

2026:PHHC:087007



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

**CRR-2306-2019 (O&M)
Reserved on:18.03.2026
Date of Decision: 09.06.2026**

Mukhtiar Singh and others

...Petitioner(s)

Vs.

State of Punjab and another

...Respondent(s)

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

Present: Mr. P.S. Hundal, Senior Advocate with
Mr. Arshpreet Kaur, Advocate and
Mr. K.H. Singh, Advocate
for the petitioners.

Mr. M.S. Bajwa, DAG, Punjab.

Mr. Lalit Pathak, Advocate
for the complainant.

N.S.Shekhawat J.

1. The petitioners have filed the present petition against the impugned order dated 20.07.2019, passed by the Additional Sessions Judge, Ludhiana, whereby petitioners were ordered to be summoned as additional accused, in FIR No.85 dated 26.04.2015, registered under Sections 307, 323, 324, 341, 506, 427, 148, 149 IPC, Police Station Shri Machhiwara Sahib, District Ludhiana, by exercising the power under Section 319 Cr.P.C.

2. Learned senior counsel appearing on behalf of the petitioners has vehemently argued that the FIR in the present case was registered on the basis of the statement made by Sukhwinder Singh son of Swaran Singh and the same has been reproduced below:-

“Statement of Sukhwinder Singh son of Swaran Singh, caste Jat Sikh resident of Street number 10, Krishna Nagar, Khanna, District Ludhiana, aged about 48 years. Stated that I am resident of above mentioned address and engaged in the occupation of agriculture work. We are two brothers. My elder brother Balwinder Singh along with his family/children has been residing at our village Salana Bet and I along with my children/family have been residing at Khanna. Our land situates at village Salana Bet. We sought possession of our land through court. Yesterday on 25.04.2015, I along with my son Jatinder Singh and my CHACHA's son (paternal uncle's son) Nishana Singh son of Sadhu Singh, caste Jat resident of Badinpur along with combine and jeep make Bolero had come to village Salana Bet for harvesting wheat crop. We after harvesting our wheat crop placed it at Grain Market. Then at about 6:45 p.m. I on my motorcycle and behind me my CHACHA's son (paternal uncle's son) Nishan Singh and my son Jatinder Singh and my nephew (BHATIJA) Rajwinder Singh in a Bolero jeep had been returning to the village. When we were some distance away from the village, then on our way Joga Singh, Mahinder Singh, Sukhdev Singh, Surinder Singh sons of Hazara Singh, who were having in their hands i.e. Joga Singh armed with GANDASA, Mahinder Singh armed with DATAR used for cutting fodder, Sukhdev Singh armed with DANDA, Surinder Singh armed with GANDASI, Didar Singh son of Joga Singh armed with GANDASI, Phuman Singh son of Joga Singh armed with GANDASI, Jagtar Singh son of Mahinder Singh armed with GANDASI, Mukhtiar Singh son of Mahinder Singh armed with GANDASI, Jagresham Singh son of Surinder Singh armed with GANDASI, Paramjit Singh son of Surinder Singh armed with GANDASI, Rajwant Singh son of Darshan Singh armed with DANDA, Davinder Singh son of Shingara Singh armed with DANDA and Hukam Singh son of Sukhdev Singh armed with GANDASI residents of Salana Bet were present some distance away from the village. In the passage, Joga Singh raised LALKARA (shouted in loud voice)

