



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 21<sup>ST</sup> DAY OF OCTOBER, 2024**

**BEFORE**

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

**CRIMINAL PETITION NO. 8700 OF 2024**

**BETWEEN:**

SRI R.K.BHAT  
S/O KRISHNA N.BHAT  
AGED ABOUT 66 YEARS  
SAUKYA BUILDING, 2<sup>ND</sup> BLOCK  
3<sup>RD</sup> MAIN ROAD, 3<sup>RD</sup> CROSS  
KUVEMPUNAGAR, TUMKUR – 572 103.

...PETITIONER

(BY SRI RAJASHEKAR S., ADVOCATE)

**AND:**

1. SMT. SHANTHI ROACHE  
W/O NORBERT D'SOUZA  
AGE: MAJOR  
R/AT H.NO.1-132/2  
OPP. CANARA ENGINEERING COLLEGE  
KODMAN VILLAGE, BANTWAL TALUK  
D.K.DISTRICT – 574 143.

2. THE STATE OF KARNATAKA  
THROUGH EXCISE INSPECTOR  
BANTWAL SUB-DIVISION  
D.K.DISTRICT – 574 211.

...RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL. SPP)





THIS CRL.P IS FILED U/S.482 (FILED U/S.528 BNNS) CR.P.C PRAYING TO SET ASIDE THE ORDER DATED 22.06.2024 PASSED IN CRIMINAL REVISION PETITION NO.7/2023 PASSED BY THE III ADDITIONAL DISTRICT AND SESSIONS JUDGE, D.K., MANGALURU DISMISSING THE REVISION PETITION FILED BY THE PETITIONER AND THEREBY CONFIRMING THE ORDER DATED 07.11.2022 PASSED IN C.C.NO.47/2021 ON THE FILE OF THE ADDITIONAL CIVIL JUDGE AND JMFC BANTWAL D.K., DISMISSING THE APPLICATION FILED BY THE PETITIONER U/S.319 OF CR.P.C TO IMPLEAD THE RESPONDENT NO.1 AS PROPOSED ACCUSED NO.4 IN C.C.NO.47/2021 AND CONSEQUENTLY ALLOW THE APPLICATION.

THIS PETITION, COMING ON FOR ORDERS, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

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

**ORAL ORDER**

The petitioner is before this Court calling in question an order dated 07-11-2022 passed by the Additional Civil Judge and JMFC, Bantwal, D.K. in C.C.No.47 of 2021, dismissing the application filed by the petitioner under Section 319 of the Cr.P.C. seeking to implead the 1<sup>st</sup> respondent herein as accused No.4 in the criminal case and also an order dated 22-06-2024 passed by the III Additional District and Sessions Judge, D.K., Mangalore in Criminal Revision Petition No.7 of 2023, dismissing the revision petition.



2. Heard Sri S.Rajashekar, learned counsel appearing for the petitioner and Sri B.N. Jagadeesha, learned Additional State Public Prosecutor for respondent No.1.

3. Facts, in brief, germane are as follows;-

A crime comes to be registered on 18-04-2020 in Crime No.76/2019-20/15SIE/150412 by the jurisdictional Detecting Officer of the Karnataka Excise Department for offences punishable under Sections 13, 32(2) and 38(A) of the Karnataka Excise Act, 1965. The police conduct investigation and file a charge sheet against three persons.

4. The issue in the *lis* is not with regard to the proceedings pending trial *qua* the accused. The petitioner - complainant through the prosecution files an application under Section 319 of the Cr.P.C. seeking to implead respondent No.1 herein as accused No.4. The concerned Court rejects the application in terms of its order dated 07-11-2022. The petitioner calls that in question before the Court of Sessions in Criminal Revision Petition No.7 of 2023. The concerned Sessions Court in terms of its order dated 22-06-2024 rejects



the said application. It is these orders that have driven the complainant/petitioner to this Court in the subject petition.

5. The learned counsel appearing for the petitioner Sri S. Rajashekar would vehemently contend that the application filed under Section 319 of the Cr.P.C. ought to have been allowed by the concerned Court at the outset as the proposed accused - Shanthi Roche, wife of accused No.3, one Norbert D'Souza. She was residing along with accused Nos.2 and 3 who were alleged of selling large number of spurious liquor. The learned counsel also submits that the wife of accused No.3 also had equal knowledge of manufacturing, storing and selling of spurious liquor. Therefore, the application seeking dragging in the wife of accused No.3 should have been allowed as there was ample evidence for trial against her for the simple reason that she had the knowledge of all the activities of the other accused. Notwithstanding the aforesaid fact of knowledge, the concerned Court could not have rejected the application and the Court of Sessions could not have affirmed the said rejection. He would submit that the application be allowed and the 1<sup>st</sup> respondent herein be brought in as accused No.4 in the proceedings.



6. The learned Additional State Public Prosecutor would toe the lines of the complainant in contending that the proposed accused No.4 is admittedly the wife of accused No.3 and, undoubtedly would have knowledge of the offences committed by her husband. Therefore, she was a necessary party and as such, the application ought to have been allowed. The submissions of both the Additional State Public Prosecutor and the complainant are in unison *qua* the application.

