



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Miscellaneous (Petition) No. 3521/2019

1. Vikram Sharma S/o Late Shri Munni Lal Sharma, Aged About 57 Years, R/o House No. 233, B.K. Kaur Nagar, Behind Hina Bar, Ajmer, Police Station Kishanganj, Ajmer.
2. Sanjay Singh S/o Shri Prem Singh, Aged About 27 Years, R/o House No.24, Jai Hanuman Colony, Opp. Sanskriti School, Ghooghra, Ajmer, Police Station Civil Lines, Ajmer.

----Petitioners

Versus

1. State Of Rajasthan, through PP.
2. Snehlata Choudhary S/o Shri Dharmendra Choudhary, R/o Nathji Mandir Road, Kundan Nagar, Ajmer, Raj.

----Respondents

For Petitioner(s) : Mr. Swadeep Singh Hora with
Mr. T.C. Sharma

For Respondent(s) : Mr. Jitendra Singh Rathore, PP
Mr. Vinay Pal Yadav(for respondent
No. 2)

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

25/03/2026

Reportable

For convenience of exposition, this judgment is divided in the following parts: -

INDEX

(1) Prelude.....	2
(2) The challenge.....	2
(3) Arguments by the petitioner.....	2
(4) Arguments by the learned P.P. and complainant.....	5
(5) Analysis and discussions.....	6
(6) Conclusion and directions.....	14



**Prelude:-**

1. The instant misc. petition is listed before this Court in pursuance of the directions issued by the Hon'ble Apex Court in the case of **Vijay Kumar and Ors. Vs. State of Rajasthan** (Petition for Special Leave to Appeal (Crl.) No. 773/2026, decided on 15.01.2026), wherein the Hon'ble Apex Court observed that in various matters, interim orders have been passed in criminal revision petitions and petitions filed under Section 482 Cr.P.C., as a result of which trial relating to serious offences such as murder, rape, dacoity, dowry death, etc., could not proceed and remained stalled/held up due to the passage of considerable time.

2. Directions have been issued to this Court and other High Courts to take up such like matters which are pending since long, on priority and decide the same expeditiously without deferring the hearings to subsequent dates.

The Challenge:-

3. By way of filing the instant criminal misc. petition, a challenge has been led to the impugned order dated 15.01.2019, passed by the Additional District and Sessions Judge No. 3, Ajmer in Sessions Case No. 07/2018 (CIS No.27/2017), by which the application submitted by the complainant-respondent under Section 319 Cr.P.C. has been allowed and cognizance has been taken against the petitioners for the offence under Section 147, 148, 323/149, 325/149, 302/149, 307/149 & 120B of the IPC.

Arguments by the petitioner:-

4. Learned counsel for the petitioners submits that during pendency of the instant misc. petition, the petitioner No. 1 Vikram





Sharma has passed away, hence, instant misc. petition stands abated qua petitioner No. 1.

5. Counsel further submits that the alleged incident occurred on 10.11.2016 between 9-10 p.m. at an indoor stadium, where the Police arrived immediately after occurrence of the offence. The impugned FIR was registered on the next date by the wife of the deceased, wherein, the petitioners along with other co-accused persons have been implicated as accused.

6. Counsel further submits that after conclusion of the investigation, charge-sheet was submitted only against the co-accused persons and the same was kept pending against the petitioners under Section 173(8) Cr.P.C. and later on, the petitioners were also arrested.

7. Counsel further submits that thereafter, investigation was handed over to the CID(CB) and after thorough investigation of the matter, from all four corners, by the CID(CB), it was found that the petitioners were not present at the place of occurrence rather the petitioner No. 1 was 5 kms away from the place of occurrence and the petitioner No. 2 was in Pushkar which is 15 kms away from the place of occurrence. Counsel submits that evidence was collected with regard to the plea of alibi of the petitioners and considering such evidence, an application under Section 169 Cr.P.C. was submitted by the CID(CB) in favour of the petitioners for passing appropriate orders for their release. Counsel submits that the said application was allowed and appropriate orders were passed by the concerned Magistrate for releasing the petitioners on bail.





8. Counsel further submits that thereafter, a pre-mature application under Section 319 Cr.P.C. was submitted by the complainant-respondent, even before the commencement of the trial, at the time when not a single Prosecution Witness was examined. Thereafter, statements of certain witnesses were recorded and on the basis of the statement of PW-4, Snehlata, who is wife of the deceased, cognizance has now been taken against the petitioners without looking into the reasons, so furnished by the Investigating Agency, i.e. CID(CB) in the application submitted under Section 169 Cr.P.C. for release of the petitioners, wherein based on the evidence collected by the Investigating Agency, it was averred that the petitioners were not present at the place of occurrence of the alleged incident.