and said Sukhwinder Singh and others have come, who should be taught a lesson for taking possession of the land and then they stopped us by coming in front of us. Then Joga Singh having GANDASI in his hand gave its blow on my left hand/arm, Surinder Singh having GANDASI in his hand gave its blow on my head with an intention to kill me, Jagtar Singh son of Mahinder Singh having GANDASI in his hand gave its blow on my head with an intention to kill me, Mukhtiar Singh son of Mahinder Singh having GANDASI in his hand gave its blow on my head, Mahinder Singh having DATAR being used to cutting fodder gave its blow on the right arm of my son Jatinder Singh. Didar Singh son of Joga Singh having GANDASI in his hand gave its blow on the right arm of my son Jatinder Singh, Phuman Singh son of Joga Singh having GANDASI in his hand gave its blow on the right hand/arm of my son Jatinder Singh. Then Jagresham Singh having GANDASI in his hand gave its blow on the head of my nephew (BHATIJA) Rajwinder Singh, Hukam Singh having GANDASI in his hand gave its blow on the head of Rajwinder Singh, Paramjit Singh son of Surinder Singh having GANDASI in his hand gave its blow on the chest of my CHACHA's son (paternal uncle's son) Nishan Singh, Sukhdev Singh, Rajwant Singh, Davinder Singh gave blow of DANDAs in their respective hands to us while we were lying on the ground. These all persons also broken/caused physical harm to the jeep Bolero of my CHACHA's son Nishan Singh. Thereafter, we raised hue and cry 'Maar Ditta-Maar Ditta'. In the meanwhile, my brother Balwinder Singh came there, who by putting us in Bolero jeep started taking us for getting us treated, then these all the above mentioned persons again caused damage to Bolero jeep from its front and back portion. My brother Balwinder Singh by driving the vehicle in fast speed brought us to Civil Hospital, Machhiwara for our treatment, where the doctor sahib by providing us first aid, referred us to Civil Hospital, Ludhiana for our treatment. By providing first aid to Nishan Singh the doctor sahib sent him to home. We were admitted at CMC hospital,

Ludhiana by reaching there in an ambulance, where we are under treatment. Bone of contention is that we took possession of our land measuring about 5 killas through court from Joginder Singh etc. and only due to this animosity these above mentioned persons have inflicted injuries to us and they inflicted injuries to us with an intention to kill us. Statement is recorded to you, heard it, which is correct. Action may please be taken. Sd/- Sukhwinder Singh.”

3. Learned senior counsel further submits that after registration of the FIR, the investigation was conducted by the police and it was found that four accused, namely, Mahinder Singh, Joga Singh, Surender, Singh and Gurdev Singh were involved in the occurrence and the petitioners were found to be innocent in the present case. Learned counsel further submits that in the present case, the medical evidence was not in consonance with the ocular account of the prosecution. Still further, the FIR was initially registered on the basis of the statement made by Sukhwinder Singh complainant and it is very strange and unbelievable that he was able to remember each injury inflicted by 13 persons in the present case. He not only explained each and every injury, but also the manner of causing injury and the attribution was stated by him. Thus, it is apparent that the statement of Sukhwinder Singh was apparently false and injuries were attributed to almost all the accused in the present case, so that they may be prosecuted by the complainant in the present case.

4. Learned senior counsel further submits that in the present case, a free fight had taken place between two groups and both the groups had sustained injuries. Even, a cross-version was registered on the basis of the statement made by Mahinder Singh, co-accused, also. Mahinder Singh

sustained four injuries i.e. two injuries with sharp edged weapons and two from the blunt weapons. Joga Singh also sustained three injuries. On the other hand, the complainant side had suffered almost 25 injuries and only by taking into account the number of injuries, several petitioners were summoned by the trial Court mechanically. Learned counsel further submits that in the present case, the investigation was conducted by senior police officers of the ranks of DSP and SP and the police had taken into consideration the location of mobile phones of the petitioners and other evidence, which pointed towards the innocence of all of them. Rather, it was found that most of the petitioners were not even present near the place of occurrence and had been falsely involved.

5. Learned Senior Counsel also referred to the pedigree table of Hazara Singh to contend that the petitioners and their co accused, who are already arrayed as accused, belonged to a single family and it is a common tendency to falsely implicate all the family members of the accused by assigning them false roles. However, during investigation, it was established that the petitioners had not participated in the commission of crime. Now, during the course of trial, the trial Court had only recorded the statement of PW1, Sukhwinder Singh and only on the basis of his statement, the trial Court wrongly held that the petitioners had also actively participated in the crime and had played active role in the occurrence.

6. On the other hand, learned counsel appearing on behalf of learned State counsel, assisted by learned counsel for the complainant have vehemently opposed the submissions made by learned counsel for the petitioners on the ground that the trial Court had considered the fact that specific role was assigned to all the accused and their active participation

stood proved from the testimony of PW1 Sukhwinder Singh. Even learned counsel referred to the findings recorded by the trial Court in detail to contend that the petition deserves to be dismissed by this Court.

