



102

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

CRR-1786-2022

Date of Decision:24.03.2026

Ojender Singh

...Petitioner

Vs.

State of Haryana and Anr.

...Respondents

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

Present: Mr. Anhul Singh, Advocate with
Mr.Nihul Pratap Singh, Advocate
for the petitioner.

Mr. Rajinder Kumar Banku, Sr.DAG, Haryana.

Mr. Tanmoy Gupta, Advocate
for the complainant.

N.S.Shekhawat J.

1. The petitioner has filed the present revision petition against the impugned order dated 04.06.2022, passed by the Court of Sessions Judge, Palwal, whereby, the application under Section 319 Cr.P.C filed by the prosecution has been allowed and the petitioner has been summoned as additional accused to face trial for the commission of offences under Sections 148,323,427,302,379-B and 452 r/w Section 149 of IPC.

2. While issuing notice of motion on 16.09.2022, a Co-ordinate Bench of this Court had noticed the following contentions:-

“In the instant case, the FIR was lodged at the instance of Lachhi Ram, wherein it is alleged that on 10.5.2021 at about 08:00 p.m., his brother Mohar Pal had gone to his plot alongwith a mason and a labourer to construct a boundary wall on the said plot. However, Rajpal also came there and started abusing him and proclaimed that the said plot belongs to him and issued



threat to kill him. The complainant and his brother proceeded back to their house, where his brother's wife was present. Shortly thereafter, the accused Rajpal, Kiran, Gulshan, Pawan, Lata, Ojender, Pintu, Deepak, Prehlad and Sonu entered their house duly armed with sticks, axe, farsa and iron rod and attacked the complainant and other members of his family. It is alleged that the said assailants attacked complainant's wife Kranti and while leaving, took an amount of Rs.1.40 lakhs lying in the house alongwith gold and silver ornaments. It is alleged that although Kranti, who had been injured, was taken to hospital but was declared dead.

Learned counsel for the petitioner has submitted that the matter was investigated by the police and a challan was presented against Rajpal, Deepak and Pawan, whereas the other 7 persons were kept in column No.2. Pursuant to framing of charges, the statement of the complainant Lachhi Ram was recorded, wherein he named the following nine persons as assailants who had entered his house and inflicted injuries:

1. Rajpal son of Karan Singh 2.Kiran wife of Rajpal 3.Gulshan son of Rajpal 4.Pawan son of Rajpal 5.Lata daughter of Rajpal 6.Pintu nephew of Rajpal 7.Subhash nephew of Rajpal 8.Prahlad 9.Sonu.However, he did not name Ojender (son-in-law of Rajpal) amongst the assailants.

An application under Section 319 Cr.P.C. was filed by prosecution. The Trial Court, upon considering the matter, accepted the application under Section 319 Cr.P.C. and ordered for summoning all the 7 persons, who had been kept in column No.2 including the petitioner, vide order 4.6.2022.

Learned counsel for the petitioner, while assailing the impugned order, has inter alia made the following submissions:

(i) that apparently an attempt had been made to rope in the entire family of Rajpal and even his married daughter and son-in-law



Ojender (petitioner) have not been spared;

(ii) that although it is alleged that all the 10 accused were duly armed with weapons and had inflicted injuries but as a matter of fact the deceased was found to have sustained a single injury only with a blunt edged weapon. Learned counsel has submitted that although the prosecution claims that the complainant and his brother Mohar Pal had also sustained injuries but the same are in the nature of 'complaints of pain' and would fall within the ambit of Section 323 IPC and that none of the injury caused by any sharp edged weapon;

(iii) that it remains unexplained as to how in a short span of time that too during night all the members of the family including a married sister and son-in-law, who are staying in a different village, got together so as to cause injuries as alleged; and

(iv) that the name of the petitioner, in any case, is conspicuously missing in the statement of the complainant recorded before the Court during the proceedings of trial.

3. Learned counsel appearing on behalf of the petitioner submits that vide the impugned order, six other persons were summoned as additional accused and thus, now, total nine other persons are facing trial. The petitioner has been falsely involved in the present case as he is the son-in-law of the main accused (Rajpal). In fact, there was a property dispute between the complainant and Rajpal main accused, who are real brothers and the petitioner has been named only to settle the scores with Rajpal, main accused. Even, the petitioner is resident of some other village in District Gurugram and was not present at the place of occurrence.

4. Learned counsel for the petitioner 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 92 as follows:-

“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.

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 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."

5. On the other hand learned State counsel submits that the petitioner was found innocent, during the course of trial.
6. On the other hand, learned counsel appearing on behalf of the respondent No.2/complainant has vehemently opposed the submissions made



by learned counsel for the petitioner on the ground that the petitioner was specifically named in the FIR and even the complainant appeared as PW-3 before the Court and had assigned a specific role to the present petitioner. Even, there was no dispute regarding his presence at the place of occurrence and had actively participated in the commission of crime. Thus, the present petition deserves to be dismissed by this Court.

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

8. The Hon'ble Supreme Court has held in the matter of "**Omi @ Omkar Rathore & Anr. Vs.State of Madhya Pradesh & Anr., SLP (Crl.) No. (s) 17781 of 2024**" held that the powers under Section 319 Cr.P.C empowers the trial court to summon persons to face trial, even they were not named in the charge-sheet, however, this power has to be exercised extraordinarily and must be exercised sparingly and not in a casual manner 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”.

9. In the present case, complainant Lachhi Ram was examined as PW-3 and immediately after his examination, the application was moved by him under Section 319 Cr.P.C for summoning the present petitioner. However, from a perusal of the allegations levelled by the complainant, it is apparent that the petitioner was named as one of the accused, but no overt act has been



attributed to him. Even, apparently, the complainant has made a futile attempt to rope the entire family of Rajpal and even his married daughter and the petitioner i.e. son-in-law have also been roped in the present case. Still further, I also find sufficient force in the submissions made by learned counsel for the petitioner that at present nine accused are already facing trial in the present case. As a matter of fact, the deceased had sustained only one injury with a blunt weapon and the said injury was also not even attributed to the petitioner. Apart from that, the occurrence had taken place in Village Khedla Farijanpur, District Palwal, whereas, the petitioner is resident of Village Ghanghola, District Gurugram and it is not understandable as to how the petitioner had reached at 08:00 P.M to such a far of place. Even otherwise, the petitioner has been simply named as one of the accused, as the complainant wanted to settle his score with his real brother Rajpal, who is also the father-in-law of the present petitioner and almost all the family members of Rajpal have already been arrayed as an accused in the present case. Even, the daughter of Rajpal and wife of petitioner was not spared in the present case.

10. In view of the above discussion, the present revision petition succeeds and the impugned order dated 04.06.2022, passed by the Court of Sessions Judge, Palwal is ordered to be set aside by this Court qua the petitioner only.

11. Ordered accordingly.

(N.S.SHEKHAWAT)
JUDGE

24.03.2026

hitesh

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