9. Counsel submits that as per the judgment passed by the Hon'ble Apex Court in **Brijendra Singh and Ors. Vs. State of Rajasthan reported in (2017) 7 SCC 706**, such material evidence, collected by the Investigating Agency, is required to be looked into at the stage of taking cognizance, against the accused under Section 319 Cr.P.C. Counsel further submits that at the stage of taking cognizance, the accused cannot put their version unless the stage of framing charge is reached. Counsel submits that in the case of **Jogendra Yadav and Ors. Vs. State of Bihar & Anr. reported in (2015) 9 SCC 244**, the Hon'ble Apex Court has held that at the stage of taking cognizance, while exercising the powers under Section 319 Cr.P.C., more than prima facie case is required to be seen but in the instant case, no such reasons have been assigned by the Court below at the time of passing of the order impugned. Hence, the matter requires consideration and





the same be put up before the Trial Court for passing appropriate orders.

Arguments by the Public Prosecutor and complainant:-

10. Per contra, learned Public Prosecutor as well as counsel appearing on behalf of the complainant-respondent opposed the arguments advanced by the learned counsel for the petitioners and submitted that in the FIR as well as the statements of PW-4, Snehlata, recorded during the course of investigation under Section 161 Cr.P.C. and in her statements recorded before the Trial Court, she has specifically mentioned the name of the petitioners as assailants along with the co-accused persons and specific overtact of each and every accused including the petitioners, have been mentioned in her statement. Counsel submits that at the stage of taking cognizance, the merits of the evidence is not required to be appreciated and the same has to be appreciated only during trial by cross-examination of the witness and scrutiny of evidence by the Trial Court. But the same cannot be done at the stage of taking cognizance, while exercising the powers under Section 319 Cr.P.C. In support of his contention, counsel has placed reliance upon the judgment passed by the Hon'ble Apex Court in **Sandeep Kumar Vs. The State of Haryana & Anr. reported in (2024) 20 SCC 451**. He further submits that the Trial Court is not bound to look into the conclusion report, if any, furnished by the Investigating Agency in favour of the accused.

11. Counsel submits that even in the case of **Hardeep Singh Vs. State of Punjab and Ors. reported in (2014) 3 SCC 92**, the Hon'ble Apex Court has held that 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. Counsel submits that considering the overall facts and circumstances, as stated above, cognizance has rightly been taken by the Court below against the petitioners in exercise of its power contained under Section 319 Cr.P.C. by passing a just, cogent and reasoned order which does not require any interference of this Court and the petition is liable to be rejected.

Analysis and discussions:-

12. Heard and considered the submissions made at the Bar and perused the material available on record.

13. Upon perusal of the material available on record as well as the impugned order passed by the Court below, this fact is not in dispute that an incident has occurred on 10.11.2016 for which the FIR has been lodged on the next day, i.e. 11.11.2016 by the respondent No. 2, who is wife of the deceased. Perusal of the aforesaid FIR reveals that name of the petitioners along with the co-accused persons have been mentioned as assailants and specific overtact has also been assigned to him. Even in the statements of the informant/complainant, recorded under Section 161 Cr.P.C., similar allegations have been made against the petitioners as well as the co-accused persons.

14. This fact is not in dispute that the instant matter has been investigated on three different occasions and at two instances charge-sheets were submitted against other co-accused persons, while the investigation remained pending under Section 173(8) Cr.P.C. Thereafter, investigation was transferred to the CID(CB) and during the course of investigation, the petitioners were





arrested and subsequently, CID(CB) found the presence of the petitioners, at the place of occurrence of the alleged incident, as doubtful since the petitioner No. 1 was 5 kms away from the place of occurrence of the alleged incident and the petitioner No. 2 was in Pushkar which is 15 kms away from the place of occurrence of the alleged incident. Evidence was collected in this regard by CID(CB) and thereafter an application under Section 169 Cr.P.C. was submitted for releasing the petitioners.