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

8. While discussing the scope of powers of a Court to summon the accused under section 319 CrPC, the Hon'ble Supreme Court held in the matter of "***Brijendra Singh and others Vs. State of Rajasthan, 2017 (3) RCR (Crl.) 374***", as follows:-

"9. Powers of the Court to proceed under [Section 319 Cr.P.C.](#) even against those persons who are not arraigned as accused, cannot be disputed. This provision is meant to achieve the objective that real culprit should not get away unpunished. A Constitution Bench of this Court in [Hardeep Singh v. State of Punjab & Ors.](#), (2014) 3 SCC 92, explained the aforesaid purpose behind this provision in the following manner:

"8. The constitutional mandate under [Articles 20 and 21](#) of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under [CrPC](#) indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions,

whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

XX XX XX

12. [Section 319](#) CrPC springs out of the doctrine *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of [Section 319](#) CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. 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. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in [Section 319](#) CrPC?

XX XX XX

19. 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 manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.”

10. It also goes without saying that [Section 319](#) Cr.P.C., which is an enabling provision empowering the Court to take appropriate steps for proceeding against any person, not being an accused, can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment, except during the stage of [Section 207/208](#) Cr.P.C., the committal etc., which is only a pre-trial stage intended to put the process into motion.

11. In Hardeep Singh's case, the Constitution Bench has also settled the controversy on the issue as to whether the word 'evidence' used in [Section 319\(1\)](#) Cr.P.C. has been used in a comprehensive sense and indicates the evidence collected during investigation or the word 'evidence' is limited to the evidence recorded during trial. It is held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word 'evidence' has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, this Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that 'evidence' under [Section 319](#) Cr.P.C. could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

12. The moot question, however, is the degree of satisfaction that is required for invoking the powers under [Section 319](#) Cr.P.C. and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by the Constitution Bench in Hardeep Singh's case and answered in the following manner:

“95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under [Section 319](#) CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in [Vikas v. State of Rajasthan](#) [(2014) 3 SCC 321] , held that on the objective satisfaction of the court a person may be “arrested” or “summoned”, as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

105. Power under [Section 319 CrPC](#) 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. (emphasis supplied)”

13. In order to answer the question, some of the principles enunciated in Hardeep Singh’s case may be recapitulated:

Power under [Section 319 Cr.P.C.](#) can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an accused and face the trial in the ongoing case, once the trial court finds that there is some ‘evidence’ against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The ‘evidence’ herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under [Section 319 Cr.P.C.](#) No doubt, such evidence that has surfaced in examination-in-chief, without cross- examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court under [Section 319 Cr.P.C.](#) and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom chargesheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

9. In the present case, petitioners have been ordered to be summoned only on the basis of the statement made by PW1, Sukhwinder Singh and no other material was on record before the trial Court to support his so-called verbal/ocular version. Thus, the evidence recorded during trial was nothing more than the statement of Sukhwinder Singh, which was already there on record at the time of investigation of the case and there was plethora of evidence collected by the IO during investigation, which suggested otherwise; consequently, the trial Court was at least duty bound to look into the same while forming a *prime facie* opinion and to see as to whether, much stronger evidence than mere possibility of involvement had come on record. In the present case, the trial Court had just examined the role assigned to all the accused by PW1 Sukhwinder Singh and did not record any satisfaction that cogent and convincing material existed on record before the trial Court, which could warrant their summoning. In the present case, I also find strength from the law laid down by the Hon'ble Supreme Court in the matter of "***Juhru and others versus Karim and others, 2023 SCC Online SC171***", wherein the Hon'ble Supreme Court held that the power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and existence of more than a *prima facie* case was *sine qua non* to summon an additional accused. 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 dictum, 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

absence of any credible evidence, the power under Section 319 CrPC ought not to be invoked.

10. In view of the aforesaid factual aspects and the law discussed here-in-above, this Court finds that the petition filed by the petitioners deserves to be allowed and the impugned order dated 20.07.2019, passed by the Additional Sessions Judge, Ludhiana, whereby petitioners have been summoned in FIR No.85 dated 26.04.2015, registered under Sections 307, 323, 324, 341, 506, 427, 148, 149 IPC, Police Station Shri Machhiwara Sahib, District Ludhiana, is ordered to be set aside qua the petitioners.

11. Pending application(s), if any, stand(s), disposed of, accordingly.

09.06.2026

sunil

(N.S.SHEKHAWAT)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No
Whether full judgment is pronounced or operative part thereof	:	Full
Uploaded on	:	