

Reserved on : 07.08.2026

Pronounced on : 25.09.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.2796 OF 2025

BETWEEN:

SURAJ REVANNA
S/O H D REVANNA
AGED ABOUT 35 YEARS
RESIDING AT
HOLENARASIPURA TOWN
AND TALUK
HASSAN - 573 211.

... PETITIONER

(BY SRI BIPIN HEGDE ADVOCATE A/W
SRI ABHINAY Y.T., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
BY CHANNARAYAPATNA RURAL POLICE
REPRESENTED BY
STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING COMPLEX
HIGH COURT OF KARNATAKA
BENGALURU - 560 001.
2. SHIVANANDA @ MADHU
S/O NAGARAJU

Digitally
signed by
PADMAVATHI
B K

Location:
High Court of
Karnataka

AGED ABOUT 35 YEARS
RESIDING AT NAMBIHALLI
DANDIGANAHALLI HOBLI
CHANNARAYAPATNA TALUK
HASSAN - 573 225.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, SPP-I FOR R-1;
SRI MANJUNATHA H.B., ADVOCATE FOR R-2)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 07.02.2025 PASSED ON I.A. FILED U/S 319 OF CR.P.C. IN S.C.NO.194/2022 BY THE 4TH ADDL. DIST. AND SESSIONS JUDGE, HASSAN DISTRICT AT CHANNARAYAPATNA AND CONSEQUENTLY DISMISS THE I.A. FILED U/S 319 OF CR.P.C.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 07.08.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before the Court calling in question an order dated 07-02-2025 passed by the IV Additional District and Sessions Judge, Hassan sitting at Channarayapatna in S.C.No.194 of 2022 by which an application filed under Section 319 of the Cr.P.C., by the prosecution comes to be allowed and the petitioner is brought back into the web of proceedings.

2. Heard Sri Bipin Hegde, learned counsel appearing for the petitioner, Sri B.N. Jagadeesha, learned State Public Prosecutor-1 appearing for respondent No.1 and Sri Manjunatha H.B., learned counsel appearing for respondent No.2.

3. Facts, in brief, adumbrated are as follows: -

3.1. On 03-12-2019 a complaint comes to be registered alleging that at about 8-00 p.m. on the said day, the complainant and his friends went to a farm house of one Santhosh, their friend. An hour later the petitioner along with 150 to 200 persons come to the farm house of Santhosh and abused Girish and Santhosh alleging that they have left JDS and joined BJP and threatened to kill them. Certain persons named in the petition had also come with an intention to kill them. Out of the said gang, one Mohan assaulted Girish on body and hands, Pradhi assaulted one Naveena with club on the right hand, N Bindenahalli Loki assaulted Ananda with hands and one Karadevu Sathish assaulted Santhosh with clubs. The complainant and others went inside the house. The petitioner is alleged to have further instigated others to barge into the house and they assaulted mercilessly and also damaged the

cars. This becomes the fulcrum of the complaint in Crime No.168 of 2019 for offences punishable under Sections 114, 143, 147, 148, 307,323, 324, 427, 448, 504, 506 and 149 of the IPC. The offences alleged were including attempt to murder. The Police conduct investigation and file a charge sheet.

3.2. The petitioner who was an accused at the time of filing FIR was not an accused at the time of filing the charge sheet. Therefore, he was dropped from the array of accused finding no allegation against him for filing of a charge sheet. The concerned Court then takes cognizance of the offence and registers S.C.No.194 of 2022. Charges are framed against accused Nos.1 to 13 on 12-01-2024. After framing of charges 13 witnesses are examined. 11 witnesses turned hostile and they denied involvement of several of the accused. When things stood thus, on 05-10-2024 the prosecution files an application under Section 319 of the Cr.P.C., seeking to draw the petitioner back as an additional accused. The concerned Court issues summons on the application to the petitioner. The petitioner then files his objections to the application. By the order impugned dated 07-02-2025 the

application comes to be allowed and the petitioner is brought back as an additional accused to face trial. It is this order that is called in question by the petitioner before this Court in the subject petition.

4. The learned counsel Sri Bipin Hegde appearing for the petitioner would vehemently contend that petitioner's role was assessed during investigation and finding the allegation to be bald he was dropped from the array of accused. The learned counsel would contend that to bring back an accused under Section 319 of the Cr.P.C., what is required is a higher degree of evidence that was not looked into at the time of investigation by the Investigating Officer. Stray sentences or utterances during the trial would not mean that the petitioner can be brought back to the web of proceedings. The only circumstance narrated by two witnesses was that the petitioner had instigated others to damage or assault the complainant. Therefore, the learned counsel submits that a mere statement during the trial without any corroboration would not mean that the petitioner should face trial. He would seek quashment of the order impugned.

5. Per contra, the learned counsel appearing for the complainant Sri Manjunatha H.B., would vehemently refute the submissions in contending that the petitioner is the kingpin who instigated everyone to assault and did direct them to assault the complainant also. He would therefore, submit that trial must be permitted to be continued against the petitioner also.

6. The learned State Public Prosecutor-I Sri B.N.Jagadeesha appearing for the State would also vehemently refute the submissions made by the petitioner in contending that the petitioner has been brought back to the web of proceedings on cogent evidence. Therefore, the petitioner's continuance as accused in the trial is imperative. It is for him to come out clean in its full-fledged form. The learned State Public Prosecutor would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are a matter of record. A crime comes to be registered for an incident that took place on 03-12-2019. The gist of the crime as found in column No.10 of the FIR reads as follows:

"ದಿನಾಂಕ: 03-12-2019 ರಂದು ಸಂಜೆ 08-00 ಗಂಟೆಯಲ್ಲಿ ಪಿಯಾರ್‌ದಿ ಮತ್ತು ಆತನ ಸ್ನೇಹಿತ ಗಿರೀಶ ಇಬ್ಬರೂ ಬೆಂಗಳೂರಿನಿಂದ ಬಂದಿದ್ದ ಸಂತೋಷ ಬಿನ್ ರಾಮೇಗೌಡ ರವರನ್ನು ನೋಡಲು ನಂಬಿಕೆಳ್ಳಿ ಗ್ರಾಮದ ಅವರ ತೋಟದ ಮನೆಯ ಹತ್ತಿರ ಹೋಗಿ ಸಂತೋಷನ ಸ್ನೇಹಿತರಾದ ರವೀಂದ್ರ, ಆನಂದ ಹೊಸೂರ್, ನವೀನ, ಪ್ರದೀಪ, ರಾಜಕುಮಾರ, ಗೋವಿಂದರಾಜು, ಬಸವರಾಜು ಎಲ್ಲರೂ ಮಾತನಾಡುತ್ತಾ ಇದ್ದಾಗ ಸರಿ ಸುಮಾರು ರಾತ್ರಿ 09-00 ಗಂಟೆ ಸಮಯದಲ್ಲಿ, ಅಲ್ಲಿಗೆ ಬಂದ ಡಾ|| ಸೂರಜ್ ರೇವಣ್ಣ ಹಾಗೂ ಅವರೊಂದಿಗೆ ಪಡುವಲಹಿಪ್ಪೆಯ ಮೋಹನ, ಸುಮಂತ, ಚೆಟ್ಟೆ ಮಂಜ, ಕಾಳೇನಹಳ್ಳಿಯ ಪ್ರದೀ, ಮೂಡಲಹಿಪ್ಪೆಯ ಕಿರಣ, ಕರಡೇವು ಸತೀಶ ಹಾಗೂ ಇತರೆ ಸುಮಾರು 150 ರಿಂದ 200 ಜನ ಬೆಂಬಲಿಗರೊಂದಿಗೆ ಬಂದು ಪಿಯಾರ್‌ದಿಯವರನ್ನು ಕುರಿತು ಏನೋ ಬೋಳಿ ಮಕ್ಕಳಾ, ನಮ್ಮ ಪಾರ್ಟಿಯನ್ನು ಬಿಟ್ಟು ಬೇರೆ ಪಾರ್ಟಿಗೆ ಸೇರಿಕೊಳ್ಳುತ್ತೀರೇನೋ, ನೋಡಿ ನಿಮಗೆ ಇವತ್ತು ಕೊಲೆ ಮಾಡಿಸುತ್ತೇನೆಂದು ಸೂರಜ್ ರೇವಣ್ಣ ಕರೆದುಕೊಂಡು ಬಂದಿದ್ದ ಪಡುವಲಹಿಪ್ಪೆ ಗ್ರಾಮದ ಮೋಹನನಿಗೆ ಈ ನನ್ನ ಮಕ್ಕಳನ್ನು ಕತ್ತರಿಸು ಎಂದು ಸೂರಜ್ ರೇವಣ್ಣ ಹೇಳುತ್ತಿದ್ದಂತೆ ಮೋಹನನು ಪಿಯಾರ್‌ದಿಯವರನ್ನು ಕೊಲೆ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಮಚ್ಚಿನಿಂದ ಪಿಯಾರ್‌ದಿಯ ತಲೆಗೆ, ಕುತ್ತಿಗೆ ಹಾಗೂ ಮೈಕೈಗೆ ಹೊಡೆದು ರಕ್ತಗಾಯ ಪಡಿಸಿದನು. ಮಂಜ @ ಚೆಟ್ಟೆ ಮಂಜ ಎಂಬುವವನು ದೊಣ್ಣೆಯಿಂದ ಗಿರೀಶನ ಕೈಗೆ ಹಾಗೂ ಮೈಕೈಗೆ, ಕಾಳೇನಹಳ್ಳಿ ಪ್ರದೀ ದೊಣ್ಣೆಯಿಂದ ನವೀನರವರ ಬಲಕೈಗೆ, ಎನ್.ಬಿಂಡೇನಹಳ್ಳಿ ಲೋಕಿ ಆನಂದ ಸಿ ಹೊಸೂರ್ ರವರ ಕೈಗೆ ಹೊಡೆದು, ದೊಡ್ಡ ಕರಡೇವು ಸತೀಶ ದೊಣ್ಣೆಯಿಂದ ಸಂತೋಷನ ಮೈಕೈಗೆ ಹಾಗೂ ಸುಮಂತ ಮತ್ತು ಇತರರು ಸೇರಿಕೊಂಡು ರಾಮಗೌಡರ ಮನೆಯಲ್ಲಿದ್ದ ಇತರರಿಗೆ ಹೊಡೆದು ನೋವುಂಟು ಮಾಡಿದರು. ಆಗ ಪಿಯಾರ್‌ದಿ ಮತ್ತು ಅವರ ಕಡೆಯವರು ಹೆದರಿ ರಾಮೇಗೌಡರ ಮನೆಯೊಳಗೆ ಹೋಗಿ ಬಾಗಿಲು ಹಾಕಿಕೊಂಡಾಗ ಎಲ್ಲರೂ ಸೇರಿ ಮನೆಯ ಬಾಗಿಲು, ಕಿಟಕಿಗಳನ್ನು ಹೊಡೆದು, ಮನೆಯೊಳಗೆ ನುಗ್ಗಿ ಮನಬಂದಂತೆ ಧಳಿಸಿದರು. ಹಾಗೂ ಮನೆಯ ಮುಂದೆ ನಿಂತಿದ್ದ ಸಂತೋಷನ ಸ್ನೇಹಿತರ ಕಾರುಗಳಾದ KA-04-MV-6668 & KA04-MV-2931 ರ ನಂಬರಿನ ಕಾರುಗಳನ್ನು ಜಖಂಗೊಳಿಸಿದರು, ಅಷ್ಟರಲ್ಲಿ, ಸಂತೋಷನ ಸ್ನೇಹಿತರಾದ ರವೀಂದ್ರ, ಪ್ರವೀಣ, ರಾಜಕುಮಾರ, ಗೋವಿಂದರಾಜ ಹಾಗೂ ಬಸವರಾಜು ರವರುಗಳು ಗಲಾಟೆ ಮಾಡುತ್ತಿದ್ದವರನ್ನು ಸಮಾದಾನ ಪಡಿಸಿ, ಗಲಾಟೆ ಸಮಯದಲ್ಲಿ ಕಲ್ಲು ತೂರಾಟ ನಡೆಸುತ್ತಿದ್ದರಿಂದ ರಾಮೇಗೌಡರ ಮನೆ ಹಾಗೂ ಅವರ ಪಕ್ಕದ ಮನೆಯಾದ ನಂಜೇಗೌಡರ ಮನೆಯು ಜಖಂಗೊಂಡಿರುತ್ತೆ. ನಂತರ ಗಲಾಟೆಯಲ್ಲಿ ಪೆಟ್ಟಾಗಿದ್ದ ಗಾಯಾಳುಗಳನ್ನು 108 ಆಂಬುಲೆನ್ಸ್‌ನಲ್ಲಿ ಚನ್ನರಾಯಪಟ್ಟಣ ಸರ್ಕಾರಿ

