IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2026:PHHC:112011

CRR No. 37 of 2020 (O&M)

Anirudh **... Petitioner**

Versus

State of Haryana and others **...Respondents**

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	11.08.2026
2	The date when the judgment is pronounced	17.08.2026
3	The date when the judgment is uploaded on the website	17.08.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present: Mr. Ram Darshan Yadav, Advocate
for the petitioner.

Mr. Ashok Kumar Khubbar, Addl. A.G., Haryana.

Mr. Ramesh Malik, Advocate
for respondents No.2 and 3.

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MANISHA BATRA, J.

1. The present revision petition has been filed by the petitioner/complainant challenging/seeking modification of the order dated 04.12.2019, passed by the Court of learned Additional Sessions Judge, Jhajjar in case arising out of FIR No.282 dated 24.10.2017, registered under Sections 323, 341, 506 and 34 of IPC, Section 3 of the Scheduled Castes and the Scheduled

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Tribes (Prevention of Atrocities) Act, 1989 *(for short 'SC/ST Act')* and Section 25 of the Arms Act at Police Station Sahlawas, District Jhajjar, whereby the application under Section 319 Cr.P.C. moved by the petitioner for summoning respondents No.2 and 3, namely Jagjeet and Sudesh, as additional accused, was dismissed, while the said application was allowed qua Pardeep.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered at the instance of the present petitioner/complainant alleging therein that on 22.10.2017 at about 8:30 p.m., he, along with Sanjay and Nand Kumar, had gone out for a walk. When they reached near the Government School, they saw Rajbir, his son Jagjeet and Pardeep, owner of the JCB machine, filling up with sand a well which had been built by his ancestors and was being used by the members of SC community for drinking water and religious purposes. When the complainant asked Rajbir why the well was being filled, Rajbir stated that he was filling up their well and would thereafter demolish the complainant's house. Rajbir then gave a kick blow to the complainant on his abdomen, due to which he fell down. Pardeep, who was holding a danda, abused the complainant by saying him *'Dhed Kamina'* and started beating him with the said danda. When Sanjay and Nand Kumar tried to rescue the complainant, Rajbir and his son Jagjeet stood in front of them. Jagjeet used derogatory words against the complainant by saying him *'Dhed Kamina'* and when Sanjay and Nand Kumar tried to raise an alarm, took out the pistol which Rajbir was carrying and aimed it at them, whereupon both of them fled from the spot. During this period, Pardeep and Jagjeet gave danda blows to the complainant on his head and right cheek. Thereafter, several

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persons reached the spot and the accused persons threatened the complainant and other members of his community with dire consequences in case they made a complaint. The complainant further alleged that the Sarpanch, her husband and her son were also present at the spot, but they did not take any action against the accused.

3. After registration of the FIR, investigation proceedings were initiated. After completion of investigation, the investigating agency submitted the final report against accused Rajbir, whereas the names of Jagjeet, Pardeep and Sudesh were placed in column No.2.

4. During the course of trial, on 06.08.2018, the petitioner appeared as PW-1 before the learned trial Court and made a statement regarding the occurrence. During his examination-in-chief, he specifically attributed roles to Jagjeet, Pardeep and Sudesh. At that stage, an application under Section 319 Cr.P.C. was moved by the complainant as well as the Public Prosecutor seeking summoning of the said persons as additional accused. The said application was considered by the learned trial Court and vide order dated 04.12.2019, the learned trial Court allowed the application qua Pardeep and summoned him as an additional accused. However, the same was dismissed qua Jagjeet and Sudesh. Aggrieved thereof, the petitioner/complainant has filed this petition seeking modification of the impugned order, thereby summoning respondents No. 2 and 3 as well to face trial in the aforementioned case.

5. It is argued by learned counsel for the petitioner that the impugned order is not sustainable in the eyes of law to the extent to which it did not summon the respondents No. 2 and 3 as additional accused. It is submitted that

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the learned trial Court has misread the evidence and has given undue weightage to the defence version. Learned counsel submits that there are specific allegations against respondents No.2 and 3 in the FIR as well as in the statement of PW1, who has supported the version contained in the FIR and specifically stated the role played by Jagjeet and Sudesh in the occurrence. It is argued that Jagjeet was specifically alleged to have stood in front of the complainant's companions, used derogatory words and thereafter taken out the pistol and aimed it at Sanjay and Nand Kumar. It is further submitted that the complainant, in his statement before the Court, attributed a specific role to Sudesh as well. Learned counsel submits that at the stage of consideration of an application under Section 319 Cr.P.C., the evidence of PW1 could not have been discarded by relying upon the defence version. The material on record disclosed sufficient grounds for summoning respondents No.2 and 3 as additional accused. Hence, it is urged that the petition deserves to be allowed and the impugned order is liable to be modified to the above mentioned extent.

