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**101/3 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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(I) CRR-2441-2022 (O&M)

Narender Singh and another
State of Haryana and another

vs.

...Petitioners
...Respondents

(II) CRR-2657-2022 (O&M)

Pawan	vs.	...Petitioner
State of Haryana and others		...Respondents

(III) CRR-2746-2022 (O&M)

Hawa Singh	...Petitioner
	vs.
State of Haryana and another	...Respondents

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

Present : Mr. Pardeep Singh Poonia, Sr. Advocate with
Mr. Pulkit Dhanda, Advocate, Mr. Gaurav Lamba, Advocate
Mr. Dharam Pal Saini, Advocate,
for the petitioners in CRR-2441-2022.

Mr. Rakesh Dhiman, Advocate
for the petitioner in CRR-2746-2022 and
for the complainant in CRR-2441-2022 and CRR-2657-2022.

Mr. Ajay Ghangas, Advocate
Mr. Akash Mehra, Advocate, for the petitioner in CRR-2657-
2022.

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

Ms. Veena Hooda, Advocate
for respondent No.2 in CRR-2746-2022.

N.S.Shekhawat J.



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1. This order shall dispose of above-stated three petitions i.e. CRR-2441-2022 titled as **“Narender Singh and another vs. State of Haryana and another”**; CRR-2657-2022 titled as **“Pawan Vs. State of Haryana and other”** and CRR-2746-2022 titled as **“Hawa Singh and State of Haryana and another”**, as all the petitions have been filed against the common impugned order dated 26.10.2022, passed by the Court of Additional Sessions Judge, Jhajjar, while disposing of an application under Section 319 Cr.P.C.

2. Vide the impugned order dated 26.10.2022, Narender Singh, Aakash @ Hunny and Pawan have challenged their summoning as additional accused under Section 319 Cr.P.C. and have filed two separate revision petitions i.e. CRR-2441-2022 titled as “Narender Singh and another Vs. State of Haryana and another” and CRR-2657-2022 titled as “Pawan Vs. State of Haryana and others”, whereas, on the other hand, CRR-2746-2022 has been filed by Hawa Singh, complainant with a prayer to summon Amit son of Raghbir, respondent No.2, as additional accused, by exercising the power under Section 319 Cr.P.C. Since common question of facts and law are involved in the present case, all the petitions are taken up together and are being disposed of simultaneously.

3. Learned Senior counsel appearing for Narender Singh and Aakash @ Hunny, petitioners in CRR No.2441-2022 submitted that the FIR in the present case was registered on the basis of the statement made by Hawa Singh and the same has been reproduced below:-

*“To,
The SHO,
Police Station, Jhajjar,
Sir,*



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It is requested that I, Hawa Singh S/o Prithvi Singh is resident of village Mandothi at present Dev Colony, Ward no.4, Jhajjar and retired from CRPF. I have two sons and one daughter. My Second son is Naveen Kumar aged 25 Years. He used to remain at home and was preparing for government service. Today I had gone to Hisar for my personal work. Today at about 03:30 PM, I received a phone call from Narender resident of Village Badhani through mobile no. 9992738817. He said that my son Naveen Kumar is present in his shop (office), which is situated in front of Nehru College. He is abusing and breaking the glasses of his shop. Either I should stop him or otherwise he would kill him. After sometime, my brother-in-law Dharambir S/o Ramchander Dujana called me and told that some persons has caused injuries to Naveen on his head near Nehru College. He has been taken to Jhajjar hospital where he has died. Then, I straight away reached Jhajjar hospital. My brother Ranbir S/o Prithvi resident of village Mandothi was also present there who had reached on the spot at the time of quarrel. I saw the dead body of my son Naveen. He has been given many injuries on his head and is smeared with blood. I have inquired on my own fully that my son Naveen has been killed by Akshay, Rahul, Paramjeet, Hunny, Sumeet, Amit and Narender etc. by giving him head injuries. Amit son of Raghubir resident of Gangtan had taken my son Naveen on his motorcycle. My son was already having a dispute with the above said persons which is pending in the court. The above said persons and some other boys about 8 to 10 in number has killed my son Naveen by giving him head injuries while keeping grudge of the said dispute. Strict action be taken against them. Now, I have presented my application to you at Civil Hospital, Jhajjar.