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 all a matter of record. A crime comes to be registered by the jurisdictional Detecting Officer of the Karnataka Excise Department on 18-04-2020 in Crime No.76/2019-20/15SIE/150412 for the aforesaid offences. The Inspector of Excise after investigation file a charge sheet on 27-08-2020. The allegation was, when the officials of the Department of Excise along with other staff were conducting inspection in Bantwal Taluk, they found accused No.2 had possessed large number of spurious liquor and some



infrastructure for manufacture of such spurious liquor in the backyard of the house of accused No.3. They drew up a mahazar and seized several materials from the house which was standing in the name of Norbert D'Souza, accused No.3. Therefore, the three accused were brought into the web of proceedings for the aforesaid offences under the Excise Act. The issue does not concern those three accused.

9. The complainant through the prosecution files an application under Section 319 of the Cr.P.C. seeking to bring in Smt. Shanthi Roache, wife of accused No.3 into the web of proceedings as accused No.4. The reasons for filing the application is that she is the wife of accused No.3. The contents of the application are that when the seizure happens, all the inmates of the house ought to have been brought in as accused. Proposed accused No.4 who is the wife of accused No.3 was completely aware of the alleged illegalities being committed in the house. Therefore, it was the duty of the prosecution to bring in the wife also into the proceedings. This is seriously objected to by the 1<sup>st</sup> respondent before the concerned Court. The concerned Court in terms of its order dated 07-11-2022 rejects the application on the ground that



the matter is still on pre-trial stage and mere production of ration card would not mean that the wife should be brought in as an accused. The reasons given by the learned Magistrate read as under:

"13. As already observed above, charge yet to be recorded and the present case is still at pre-trial stage. **Mere production of ration card which annexed with charge sheet will not sufficient to hold that, the proposed accused sought to be added as an accused having culpable knowledge has been residing along with the accused Nos. 2 and 3 in the same house where alleged spurious liquor are seized. On the other hand, after collecting all material documents related to case, recording statement of witnesses who are acquaintant with the facts of the case, the investigating officer concerned arrived at conclusion that, the accused persons have indulged in commission of offence. At this juncture, it cannot be presumed that, the proposed accused Smt. Shanthi Roche having culpable knowledge and the possession of the accused persons is on account of proposed accused as contended by the learned Sri R.K., Advocate.** Having considering the facts and circumstances of the case on hand and the material placed on record, the Court is of the opinion that, the application under Section 319 of CrPC is deserves to be dismissed. Hence, for the aforesaid discussions and reasons, the application is liable to be dismissed, accordingly, the pointNo.1 is answered in the negative."

(Emphasis added)

The complainant files a revision petition against the said order.

The revision petition is also rejected by the Court of Sessions

on the following reasoning:



“17. Moreover, the petitioner has failed to show that the impugned order of the learned Magistrate is illegal, perverse and opposed to natural justice and that it suffers from any infirmities. **Further, the reasoning of the learned Magistrate in the impugned order clearly goes to show that trial Judge has considered all the materials available on record meticulously and thereby has come to the conclusion that the petitioner has failed to make out any ground for considering their application under Section 319 of CrPC. On the other hand, as discussed herein above, the reasoning of learned Magistrate in the impugned order clearly shows that, learned Magistrate has considered each and every aspect of the papers on record and thereby has come to the proper conclusion and as mentioned in the application under Section 319 of CrPC it was rejected.** Hence, the question of interfering with the impugned order, by this Court under power of revision under Section 397 and 399 of CrPC does not arise on the facts of the case and also in law. Consequently, the points No.1 and 2 are answered in the negative.

18. Point No.2: From the discussion made herein above, it is clear that this petition is liable to be dismissed. In the result, this Court proceeds to pass the following:

O R D E R

This revision petition filed by the petitioner under Section 397 and 399 of CrPC is hereby Dismissed.

Consequently, the order dated 7-11-2022 of the learned Additional Civil Judge and JMFC Court, Bantwal in C.C.No.47 of 2021 on the application filed by the petitioner under Section 319 of CrPC shall stand confirmed.”

(Emphasis added)

Now, the complainant is before the doors of this Court on the same submissions. Section 319 of the Cr.P.C. permits summoning of a person as an additional accused. To summon some one as an additional accused who has either been





dropped from the charge sheet or never an accused at any point in time, requires evidence that is necessary for drawing up as an accused at the time of filing of the charge sheet. The Apex Court in its judgment rendered in the case of **SHANKAR Vs. STATE OF UTTAR PRADESH** reported in **2024 SCC OnLine SC 730**, 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.

**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 afresh<sup>1</sup>. 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 deposited 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.83 Kha under Section 319 Cr. P.C. are hereby set aside.”

(Emphasis supplied)

The Apex Court was following earlier judgments which have held that the power under Section 319 of the Cr.P.C. cannot be exercised at a pre-trial stage, as to bring in another accused. There must be some evidence and for some evidence the trial must commence. It is an admitted fact that in the case at hand, the trial is yet to commence. Moreover, Section 319 of the Cr.P.C. casts higher degree of evidence against the person who is sought to be impleaded as an accused than what is available at the time of investigation.

10. In the case at hand, the husband is already an accused - accused No.3. It cannot be said that the husband



and the wife both should be accused for the same crime, merely because the wife was staying with the husband. There is not even an allegation that the wife had indulged in the activities of manufacturing and storing of spurious liquor. Merely because she is the wife of accused No.3, against whom all the allegations are made, she cannot be brought into the web of crime. The application is misconceived and filed with an oblique motive to settle scores with accused No.3 that too, at a pre-trial stage.

11. In the light of the aforesaid reasons, finding no warrant to interfere with both the orders of concerned Courts as also the petition, lacking in merit, stands rejected.

**Sd/-  
(M.NAGAPRASANNA)  
JUDGE**

NVJ  
List No.: 1 Sl No.: 128  
CT:SS