6. Learned State counsel has argued that the complainant, while appearing as PW1, specifically named Jagjeet, Pardeep and Sudesh and attributed their respective roles in the occurrence. However, Jagjeet and Sudesh were not summoned as additional accused. The learned trial Court erred in not summoning these persons as additional accused to face trial. Hence, it is urged that the petition deserves to be allowed and respondents No. 2 and 3 are liable to be summoned as additional accused to face trial.

7. On the other hand, learned counsel appearing for respondents No.2 and 3 has argued that there is no illegality or infirmity in the impugned order,

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which is a well reasoned order. It is further submitted that the application under Section 319 Cr.P.C. was based upon false, vexatious and concocted allegations and was liable to be dismissed. The complainant had made material improvements in his statement before the learned trial Court. In particular, it is argued that the complaint made by the complainant to the Superintendent of Police did not attribute any specific role to respondent No.3 Sudesh. The allegation against Sudesh in the complaint was only that she was present at the spot and did not take any action against the alleged assault, whereas the allegation that she slapped the complainant and used derogatory words was subsequently introduced in her statement before the Court. It is, therefore, argued that the said allegation was an afterthought.

8. Learned counsel further submits that respondent No.2 Jagjeet had been falsely implicated and that the investigating agency had conducted an inquiry regarding his presence at the spot. It is argued that the investigating agency, in its report under Section 173 Cr.P.C., found that the persons placed in column No.2 were not involved in the alleged occurrence and consequently did not charge-sheet them. It is also submitted that Jagjeet was a student of M.D. University, Rohtak and was residing in the University hostel at the relevant time. Learned counsel also submits that the allegation regarding Jagjeet taking out the pistol and aiming it at Sanjay and Nand Kumar is not corroborated by the statements of other witnesses recorded under Section 161 Cr.P.C. It is, accordingly, argued that the learned trial Court rightly declined to summon respondents No.2 and 3 as additional accused and that the impugned order does

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not warrant interference in revisional jurisdiction. Hence, it is urged that the petition is liable to be dismissed.

9. This Court has heard the rival submissions.

10. At the outset, it would be proper to refer to the provisions of Section 319 of the Code, which read as under:-

> "**319. Power to proceed against other persons appearing to be guilty of offence**. - (1) 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. (2) 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. (3) 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. (4) Where the Court proceeds against any person under sub-section (1), then- (a) the proceedings in respect of such person shall be commenced afresh, and witnesses reheard; (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."

11. Having noted the abovementioned 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

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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.

12. The issue relating to the powers to be exercised under Section 319 of the Code had arisen for detailed consideration in ***Hardeep Singh v. State of Punjab, (2014) 3 SCC 92***, wherein the scope, procedure and the stage at which such power was to be exercised was considered and summarized. It was observed by Hon'ble Supreme Court that the power under Section 319 of the Code is discretionary and an extraordinary power. It has 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 material placed before the Court that such power should be exercised and not in a casual and cavalier manner. It was also observed 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 strong evidence than mere probability of his complicity. The test that has to be applied is one which is more than *prima facie* case as has been established 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 of the Code.

13. The legal position on the scope and ambit of powers of the Court

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under Section 319 of the Code has also been summarized by Hon'ble Apex Court in the case cited as ***Manjeet Singh v. State of Haryana and others, (2021) 18 Supreme Court Cases 321***, wherein it was observed as under:-

> "(i) That while exercising the powers under section 319 CrPC and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished.
>
> (ii) For the empowerment of the courts to ensure that the criminal administration of justice works properly.
>
> (iii) The law has been properly codified and modified by the legislature under CrPC indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law.
>
> (iv) To discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished.
>
> (v) 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.
>
> (vi) Section 319 CrPC allows the court to proceed against any person who is not an accused in a case before it.
>
> (vii) 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.

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(viii) Section 319 CrPC is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial.

(ix) The power under section 319(1) CrPC can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Sections 207/208 CrPC, committal, etc. which is only a pretrial stage intended to put the process into motion.

(x) The court can exercise the power under section 319 CrPC only after the trial proceeds and commences with the recording of the evidence.

(xi) The word "evidence" in section 319 CrPC means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents.

(xii) It is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under section 319 CrPC is to be exercised and not on the basis of material collected during the investigation.