ಆಸ್ಪತ್ರೆಗೆ ಚಿಕಿತ್ಸೆ ದಾಖಲಿಸಿದ್ದು, ಪಿಯಾರ್‌ದಿಯವರು ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ಚಿಕಿತ್ಸೆ ಪಡೆಯುತ್ತಿದ್ದಾಗ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸುವಂತೆ ನೀಡಿದ ಹೇಳಿಕೆಯ ಮೇರೆಗೆ,"

The Police conduct investigation and file a charge sheet. The summary of the charge sheet as obtaining in Column No.17 reads as follows:

"ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ಕಲಂ-143,147,148,323,324,326,307,504,506,427,448 ರೆ/ವಿ 149 ಐಪಿಸಿ,

ಚನ್ನರಾಯಪಟ್ಟಣ ಗ್ರಾಮಾಂತರ ಪೊಲೀಸರ ರಾಣಾ ಸರಹದ್ದಿನ ಚನ್ನರಾಯಪಟ್ಟಣ ತಾಲ್ಲೂಕು ದಂಡಿಗನಹಳ್ಳಿ ಹೋಬಳಿ ನಂಬಿಹಳ್ಳಿ ಗ್ರಾಮದಲ್ಲಿ ಸಾಕ್ಷಿ -2 ರವರು ಸಾಕ್ಷಿ -4, ಸಾಕ್ಷಿ -5 ಮತ್ತು ರವೀಂದ್ರ ರವರೊಂದಿಗೆ ದಿನಾಂಕ 29/11/2019 ರಂದು ಕೆಎ-04 ಎಂ ವಿ -6668 ಮತ್ತು, ಕೆಎ -04 ಎಂವಿ -2931 ರ ಕಾರಿನಲ್ಲಿ, ಬಿ.ಜೆ.ಪಿ ವಸ್ತದ ವತಿಯಿಂದ ಕೆ.ಆರ್.ವೇಟೆ ವಿಧಾನಸಭಾ ಉಪ ಚುನಾವಣೆ ಪ್ರಚಾರಕ್ಕಾಗಿ ಹೋಗಿ ಅಲ್ಲಿ ಚುನಾವಣಾ ಪ್ರಚಾರ ಮಾಡಿಕೊಂಡಿದ್ದು, ದಿನಾಂಕ:03-12-2019 ರಂದು ಸಂಜೆ ಸುಮಾರು 07-00 ಗಂಟೆಗೆ ಸಾಕ್ಷಿ-2 ರವರ ಉರಾದ ನಂಬಿಹಳ್ಳಿಯಲ್ಲಿರುವ ತೋಟದ ಮನೆಗೆ ಸಾಕ್ಷಿ-4, ಸಾಕ್ಷಿ-5 ಮತ್ತು ರವೀಂದ್ರರವರೊಂದಿಗೆ ಬಂದು ಉಳಿದುಕೊಂಡಿರುವಾಗ, ಅಲ್ಲಿಗೆ ನಂಬಿಹಳ್ಳಿ ಗ್ರಾಮದ ಸಾಕ್ಷಿ-1, ಸಾಕ್ಷಿ-3 ಮತ್ತು ಸಾಕ್ಷಿ-2 ರವರ ಸ್ನೇಹಿತರಾದ ಸಾಕ್ಷಿ-6,7,8 ಮತ್ತು ಸಾಕ್ಷಿ-9 ಅವರುಗಳು ಬಂದಿದ್ದು ಎಲ್ಲರೂ ರಾತ್ರಿ 09.00 ಗಂಟೆಯ ವೇಳೆಯಲ್ಲಿ ಸಾಕ್ಷಿ-2 ರವರ ಮನೆಯ ಮುಂಬಾಗ ಉಟ ಮಾಡುತ್ತಿರುವಾಗ ಅದೇ ಸಮಯಕ್ಕೆ ಅಂಕಣ-12 ರಲ್ಲಿ, ಕಂಡ ಆರೋಪಿಗಳಾದ ಎ -1, ಎ -2, ಎ -3, ಎ -4, ಎ -5, ಎ -6, ಎ -7, ಎ -8, ಎ -9, ಎ -10, ಎ -11, ಎ -12 ಮತ್ತು ಎ -13 ಇವರುಗಳು ಎಲ್ಲಾರು ಗುಂಪು ಕಟ್ಟಿಕೊಂಡು ಕೈಯಲ್ಲಿ ರಿಪೀಸ್ ಪಟ್ಟಿ ಹಿಡಿದುಕೊಂಡು ಬಂದು ಸಾಕ್ಷಿ-1,2, ಮತ್ತು ಸಾಕ್ಷಿ-3 ರವರನ್ನು ಉದ್ದೇಶಿಸಿ ಏನೋ ಬೋಳಿ ಮಕ್ಕಳಾ ಜೆಡಿಎಸ್ ಪಾರ್ಟಿ ಬಿಟ್ಟು ಬಿಜೆಪಿ ಪಾರ್ಟಿಗೆ ಸೇರಿಕೊಂಡು ಹೊರಗಡೆಯಿಂದ ಜನರನ್ನು ಕರೆದುಕೊಂಡು ಬಂದು ಕೆ.ಆರ್. ವೇಟೆಯ ಚುನಾವಣಾ ಪ್ರಚಾರ ಮಾಡಿಕೊಂಡು ದುಡ್ಡು ಹಂಚಿಕೊಂಡು ಅವರೊಂದಿಗೆ ಪಾರ್ಟಿ ಮಾಡುತ್ತಿದ್ದೀರಾ ಎಂದು ಅವ್ಯಾಚ್ಛ ಶಬ್ದಗಳಿಂದ ಬೈಯ್ದು ನೋಡಿ ನಿಮಗೆ ಒಂದು ಗತಿ ಕಾಣಿಸುತ್ತೇವೆ ಎಂದು ಎಲ್ಲರೂ ಕೂಗುತ್ತಾ ಇರುವಾಗ ಎ-1 ರವರು ಕೊಲೆ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಕೈಯಲ್ಲಿದ್ದ ರಿಪೀಸ್ ಪಟ್ಟಿಯಿಂದ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ತಲೆ ಕುತ್ತಿಗೆ ಮೈಕೈಗೆ ಹೊಡೆದಿರುವುದು, ಹಾಗೂ ಎ-12,ಎ-13 ರವರು ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಮೈಕೈಗೆ ಕೈಯಿಂದ ಹೊಡೆದು ಕಾಲಿನಿಂದ ಒದ್ದು ನೋವುಂಟು ಮಾಡಿಸಾಮಾನ್ಯ ಸ್ವರೂಪದ ಗಾಯ ಉಂಟು ಮಾಡಿರುವುದು ಎ-3 ರವರು ಅದೇ ರಿಪೀಸ್ ಪಟ್ಟಿಯಿಂದ ಸಾಕ್ಷಿ-3 ರವರಿಗೆ ಕೈಗೆ ಮತ್ತು ಮೈಕೈಗೆ ಹೊಡೆಯುತ್ತಿರುವಾಗ ಎ-6 ರವರು ಸಹ ಇಟ್ಟಿಗೆಯಿಂದ ಸಾಕ್ಷಿ-3 ಎದೆಗೆ ಹೊಡೆದು ಸಾಮಾನ್ಯ ಸ್ವರೂಪದ ಗಾಯ ಉಂಟು ಮಾಡಿರುವುದು, ಈ ಗಲಾಟೆಯನ್ನು ತಡೆಯಲು ಹೋದ

ಸಾಕ್ಷಿ-4 ರವರಿಗೆ ಎ-7 ರವರು ಅದೇ ರಿಪೀಸ್ ಪಟ್ಟಿಯಿಂದ ಬಲಕ್ಕೆಗೆ ಹೊಡೆದು ನೋವುಂಟು ಮಾಡಿ ಗಂಭೀರ ಸ್ವರೂಪದ ಗಾಯ ಉಂಟು ಮಾಡಿರುವುದು, ಹಾಗೂ ಇದೇ ರೀತಿ ಗಲಾಟೆ ತಡೆಯಲು ಯತ್ನಿಸಿದ ಸಾಕ್ಷಿ-5 ರವರಿಗೆ ಎ-4,ಎ-8,ಎ-9,ಎ-10- ಮತ್ತು ಎ-11 ರವರುಗಳು ಒಟ್ಟಾಗಿ ಸೇರಿಕೊಂಡು ಹಿಡಿದು ಎಳೆದಾಡಿ ಕೈಯಿಂದ ಮೈಕೈಗೆ ಹೊಡೆದು ಕಾಲಿನಿಂದ ಒದ್ದು ನೋವುಂಟು ಮಾಡಿ ಸಾಮಾನ್ಯ ಸ್ವರೂಪದ ಗಾಯ ಉಂಟು ಮಾಡಿರುವುದು ಹಾಗೂ ಸಾಕ್ಷಿ-2 ರವರಿಗೆ ಎ-2,ಎ-5 ಮತ್ತು, ಎ-11 ರವರುಗಳು ಬಿಜೆಪಿಯವರನ್ನು ಕರೆಸಿ ಮನೆಯಲ್ಲಿ ಪಾರ್ಟಿ ಮಾಡುತ್ತೀಯೆ ಎಂದು ಅವ್ಯಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈಯ್ದು ಕೈಯಿಂದ ಮೈಕೈಗೆ ಹೊಡೆದು ಕಾಲಿನಿಂದ ಒದ್ದು ನೋವುಂಟು ಮಾಡಿ ಸಾಮಾನ್ಯ ಸ್ವರೂಪದ ಗಾಯ ಉಂಟು ಮಾಡಿರುವುದು ಅಷ್ಟರಲ್ಲಿ ಅಲ್ಲಿದ್ದ ಸಾಕ್ಷಿ-6,7,8,9, ಮತ್ತು, ಗಲಾಟೆ ಶಬ್ದ ಕೇಳಿ ಅಲ್ಲಿಗೆ ಬಂದ ಸಾಕ್ಷಿ-10,11,12,13,14 ಮತ್ತು ಸಾಕ್ಷಿ-15 ರವರುಗಳು ಸೇರಿ ಜಗಳ ಬಿಡಿಸಿದಾಗ, ಗಲಾಟೆ ಮಾಡಿದ ಆರೋಪಿಗಳೆಲ್ಲರೂ ಸೇರಿ ಸಾಕ್ಷಿ-1,2, ಮತ್ತು ಸಾಕ್ಷಿ-3 ರವರಿಗೆ ಕೊಲೆ ಬೆದರಿಕೆ ಹಾಕಿ, ಸಾಕ್ಷಿ-2 ರವರ ಚಿಕ್ಕಪ್ಪನ ಮನೆಯ ಕಿಟಕಿಯ ಗಾಜು, ಮನೆಯ ಹೆಂಚುಗಳಿಗೆ ಮತ್ತು ಮನೆಯ ಬಾಗಿಲಿಗೆ ಹೊಡೆದು ಮನೆಯನ್ನು ಜಖಂಗೊಳಿಸಿರುವುದು, ಹಾಗೂ ಸಾಕ್ಷಿ-2 ರವರ ಮನೆಯ ಮುಂದೆ ನಿಂತಿದ್ದ ಕೆಎ-04 ಎಂ ವಿ -6668 ಕಾರು ಮತ್ತು ಕೆಎ-04 ಎಂ ವಿ -2931 ರ ಕಾರಿನ ಗ್ಲಾಸ್ ಗಳನ್ನು ಹೊಡೆದುಹಾಕಿ ನಷ್ಟ ಉಂಟುಮಾಡಿರುವುದು ಇದುವರೆವಿಗೂ ನಡೆಸಿರುವ ತನಿಖೆಯಿಂದ ಮತ್ತು ಸಾಕ್ಷಿದಾರರ ಹೇಳಿಕೆಗಳಿಂದಲೂ ದೃಢಪಟ್ಟಿರುತ್ತದೆ.

ಆದ್ದರಿಂದ ಮೇಲ್ಕಂಡ ಕಲಂ ರೀತ್ಯಾ ಆರೋಪಿಗಳ ವಿರುದ್ಧ ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ದೋಷಾರೋಪಣ ಪತ್ರ ಸಲ್ಲಿಸಿದೆ."