15. Learned Magistrate i.e. Additional Chief Judicial Magistrate No. 1, Ajmer accepted and allowed the said application and released the petitioners on bail, after taking their bail bonds and surety bonds. Thereafter, the trial proceeded and charges were framed against the accused persons who were charge-sheeted. After commencement of the trial, statements of certain witnesses including the respondent No. 2 i.e. PW4 Snehlata were recorded and thereafter, the application submitted by her under Section 319 Cr.P.C. was heard and subsequently, cognizance has been taken against the petitioners for the above stated offences by the Trial Court, in exercise of its powers contained in Section 319 Cr.P.C. The only reason for coming to the conclusion i.e. presence of the petitioners at the place of occurrence of the alleged incident being doubtful, was that certain call details of their mobile phones were taken which did not reflect the presence of the petitioners at the place of occurrence of the alleged incident. The CID(CB), i.e., the Investigating Agency was of the view that the petitioner No. 1 was 5 kms away from the place of occurrence and petitioner No. 2 was in Pushkar which is 15 kms away from the place of occurrence and certain witnesses were examined by the CID(CB) with regard to



their presence at the place other than the place of occurrence. Therefore, an application under Section 169 Cr.P.C. was submitted by CID(CB) for release of the petitioners and the said application was accordingly allowed.

16. Now, the question that remains for consideration of this Court is whether the plea of alibi can be taken into account at the stage of taking cognizance?

17. The Latin word "alibi" means "elsewhere" and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime.

It is the settled proposition of law that the plea of alibi cannot be considered or determined at the stage of taking cognizance. This plea of alibi should be proved by the accused at the appropriate stage of defence.

18. Recently the Hon'ble Apex Court has dealt with the issue of plea of alibi taken by the accused summoned by the Court at the stage of taking cognizance under Section 319 Cr.P.C. in the case of **Harjinder Singh versus The State of Punjab & Anr.** reported in 2025 SCC OnLine SC 1029 in para. 11 to 17 which reads as under:-

"11. The primary argument of Respondent no. 2 rests on his alibi. An alibi, however, is a plea in the nature of a defence; the burden to establish it rests squarely on the accused. Here, the documents relied upon, parking chit, chemist's receipt, OPD card, CCTV clip, have yet to be formally proved. Until that exercise is undertaken, they remain untested pieces of paper. To treat them as conclusive at the threshold would invert the established order of criminal proceedings, requiring the Court to pronounce upon a defence





before the prosecution is allowed to lead its full evidence. Even assuming the documents will eventually be proved, their face value does not eclipse the prosecution version. The parking slip is timed at 06 : 30 a.m.; the chemist's bill and CCTV images are from 12 : 09 p.m. The confrontation is alleged at 08 : 30 a.m. A road journey from Jagowal to Chandigarh of roughly ninety kilometres in a private vehicle can comfortably be accomplished within the intervening window. More importantly, abetment to suicide is not an offence committed at a single moment. It may consist of a build-up of psychological pressure culminating in self-destruction, and the law punishes that build-up wherever and whenever it occurs.

12. Learned counsel for the respondents urged that the police, having once accepted the alibi, were the best judges of its authenticity and that their conclusion should not be lightly brushed aside. The submission overlooks the scheme of the CrPC. Once cognizance is taken and trial commences, the investigating agency's view yields to the Court's independent assessment. If, in the midst of that trial, evidence implicating a new participant surfaces, the Court is duty-bound to act on it. Section 319 CrPC would be rendered otiose if an Investigating Officer's earlier opinion could freeze the array of accused for all time.

13. It was next argued that PW-1's deposition merely reproduces the FIR. We are unable to agree. A first information report is only an initial version; a statement under oath, recorded in Court, is substantive evidence. Indeed, it is difficult to conceive of what stronger material could be demanded at the summoning stage short of a confession. The threshold is not proof beyond reasonable doubt; it is the appearance of involvement which is apparent from evidence adduced in the proceeding. That threshold was satisfied here.

14. We believe that the High Court, in interfering under Section 482 CrPC, placed decisive reliance on the investigation dossier and characterised the 10 May 2016 episode as mere "teasing". Such a description underplays both the content and the effect of the words spoken. If the allegations is true,





telling a physically challenged man that he and his family should die, and doing so in the immediate aftermath of a grievous acid attack, is not banter. Sensitivity to the social context, where honour and shame weigh heavily, was called for. The offence, no doubt, will have to be established at the trial. The Trial Court will also decide whether on facts the offence is established, keeping in view the law laid down by this Court in Mahendra Awase v. State of Madhya Pradesh² and other judgments interpreting Section 306 IPC.

15. Having regard to the purpose of Section 319 CrPC, we see no infirmity in the order of the Trial Court. On the contrary, non summoning of respondent no. 2 would have risked a truncated trial and a possible failure of justice. The High Court, by elevating unproved defence documents above sworn testimony, adopted an approach that was neither consistent with the text of Section 319 CrPC nor consonant with the realities of a case involving a vulnerable victim. The Court's intervention, in effect, foreclosed the prosecution from testing the alibi and deprived the Trial Court of jurisdiction expressly conferred upon it.