(xiii) If the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under section 319 CrPC and can proceed against such other person(s).

(xiv) That the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under section 319 CrPC can be exercised.

(xv) That power under section 319 CrPC can be exercised even at the stage of completion of examination-in-chief and the court need not to wait till the said evidence is tested on cross-examination.

(xvi) Even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court

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> is still not powerless by virtue of section 319 CrPC and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses).
>
> (xvii) While exercising the powers under section 319 CrPC the Court is not required and/or justified in appreciating the deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial."

14. On going through the above discussed proposition of law, it is clear that the power under Section 319 Cr.P.C. is an extraordinary power and is required to be exercised sparingly and only where strong and cogent evidence surfaces against a person sought to be summoned. At the same time, the Court is required to consider the evidence which has come on record during trial and cannot be unduly influenced by the fact that the investigating agency had placed such person in column No.2. Now coming to the case in hand. So far as respondent No.2 Jagjeet is concerned, the FIR itself contains specific allegations against him. It was alleged that when the complainant's companions tried to rescue him, Jagjeet stood in front of them, used derogatory words against the complainant, took out the pistol which Rajbir was carrying and aimed it at Sanjay and Nand Kumar, and thereafter gave danda blows to the complainant. The complainant, while appearing as PW-1, has reiterated the material part of the occurrence and has attributed a specific role to Jagjeet. No doubt, learned counsel for respondent No.2 has pointed out that the investigating agency did not find Jagjeet involved and had kept his name in column No.2. It has also been argued that there is no corroboration from the other statements recorded

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under Section 161 Cr.P.C. and that Jagjeet was residing in the University hostel at the relevant time. However, at the stage of Section 319 Cr.P.C., the Court is primarily required to examine the evidence which has surfaced before it during trial. The fact that the investigating agency did not send a person for trial cannot be treated as conclusive when substantive evidence has subsequently emerged before the Court.

15. The learned trial Court declined to summon Jagjeet, inter alia, by noticing that, according to PW-1, Jagjeet had the pistol in his hand and yet subsequently took the danda from Pardeep, besides noticing the injuries reflected in the MLR. However, these aspects essentially relate to appreciation of the evidence and the defence available to the proposed accused. At this stage, the Court is not required to conduct a meticulous appreciation of the evidence or to determine whether the evidence would ultimately result in conviction. The testimony of PW-1 contains specific and direct allegations against Jagjeet and, therefore, the material on record satisfies the requisite threshold for exercise of power under Section 319 Cr.P.C.

16. The position, however, is materially different in the case of respondent No.3 Sudesh. Significantly, the FIR does not attribute any overt act to Sudesh. The allegation therein, as noticed above, is only that the Sarpanch, her husband and her son were present at the spot and that they did not take any action against the accused. There is no allegation in the FIR that Sudesh assaulted the complainant or abused him. More importantly, the complainant himself, while appearing as PW-1, made a material admission in his cross-

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examination. He admitted that he had not mentioned in his complaint that Sudesh Sarpanch had abused the accused persons/complainant or had slapped him; rather, his grievance in the complaint was that, despite being present at the spot, she had not stopped the accused from filling up the well. The record also reflects that the allegation of Sudesh slapping the complainant and referring to him in derogatory terms came in the subsequent statement made before the Court. Thus, as regards Sudesh, the specific role attributed to her in the deposition of PW-1 is not only absent from the FIR but is also accompanied by a material improvement over the earlier version. In these circumstances, the evidence against her cannot be said to be of such a strong and cogent nature as would justify the exercise of the extraordinary power under Section 319 Cr.P.C. Merely because her name finds mention as the Sarpanch being present at the spot, or because a subsequent allegation has been made against her, would not be sufficient to summon her as an additional accused.

17. In view of the discussion as made above, this Court is of the considered opinion that the impugned order dated 04.12.2019 passed by the Court of learned Additional Sessions Judge, Jhajjar, calls for interference to the limited extent of respondent No.2 Jagjeet. The application under Section 319 Cr.P.C. deserves to be allowed qua Jagjeet, whereas the prayer for summoning respondent No.3 Sudesh does not merit acceptance. Accordingly, the present revision petition is ***partly*** allowed. The impugned order dated 04.12.2019 is modified to the extent that respondent No.2 Jagjeet is ordered to be summoned as an additional accused under Section 319 Cr.P.C. The petition qua respondent

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No.3 Sudesh is dismissed. The learned trial Court shall proceed against respondent No.2 in accordance with law.

17.08.2026 **(MANISHA BATRA)**
Waseem R. Ansari **JUDGE**

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*

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