The concerned Court takes cognizance of the offence, later frames charges and registers S.C.No.194 of 2022. The issue is not with regard to merit of the matter. During the advanced stage of trial, the prosecution files an application under Section 319 of the Cr.P.C. The application reads as follows:

"....

ಅಪರಾಧ ಪ್ರಕ್ರಿಯಾ ಸಂಹಿತೆ ಕಲಂ 319 ರ ಅಡಿಯಲ್ಲಿ ಅಭಿಯೋಜನೆಯ ಪರವಾಗಿ ಸಲ್ಲಿಸುತ್ತಿರುವ ಅರ್ಜಿ:

ಅಭಿಯೋಜನೆಯ ಪರವಾಗಿ ಈ ಕೆಳಕಂಡಂತೆ ಪ್ರಾರ್ಥಿಸಿಕೊಳ್ಳಲಾಗಿದೆ:-

ಈ ಮೇಲ್ಕಂಡ ಮೊಕದ್ದಮೆಯನ್ನು ಫಿರ್ಯಾದುದಾರರು ಮೇಲ್ಕಾಣಿಸಿದ ಆರೋಪಿತರ ವಿರುದ್ಧ ಭಾರತೀಯ ದಂಡಸಂಹಿತೆಯ ಕಲಂ143, 147, 148, 323, 324, 427, 448, 307 ರೆ/ವಿ 149 ರ ರೀತ್ಯಾ ದೋಷಾರೋಪಣ ಪಟ್ಟಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಸದರಿ ದೋಷಾರೋಪಣಾ ಪತ್ರದಲ್ಲಿರುವ ಎಲ್ಲಾ ಸಾಕ್ಷಾಧಾರಗಳನ್ನು ಹಾಗೂ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಹಾಜರುಪಡಿಸಿರುವ ಸಾಕ್ಷ್ಯವನ್ನು ಈ ಅರ್ಜಿಯ ಒಂದು ಭಾಗವಾಗಿ ಪರಿಗಣಿಸಲು ಕೋರಲಾಗಿದೆ. ಪ್ರಸ್ತುತ ಪ್ರಕರಣವು ಅಧಿ ವಿಚಾರಣೆಯ ಹಂತದಲ್ಲಿರುತ್ತದೆ.

ಅಭಿಯೋಜನೆ ಪರವಾಗಿ ಈಗಾಗಲೇ 13 ಜನ ಸಾಕ್ಷಿದಾರರನ್ನು ವಿಚಾರಣೆ ಮಾಡಲಾಗಿದ್ದು, ಅವರುಗಳ ಪೈಕಿ ಗಾಯಾಳು/ಬಾಧಿತರಾದ ಪ್ರಾಸಾ-9 ಶಿವಾನಂದರವರನ್ನು ವಿಚಾರಣೆ ಮಾಡಲಾಗಿರುತ್ತದೆ. ಸದರಿ ಸಾಕ್ಷಿದಾರರು ಘಟನೆಗೆ ಪೂರಕವಾಗಿ ಸಾಕ್ಷ್ಯ ನುಡಿದಿರುತ್ತಾರೆ.

ಪ್ರಾಸಾ-9 ಶಿವಾನಂದರವರು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸಾಕ್ಷ್ಯ ನುಡಿಯುವ ಕಾಲಕ್ಕೆ ತಮ್ಮ ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಿ ಪ್ರಸ್ತಾಪಿತ/ಹೆಚ್ಚುವರಿ ಆರೋಪಿಯಾದ ಸೂರಜ್ ರೇವಣ್ಣನವರು ಅಕ್ರಮ ಕೂಟದ ಪ್ರಮುಖ ಸದಸ್ಯರಾಗಿ ಘಟನಾ ಸ್ಥಳಕ್ಕೆ ಬಂದು, ಬಾಧಿತರನ್ನು ಕುರಿತು ಈ ಮೊದಲು ನೀವು ಜೆ.ಡಿ.ಎಸ್. ಪಾರ್ಟಿಯಲ್ಲಿದ್ದು. ಈಗ ಬಿ.ಜೆ.ಪಿ. ಪಕ್ಷಕ್ಕೆ ಬೆಂಬಲ ನೀಡುತ್ತೀದ್ದೀರಿ ಎಂದು ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು, ಅವರ ಜೊತೆ ಅಕ್ರಮ ಕೂಟದ ಸದಸ್ಯರಾಗಿದ್ದ ಉಳಿದ ಆರೋಪಿತರಿಗೆ ನಮ್ಮನ್ನು ಸಾಯಿಸುವಂತೆ ಪ್ರಚೋದನೆ ನೀಡಿದ ಕೂಡಲೇ, ಉಳಿದ ಅಕ್ರಮ ಕೂಟದ ಸದಸ್ಯರಾದ ಅಂದರೆ ಆರೋಪಿತರು ನನಗೆ, ಸಂತೋಷ್, ಗಿರೀಶ್, ನವೀನ್ ಡಿ. ಸೇರ್ ಮತ್ತು ಆನಂದ್ ಜಿ.ಹೊಸೂರ್ ರವರಿಗೆ ಹಲ್ಲೆ ಮಾಡಿ, ಗಾಯಪಡಿಸಿರುತ್ತಾರೆ ಎಂದು ಹಾಗೂ ಸದರಿ ಪ್ರಸ್ತಾಪಿತ ಆರೋಪಿಯು ಉಳಿದ ಆರೋಪಿತರಿಗೆ ಮನೆಯೊಳಗೆ ನುಗ್ಗಿ ಹಲ್ಲೆ ಮಾಡಲು ಮತ್ತು ಸದರಿ ಮನೆಗಳನ್ನು ಜಖಂಗೊಳಿಸಲು ಮತ್ತೊಮ್ಮೆ ಕುಮ್ಮಕ್ಕು/ಪ್ರೇರಣೆ ನೀಡಿದ ಮೇರೆಗೆ ಆರೋಪಿಗಳೆಲ್ಲರೂ ಸಂತೋಷ್ ಮತ್ತು ನಂಜೇಗೌಡರವರ ಮನೆಗಳ ಕಿಟಕಿ, ಬಾಗಿಲು ಮತ್ತು ಹೆಂಚುಗಳನ್ನು ಹಾಗೂ ಮನೆಯ ಹೊರಗಡೆ ನಿಲ್ಲಿಸಿದ್ದ ಬಾಧಿತರಿಗೆ ಸೇರಿದ ಕಾರುಗಳಿಗೆ ಕಲ್ಲು ಮತ್ತು ಇಟ್ಟಿಗೆಗಳಿಂದ ಒಡೆದು ಜಖಂಗೊಳಿಸಿರುತ್ತಾರೆಂದು ತಮ್ಮ ಮುಖ್ಯ ವಿಚಾರಣೆಯಲ್ಲಿ ಹೇಳಿರುತ್ತಾರೆ. ಈ ರೀತಿ ಪ್ರಸ್ತಾಪಿತ/ಹೆಚ್ಚುವರಿ ಆರೋಪಿಯು ಅಕ್ರಮಕೂಟ ಕಟ್ಟಿಕೊಂಡು ಉಳಿದ ಆರೋಪಿತರಿಗೆ ಬಾಧಿತರಿಗೆ ಹಲ್ಲೆ ಮಾಡಲು ಮತ್ತು ಮನೆಗಳನ್ನು ಮತ್ತು ಕಾರುಗಳನ್ನು ಜಖಂಗೊಳಿಸಲು ದುಷ್ಪ್ರೇರಣೆ ನೀಡಿರುವ ಸಂಗತಿಯೂ ಸಹ ನಿಷಿ-1 ದೂರಿನಲ್ಲಿರುವ ಅಂಶಗಳಿಂದ ಸ್ಪಷ್ಟವಾಗಿ ಗೋಚರಿಸಿರುತ್ತದೆ.

ಪ್ರಾಸಾ-12 ನವೀನ್ ಡಿ. ಸೇರ್ ರವರು ಮತ್ತೊಬ್ಬ ಬಾಧಿತ ಸಾಕ್ಷಿಯಾಗಿದ್ದು, ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸಾಕ್ಷ್ಯ ನುಡಿಯುವ ಕಾಲಕ್ಕೆ ಪ್ರಸ್ತಾಪಿತ/ಹೆಚ್ಚುವರಿ ಆರೋಪಿಯು ಅಕ್ರಮ ಕೂಟದ ಪ್ರಮುಖ ಸದಸ್ಯರಾಗಿ ಹಾಜರಿದ್ದು, ಚಾಸಾ-1 ಶಿವಾನಂದ ಮತ್ತು ಚಾಸಾ-3 ಗಿರೀಶರವರನ್ನು ಕುರಿತು ನೀವು ಜೆ.ಡಿ.ಎಸ್. ಪಾರ್ಟಿಯನ್ನು ಬಿಟ್ಟು ಬಿ.ಜೆ.ಪಿ. ಪಕ್ಷಕ್ಕೆ ಸೇರಿಕೊಂಡು ಕೆ.ಆರ್.ಪೇಟೆ ಉಪ ಚುನಾವಣೆಯಲ್ಲಿ ಬಿ.ಜೆ.ಪಿ. ಪಕ್ಷಕ್ಕೆ ಬೆಂಬಲ ನೀಡುತ್ತೀದ್ದೀರಿ ಎಂದು ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು ಘಟನೆಗೆ ಪೂರಕವಾಗಿ ಸಾಕ್ಷ್ಯ ನುಡಿದಿರುತ್ತಾರೆ. ಸದರಿಯವರ ಸಾಕ್ಷ್ಯದಿಂದ ಪ್ರಸ್ತಾಪಿತ ಆರೋಪಿಯು ಸದರಿ ಘಟನೆಯ ದಿನದಂದು ಅಕ್ರಮ ಕೂಟದ

ಸದಸ್ಯರಾಗಿ ಹಾಜರಿದ್ದು, ಬಾಧಿತರಾದ ಶಿವಾನಂದ ಮತ್ತು ಗಿರೀಶ್ ರವರಿಗೆ ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದಿರುವ ಬಗ್ಗೆ ಘಟನೆಗೆ ಪೂರಕವಾಗಿ ಸಾಕ್ಷ್ಯ ನುಡಿದಿರುವುದು ಸದರಿಯವರ ಸಾಕ್ಷ್ಯ ವಿರುವುದು ಗೋಚರಿಸಿರುತ್ತದೆ.

