



140-2

**HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CRR-1246-2024 (O&M)****Date of decision : 30.03.2026****Ombir and another****.....Petitioners****versus****State of Haryana****..... Respondent****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

Present :- Mr. Ramnish Puri, Advocate
for petitioner No.2-Krishan.

Petition qua petitioner No.1-Ombir already
dismissed as withdrawn vide order dated 13.10.2025.

Mr. Tanuj Sharma, AAG, Haryana.

*********RAJESH BHARDWAJ, J.**

1. Petitioner has approached this Court for setting aside the order dated 13.03.2024 by Additional Sessions Judge, Jind in FIR No.250 dated 20.10.2022, registered under Sections 302, 307, 341 of Indian Penal Code and Section 25/27 of the Arms Act, 1959, registered at Police Station Pillukhera, District Jind whereby the application filed by the prosecution under Section 319 Cr.P.C. for summoning the additional accused was allowed *qua* present petitioners.

2. Succinctly facts of the case are that the FIR has been lodged on the statement of complainant-Bijender. It was alleged that on 20.10.2022, when his nephews Vikas and Rahul were returning from Pillukhera Mandi to Village Gangoli, near the village bus stand, Kulbir and Ombir wrongfully restrained them and opened fire, causing a bullet injury to Vikas. On hearing the gunshots, the complainant and others reached the spot, where several accused persons, including Kulbir, Krishan and others, were present. It was



alleged that Kulbir and Krishan fired shots towards them indiscriminately and all the accused attacked with sharp weapons i.e. knife, farsa and lathis. During the incident, multiple persons sustained injuries and Dharampal (Pala) died due to a gunshot injury. The injured persons were taken to Civil Hospital, Jind and later, were referred to PGI Rohtak. The FIR was lodged to take the legal action against the culprits. On the conclusion of the investigation, the challan was presented only against accused Kulbir whereas, rest of the accused named in the FIR were found innocent. Thereafter, at the time of recording part cross-examination of complainant-Vijender (PW1), he reiterated his allegations as in the FIR and on the basis of the same, the application under Section 319 Cr.P.C. was filed for summoning the accused i.e. (i) Ombir (ii) Dalbir (iii) Dharambir (iv) Krishan (v) Vinod (vi) Naresh (vii) Satyawar @ Devender (viii) Kanta (ix) Manoj Rani (x) Pooja. After hearing the parties, learned Additional Sessions Judge, Jind partly allowed the application *qua* accused Ombir and Krishan vide its impugned order dated 13.03.2024. Aggrieved by the same, petitioners have approached this Court by way of the present petition.

3. Learned counsel for petitioner No.2 has submitted that the prosecution has moved an application under Section 319 Cr.P.C. for summoning petitioner-Krishan as an additional accused which has been wrongly allowed by the learned trial Court and the said order is illegal and not sustainable in the eyes of law. He has submitted that during investigation, it was found that petitioner No.2-Krishan was not even present at the spot and his presence was detected at KCC Plant Jamni. He has submitted that thereafter, petitioner No.2 was kept in Column No.12 and was declared innocent. He has submitted that the complainant party is inimical to the family of petitioner. He has submitted that it is a case of version and cross-



version and the complainant party was the aggressor one. He has relied upon the judgment of **Hardeep Singh Vs. State of Punjab, 2014 (3) SCC 92** to contend that mere naming of the petitioner is not sufficient for summoning him as an additional accused under Section 319 Cr.P.C.. However, learned trial Court has failed to appreciate this settled position of law and has erroneously passed the impugned order which deserves to be *set aside*.

4. Learned State counsel has opposed the submissions made by learned counsel for petitioner No.2. He has submitted that presence of petitioner-Krishan was found at the spot along with co-accused, Kulbir, who is facing trial. He has submitted that petitioner-Krishan has been assigned a clear and specific role, as he was carrying a pistol and caused a firearm injury to the injured persons as well as recovery of pistol has been effected from him. He thus, has submitted that in view of the cogent evidence that has surfaced during trial, his summoning as an additional accused under Section 319 Cr.P.C. is essential for just decision of the case.

5. I have heard counsel for the parties and perused the records.

6. After hearing counsel for the petitioner and perusing the record, it is inferred that though the petitioner was declared innocent during investigation, it has come on record that a pistol was recovered from his possession and a specific firearm injury has been attributed to him and this, in itself, clearly reflects his active participation and establishes common intention along with co-accused, Kulbir, who is already facing trial. In such circumstances, the material available *prima facie* justifies summoning of petitioner-Krishan as an additional accused under Section 319 Cr.P.C. The case was thoroughly investigated by the investigating agency and on the conclusion of the same, the charge-sheet was filed against one of the accused person out of number of accused persons mentioned in the FIR.



7. The statutory provisions of Section 319 Cr.P.C. are as follows:-

“319. Power to proceed against other persons appearing to be guilty of offence-

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 the appears to have committed.

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.

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.

Where the Court proceeds against any person under subsection (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(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.”

8. The Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and others, 2014(1) RCR (Criminal) 623** is reproduced as under:-

98. Power under Section 319 Cr.P.C. 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.

99. 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 Cr.P.C. In Section 319 Cr.P.C. 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. to form any opinion as to the guilt of the accused.

9. It has been held by the Hon'ble Supreme Court that summoning under Section 319 Cr.P.C. is an extraordinary power which cannot be used in a cavalier manner and the same has to be used sparingly. The satisfaction of the Court for summoning the additional accused under Section 319 Cr.P.C. should be more than the satisfaction required for framing of the charge. The application under Section 319 Cr.P.C. filed by the prosecution along with material and evidence that has come on record during the course of trial, provides sufficient and cogent ground for summoning petitioner No.2 as additional accused. The evidence available on record *prima facie* discloses the involvement of the said person in the commission of the offence. In all its humility, there is no dispute regarding the judgment relied upon by counsel for the petitioner. However, in the facts and circumstances of the same, the same is distinguishable. As per the judgment relied upon by the petitioner,



Hon'ble the Supreme Court had laid down the guidelines for invoking the power under Section 319 Cr.P.C. and the present case squarely falls within the parameters so laid down.

10. Weighing the facts the circumstances of the present case on the anvil of the law settled by the Hon'ble Supreme Court in Hardeep Singh case (supra), this Court finds that the view taken by the learned trial Court finds no infirmity and hence, the petition being devoid of any merits is hereby dismissed.

30.03.2026
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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