



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

1. This private complaint was initially filed by the Complainant under Section 200 of Cr.P.C against the Accused alleging offence punishable under Section 138 of N.I Act. Now, by this application filed under Section 319 of Cr.P.C, the Complainant seeks this Court to proceed against the Proposed Accused No.2 shown in the application by summoning her as an additional Accused in this case.

2. In the application, it is ventilated that the case is now at the stage of further evidence of the Complainant; till the time when the Complainant was subjected to cross-examination, he was under the reasonable belief that the Ex.P-1 cheque belonged to the Accused but when the said aspect was denied by the Accused, the Complainant grew suspicion and sought to summon the particulars pertaining to the said cheque through the bank; the bank manager was examined as PW-2 and by looking into the documents produced by him as per Ex.P-8 to 10, it came to the knowledge of the Complainant that the bank account to which the Ex.P-1 cheque pertains, is actually operated by the Proposed Accused No.2 who is the wife of the Accused; in the reply notice as per Ex.P-6, the



Accused had replied that the cheque pertains to his bank account which was closed 2 years back; when all these circumstances are considered, it is apparent that the Accused and his wife have colluded and played fraud against the Complainant; the documents would show that the Proposed Accused No.2 being the signatory of Ex.P-2 cheque should be added as additional Accused in this case; if not, untold loss and hardship would be caused to the Complainant. Hence, the prayer to allow the application.

3. Heard the Learned Counsel for the Complainant.
4. Having heard and on perusal of the materials, the points that would now arise for my consideration are as under;

Point No.1 : Whether the Complainant shows that there are sufficient materials against the Proposed Accused No.2 to add her as an additional Accused in this case?

Point No.2 : What Order?

5. Now, my findings on the above points are as follows;

Point No.1 : In the Affirmative

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



REASONS

6. **Point No.1:** The Complainant has sought to exercise power under Section 319 of Cr.P.C for the purpose of summoning the Proposed Accused No.2 as an additional Accused in this case. Before advertng to the factual matrix, it is germane to first examine the said provision of law and the law surrounding its application.
7. Section 319 of Cr.P.C reads 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) 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 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.



8. Section 319 of Cr.P.C is based upon the doctrine "*judex demnatur cum nocens absolvitur*" which means "A Judge is condemned when a guilty man is acquitted or absolved". It is a settled principle of law that power under Section 319 of Cr.P.C has to be exercised very sparingly because it is an extraordinary power given to the Court and cannot be exercised routinely. The said power is required to be exercised in appropriate cases wherever the Court feels that the real culprits have been left out in the case. An order under Section 319 of Cr.P.C is required to be passed only after judicious application of the mind to the material available on record and the resultant order should be a well-reasoned order. Before passing an order under Sections 319 of Cr.P.C the Court is required to satisfy itself that based on the evidence available on record, there are chances of convicting the proposed Accused in the case. This subjective satisfaction of the Court should be keeping in mind that the proposed Accused persons have been left out in the case on the ground that there is no sufficient material to proceed against them. The consequences of an order passed under Section 319 of Cr.P.C against a person who would be tried along with another Accused person



for the alleged offence in the case are very severe. Therefore, the Court has to be conscious of this fact and before exercising the extraordinary power under Section 319 of Cr.P.C, the Court is required to be slow and careful. For a mere asking by the complaint or by the prosecution the application under Section 319 of Cr.P.C cannot be allowed.

9. Apart from this, there were divergent views on the aspect of causing notice and hearing the Proposed Accused before proceeding, which has now been set right recently by the Hon'ble Supreme Court of India in **YASHODHAN SINGH V. STATE OF U.P.** reported in **(2023) 9 SCC 108** wherein it is held at Para 40 to 42 as under –

40. Thus, the contention that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial is clearly not contemplated under Section 319 CrPC. It is also observed by this Court in Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] that such a summoned person can assail a summoning order before a superior Court and will also have the right of cross-examining the witnesses as well as can let in his defence evidence, if any.

