



IN THE COURT OF PRL. CIVIL JUDGE & JMFC.,
MUDIGERE

PRESENT: Sri. Vishwanath A. B.B.A.,LL.B.,
Prl. Civil Judge & JMFC.,
Mudigere.

DATED THIS THE 30th DAY OF DECEMBER 2024

CC.No.1069/2018

BETWEEN :

The State, represented by
Mudigere Police Station,
Mudigere Taluk.

...Complainant

(By Learned APP)

AND :

Abbas @ Edri Abbas,
Aged about 38 years,
S/o late Mydinabba,
R/o 1st Cross, Bapu Nagara,
Hesgal Village, Mudigere Taluk.

... Accused

(By Sri.Siddaiah.D., Adv.,)

Proposed Accused

- 1.** Isamma W/o late Moidinabba.
- 2.** Hasainar S/o late Moidinabba.
- 3.** Lathif S/o late Moidinabba.
- 4.** Jainabu W/o Hasainar.
- 5.** Jameela W/o Ibrahim.
- 6.** Mahammad Musliyar.



7. Mymuna W/o Mahammad Musliyar.
8. Naziya D/o Mahammad Musliyar.
9. Haneef S/o Hasainar.
10. Musthafa S/o Hasainar.
11. Asma D/o Hasainar.
12. Ashraf, Aged about 38 years,
S/o Mahammad Musliyar.

All are R/o Bapu Nagara, 1st Cross,
Hesgal Village, Mudigere Taluk.

... Proposed Accused

(Vishwanath A.)
Prl. Civil Judge & JMFC.,
Mudigere.

**ORDERS ON APPLICATION FILED UNDER SECTION 319 OF
CR.P.C.**

Learned APP has filed the present application seeking to summon and proceed against the proposed accused in 12 persons who were arrayed as accused No.2 to 13 in the FIR, for the offences punishable under Section 498A, 506 r/w 149 IPC and Section 3 and 4 of the Dowry Prohibition Act.

2. It is submitted in the application that the accused along with his relatives i.e., the proposed accused have harassed the informant i.e., wife of accused, both mentally and physically in connection to demand of dowry. On 13.06.2018, the accused along



with proposed accused have scolded the informant in filthy language, harassed her physically and also threatened of killing her and on 13.06.208, they have ousted the informant from their house asking her to bring dowry. The name of proposed accused were also named in the FIR but they are not charge sheeted. Even the informant while deposing as PW1, has deposed in the similar line as alleged in the first information. The IO has not assigned proper reasons for dropping the proposed accused in the charge sheet and there are materials to proceed even against the proposed accused for the offences punishable under Section 498A, 506 r/w 149 IPC and Section 3 and 4 of the Dowry Prohibition Act. On the above grounds, learned APP seeks for allowing the application.

3. Hon'ble Apex Court in the case of Yashodhan Singh and Others v. State of Uttar Pradesh and Another reported in 2023 INSC 652 was pleased to hold that the proposed accused need not be heard while exercising power under Section 319 of Cr.P.C. Heard the learned APP and also perused the entire materials on record.

4. Now, the following points do arise for consideration:

1. Whether the prosecution has made out sufficient grounds to proceed against and summon the proposed accused in the above case for the offences punishable



**under 498A, 506 r/w 149 IPC and Section
3 and 4 of the Dowry Prohibition Act?**

2. What order?

5. The findings of this Court on the above points are as follows:

Point No.1 : **In the Negative**

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

REASONS

6. Point No.1: The PSI of Mudigere Police Station has filed the charge-sheet alleging that the accused has committed offences punishable under Section 498A of IPC and Section 3 and 4 of the Dowry Prohibition Act. On perusal of FIR, it could be seen that the proposed accused were arrayed as accused No.2 to 13 but in the charge-sheet the said persons are dropped for the reason that in the investigation, the accused No.1 in the FIR i.e., accused herein only is found to have committed the offence punishable under Section 498A IPC and Section 3 and 4 of the Dowry Prohibition Act.

7. The present case is registered pursuant to the first information dtd: 29.08.2018 lodged by CW1. It is alleged in the first information that the accused along with his parents and relatives have harassed her both mentally and physically demanding dowry to buy an auto. It is also alleged that on 17.03.2011, they have further assaulted her and also threatened with consequences of life and also ousted her from the house. It is



further alleged in the first information that on 13.06.2018, they have further scolded her in filthy language and also assaulted her. As noted earlier, though the proposed accused were arrayed as accused No.2 to 13 in the FIR, they are dropped in the charge-sheet for having found not to have committed any offence. During the course of trial the informant i.e., CW1 is examined as PW1 who has deposed to the similar line as that in the first information. It is at the stage of further examination in chief of PW1, learned APP has filed the present application on the sole ground that the PW1 has deposed that the proposed accused have also committed the offences punishable under Section 498A, 506 r/w 149 IPC and Section 3 and 4 of the Dowry Prohibition Act.

8. Keeping in view the above aspects, this Court considers it relevant to refer Section 319 of Cr.P.C., which reads as under:

"319. Power to proceed against other persons appearing to be guilty of offence.-

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.



(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) xxx"

9. It is also relevant here to refer the decision of Hon'ble Apex Court in the case of **Babubhai Bhimabhai Bokhiria & Another V/s State of Gujarat and others** reported in **AIR 2014 SC 2228** wherein held as under:

"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 Cr.P.C."