Sd/- Hawa Singh”

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4. Learned Senior counsel submits that both the petitioners were wrongly named by the complainant only on the basis of suspicion. However, the police conducted the investigation in the present case and it was found that both the petitioners were not present at the place of alleged occurrence. He further contends that Narender Singh was working in Delhi Transport Corporation, since last several years and was not even present at the place of occurrence. Apart from that, even Aakash @ Hunny was also not present at the place of occurrence and both of them were kept in column No.2. He further submits that during the course of trial, the prosecution examined PW-1, Ranbir, PW-2 ASI Pawan Kumar and PW-3, Hawa Singh, complainant. After recording the statements of three witnesses, the application under Section 319 Cr.P.C. was moved by the prosecution, which was allowed to all these petitioners wrongly. He further submits that PW-1 Ranbir is the uncle of the deceased and was not an eye-witness. He had made the statement only on the basis of hearsay and his statement was not admissible. Similarly, PW2 ASI Pawan Kumar is an official witness. PW-3, Hawa Singh is the complainant and again, he was not present at the place of occurrence and had lodged the FIR by making an inquiry at his own level. Consequently, there was no evidence on record to show that the petitioners had also participated in the commission of crime, rather, it also stood established that at the time of the occurrence, both the petitioners were present at a different place and were wrongly summoned by the trial Court.

5. On the other hand, learned counsel appearing on behalf of Pawan (in CRR-2657-20222) also raised similar arguments and submitted that the petitioner had been summoned without any incriminating evidence against him.

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He was neither named in the FIR nor in the statement of any of the prosecution witnesses recorded under Section 161 Cr.P.C. Even no specific role or injury was attributed to him. Moreover, from a perusal of the statement made by PW-3, Hawa Singh, it is apparent that even he had not named the petitioner. Consequently, he has been wrongly summoned in the present case.

6. On the other hand, learned counsel appearing on behalf of Hawa Singh, respondent No.2 in CRR No.2441-2022 and CRR No.2657-2022 as well as the petitioner in CRR No. 2746-2022 has vehemently argued that the trial Court had correctly appreciated the evidence on record and Narender, Aakash @ Hunny and Pawan were rightly summoned by the trial Court. Even Narender and Aakash @ Hunny were not only named in the FIR, but also in the statement made by the witnesses in the Court. Apart from that, Amit son of Ragbir, respondent No.2 in CRR No.2746-2022 was also liable to be summoned by the trial Court.

7. On the other hand, learned counsel appearing on behalf of Amit, respondent No.2 in CRR No.2746-2022 submitted that respondent No.2 had no concern with the allegations levelled by any witness in the present case. Rather from a perusal of the FIR (Annexure P-1), it is apparent that Amit was having good relations with the deceased and even he had taken the deceased on his motorcycle. Even while appearing as a prosecution witness, only general allegation of participation has been levelled against Amit and no specific role has been assigned to him. He prayed that the Criminal Revision No.2746-2022 is liable to be dismissed by this Court.



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

9. While interpreting the power of the trial Court to summon additional accused under Section 319 Cr.P.C., the Hon'ble Supreme Court has held in the matter of **"Brijendra Singh and others Vs. State of Rajasthan"** 2017(3) RCR(Criminal) 374, as under:-

"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(1) RCR (Criminal) 623 : 2014(1) Recent Apex Judgments (R.A.J.) 384 : (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 Cr.P.C 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



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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.

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12. Section 319 Cr.P.C. 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 Cr.P.C.

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 Cr.P.C.?

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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



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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:



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"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 Cr.P.C., 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* [2013(4) RCR (Criminal) 948 : 2013(6) Recent Apex Judgments (R.A.J.) 356 : (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.

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105. 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.

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



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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.

(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



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the degree which is warranted at the time of framing of the charges against others in respect of whom charge sheet 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.”

