

IN THE COURT OF II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, BAGALKOT.

Present: Sri. G. A. Mulimani, M.A., LL.M.,
District and Sessions Judge, Bagalkot.

Dated this the 18th day of January, 2024

SPECIAL CASE No.3/2020

Complainant:

The State of Karnataka,
Represented by Mudhol Police Station.

(By the Learned Public Prosecutor)

Vs.

Accused:

Mallappa Huddar and Others.

(By Sri. R.T.Hosamani, Advocate)

ORDER ON APPLICATION U/Sec. 319 of Cr.P.C.

The learned Spl. Public Prosecutor represented by the State has filed this application U/Sec.319 of Cr.P.C to impleading the names of the accused persons as stated in

the application. It is the case of the prosecution is that, on 15.10.2019 the complainant has filed this complaint against the accused persons for the offences punishable U/Secs.143, 147, 148, 302, 120(B) R/w. Sec.149 of IPC and U/Sec.3(2)(v-a) of SC/ST (POA) Act under Cr.No.160/2019 of Mudhol P.S. Further the applicant has contended that, the complaint was filed against the 13 accused persons. But IO has submitted the charge sheet against only 3 accused persons by left out the remaining 10 accused persons. Further contended that, whose name is mentioned in the complaint and IO has filed the charge sheet by left out the remaining accused persons without following the procedure U/Sec.173(2) of Cr.P.C.

2. Further it is the case of the prosecution is that, there are 5 cases are pending in between the accused and the complainant and there is a enmity in between the complainant and accused persons and the accused persons have committed murder. Hence, has prayed for issue process to the remaining accused No.3 to 13.

3. Learned counsel for the proposed accused persons has filed objections to the application U/Sec.319 of Cr.P.C, inter-alia contending that, the application is not maintainable as such liable to be dismissed. Further contended that, CW.1 was examined as PW.1 who is not an eye witness to the incident and has not stated names of the accused persons who were dropped. Cws.16 & 17 are the eye witnesses who are not examined, as such there is no material available to allow the application. So far as compliance of provisions U/Sec.173(2) of Cr.P.C is concerned if the notice was not issued by the IO then the prosecution has liberty to challenge the said charge sheet. Hence, prayed for rejection of the application.

4. Heard the arguments.

5. Learned Spl. Public Prosecutor has filed written arguments and has also produced the following citations:

1) Crl. Appeal No.100041/2022 between Shankreppa S/o. Jatteppa Vs. State by Mudhol PS and Another.

2) CrI. Petition No.100934/2020 C/W 100845/2020 between Shankareppa S/o. Jatteppa Gudadinni Vs. The State of Karnataka and Another.

3) SLP (CrI) No.6262/2023 between Yashodhan Singh Vs. The State of Uttar Pradesh.

6. On the other hand, learned counsel for the proposed accused persons has also produced Judgment in CrI. Appeal No.644 of 2023 between Vikas Rathi Vs. The State of U.P and Another and has also filed one more citation reported in 2024 SAR (Cri) 72 between Aarif Vs. The State of Rajasthan.

7. On going through the available materials, the points that arise for my consideration are as under:

1. Whether the prosecution has made out a prima-facie ground to allow the application U/Sec.319 of Cr.P.C as prayed ?

2. What Order?

8. My finding on the above points are as under:

Point No.1 : In the Negative;

Point No.2 : As per final order, for the following:

REASONS

9. Point No.1: The learned Spl. P.P. has vehemently argued and also filed written arguments and has raised the point that, after receipt of the complaint against the accused persons who are well participated in the crime and the role played by the accused is mentioned in the complaint. Prior to to the murder of the deceased Vithal and Mallyappa Talageri and after the murder the complainant and his family members were continuously facing harassment and life threat also and inspite of that the IO has left out the accused who are actually participated in the incident. Further has raised the point that, PW.1 is the complainant has deposed in his chief examination and mentioned 13 accused persons and their involvement and also IO has not complied Sec.173(2) of Cr.P.C.

10. On the other hand, the learned defence counsel has raised the point while arguing the matter is that, the PW.1 is not the eye witness to the incident and he has not

deposed the name of all the proposed accused persons. Therefore, in the instant case in the present stage there are absolutely no materials to allow the instant application.