ಪ್ರಾಸಾ-13 ಗಿರೀಶ್ ರವರು ಮತ್ತೊಬ್ಬ ಬಾಧಿತ ಸಾಕ್ಷಿಯಾಗಿದ್ದು, ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಸಾಕ್ಷ್ಯ ನುಡಿಯುವ ಕಾಲಕ್ಕೆ ಪ್ರಸ್ತಾಪಿತ/ಹೆಚ್ಚುವರಿ ಆರೋಪಿಯು ಅಕ್ರಮ ಕೂಟದ ಪ್ರಮುಖ ಸದಸ್ಯರಾಗಿ ಘಟನಾ ಕಾಲಕ್ಕೆ ಹಾಜರಿದ್ದು, ನಮ್ಮನ್ನು ಕುರಿತು ನೀವು ಜೆ.ಡಿ.ಎಸ್. ಪಕ್ಷವನ್ನು ಬಿಟ್ಟು ಬಿ.ಜೆ.ಪಿ. ಪಕ್ಷವನ್ನು ಸೇರಿಕೊಂಡು, ಪಾರ್ಟಿ ಮಾಡಿಕೊಂಡು, ಕೆ.ಆರ್.ಪೇಟೆ ಉಪಚುನಾವಣೆಯಲ್ಲಿ ಬಿ.ಜೆ.ಪಿ. ಪಕ್ಷಕ್ಕೆ ಬೆಂಬಲ ನೀಡುತ್ತಿದ್ದೀರಿ ಎಂದು ಅವಾಚ್ಯ ಶಬ್ದಗಳಿಂದ ಬೈದು ಉಳಿದ ಆರೋಪಿತರಿಗೆ ನಮ್ಮನ್ನು ಸಾಯಿಸುವಂತೆ ಪ್ರಚೋದಿಸಿದ್ದರಿಂದ, ಅವರ ಜೊತೆಯಿದ್ದ ವ್ಯಕ್ತಿಗಳು ನಮಗೆ ಹಲ್ಲೆ ಮಾಡಿ, ವಾಹನಗಳನ್ನು ಜಖಂಗೊಳಿಸಿ, ಸಂತೋಷ್ ಮತ್ತು ನಂಜೇಗೌಡರವರ ಮನೆಯ ಕಿಟಕಿ, ಬಾಗಿಲುಗಳನ್ನು ಒಡೆದು ಹಾಕಿ ನಮಗೆ ಜೀವ ಬೆದರಿಕೆ ಹಾಕಿರುತ್ತಾರೆಂದು ಸಾಕ್ಷ್ಯ ನುಡಿದಿರುತ್ತಾರೆ. ಈ ಸಾಕ್ಷ್ಯದಿಂದಲೂ ಸಹ ಪ್ರಸ್ತಾಪಿತ/ಹೆಚ್ಚುವರಿ ಆರೋಪಿಯು ಘಟನೆಯ ದಿನ ಘಟನೆಯ ಸ್ಥಳದಲ್ಲಿ ಅಕ್ರಮಕೂಟದ ಸದಸ್ಯರಾಗಿ ಹಾಜರಿದ್ದು, ಉಳಿದ ಆರೋಪಿತರಿಗೆ ಮೇಲ್ಕಂಡ ಅಪರಾಧವನ್ನೆಸಗಲು ಕುಮ್ಮಕ್ಕು ನೀಡಿರುವುದು ಸದರಿಯವರ ಸಾಕ್ಷ್ಯದಿಂದಲೂ ಸಹ ಕಂಡು ಬಂದಿರುತ್ತದೆ. ಈ ರೀತಿ ಯಾವುದೇ ಅಪರಾಧಗಳನ್ನು ಎಸಗಲು ದುಷ್ಪ್ರೇರೇಪಿಸುವುದೂ ಸಹ ಅಪರಾಧವಾಗುತ್ತದೆ ಹಾಗೂ ಆ ರೀತಿ ಘಟಿಸಿದ ಅಪರಾಧಗಳಿಗೆ ದುಷ್ಪ್ರೇರೇಪಿಸಿದ ವ್ಯಕ್ತಿಯು ದುಷ್ಪ್ರೇರಕರಾಗುತ್ತಾರೆಂದು ಭಾರತೀಯ ದಂಡ ಸಂಹಿತೆ Chapter-V ರಲ್ಲಿ ದುಷ್ಪ್ರೇರಣೆಯ ಬಗ್ಗೆ ಅಂದರೆ ಯಾವ ಯಾವ ಸಂದರ್ಭದಲ್ಲಿ ದುಷ್ಪ್ರೇರಣೆಯನ್ನು ದುಷ್ಪ್ರೇರೇಪಿಸಿದ ಅಪರಾಧಗಳಿಗೆ ಶಿಕ್ಷಿಸಬಹುದೆಂದು ವಿವರವಾಗಿ ನಮೂದಿಸಲಾಗಿರುತ್ತದೆ(ಐಪಿಸಿ ಕಲಂ 108, 109, 114, 115).

ಈ ಮೇಲೆ ಹೇಳಿದ ಬಾಧಿತರಾದ, ಶಿವಾನಂದ, ನವೀನ್ ಡಿ. ಸೇಠ್, ಗಿರೀಶ್ ರವರ ಸಾಕ್ಷ್ಯದಿಂದ ಹಾಗೂ ನಿಪಿ-1ರ ದೂರಿನಿಂದ ಹೊರ ಬರುವ ಸಾಕ್ಷ್ಯವೇನೆಂದರೆ ವೇನೆಂದರೆ, ಘಟನೆಯ ದಿನಾಂಕದಂದು ಪ್ರಸ್ತಾಪಿತ ಆರೋಪಿಯು ಅಕ್ರಮ ಕೂಟದ ಸದಸ್ಯರಾಗಿರುವುದು, ಉಳಿದ ಆರೋಪಿತರೊಂದಿಗೆ ಅಕ್ರಮ ಕೂಟ ಕೂಟ ಕಟ್ಟಿಕೊಂಡು ಘಟನಾ ಸ್ಥಳಕ್ಕೆ ಬಂದು, ಉಳಿದ ಆರೋಪಿತರಿಗೆ ಮೇಲ್ಕಂಡ ಅಪರಾಧವನ್ನು ಎಸಗಲು ದುಷ್ಪ್ರೇರಣೆ /ಕುಮ್ಮಕ್ಕು ನೀಡಿರುವುದು ಕಂಡು ಬಂದಿರುತ್ತದೆ.

ಪ್ರಸ್ತಾಪಿತ ಆರೋಪಿಯ ವಿರುದ್ಧ ಪ್ರ.ವ.ವರದಿ ದಾಖಲಾಗಿದ್ದು, ತನಿಖೆಯ ನಂತರ ತನಿಖಾಧಿಕಾರಿಯವರು ದೋಷಾರೋಪಣಾ ಪತ್ರದ ಕಾಲಂ 13 ರಲ್ಲಿ ಸದರಿ ಪ್ರಸ್ತಾಪಿತ ಆರೋಪಿಯ ವಿರುದ್ಧ ಸಾಕಷ್ಟು ಸಾಕ್ಷಾಧಾರ ಲಭ್ಯವಿಲ್ಲವೆಂಬ ಕಾರಣವನ್ನು ನೀಡಿ, ದೋಷಾರೋಪಣಾ ಪತ್ರದಿಂದ ಪ್ರಸ್ತಾಪಿತ ಆರೋಪಿಯನ್ನು ಕೈಬಿಟ್ಟಿರುತ್ತಾರೆ.

ಆದರೆ ಈ ಮೇಲ್ಕಂಡ ಪ್ರಕರಣದಲ್ಲಿ ಪ್ರಸ್ತಾಪಿತ ಆರೋಪಿಯೂ ಸಹ ಅಕ್ರಮ ಕೂಟದ ಸದಸ್ಯನಾಗಿ ಉಳಿದ ಆರೋಪಿತರಿಗೆ ಮೇಲ್ಕಂಡ ಅಪರಾಧಗಳನ್ನೆಸಗಲು ಕುಮ್ಮಕ್ಕು/ದುಷ್ಪ್ರೇರಣೆ ನೀಡಿರುವುದು ಬಾಧಿತರಾದ ಪ್ರಾಸಾ-9, ಪ್ರಾಸಾ-12 ಮತ್ತು ಪ್ರಾಸಾ-13 ರವರ ಸಾಕ್ಷ್ಯದಿಂದ ಮತ್ತು ನಿಪಿ-1 ರ ದೂರಿನ

ಅಂಶಗಳಿಂದ ಸ್ಪಷ್ಟವಾಗಿ ಗೋಚರಿಸಿರುತ್ತದೆ. ಆದ್ದರಿಂದ ಸದರಿ ಪ್ರಸ್ತಾಪಿತ ಆರೋಪಿಯನ್ನು ಈ ಪ್ರಕರಣದಲ್ಲಿ ಪ್ರಸ್ತಾಪಿಸಿದ/ಹೆಚ್ಚುವರಿ ಆರೋಪಿಯಾಗಿ ಪರಿಗಣಿಸಿ ಉಳಿದ ಆರೋಪಿಗಳ ಜೊತೆ, ಮೇಲ್ಕಂಡ ಅಪರಾಧಗಳಿಗೆ ಅಧಿವಿಚಾರಣೆಗೆ ಗುರಿಪಡಿಸುವುದು ನ್ಯಾಯಸಮ್ಮತವಾಗಿರುತ್ತದೆ.

ದೋಷಾರೋಪಣಾ ಪಟ್ಟಿಯಲ್ಲಿ ಆರೋಪಿಯಾಗಿ ಸೇರಿಸದಿದ್ದರೂ ಸಹ ನ್ಯಾಯಾಲಯದ ಅಧಿವಿಚಾರಣಾ ಹಂತದಲ್ಲಿ ಸಾಕ್ಷಿದಾರರು (ಬಾಧಿತರು) ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಹಾಜರುಪಡಿಸಿದ ಸಾಕ್ಷ್ಯದ ಆಧಾರದ ಮೇಲೆ ನ್ಯಾಯಾಲಯವು ವಿಚಾರಣೆಯ ಯಾವುದೇ ಹಂತದಲ್ಲಿ ಯಾವುದೇ ವ್ಯಕ್ತಿಗಳ ವಿರುದ್ಧ ಅಥವಾ ದೋಷಾರೋಪಣಾ ಪತ್ರದಲ್ಲಿ ಕೈಬಿಟ್ಟ ಆರೋಪಿತರ ವಿರುದ್ಧ ಅಧಿವಿಚಾರಣೆ ಸಮಯದಲ್ಲಿ ಸಾಕ್ಷಾಧಾರಗಳು ಲಭ್ಯವಾಗಿದೆ ಎಂದು ಅಭಿಪ್ರಾಯಿಸಿದಲ್ಲಿ ಕೈಬಿಟ್ಟಿರುವ ಆರೋಪಿತರನ್ನು/ಯಾವುದೇ ವ್ಯಕ್ತಿಯನ್ನು ಹೆಚ್ಚುವರಿ ಆರೋಪಿತರಾಗಿ ಸೇರಿಸಿಕೊಂಡು ಅಧಿವಿಚಾರಣೆ ಮಾಡಬೇಕಾಗುತ್ತದೆ ಎಂದು ಈ ಕೆಳಕಂಡ ಪ್ರಕರಣಗಳಲ್ಲಿ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ಅಭಿಪ್ರಾಯಪಟ್ಟಿರುತ್ತದೆ.

2021(3) ಕ್ರೈಮ್ಸ್ 260(ಎಸ್.ಸಿ.) ಮಂಜಿತ್ ಸಿಂಗ್ ವಿರುದ್ಧ ಹರಿಯಾಣ ರಾಜ್ಯ

2015 (ಕ್ರೈಮ್ಸ್) 50 (ಎಸ್.ಸಿ)

(2014)3 ಎಸ್.ಸಿ.ಸಿ. 92 ಹರೀ ದೀಪ್ ಸಿಂಗ್ ವಿರುದ್ಧ ಪಂಜಾಬ್ ರಾಜ್ಯ.

ಈ ಮೇಲ್ಕಂಡ ತೀರ್ಪುಗಳನ್ನು ಮಾನ್ಯ ನ್ಯಾಯಾಲಯದ ಅವಗಾಹನೆಗಾಗಿ ಈ ಕೂಡ ಸಲ್ಲಿಸಲಾಗಿದೆ.

ಕಾನೂನು ಸಮ್ಮತವಾದ ಅಧಿವಿಚಾರಣೆಗೆ ಮತ್ತು ನ್ಯಾಯಸಮ್ಮತವಾದ ತೀರ್ಮಾನಕ್ಕೆ ಬರಲು ಈ ಮೇಲ್ಕಂಡ ದೋಷಾರೋಪಣಾ ಪತ್ರದಲ್ಲಿ ಕೈಬಿಟ್ಟು ಕಾಲಂ 13 ರಲ್ಲಿ ಹೆಸರಿಸಿರುವ ಪ್ರಸ್ತಾಪಿತ ಆರೋಪಿಯನ್ನು ಹೆಚ್ಚುವರಿ ಆರೋಪಿಯಾಗಿ ಪರಿಗಣಿಸಿ ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಹಾಜರುಪಡಿಸಿಕೊಂಡು ಈ ಪ್ರಕರಣದ ಉಳಿದ ಆರೋಪಿತರ ಜೊತೆ ಅಧಿವಿಚಾರಣೆ ನಡೆಸುವುದು ಅತ್ಯಾವಶ್ಯಕವಾಗಿರುತ್ತದೆ..

ಆದುದರಿಂದ ಈ ಪ್ರಕರಣದ ದೋಷಾರೋಪಣಾ ಪತ್ರದ ಕಾಲಂ 13 ರಲ್ಲಿ ಹಾಗೂ ಈ ಅರ್ಜಿಯ ಶಿರೋನಾಮೆಯಲ್ಲಿ ನಮೂದಿಸಿರುವ ಪ್ರಸ್ತಾಪಿತ ಆರೋಪಿಯನ್ನು ಈ ನನ್ನ ನ್ಯಾಯಾಲಯದ ಮುಂದೆ ಹೆಚ್ಚುವರಿ/ಪ್ರಸ್ತಾಪಿಸಿದ ಆರೋಪಿಯಾಗಿ ಪರಿಗಣಿಸಿ, ಹಾಜರುಪಡಿಸಿಕೊಂಡು ಅಧಿವಿಚಾರಣೆ ಎದುರಿಸಲು ಸಮನ್ಸ್ ಹೊರಡಿಸ ಬೇಕೆಂದು ಅಭಿಯೋಜನೆ ಪರ ಘನ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಪ್ರಾರ್ಥಿಸಲಾಗಿದೆ.