10. Now, advertent to the facts of the present case in the light of the aforementioned settled principles, this Court has to examine as to whether four accused, namely, Narender Singh, Aakash @ Hunny, Pawan and Amit should be summoned in the facts of the present case, while exercising the power under Section 319 Cr.P.C. Narender Singh, Aakash @ Hunny and Pawan have already been summoned by the trial Court, vide the impugned order, whereas, the prayer qua Amit has already been declined by the trial Court.

11. During the course of trial, the prosecution examined Ranbir as PW-1 and he stated that on 26.02.2018, he received an information that Naveen, deceased had sustained many injuries at the hands of Amit, Rahul, Hunny, Manjeet and Narender etc. and he died during treatment. Even Amit, son of Raghubir, respondent No.2 in CRR No. 2746 of 2022 had taken his nephew Naveen on his motorcycle. Similarly, the prosecution further examined PW3 Hawa Singh also stated that he reached after the occurrence and inquired about the matter at his own level. He found that Amit son of Raghubir, respondent No.2 in CRR No.2746-2022 had taken away his son on a motorcycle from his home and he found the involvement of Akshay, Paramjeet, Rahul, Honey,



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Sumit, Amit and Narender and apart from the above, ten more boys also made a plan and he was called from his house and was murdered. From the evidence led by the prosecution, it is apparent that there was no conclusive evidence on record, which could prove the complicity of Narender, Aakash @ Hunny, Pawan and Amit, in the present case. Both PW1, Ranbir and PW-3, Hawa Singh were not the eyewitnesses of the occurrence and only on their whims, they had named the present petitioners. Except the statements of PW1 Ranbir and PW3, Hawa Singh. The trial Court completely failed to appreciate that it was a discretionary power given to the Court under Section 319 Cr.P.C. and has to be exercised sparingly and only in those cases, where the circumstances of the case so warrant. The trial Court also failed to realise that the degree of satisfaction should be more than the degree, which is warranted at the time of framing of charges against others in respect of whom charge-sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court, then such power should be exercised. It is never expected that this extraordinary power shall be exercised by the trial Court in a casual and cavalier manner.

12. While recording the above referred findings, this Court also finds support from the law laid down by the Hon'ble Supreme Court in the matter of **“Juhru and others Vs. Karim and another (2023) 5 Supreme Court Cases 406”** as under:-

“16. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 CrPC is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused. We

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may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319 CrPC, 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, 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 CrPC ought not to be invoked”.

13. Apart from that, I also find substance in the argument raised by learned counsel for the petitioner, namely, Pawan in CRR No.2657 of 2022, that Pawan was neither named in the FIR, nor he was named by PW-1, Ranbir as well as PW-3 Hawa Singh. Even though, none of the prosecution witness had deposed against Pawan nor any other attribution was made to him, still he was ordered to be summoned by the trial Court, while exercising the power under Section 319 Cr.P.C. It appears that the trial Court adopted a very casual approach, while summoning Pawan Kumar. Similarly, from the FIR, it is evident that Amit, respondent No.2 in CRR-2746-2022 had allegedly taken away Naveen, deceased on his motorcycle. Even, while appearing as PW-3, Hawa Singh again stated that Amit, respondent No.2 had taken away his son Naveen with him and the injuries were caused subsequently to him. Even Amit was shown as a witness in the present case and later on, he was ordered to be summoned under Section 319 Cr.P.C. It appears that Amit enjoyed cordial relations with the deceased and had taken away him on his motorcycle. This



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fact was appreciated by the trial Court and the prayer to summon him as additional accused was rightly declined.

14. In view of the aforesaid discussion, Criminal Revision No.2441-2022 titled as “**Narender Singh and another vs. State of Haryana and another**” and Criminal Revision No.2657-2022 titled as “**Pawan Vs. State of Haryana and others**” are allowed and the impugned order dated 26.10.2022 is ordered to be set aside qua Narender Singh, Aakash @ Hunny and Pawan, petitioners in these two petitions. However, Criminal Revision No.2746-2022 titled as “**Hawa Singh Vs. State of Haryana and another**” is ordered to be dismissed.

15. Pending applications, if any, stand also disposed of.

08.06.2026
hemlata

(N.S.SHEKHAWAT)
JUDGE

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