16. For the reasons recorded above, the appeal succeeds and is allowed. The judgment and order dated 21 November 2023 passed by the High Court of Punjab and Haryana in CRM-M No. 31120 of 2022 is set aside.

17. The order of the Trial Court dated 04 July 2022 summoning respondent no. 2 to stand trial for the offence punishable under Section 306 IPC shall stand revived. Respondent no. 2 shall appear before the Trial Court within four weeks from today and thereafter abide by all further orders of the Trial Court. It will be open to the Trial Court to regulate the conditions of his release, if any application for bail is moved, in accordance with law."

19. It has been concluded by the Hon'ble Apex Court in the case of **Harjinder Singh (supra)** that summoning order under Section 319 Cr.P.C. of an accused cannot be quashed based on plea of alibi evidence presented by the additional accused at the summoning stage. The threshold for summoning an additional accused is the





existence of prima facie evidence indicating involvement in the offence, not proof beyond reasonable doubt. The plea of alibi is a matter of defence and the same is required to be established during trial, not at the stage of summoning.

20. Section 319 Cr.P.C. deals with the procedure of summoning the additional accused to face trial who has been left out by the police and not charge-sheeted along with the other accused persons. Section 319 Cr.P.C. reads 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 the 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.”

Sub-section (1) of Section 319 Cr.P.C. leaves it to the judicial discretion of the Court, where the trial is proceeding to summon a person as an accused (who has been left by the police), if the evidence has appeared before the Court that such a person has





committed an offence for which he should be tried together with the other accused.

21. The entire purpose of criminal trial is to go to the truth of the matter. Once there is satisfaction of the Court that there is evidence before it that an accused has committed an offence, the court can proceed against such a person. At the stage of summoning an accused, there has to be a prima facie satisfaction of the Court. The evidence which was there before the Court was of an eye witness who has clearly stated before the Court that a crime has been committed, inter alia, by the revisionist. The Court need not cross-examine this witness. It can stop the trial at that stage itself if such application had been moved under Section 319. The detail examination of the witness and other witnesses is a subject matter of the trial which has to begin afresh. The scope and ambit of Section 319 CrPC has been discussed and dealt with in detail in the Constitution Bench judgment of **Hardeep Singh v. State of Punjab and Others** reported in **(2014) 3 SCC 92** where it said:

“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 Cr. PC.

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.”





22. In **Hardeep Singh** (supra), this court further said that the Court only has to see at the state of Section 319, whether a prima facie case is made out although the degree of satisfaction has to be much higher.

"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*, 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.

In Para 106 it is stated as under:

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" it 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.”

23. In this case, clear and specific allegations have been levelled against the petitioners in the FIR which was registered immediately on the next day after the occurrence and in the statements of the respondent No. 2 Snehlata which were recorded under Section 161 Cr.P.C. immediately after FIR and even in her statements which were recorded during the course of trial before the Trial Court.

Conclusion and directions:-

24. In the considered opinion of this Court, at this stage more than prima facie case is required to be seen against the accused not charge-sheeted. The merits and the defence of the accused cannot be appreciated at this initial stage of taking cognizance. The defence, so put by the accused, with regard to his plea of alibi that they were not present at the place of occurrence would be taken into account by the Trial Court at the appropriate stage of trial. There is much more prima facie evidence available on the record for summoning them to face the trial. This Court finds no substance in the instant misc. petition and the order passed by the Court below is just and proper which does not require any interference of this Court.

25. Accordingly, the instant misc. petition stands rejected. The stay application and any other application pending if any, stand disposed of.

26. Before parting with this order, this Court observes that while allowing the application submitted by the complainant-respondent under Section 319 Cr.P.C., and while taking cognizance against the petitioners for the above stated offences, the petitioners have





been summoned throughailable warrants and thereafter arrest warrants were issued against them. This Court cannot overlook the material fact that at the initial stage, the petitioners were arrested but released under Section 169 Cr.P.C., hence, their custodial arrest is not required. Since the petitioner No.1 has passed away, the petitioner No.2 is ready to face trial before the Trial Court. It is ordered that the petitioner No.2 shall not be arrested in case he appears before the Trial Court on or before 24.04.2026 and produce his personal and surety bonds to the satisfaction of the Trial Court, he shall be released on bail.

27. All observations made hereinabove are confined to the present adjudication under Section 319 Cr.P.C. and shall not influence the final appreciation of evidence by the Trial Court.

(ANOOP KUMAR DHAND),J

Puneet-Shivam/4