ಸ್ಥಳ:ಚನ್ನರಾಯಪಟ್ಟಣ

ದಿನಾಂಕ: 05-10-2024

ಸಹಿ/-

(ಸಿ.ಡಿ.ಶ್ರೀನಿವಾಸ)

ಸರ್ಕಾರಿ ಅಭಿಯೋಜಕರು

4 ನೇ ಅಪರ ಜಿಲ್ಲಾ ಮತ್ತು ಸತ್ರ ನ್ಯಾಯಾಲಯ,

ಹಾಸನ(ಪಿ) ಚನ್ನರಾಯಪಟ್ಟಣ."

The petitioner files his objections to the application. The objections would read as follows:

"....

1. It is submitted that the State/Prosecution has filed an application under Section 319 of the Code of Criminal Procedure seeking to array an additional accused to the proceedings. It is submitted that the state is not entitled to the relief sought for and the application is liable to be rejected.
2. From the narration of statements in support of the application, the Prosecution seeking for arraying of an additional accused is based on the evidence of PW9-Shivananda @ Madhu, PW12- Naveen D Sheet and PW 13-Girish. As the application filed by the state/Prosecution, does not disclose all the facts and materials to enable this Hon'ble Court adjudicate upon the application and hence, the present objections are detailing the same.
3. It is submitted in the complaint lodged by PW9 (CW1), the proposed accused was named as an one of the Accused persons in the FIR vide Crime No.168 of 2019 for the offences punishable under Sections 143, 149 148, 114, 504, 506, 323, 324, 448, 427, 307 read with Section 149 of IPC.
4. The state after detailed investigation have filed the chargesheet/final report. In the chargesheet, the

proposed accused was dropped from the array of an accused since there was no materials against him.

5. In the chargesheet CW1 to CW 16 are said to be the eyewitnesses to the Incident. In their statement recorded before the Investigating officer, none of the witnesses have stated anything about involvement of the proposed accused.
6. Further, CWs.2, 5, 6, 8, 9, 11, 12, 13, 14 & 15 who are eyewitnesses to the Incident have examined as PWs.1 to 8, 10 & 11 before this Hon'ble Court. All these witnesses after their examination in chief, have been treated as hostile and permission was accorded for cross examination. In the cross-examination made by the state; no question was put forth to the witnesses about the involvement of the proposed accused. The application does not disclose any reason as to why the state/Prosecution failed to cross examine the hostile witnesses regarding the involvement of the proposed accused.
7. It is submitted that **CW.1**-complainant was examined as **PW.9 Shivananda**; The complainant in his complaint dated 03.12.2019 has made allegation on the proposed accused. Subsequently, on 08.12.2019, he has given his further statement, wherein he has not stated/mentioned about the name of the proposed accused as being present at the time of occurrence of the alleged Incident.
8. It is also to be noted that the examination-in-chief does not give any explanation or clarification on the additional statement recorded on 08.12.2019. In fact, in the cross examination by the Public Prosecutor, PW9 has admitted the further statement made before the Investigation officer.
9. It is pertinent to state here that as stated earlier, none of the other eyewitnesses have supported the case of the Prosecution. Hence, it is clear that, the application seeking to array proposed accused is clearly without any materials and justification.

10. It is submitted that **CW.4** was examined as **PW 12 - Naveen D Sheet** who is also eyewitness to the incident. It is submitted that PW12 has admitted his statement given before the police in para 9 of his evidence. The said statement was recorded on 25.12.2019, i.e., after 22 days from the date of the alleged incident. In his statement, there is no reference is made as regards the involvement of the proposed accused.
11. Neither the PW12 nor the state/Prosecution in its cross examination has stated as to why the name of the proposed accused is not included in the statement nor any justification is made as regards the inclusion of his name in the evidence. The conduct of the PW12 in the light of the admitted statement made before the police casts a doubt on the allegations made in the deposition. The said witness is not supported by any other witness in this regard. As a matter of fact, no other independent witness has been stated about the presence of PW12 at the place of alleged incident. Thus, these facts clearly cast reasonable doubts on the allegations made by PW12 and hence, the same cannot be used as the basis for arraying the proposed accused as one of the parties to the proceedings.
12. It is submitted that **CW.3** was examined as **PW13 - Girish** who is also eyewitness to the incident. This witness apart from making allegation against the proposed accused has not supported the case of the prosecution even against the persons named in the chargesheet. He has denied having made the statement before the police. This witness has been treated as partly hostile and has been cross examined at length. In the cross examination, this witness has categorically denied the involvement of the proposed accused and refused to support the case of the prosecution. Therefore, the state has clearly erred in filing the application based on the allegation made by this witness.
13. From the legal perspective, it is submitted that it is settled law that the degree of satisfaction required to exercise power under Section 319 of CrPC is that the evidence before the trial court should be such that if it

goes un rebutted, then it should result the conviction of the person, who is sought to be summoned. This degree is much stricter considering that it is a extra-ordinary power and when the evidence is strong and reliable, can the power be exercised. It requires much stronger evidence than mere probability of his complicity.

14. It is further submitted that while deciding an application under Section 319 of CrPC, the court must consider the entire evidence and the cross examination of the witnesses. If an application is made before the cross examination, it will be unjust to consider the application. The power under Section 319 cannot be exercised when there is no materials and no case made out against the persons sought to be implicated in the proceedings
15. In this background, the application filed needs to be examined and the only irrebuttable conclusion that can be arrived at while considering the application. Except, the PW 9- complainant and PW13 - alleged eyewitness, no independent witnesses have supported the case of the prosecution. As a matter of fact, out of 13 witnesses examined so far, 11 have been treated as hostile and have entirely denied the involvement of the proposed accused in the alleged incident.
16. No other witnesses have deposed against the proposed accused and there is no documentary or circumstantial evidence collected by the prosecution against the proposed accused. Thus, there is no role attributed against the proposed accused. Thus, when these factors are looked into in a holistic manner, it would be clear that the higher degree of satisfaction that is required for exercising power under Section 319 of CrPC is not met in the present case and accordingly, the application is liable to be rejected."

The backdrop to the filing of the application lies in the evidence of PW-12 and PW-13. Relevant portion of the evidence in examination-in-chief of PW-12 is as follows:

"....

4) On 03.12.2019, after completion of campaigning, we returned to house of CW2 Santhosh around 7 pm. In the house of CW2, I, CW1 Shivanand, CW3 Girish, CW5 Anand Hosur, Santhosh CW2 and others were present. Around 9.00 pm, during dinner time, suddenly around 100 people came in car and motorbikes to the house of CW2 Santhosh. Among OF said 100 people, Suraj Revanna was also present. The said 100 people and Suraj Revanna abused CW1 Shivanand and Girish stating that CW1 and 3 left JDS party joined BJP party and organising dinner and parties to support the BJP party. The said 100 people assaulted Shivanand and Girish. When I intervened in the said quarrel, Pradeep and Mohan assaulted me with repiece on my right forehand. I sustained fracture over right forehand. Among them, some persons assaulted Shivananda with chopper and repiece patti. The said mob also damaged our both cars by pelting stones. The said mob also damaged windows, doors of house of CW2 Santhosh. Among them, some persons assaulted Girish, Santhosh and Anand Hosur with repiece patti. On receiving about the quarrel incident, the police came to spot. On hearing police vehicle siren, the aforesaid persons dispersed from the spot. The said persons left two vehicles viz., one Indica car and Mahendra vehicle. Other vehicles were taken away by them. I, Shivananda, Santhosh, Girisha and Anand Hosur were taken to govt hospital, Channarayapatna. Then I went to Mallige hospital, Bangalore and took treatment. I was admitted in Mallige hospital for three days. I had sustained bone fracture over right forehand, a plate was inserted in the surgery.

....

8) I can identify Suraj Revanna S/o. Revanna. Suraj Revanna is present MLC. At the time of incident, Suraj Revanna was not an elected member."

The evidence in the examination-in-chief of PW-13 is as follows:

"Examination in chief by Public Prosecutor:

1) I know CW1, 2, 4, 5 to 18.

2) I and CW1 Shivananda were in JDS political party earlier. CW2, 4 and 5 belong to BJP political party.

3) Among the accused present today, I know some of them and I do not know some of them. I know Lokesh, Sumanth and Sathish. Lokesh, Sumanth and Sathish are from JDS Party.

4) On 03.12.2019, after completing campaign of K R Pete by election, CW4 and 5 came to house of CW2 Santhosh. I and Shivananda went to the house of Santhosh to see CW4 and 5. At that time, CW2 Santhosh, CW4 Naveen, CW5 Anand Hosur and others were present. We were called there to have dinner after completing campaign. The house of Santhosh is in garden land. Adjacent to the house of Santhosh his uncle house is also situated. Around 9 pm, when we were having dinner and discussing, at that time around 100 persons with the leadership of Suraj Revanna came there. They started abusing us stating that we left JDS party and joined BJP party and conducting parties and campaigning. Suraj Revanna abused us stating that we left JDS party and joined BJP party. Suraj Revanna instigated others to kill us. They were holding chopper, clubs, brick pieces, stones. The said persons attacked us and assaulted. In the said assault, Shivananda received injury over head. I received injury over left hand. CW4 Naveen Shet received injury over hand. Suraj Revanna instigated the said persons to damage the cars and houses. The said mob also damaged cars which were parked in front of house of Santhosh. The said cars belong to Ravindra and Anand Hosur. The said mob also damaged windows, doors of house of Santhosh and his uncle Nanjegowda. The said mob also gave life threat to us. When the police vehicle came with siren, the said mob dispersed from the spot. The said mob left repiece patties, stones, clubs, etc., on the spot. The said persons came with vehicles, but I know one Indica car from which they came.

5) I can identify repiece patties, stones, brick pieces, glass pieces and vehicles. The witness has identified MO.1 to 5. Witness identifies Indica car in ExP10 photograph. Witness identifies vehicles of Anand Hosur and Ravindra in photograph ExP12 and 13.

6) Suraj Revanna is son of Revanna. He is present MLC. He was not an elected member at the time of incident.

7) I cannot identify who assaulted me and others among the accused persons present today.

8) I have not given statement before police with respect to the incident.

(at this stage, at the request of Public Prosecutor this witness has been treated as partly hostile and permission is accorded for cross examination)"

(Emphasis added)

PWs-12 and 13 spoke of one fact that the petitioner Suraj Revanna, S/o Revanna was present at the spot. PW-13 says that he cannot identify who assaulted the complainant on the said date. PW-12 says that he can identify Suraj Revanna, the present M.L.C., but at that time he was not elected member. Both these accused in their examination-in-chief and cross-examination do not indicate any overt act by the petitioner, but would in a blurred way depose that Suraj Revanna was present at the spot.

9. Even PW-9 speaks of Suraj Revanna coming in a jeep compass car. The statements of these persons, PWs-9, 12 and 13 are also recorded at the time of investigation. PWs-12 and 13 at the time of investigation did not indicate any acts by the petitioner. In fact, there is no reference by PWs-12 and 13 to the act of the petitioner. Statements of eyewitnesses are taken. Those eye witnesses also do not speak about the petitioner. With this evidence what the concerned Court has done is required to be noticed. The concerned Court relies on these evidence and allows the application by the following order:

"....

REASONS:

13. **Point No.1:-** It is the case of the complainant that, on 03.12.2019 a case was registered on the statement given by the Shivananda @ Madhu S/o Nagaraju. It was stated in the statement, on 03.12.2019 at 8.00 pm., he came to know Santhosh and his friends came from Bangalore. Hence, he and his friend Girish went to the garden house of Santhosh. In the house, his friend, Ravindra, Ananda Hosuru, Naveena, Praveena, Rajakumar, Govinda Raja and Basavaraja were present. He and Girish joined them and discussing with them. At 9.00 pm, Dr. Suraj Revanna with him 150-200 persons came in front of house of Santhosh. Suraj Revanna abused him, Girish and Santhosh that they left JDS party and joined other party, hence, he would kill them through his supporters and asked Mohan to kill them. Mohan, Sumantha, Chitte Manja, Kalenahalli Pradi, Mudalhippe Kiran, Karadevu Sathish and others came with an intention to kill them, Mohan assaulted on the head, neck of complainant with chopper. Manju @ Chitte Manja

assaulted Girish on the body and hands with club, Kalenahalli Pradhi assaulted Naveena with club on the right hand. N.Bindenahalli Loki assaulted Ananda Hosur with hands, Karadevu Sathish assaulted Santhosh with club and others assaulted them with hands. Due to fear the complainant and others went inside the house of Ramegowda. Suraj Revanna further instigated others to barge inside the house and assault them. The other accused barged inside the house and assaulted mercilessly and also damaged Cars bearing registration No.KA-04-MV-6668 and KA-04-MV2931 By that time Ravindra, Praveena, Rajakumara, Govindaraju and Basavaraja intervened and pacified the quarrel and took the complainant and other injured persons to the hospital in an ambulance. Based on the statement given by the complainant, the respondent Police registered a case against the petitioner for the offences punishable U/s. 143, 147, 148, 504, 323, 114, 506, 448, 427, 307 R/w 149 of I.P.C.