11. On perusal of the available materials on record, no doubt IO has filed charge sheet against the accused for the offences punishable U/Secs.143, 147, 148, 302, 120(B) R/w. Sec.149 of IPC and U/Sec.3(2)(v-a) of SC ST (POA) Act. The trial is in progress. The point raised by the learned SPP that, the IO has not followed the provisions U/Sec.173(2) of Cr.P.C and as per the evidence of PW.1 the accused No.2 to 13 are necessary to implead in this case, as their names were appeared in the complaint.

12. On perusal of the evidence of PW.1, admittedly he is not the eye witness. He has deposed in his evidence that, as per the say of his sister there were 13 accused involved in this case. However, he has not deposed all the names of the accused who were dropped by the IO. Further the eye witnesses are not examined yet, therefore in the absence of evidence of eye witnesses none of the witnesses are

material witnesses in order to ascertain the participation of the accused involved in the incident. In this stage, the learned counsel for the defence has relied the ruling reported in 2024 SAR (Cri) 72 in Aarif and Others Vs. The State of Rajasthan and Another, wherein the Hon'ble Supreme Court of India has been held:

“R-Additional Accused-Summoning-Evidence of material witnesses and eye witness is insufficient to meet the test and the standards of the degree of satisfaction, prima-facie summoning as accused not made out.

Criminal Procedure Code, 1973-Sec. 319 and Indian Penal Code, 1860, Secs. 323, 302, 341, 148, 149 – Power of court to summon as accused during trial – Murder with unlawful assembly with common object – High Court set aside the order passed u/s 319 of Cr.P. by the trial Court – Appeal against Summoning – Admittedly, evidence of material witnesses is insufficient to meet the test of prima-facie case and the standards of the degree of satisfaction that is required is much stricter as laid down by the Constitution Bench in “Hardeep Singh Vs. State of Punjab” 2014 SAR Online (SC) 482 – Evidently, eye witness account in cross-examination deposed that ‘he had not seen the incident with his own eyes’ whereas, witness who seen the incident has not reported the incident to the police despite being related to the deceased as such, evidence of the witnesses not sufficient to sustain the order of

summoning the accused/appellant u/s 319 of Cr.P.C – Held, appeal is allowed”.

13. I have carefully gone through the supra decision, since the facts and circumstances involved in this case and the principles enumerated in the supra decision are one and the same. Admittedly, in the instant case, no eye witnesses are examined till today, the IO has dropped the other accused by taking their statements and available documents. The only contention raised by the learned SPP is that IO has not complied Sec.173(2) of Cr.P.C. Therefore, the evidence of IO is necessary in order to ascertain the compliance U/Sec.173(2) of Cr.P.C as to whether he was issued notice to the complainant or not. Moreover, yet the eye witnesses are not examined and the evidence of PW.1 is not sufficient to allow the application, as he has not deposed the names of all the 13 accused persons. Further he is not an eye witness to the incident. Therefore, in this stage the application filed by the prosecution is not maintainable in the absence of evidence of material witnesses. The learned SPP has relied the decisions in

support of the case of prosecution, since the facts and circumstances involved in the case and the principles involved in the decision cited by the State are not one and the same. Hence, with due respect to the above said citations vide 1) CrI. Appeal No.100041/2022, 2) CrI. Petition No. 100934/2020 C/W 100845/2020 and SLP (CrI) No.6262/2023 are not applicable to the present case in hand. However, the State is at liberty to file such application after examination of the material witnesses. Under these observations and foregoing reasons, I am of the opinion that the prosecution has not made out sufficient grounds to allow the application as prayed. Hence, I answer the point No.1 in the negative.

14. Point No.2: In view of the discussion made in supra paras, this Court has proceed to pass the following:

ORDER

The application filed by the learned Special P.P. U/Sec. 319 of Cr.P.C is hereby rejected.

(Dictated to the Stenographer Grade-I directly on the computer, print out taken out by him, corrected and then pronounced by me in the open court on this the 18th day of January, 2024.)

(G. A. Mulimani)
II Additional District and Sessions Judge,
Bagalkot