall pause



the trial at that stage and the Court shall proceed to decide the fate of the application under Section 319 Cr.P.C., 1973;

(ii) if the Court decides to summon an accused under Section 319 Cr.P.C., 1973 such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the Trial Court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately; and

(iii) if the power under Section 319 Cr.P.C., 1973 is not invoked or exercised in the main trial till its conclusion and if there is a split-up case, such power can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated trial).

17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C., 1973 is not to be exercised routinely and the existence of more than a prima facie case is sine quo non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 Cr.P.C., 1973 and in conformity with the binding judicial dictums referred to above, 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 is, 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., 1973 ought not to be invoked”.



7. Now adverting to the facts of the present case, it is apparent that both the petitioners were not initially named as accused in the present FIR and only during the course of investigation, their name appeared as additional accused in the present case. Even at later stage, there was no specific attribution to both the petitioners and it was alleged that they were also present at the place of occurrence and were armed with weapons and had caused injuries to the deceased. However, from a perusal of the record, it is apparent that five accused, namely, Kimti Lal, Shiv Kumar, Sandeep Singh, Sukhraj Singh and Sukhwinder Singh were already facing trial for causing injuries to the deceased. Even from a perusal of the postmortem report (Annexure P-2), it is apparent that the deceased had suffered the following injuries on his person:-

- “1. Abrsion 2x1 cm with peeled off skin present at lower side of third finger of right foot. No blood clot seen.*
- 2. Two Bruise marks 0.5 cm x 0.5 cm present on lower abdomen in mid line, approx. 10 cm below umbilicus.*
- 3. Abrasion alongwith mud present over left ear.*
- 4. Abrasion 1 cm x 0.5 cm present on right foot below great toe on dorsum aspect.*
- 5. Red linear bruise 6 cm x 1 cm approx. present about 14 cm from below left ear. It extends from mid of left clavicle to 6 cm upward backwards.”*

8. Still further, the role of both the petitioners was examined in detail by the Investigating Agency and it was concluded that both the petitioners were not at all present at the place of alleged occurrence. Further, during the course of trial, the prosecution had examined PW1, Rajnish Singh, who categorically stated that Jagjit Singh had met him and it was disclosed by Jagjit Singh,



witness that the petitioners along with five other accused had caused injuries to Rajinder Singh and Rajinder Singh had succumbed to the injuries. In his cross-examination, he also admitted that he got his statement recorded on the next day of occurrence, as per the instructions of Jagjit Singh. This clearly shows that even the presence of these petitioners at the spot may be doubtful. Furthermore, PW-3, Jagjit Singh was also confronted by the defence counsel with his earlier statement. Even there was no specific attribution to both the petitioners and during the course of trial, no fresh evidence surfaced against the petitioners, warranting through summoning under Section 319 Cr.P.C. as additional accused. Even otherwise, the statements of PW-1 Rajnish Singh and PW-3 Jagjit Singh have already been examined by the investigating agency and their statements qua petitioners were found to be false. Now, no other fresh evidence has been led by the prosecution, which may necessitate the summoning of the petitioners as additional accused while allowing the application under Section 319 Cr.P.C.

9. As a consequence of the above discussion and keeping in view the law laid down by the Hon'ble Supreme Court in the matter of **Hardeep Singh's case (Supra)** and **Juhru's case (Supra)**, both the petitions are allowed and the impugned order dated 10.02.2023 passed by the Court of Additional Sessions Judge, Pathankot is set aside qua the petitioners only.

10. Pending application, if any, stands also disposed of.

05.05.2026

hemlata

(N.S.SHEKHAWAT)
JUDGE

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