14. Investigation was commenced. The FIR was registered against 8 named accused persons and other 150-200 persons. The proposed accused was the accused No.1 in the FIR. After investigation, the investigating officer has submitted charge sheet against 13 accused persons. The investigating officer has left out accused No.1 Suraj Revanna. The prosecution has examined 13 witnesses. All the 13 witnesses are eye-witnesses to the incident. Among 13 witnesses, 3 witnesses have deposed in their deposition against proposed accused (accused No.1 as per FIR). They are PW.9, 12 and 13. The remaining witnesses have not supported the case of the prosecution itself. They have been treated hostile. Based on the complaint averments and oral testimonies of PW.9, 12 and 13, the prosecution has filed the present application seeking to array the proposed accused to face the trial.

15. It is admitted position of law that power vested under Sec.319 of Cr.P.C., is discretionary and extraordinary power. The degree of satisfaction that is required to excise power under Sec.319 of Cr.P.C., is much stricter than the prima facie material produced by the prosecution. It is also admitted position of law that, the Court can excise power under Sec.319 of Cr.P.C at any stage of the proceedings even while passing the judgment. Only when the evidence. is strong and reliable, the power of under Sec.319 of Cr.P.C., can be excised.

16. The Hon'ble Apex Court in the recent judgment which also is relied upon by the proposed accused in the of **Criminal Appeal No.2367/2024, Shankar State of Uttar Pradesh and another** dated 02.05.2024 has held as under;

14. In this background, we will examine the legality of the summoning order under Section 319 Cr.P.C. on its own footing. Section 319 of the Cr.P.C. is as follows:

"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)

(3)

(4)"

15. Having taken note of the provision, we will note the principles laid down by a Constitution Bench of this Court in Hardeep Singh v. State of Punjab, (2014) 3 SCC 92, for criminal courts to follow while exercising power under Section 319 Cr.P.C

94. In Pyare Lal Bhargava v. State of Rajasthan, AIR 1963 SC 1094, a four-Judge Bench of this Court was concerned with the meaning of the word "appear". The Court held that the appropriate meaning of the word "appears" is "seems". It imports a lesser degree of probability than proof. In Ram Singh v. Ram Niwas, (2009) 14 SCC 25, a two-Judge Bench of this Court was again required to examine the importance of the word "appear" as appearing in the section.

The Court held that for the fulfilment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to

exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as the accused in the case.

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.

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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC."

16. The degree of satisfaction required to exercise power under Section 319 Cr.P.C. is well settled after the above-referred decision. The evidence before the trial court should be such that if it goes unrebutted, then it should result in the conviction of the person who is sought to be summoned. As is evident from the abovereferred decision, the degree of satisfaction that is required to exercise power under Section 319 Cr.P.C. is much stricter, considering that it is a discretionary and an extra-ordinary power. Only when the evidence is strong and reliable, can the power be exercised. It

requires much stronger evidence than mere probability of his complicity.

17. The Hon'ble Apex Court has considered the judgment of **Hardeep Singh v. State of Punjab, reported in (2014) 3 SCC 92** which holds the field with respect to power of Court under Sec.319 of Cr.P.C.,

18. It is also relevant to refer the recent judgment of Hon'ble Apex Court in **SLP (Criminal) No.17781/2024 between Omi @ Omkar Rathore and another Vs. The state of Madhya Pradesh** dated 03.01.2025, wherein it was held as under;

21. The Principles of law as regards Section 319 of CrPC may be summarised as under:

a. On a careful reading of Section 319 of the CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial.

b. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence.

c. The power of the court under Section 319 of the CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the charge sheet by the police against the person concerned. As regards the contention that the phrase 'any person not being the accused' occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in column No.2 of the charge sheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose

of enacting such a provision like Section 319 (1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the Criminal Court are included in the said expression.

c. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the Investigating Officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the Investigating Officer hardly matters. If Satisfaction of Investigating Officer is to be treated as determinative then the purpose of Section 319 would be frustrated.

19. Let me consider the present case on hand with the principles laid down above.

20. Ex.P.9 is the statement/complaint lodged by PW.9 on 03.12.2019. Ex.P.9 is the statement recorded by the IO in the hospital from PW.9 who was admitted to the hospital with a history of assault. Two portions of Ex.P.9 are necessary to adjudicate the application. The portions of Ex.P.9 complaint are as under;

"ಆಗ ಸರಿ ಸುಮಾರು 9.00 ಗಂಟೆ ವೇಳೆಗೆ ರಾಮೇಗೌಡ ರವರ ತೋಟದ ಮನೆಯ ಹತ್ತಿರ ಡಾ: ಸೂರಜ್ ರೇವಣ್ಣ ರವರು ಅವರ ಸುಮಾರು 150 ರಿಂದ 200 ಬೆಂಬಲಿಗರೊಂದಿಗೆ ರಾಮೇಗೌಡ ರವರ ಮನೆ ಹತ್ತಿರ ವಂದು ಅಲ್ಲಿದ್ದ ನನಗೆ ಹಾಗೂ ಗಿರೀಶನಿಗೆ ಹಾಗೂ ಸಂತೋಷನಿಗೆ ಡಾ: ಸೂರಜ್ ರೇವಣ್ಣ ರವರು "ಏನೋ ಬೋಳಿ ಮಕ್ಕಳ ನಮ್ಮ ಪಾರ್ಕಿಂಗ್‌ನು ಬಿಟ್ಟು ಬೇರೆ ಪಾರ್ಕಿಂಗ್ ಸೇರಿಕೊಳ್ಳುತ್ತಿರೋನೋ" ನೋಡಿ ನಿಮ್ಮನ್ನು ಈ ದಿನ ಕೊಲೆ ಮಾಡಿಸುತ್ತೇನೆಂದು ಅವರು ಕರೆದುಕೊಂಡು ಬಂದಿದ್ದ ಪಡುವಲಹಿಪ್ಪೆ ಗ್ರಾಮದ ಮೋಹನನಿಗೆ ಈ ನನ್ನ ಮಕ್ಕಳನ್ನು ಕತ್ತರಿಸು ಎಂದು ಹೇಳುತ್ತಿದ್ದಂತೆ,

ಡಾ: ಸೂರಜ್ ರೇವಣ್ಣ ರವರು ಬಾಗಿಲು ಓಡೆದು ಹಾಕಿ ನುಗ್ಗಿ ಎಂದು ಹೇಳುತ್ತಿದ್ದಂತೆ ಎಲ್ಲರೂ ಸೇರಿ ರಾಮೇಗೌಡ ರವರ ಮನೆಯ ಬಾಗಿಲು ಕಿಟಕಿಗಳನ್ನು ಮುರಿದು ಹಾಕಿ ಒಳಗೆ ನುಗ್ಗಿ ನಮ್ಮಗಳಿಗೆ ಮನಬಂದಂತೆ ತಳಿಸಿದರು.

21. Based on Ex.P.9 case was registered in crime No.168/2019 against 8 named accused persons and other 150-200 persons. The proposed accused was accused No.1 in the FIR. On 08.12.2019 further statement of PW.9 was also recorded. In the further statement there is mention of proposed accused. Subsequently statement of eye-witnesses were also

recorded by the IO. In the statements also the name of proposed accused is not forthcoming. The IO collected other materials and submitted charge sheet. In the charge sheet 13 accused have been named. The IO has left out the accused No. 1 i.e., the proposed accused.

22. Before this Court, the prosecution has examined 13 witnesses who are the eye-witnesses to the incident including PW.9-complainant. PW.9, PW.12 and PW.13 in their deposition depose against the proposed accused. Other witnesses have not stated anything against the proposed accused rather they have not supported the case of the prosecution.

23. PW.9 who is complainant in his statement Ex.P.9 has stated when he and others were in the house of Santhosh and having dinner, the proposed accused came along with his supporters, abused and instigated his supporters to kill the complainant PW.9 and others as they have joined other party. The proposed accused also instigated other accused to barge inside the house and kill. In the deposition he deposed almost in tandem with the statement. He has also deposed he has given further statement on 08.12.2019. He has deposed in the further statement also he has taken the name of proposed accused. But in the further statement of PW.9 the name of proposed accused is not forthcoming.

24. PW.12 and 13 have also deposed on 03.12.2019 at around 9.00 pm., when they were having dinner after completion of election campaign the proposed accused came along with his supporters, abused and instigated to assault and kill them, his supporters assaulted them and also damaged their vehicles and house hold articles. Ex.P.9 complaint and oral testimonies of PW.9, 12 and 13 are in tandem with each other. No doubt PW.1 to 8, 10 and 11 have not stated anything about the proposed accused. In fact they have not supported the case of the prosecution itself, therefore their evidence cannot be considered at this stage.

25. It is not necessary that all the witnesses who have examined on behalf of prosecution must support the case of the prosecution. Some of the witnesses may not support the case of the prosecution for various reasons. But from the evidence of PW.9, 12 and 13 and Ex.P.9 complaint, it is forthcoming the

proposed accused presence at the time of incident and at his instance the other accused assaulted and damaged articles. During investigation the IO left out the name of proposed accused in the statement of witnesses and also further statement of PW.9. In the deposition PW.9 has clearly deposed he has taken the name of Suraj Revanna in his further statement also. But in the further statement the name of proposed accused is left out. That has to be tested only when the IO is examined. The counsel for the proposed accused mainly pointed out in the further statement of PW.9 and statement of witnesses, the name of proposed accused is not forthcoming, therefore, no case is out against the proposed accused. That is not a ground reject the application when the witnesses have clearly deposed against the proposed accused and the deposition is tandem with the complaint averments. From the prosecution evidence as of now available, it is evident the prosecution has placed sufficient and reliable evidence to array the proposed accused as an accused to face the trial. The judgments relied upon by the counsel for proposed accused do not apply to the facts on hand except the proposition of law down therein. In view of the above discussion, I answer point No.1 in the '**Affirmative**'.

26. **Point No.2**: In view of aforesaid reasons on point No. 1, I proceed to pass the following;

ORDER

The application u/s.319 of Cr.P.C. filed by prosecution is allowed.

The proposed accused is arraigned as an accused to face the trial.

I.O. is directed to furnish one set charge sheet papers to the proposed accused. The office is directed to furnish one set of attested copy of depositions of all the witnesses already examined to the proposed accused.

To frame the charge against proposed accused by "

The order of the concerned Court is only a reproduction of what the evidence is, but its analysis as to why the petitioner has to be brought back and charges to be framed against him is absent.

10. The petitioner is not drawn as an accused at the time of filing of the charge sheet. Section 319 Cr.P.C., though permits drawing of an accused back into the web of proceedings on an application based on cogent reasons, it is not a frolicsome act. It requires evidence that is more than what is noticed at the time of filing of the charge sheet. Therefore, it is necessary to notice the statutory provision i.e., Section 319 of the Cr.P.C., and its interpretation by the Apex Court in plethora of judgments.

10.1. Interpreting Section 319 of the Cr.P.C., the Apex Court in **SHANKAR v. STATE OF UTTAR PRADESH**¹, has held as follows:

"....

11. Issue: The only question arising in the present appeal is whether the power under Section 319 Cr. P.C. has been properly exercised in light of the facts of the present case and evidence on record.

¹ **2024 SCC OnLine SC 730**

12. Analysis: We have heard Ld. counsel for appellants, Ms. Preetika Dwivedi and Ld. counsel for the Respondent State Mr. Ankit Goel.

13. At the outset, we may note that the four accused who were charge-sheeted, have passed away. As against them, the trial has abated. The learned counsel for the Respondent State has argued that even if the trial has abated against existing accused, there is no bar in summoning the appellants and starting the trial afresh¹. This position of law is well-settled and the learned counsel for the appellant has also not disputed the same.