It is further relevant here to refer the decision of Hon'ble Apex Court in the case of **Ramesh Chandra Srivastava V/s State of U.P. & another** reported in **AIR 2021 SC 5107** wherein held as under:

"Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the



court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. 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 Cr.P.C. to form any opinion as to the guilt of the accused."

Hon'ble Apex Court in the case of **Hardeep Singh V/s State of Punjab & ors** reported in **AIR 2014 SCW 667** which is reiterated in recent decision in the case of **Vikas Rathi V/s The State of U.P. & Anr** reported in **2023 LiveLaw (SC) 175**, was pleased to hold as under:

"14. It is at this stage the comparison of the words used under Section 319 Cr.P.C. has to be understood distinctively from the word used under Section 2(g) defining an inquiry other than the trial by a magistrate or a court. Here the legislature has used two words, namely the magistrate or court, whereas under Section 319 Cr.P.C., as indicated above, only the word "court" has been recited. This has been done by the legislature to emphasise that the power under Section 319 Cr.P.C. is exercisable only by the court and not by any officer not acting as a court. Thus, the magistrate not functioning or exercising powers as a court can make an inquiry in particular proceeding other than a trial but the material so collected would not be by a court during the course of an inquiry or a trial. The conclusion therefore, in short, is that in order to invoke the power under Section 319 Cr.P.C., it is only a Court of Sessions or a Court of Magistrate performing the duties as a court under the Cr.P.C., that can utilise the material before it for the purpose of the said Section."



10. It is also relevant here to refer the decision of Hon'ble Apex Court in the case of **Kailash V/s State of Rajasthan & Anr reported** in **AIR 2008 SC 1564** wherein it has been held as under:

"A glance at these provisions would suggest that during the trial it has to appear from the evidence that a person not being an accused has committed any offence for which such person could be tried together with the accused who are also being tried. The key words in this Section are "it appears from the evidence", "any person, "has" committed any offence". It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Cr.P.C. would be used by the court. This is apart from the fact that such person against whom such discretion is used, should be a person who could be tried together with the accused against whom the trial is already going on. This Court has, time and again, declared that the discretion under Section 319 Cr.P.C. has to be exercised very sparingly and with caution and only when the concerned court is satisfied that some offence has been committed by such person. This power has to be essentially exercised only on the basis of the evidence. It could, therefore, be used only after the legal evidence comes on record and from that evidence it appears that the concerned person has committed an offence. The words "it appears" are not to be read lightly. In that the court would have to be circumspect while exercising this power and would have to apply the caution which the language of the Section demands."

11. Hon'ble Apex Court in the case of **Mohd. Shafi V/s Mohd. Rafiq & Anr** reported in **AIR 2007 SC 1899** has held as under in connection to Section 319 of Cr.P.C:



"13. From the decisions of this Court, as noticed above, it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the court concerned may also like to consider other evidence."

12. Thus, on careful reading of the above provision of law, it could be understood that if it appears on an evidence that the persons other than the accused ought to have tried along with the accused persons, then the Court may proceed against them and if they are not before the Court, then they shall be summoned. Further, as per the decisions referred supra, it is thus clear that the decree of satisfaction for invoking Sec.319 of Cr.P.C., is much higher than the prima-facie case and the same cannot be exercise in a casual and claver manner. The materials which need to be consider while exercising power under Sec.319 is only the materials collected in an inquiry or trial before the Court. In this background if the case on hand is looked into, it is nothing than the examination of chief of PW1 and the first information statement which are available at this juncture wherein alleged that the proposed accused along with the accused herein have harassed and abused her in connection to demand of dowry. Though the very allegations were made in the first information, the outcome of investigation by the police is otherwise against the proposed accused. In the decision of **Mohd. Shafi** supra, Hon'ble Apex Court has held that the Court must arrive at satisfaction that there exists



possibility that the proposed accused in all likelihood be convicted of the offences alleged against them.

13. It is further relevant here to refer the decision of our Hon'ble High Court, Kalaburgi Bench, in the case of **Sachin V/s State of Karnataka by Humnabad P.S.** in CrI.P.No201553/2022 decided on 08.02.2023 wherein it is held as under:

"13. From the decisions of this Court, as noticed above, it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the court concerned may also like to consider other evidence."

14. Herein the present case also it is the complainant who is examined as PW1 has alleged that the proposed accused have also threatened, abused and harassed her in connection to dowry demand. It is only on this material the prosecution has sought for summoning the proposed accused. If this aspect is carefully considered keeping in view the decisions in the case of **Mohd. Shafi** and also in the case **Sachin** referred supra, this Court is of no satisfaction that there are materials available against the proposed accused in the evidence adduced so far in the present case which would lead in the conviction of proposed accused, if such evidence stands unrebutted, for the alleged act which the PW1 has deposed before this Court. Therefore, it is no doubt that



the prosecution has not made out sufficient grounds to proceed against the proposed accused. Hence, Point No.1 is answered in Negative.

15. POINT No.2: In view of the above findings on point No.1, this Court proceed to pass the following:

ORDER

**Application filed by the prosecution
under Section 319 of Cr.P.C. is rejected.**

**For further examination in chief of
PW1 by: 23.01.2025.**

*(Dictated to the Stenographer, directly typed by him on computer, corrected and then pronounced by me in the open court on **30th day of DECEMBER 2024, at Mudigere**)*

Sd/-

(Vishwanath A.)
Prl. Civil Judge & JMFC.,
Mudigere.