14. In this background, we will examine the legality of the summoning order under Section 319 Cr. P.C. on its own footing. Section 319 of the Cr. P.C. is as follows:

"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)
- (3)
- (4)"

15. Having taken note of the provision, we will note the principles laid down by a Constitution Bench of this Court in *Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92, for criminal courts to follow while exercising power under Section 319 Cr. P.C.:

"94. In *Pyare Lal Bhargava v. State of Rajasthan*, AIR 1963 SC 1094, a four-Judge Bench of this Court was concerned with the meaning of the word "appear". The Court held that the appropriate meaning of the word "appears" is "seems". It imports a lesser degree of probability than proof. In *Ram Singh v. Ram Niwas*, (2009) 14 SCC 25, a two-Judge Bench of this

Court was again required to examine the importance of the word "appear" as appearing in the section. The Court held that for the fulfilment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as the accused in the case.

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...*

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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC....."*

16. The degree of satisfaction required to exercise power under Section 319 Cr. P.C. is well settled after the above-referred decision. The evidence before the trial court should be such that if it goes unrebutted, then it should result in the conviction of the person who is sought to be summoned. As is

evident from the above-referred decision, the degree of satisfaction that is required to exercise power under Section 319 Cr. P.C. is much stricter, considering that it is a discretionary and an extra-ordinary power. Only when the evidence is strong and reliable, can the power be exercised. It requires much stronger evidence than mere probability of his complicity.

17. In this background, we will examine the evidence on record which prompted the trial court to exercise the power under Section 319 Cr. P.C. PW-1, who is the mother of the deceased, is the only witness who has named the appellants.

17.1 In the first information statement, she has taken the name of the appellants as having played a role in the commission of the crime owing to the past enmity between the two families. The relevant portion of this statement is as follows:

"I am quite sure that my son Vijay Singh has been jointly murdered by Bachha Singh s/o Mohan Singh, Shankar s/o Bacha Singh, Vishal s/o Bacha Singh-residents of Raha and Sanjay s/o Munna Singh, Kallu Singh s/o Munna Singh-residents of Jalala, Police Station Ghatampur. We have an old existing enmity with these people."

17.2 However, in her Section 161 statement, she has stated that the appellants were not involved and that she named them without collecting full information. Two other witness, Rajau Sengar and Karan Singh, in their Section 161 statements have also stated that the appellants had no role whatsoever in the commission of the crime. Relevant portion of PW-1's statement under Section 161 Cr. P.C., is as follows:—

"...I had lent Rs. 8000 to Mahendra Singh long ago after selling Lahi. Vijay Singh had asked Mahendra Singh many times to repay the borrowed money but he did not give it back. Coming under the guise of this assurance, Vijay Singh left on Mahendra's motorcycle. Sanjay Singh and Kallu Singh sons of Munna Singh and Bacha Singh s/o Mohan Singh were also standing at some distance outside the house. They also lured my son Vijay Singh and accompanied Vijay Singh and

Mahendra Singh and all four of them killed my son Vijay Singh and threw the dead body in the field near the tubewell of Mahendra Pratap Singh Bhadoria. The names of Shankar Singh and Vishal Singhs sons of Bachha Singh, which I have written in the FIR, have been written by me falsely without collecting full information. My son Vijay Singh was murdered by Mahendra Singh s/o Chandrapal Singh Sachan of village Laukaha, Bacha Singh s/o Mohan Singh of village Raha and Sanjay Singh and Kallu Singh s/o Munna Singh of village Jalala. Shankar and Vishal sons of Bacha Singh were not involved in my son's murder.

(emphasis supplied)

17.3 Even in the chargesheet, which was filed after investigation, the name of the appellants has not been mentioned as accused.

17.4 It is only in her deposition before the trial court that PW-1 has once again named the appellants. However, she has also stated that she has named them only on the basis of suspicion. The relevant portion of her deposition before the Trial Court is as follows:

"In my report, I made Bachha Singh, Shankar, Vishal, Kallu Singh and Mahendra Sachan accused. I had an old enmity with these people."

In her cross-examination, PW-1 stated as follows:—

"There were two-three outstation cases and two-three local cases from the village were pending against my son Vijay Singh, which are closed now. The said cases were closed/concluded during the lifetime of Vijay Singh. My old enmity with accused Bacha Singh has been going on for the last 11 years and on the basis of suspicion, I had written the names of Shankar and Vishal in the FIR."

18. It is evident from the above that the appellants were named in the first information statement, however, in the statement under Section 161 Cr. P.C., PW-1 clarified that the names of appellants were written in the FIR falsely and without full information. She has also stated that the appellants were

not involved in the murder of her son. Even in the charge sheet, the names of the appellants were not mentioned as accused. It is only in her deposition before the Trial Court the names of the accused resurfaces again.

19. None of the other witnesses, being PW's-2, 3, 4, 5 and 6 have deposed anything about the appellants.

20. On 31.07.2017, i.e. almost a year after the deposition of PW-1, the prosecution chose to file an application under Section 319 Cr. P.C. to the following effect:—

"It is most respectfully submitted that in the above mentioned case, the first informant Mrs. Sheela Singh had written the names of Shankar Singh and Vishal Singh in the First Information Report and the names of Shankar Singh and Vishal Singh have also been mentioned by her in her examination in chief also. For this reason, it is necessary to summon Shankar Singh and Vishal Singh for trial in the said case.

Therefore, the Hon'ble court is requested to kindly pass an order thereby summoning accused Shankar Singh and Vishal Singh sons of Bachha Singh for trial in the said case.

*Yours faithfully,
Sd/-
illegible 31.7.2017"*

21. At the first place, PW-1 has named the appellants in the FIR despite not being an eyewitness to the offence. In her statement under Section 161, she sought to clarify the position by recording that her family had a long-standing enmity with appellants' family. She also stated that the names of the appellants were mentioned and written by her "*falsely without collecting full information.*" She categorically stated that the appellants are not involved in the murder of her son.

22. When we contrast this statement with her deposition given five years later, we do not see a drastic change in the stand of PW-1. Even in her chief examination, she had stated that she had an old enmity with the family of the accused. However, in her cross examination, she clarified that as the enmity with the appellants family was going on for the last

eleven years, names of the appellants were mentioned in the FIR on the basis of suspicion. Therefore, the change of circumstance which the prosecution seeks to contend on the basis of PW-1's deposition does not satisfy the requirement of Section 319 at all.

23. Having considered the matter in detail, we are of the opinion that PW-1, not being an eye-witness, her deposition is not sufficient enough to invoke the extra-ordinary jurisdiction under Section 319 to summon the appellants.

24. There are no other witnesses who have deposed against the appellants. There is no documentary evidence that the prosecution had collected against the appellants. There is absolutely no role that is attributed to the appellants. We are of the opinion that the deposition of PW-1 is also in line and consistent with her statement under Section 161. When these factors are looked in a holistic manner, it would be clear that the higher degree of satisfaction that is required for exercising power under Section 319 Cr. P.C. is not met in the present case.

25. For the reasons stated above we are of the opinion that the Trial Court committed a serious error in allowing the application under Section 319 and issuing summons to the appellants. The High Court should have exercised its jurisdiction under Section 482 and quashed the order. The High Court having failed to quash the order of summons dated 24.08.2017, we are inclined to allow these appeals and set-aside the order passed by the Trial Court dated 24.08.2017 and the also the judgment of the High Court dated 04.04.2023 dismissing the petition under Section 482.

26. For the reasons stated above, the present appeals are allowed, and the impugned order dated 04.04.2023 passed by the High Court of Judicature at Allahabad in Application under Section 482 No. 30221 of 2017 and the order dated 24.08.2017 passed by the Additional District and Sessions Judge, Court No. 5, Kanpur Dehat, in S.T. No. 434 of 2011 in Application Paper No. 83Kha under Section 319 Cr. P.C. are hereby set aside."

10.2. The Apex Court in the case of **SHIV BARAN v. STATE OF UTTAR PRADESH**², has held as follows:

"....

5. Here only, it would be pertinent to extract the relevant provision of CrPC:

"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."

(Emphasis supplied)

6. A perusal of the said section would reveal it to be an enabling provision, empowering the Court to proceed against any person, even if not cited as an accused, based on the evidence collected during the inquiry or trial, revealing the complicity of such a person to be arrayed as

² 2025 SCC OnLine SC 1457

an accused. The object is to ensure that no guilty person should be allowed to escape the process of law, which is based on the doctrine of *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted). The provision casts duty upon the Court to ensure that the real culprit does not get away unpunished, for the same to be part of a fair trial. However, the power under the said Section has to be invoked only upon the satisfaction of cogent material brought on record, necessitating such impleadment. The power to be exercised, needless to add, is to be with utmost caution and not in a casual, callous or cavalier manner - for the same is only to advance the cause of justice and not be a tool to harass the individual or result into an abuse of the process of law.

7. The question whether the word 'evidence' used in Section 319(1) CrPC means only evidence tested by cross-examination or the statements made in the examination-in-chief would be sufficient for exercising the power under this Section, has been answered by the Constitution Bench of this Court in *Hardeep Singh v. State of Punjab*⁸ in the following manner:

"89. ... Once examination-in-chief is conducted, the statement becomes part of the record. It is evidence as per law and in the true sense, for at best, it may be rebuttable. An evidence being rebutted or controverted becomes a matter of consideration, relevance and belief, which is the stage of judgment by the court. Yet it is evidence and it is material on the basis whereof the court can come to a prima facie opinion as to complicity of some other person who may be connected with the offence.

90. As held in *Mohd. Shafi* [*Mohd. Shafi v. Mohd. Rafiq*, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899] and *Harbhajan Singh*, [(2009) 13 SCC 608 : (2010) 1 SCC (Cri) 1135], all that is required for the exercise of the power under Section 319 CrPC is that, it must appear to the court that some other person also who is not facing the trial, may also have

been involved in the offence. The prerequisite for the exercise of this power is similar to the prima facie view which the Magistrate must come to in order to take cognizance of the offence. **Therefore, no straitjacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, 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). It is essential to note that the section also uses the words "such person could be tried" instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added.** In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, **even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.**

...

92. Thus, in view of the above, we hold that power under Section 319 CrPC can be exercised at the stage of completion of examination-in-chief and the court does not need to wait till the said evidence is tested on cross-examination for 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 the trial in the offence.

...

117.4. Considering the fact that under Section 319 CrPC a person against whom material is disclosed is only summoned to face the trial and in such

an event under Section 319(4) CrPC the proceeding against such person is to commence from the stage of taking of cognizance, the court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination."

(Emphasis supplied)

8. This Court in *Labhuji Amratji Thakor v. State of Gujarat*⁹ reiterated the test of satisfaction laid down in *Hardeep Singh* (supra) to be the one that is more than a *prima facie* case required at the time of framing of charges, but less than the satisfaction that would warrant conviction:

"9. Answering Issue (iv) as noticed above in *Hardeep Singh* [*Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86], in paras 105 and 106 of the judgment, the following was laid down by the Constitution Bench:

"105...

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)

9. This Court, in *Ramesh Chandra Srivastava v. State of U.P.*¹⁰ reiterated that the power under Section 319 CrPC should only be exercised when strong and cogent evidence is presented against a person and the test to be applied is one that is more than a *prima facie* case, as applied at the time of framing of charges.

10. The Court, under this Section, can also proceed against a person who, though named in FIR, is not implicated by the Investigating Officer in the chargesheet, provided the statutory mandates are fulfilled. In *S. Mohammed Ispahani v. Yogendra Chandak*¹¹, it was observed:

"35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the charge-sheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the charge-sheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet. **Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused."**

(Emphasis supplied)

[See also *Hardeep Singh* (supra); and *Labhuji Amratji Thakor* (supra)]

11. Most recently, this Court in *Omi v. State of M.P.*¹², summarized the principles that need to be kept in mind for the summoning of additional accused:

"19. The principles of law as regards Section 319CrPC may be summarised as under:

19.1. On a careful reading of Section 319CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

19.2. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence.

19.3. The power of the court under Section 319 CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the charge-sheet by the police against the person concerned. As regards the contention that the phrase "any person not being the accused" occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the charge-sheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court are included in the said expression.

19.4. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the investigating officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the investigating officer hardly matters. If satisfaction of investigating

officer is to be treated as determinative then the purpose of Section 319 would be frustrated."

(Emphasis supplied)

12. We may emphasize that this Court in *S. Mohammed Ispahani* (supra) has already observed that the 'evidence' led before the Court has to be considered, and statements recorded under 161 CrPC could only be treated as corroborative material and not as independent evidence.

13. In *Brijendra Singh v. State of Rajasthan*¹³, this Court observed that 'evidence' recorded during the trial was nothing more than the statements which were already there under Section 161 CrPC; the Trial Court ought to have looked into the evidence collected during the investigation which suggested otherwise and to see whether much stronger evidence than the mere possibility of complicity of accused person has come on record.

OUR VIEW

14. The foregoing discussion would reveal the following statutory requisites for summoning any person not being the accused:

(a) such person has committed an offence; (b) his complicity is revealed from the evidence collected during inquiry or trial; and (c) for such offence, he can be tried together with the accused already facing trial.

15. The principles that the Trial Court ought to follow while exercising power under this Section are:

(a) This provision is a facet of that area of law which gives protection to victims and society at large, ensuring that the perpetrators of crime should not escape the force of law;

(b) It is the duty cast upon the Court not to let the guilty get away unpunished;

(c) The Trial Court has broad but not unbridled power as this power can be exercised only on the basis of evidence adduced before it and not any other material collected during investigation;

(d) The Trial Court is not powerless to summon a person who is not named in the FIR or Chargesheet; they can be impleaded if the evidence adduced inculcates him;

(e) This power is not to be exercised in a regular or cavalier manner, but only when strong or cogent evidence is available than the mere probability of complicity;

(f) The degree of satisfaction required is much stricter than the *prima facie* case, which is needed at the time of framing of charge(s);

(g) The Court should not conduct a mini-trial at this stage as the expression used is 'such person *could* be tried' and not '*should* be tried'."

10.3. Again, the Apex Court in the case of **NEERAJ KUMAR**

v. STATE OF UTTAR PRADESH³ summarizes the entire law on Section 319 of the Cr.P.C. and holds as follows:

"....

4. We have heard the learned counsel for the parties and perused the material on record. The sole issue that arises for our consideration is whether the Courts below, in the attending facts and circumstances, were justified in dismissing the application for summoning the respondents as additional accused?

5. Section 319 CrPC contemplates that:

"(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. ..."

³ **2025 SCC OnLine SC 2639**

6. The law governing the summoning of an additional accused under Section 319 CrPC is now well settled. The provision is an enabling one, empowering the Court, during the course of an inquiry or trial, to proceed against any person not already arraigned as an accused, if, from the evidence adduced before it, such person appears to have committed an offence. Its object is to ensure that no guilty person escapes the process of law, thereby giving effect to the maxim *judex damnatur cum nocens absolvitur* (Judge is condemned when guilty is acquitted). It casts a duty upon the Court to ensure that the real offender does not go unpunished, for only then can the concept of fair and complete trial be realised.

7. It is no longer *res integra* that the power conferred under this Section is extraordinary and discretionary in nature, intended to be exercised sparingly and with due circumspection. While invoking it, the Court must be satisfied that the evidence appearing against the person sought to be summoned is such that it *prima facie* necessitates bringing such person to face trial. The degree of satisfaction required is higher than that warranted at the stage of framing of charge, yet short of the satisfaction necessary to record a conviction. Such satisfaction must rest on cogent and credible material brought on record during the trial, and not based on conjectures or speculations. In this regard, reference to a few judicial pronouncements of this Court would be apposite.

7.1. The Constitution Bench of this Court in *Hardeep Singh v. State of Punjab* [(2014) 3 SCC 92] extensively discussed the power conferred under Section 319 CrPC. Relevant part is extracted hereunder:

"90. ... all that is required for the exercise of the power under Section 319 CrPC is that, it must *appear* to the court that some other person also who is not facing the trial, may also have been involved in the offence. The prerequisite for the exercise of this power is similar to the *prima facie* view which the Magistrate must come to in order to take cognizance of the offence. Therefore, no straitjacket formula can and should be laid with

respect to conditions precedent for arriving at such an opinion and, 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). It is essential to note that the section also uses the words "such person *could* be tried" instead of *should* be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of sub-section (4) of Section 319 CrPC, the person would be entitled to a fresh trial where he would have all the rights including the right to cross-examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of examination-in-chief, the court or the Magistrate can proceed against a person as long as the *court is satisfied* that the evidence appearing against such person is such that it *prima facie* necessitates bringing such person to face trial. In fact, examination-in-chief untested by cross-examination, undoubtedly in itself, is an evidence.

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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. ...

xxx

110. In *Lal Suraj* [*Lal Suraj v. State of Jharkhand*, (2009) 2 SCC 696 : (2009) 1 SCC (Cri) 844],

a two-Judge Bench held that there is no dispute with the legal proposition that even if a person had not been chargesheeted, he may come within the purview of the description of such a person as contained in Section 319 CrPC. A similar view had been taken in *Lok Ram* [*Lok Ram v. Nihal Singh*, (2006) 10 SCC 192 : (2006) 3 SCC (Cri) 532 : AIR 2006 SC 1892], wherein it was held that a person, though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

xxx

117.6. A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 CrPC provided from the evidence it appears that such person can be tried along with the accused already facing trial..."

(emphasis supplied)

7.2. In *S. Mohammed Ispahani v. Yogendra Chandak* [(2017) 16 SCC 226], it reiterated that under this Section the Court possesses the power to summon the persons not named in the chargesheet to face trial, if the evidence on record so warrants. It further clarified that a statement recorded under Section 161 CrPC, though not an independent piece of evidence, sufficient in itself to invoke the power under this Section may, nevertheless, be relied upon for corroborative purposes when supported by evidence emerging during trial. It was observed as under:

"34. ... No doubt, at one place the Constitution Bench observed in *Hardeep Singh case* [*Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that the word "evidence" has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. In para 105 of the judgment, however, it is observed that **"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"**. This sentence gives an impression that only that evidence which has been led before the Court is to be seen and not the

evidence which was collected at the stage of inquiry. However there is no contradiction between the two observations as the Court also clarified that the “evidence”, on the basis of which an accused is to be summoned to face the trial in an ongoing case, has to be the material that is brought before the Court during trial. The material/evidence collected by the investigating officer at the stage of inquiry can only be utilised for corroboration and to support the evidence recorded by the Court to invoke the power under Section 319 CrPC.

35. It needs to be highlighted that when a person is named in the FIR by the complainant, but police, after investigation, finds no role of that particular person and files the chargesheet without implicating him, the Court is not powerless, and at the stage of summoning, if the trial court finds that a particular person should be summoned as accused, even though not named in the chargesheet, it can do so. At that stage, chance is given to the complainant also to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the chargesheet. Once that stage has gone, the Court is still not powerless by virtue of Section 319 CrPC. However, this section gets triggered when during the trial some evidence surfaces against the proposed accused.”

(emphasis supplied)

7.3. In *Omi v. State of M.P.* [(2025) 2 SCC 621], a coordinate bench of this Court laid the following principles of law with regard to Section 319 CrPC:

“19. The principles of law as regards Section 319 CrPC may be summarised as under:

19.1. On a careful reading of Section 319 CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not

being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

19.2. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the chargesheet or the case diary, because such materials contained in the chargesheet or the case diary do not constitute evidence.

19.3. The power of the court under Section 319 CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the chargesheet by the police against the person concerned. As regards the contention that the phrase "any person not being the accused" occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the chargesheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court are included in the said expression.

19.4. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the investigating officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the investigating officer

hardly matters. If satisfaction of investigating officer is to be treated as determinative then the purpose of Section 319 would be frustrated."

(emphasis supplied)

7.4. Recently, this Court, through one of us (Sanjay Karol, J.), in *Shiv Baran v. State of U.P.* [2025 SCC OnLine SC 1457] summarised the principles that the Court ought to keep in mind while considering an application under this Section. It was observed:

"15. The principles that the Trial Court ought to follow while exercising power under this Section are:

(a) This provision is a facet of that area of law which gives protection to victims and society at large, ensuring that the perpetrators of crime should not escape the force of law;

(b) It is the duty cast upon the Court not to let the guilty get away unpunished;

(c) The Trial Court has broad but not unbridled power as this power can be exercised only on the basis of evidence adduced before it and not any other material collected during investigation;

(d) The Trial Court is not powerless to summon a person who is not named in the FIR or Chargesheet; they can be impleaded if the evidence adduced inculcates him;

(e) This power is not to be exercised in a regular or cavalier manner, but only when strong or cogent evidence is available than the mere probability of complicity;

(f) The degree of satisfaction required is much stricter than the prima facie case, which is needed at the time of framing of charge(s);

(g) The Court should not conduct a mini-trial at this stage as the expression used is 'such person could be tried' and not 'should be tried'.

(emphasis supplied)

....

11. [...] From reading the above, it is evident that a quarrel took place between her parents. During this altercation, her father, Rahul Yadav, obtained a country made pistol from her uncle Sattan @Vineet (Respondent No. 3 herein) and, on the provocation of her grandmother Rajo @Rajwati (Respondent No. 2 herein) and her aunt's husband Gabbar (Respondent No. 4 herein), fired at her mother/deceased. The High Court, however, in the impugned judgment, concluded that PW-2 was not an eyewitness to the actual firing and relied on her cross-examination wherein she stated - "*I had heard the sound of firing. From sound of firing I came to know that, that two times firing was made. I had seen empty cartridge on ground.*". to hold that she had reached the scene of occurrence only after hearing the gunshots. **In our considered view, the High Court's approach is erroneous. Drawing such an inference amounts to conducting a mini-trial at the stage of summoning, which is impermissible. At the stage of deciding the application under Section 319 CrPC, the Court is not required to test the credibility or weigh the probative value of the evidence as would be done at the end of the trial for determining the conviction or otherwise of the accused.** What the Court has to consider at this stage is whether the material on record reasonably indicates involvement of the proposed accused so as to exercise the extraordinary power. Therefore, the reliance placed by the Courts below on PW-2's cross-examination to discredit her testimony was misplaced.

12. The respondents have further contended that PW-2 did not initially name the respondents in her statement recorded during the investigation and that, being a minor, she may have been influenced or tutored to implicate the respondents, as she was residing with the appellant's family following the incident. However, we are not persuaded to accept this contention, as

even in her statement recorded under Section 161, had categorically named the respondents as those who instigated the commission of the said crime. She stated:

....

While a statement recorded under Section 161 CrPC is not substantive evidence in itself, it may be used to corroborate the evidence recorded by the Court to invoke the power under Section 319 CrPC, as held in *S. Mohammed Ispahani (supra)*. Therefore, conjointly reading PW-2's deposition along with her Section 161 statement, we find that a specific and overt act has been assigned to the respondents. Whether she actually witnessed the firing or arrived immediately thereafter, and the extent to which her statement inspires confidence, are matters that are to be determined at the stage of trial, upon full appreciation of the evidence. The testimony of a child witness shall be weighed by the Court concerned in view of the principles laid in *State of Rajasthan v. Chatra [(2025) 8 SCC 613]* and *State of M.P. v. Balveer Singh [(2025) 8 SCC 545]*.

13. Lastly, the prosecution has also placed reliance upon the statements of the deceased recorded during the investigation under Section 161 CrPC to seek the summoning of the respondents. However, the respondents have contended that such statements cannot be relied upon as, firstly, they were neither recorded in the presence of a Magistrate nor accompanied by any contemporaneous medical certification regarding the mental fitness of the deceased to give such statements; and secondly, both statements are inconsistent *inter se*, since the first one does not name the respondents whereas the second does.

....

17. Consequent to the above discussion, we find that the material on record, i.e. the depositions of PW-1 and PW-2, along with the statements of the deceased recorded during the investigation, *prima facie* suggests the complicity of the respondents in the commission of the said offence. There, thus, exists sufficient ground to exercise the power under Section 319 CrPC and summon them to face trial in Sessions Trial No. 1151 of 2021. The objections raised by the

respondents, including the alleged tutoring of the minor witness, omission of their names in the FIR, inconsistencies in the statements of the deceased and lack of contemporaneous medical certification, are all premature and cannot be conclusively decided at the stage of exercising power under Section 319 CrPC."

If the facts obtaining in the case at hand are tested on the anvil of elucidation of law by the Apex Court, what would emerge is, the evidence that is brought during the trial which was the same at the time of recording of the statement earlier, does not become a higher decree of evidence for the petitioner to be brought back into the web of proceedings. The concerned Court has erred in taking stray statement of witnesses which were completely contrary to what they had rendered at the time of investigation and it cannot become the fulcrum of an order of allowing an application under Section 319 of the Cr.P.C., In that light, the petition deserves to succeed.

11. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is **allowed**.

- (ii) The order dated 7-02-2025 passed by the IV Additional District and Sessions Judge, Hassan sitting at Channarayapatna in S.C.No.194 of 2022 stands quashed.
- (iii) The result of quashing of the order would be that the petitioner cannot be arraigned as an additional accused in S.C.No.194 of 2022.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