41. Thus, the lateral entry of a person summoned in exercise of power under Section 319 CrPC is only to face the trial along with other accused. This, being a salutary provision in order to meet the ends of justice, the same cannot be diluted by importing within the scope of Section 319 CrPC principles of natural justice which in any case would be followed during the trial.



42. It is well settled that principles of natural justice cannot be applied in straitjacket formula and they would depend upon the facts of each case and the object and purpose to be achieved under a provision of law.

- 10.** By applying the said ratio, it becomes unnecessary to cause notice and hear the Proposed Accused while considering the application filed under Section 319 of Cr.P.C. Accordingly, no notice was issued to the Proposed Accused No.2 and this application is being considered only in the presence of the Complainant and based on materials already made available before the Court.
- 11.** The application of Section 319 of Cr.P.C is most prominent in the cases arising from offences under I.P.C. Application concerning offences under N.I Act was alien and given the technicalities involved in the said enactment which pertains to the aspects of issuance of mandatory notice and various periods of limitation involved before initiating any criminal proceedings, it was almost impossible to exercise the powers under Section 319 of Cr.P.C in cases arising out of N.I Act. But, recently, the Hon'ble High Court of Karnataka in **MPP TECHNOLOGIES PVT. LTD., REPRESENTED BY LG. SATISH MARKETING MANAGER V. RUPA BANERJI** reported in **2022 SCC OnLine Kar 1591** has held that there



is no such restriction and 319 Cr.P.C would apply to fit cases even under N.I Act.

12. Reverting to the factual matrix of the case obtaining at hand, the reason assigned in the instant application is that the Complainant was under the reasonable belief that the Accused is the signatory of the Ex.P-1 cheque until it was found out from the tenor of cross-examination of PW-1, after examination of the bank manager i.e PW-2 and examining the documents as per Ex.P-8 to 10 that the signatory of Ex.P-1 cheque is his wife who is now sought to be added as the Proposed Accused No.2. Cause-title of the complaint would indicate that the present Accused is shown as the proprietor of 'Sri Mathru Constructions'. The cheque that is issued as per Ex.P-1 is signed by the Authorised Signatory of the said 'Sri Mathru Construction'. Reading of the averments of the Complaint would indicate that the Complainant had a financial transaction with the present Accused but the Cheque was issued by him which pertains to an account held in the name of proprietorship concern viz., 'Sri Mathru Constructions'. The Proposed Accused No.2 is the wife of the present Accused. The reading of Ex.P-8 which is the reply issued to the demand



notice, would disclose that the present Accused has stated that the bank account to which Ex.P-1 cheque pertains was closed by him two years back and nowhere in the said reply it is stated that he is not the Proprietor of 'Sri Mathru Constructions' or that he is not the signatory of the said cheque. Such being the case, it is believable that the Complainant had bonafidely brought the case against the present Accused with the reasonable belief that he is the Proprietor and Authorised Signatory of the 'Sri Mathru Constructions'.

- 13.** The Ex.P-1 cheque is signed by the Authorised Signatory of 'Sri Mathru Constructions'. I have examined the deposition of PW-2 who is the concerned Bank Manager and documents at Ex.P-8 to 10. The Proposed Accused No.2 is the signatory of the Ex.P-1 cheque which has been issued to the Complainant. This being a case for the offence under Section 138 of N.I Act, the presence of the signatory of the subject matter cheque as an Accused becomes absolutely necessary.
- 14.** It is made clear that since the cheque has been issued in the name of the Proprietorship concern viz., 'Sri Mathru Constructions', the proprietorship concern becomes



answerable through its Proprietor or Proprietrix be it the present Accused or the Proposed Accused No.2. The case cannot fail only for the reason that no mandatory notice was issued to the Proposed Accused No.2 and that cannot act as a hurdle in exercising power under Section 319 of Cr.P.C in adding the Proposed Accused No.2 as Additional Accused in this case. The said position of law is made clear in **MPP TECHNOLOGIES PVT. LTD., REPRESENTED BY LG. SATISH MARKETING MANAGER V. RUPA BANERJI** (Supra) at Para No.25 which reads thus –

"Having issued cheques for the aforesaid amount in all the transactions, the accused cannot now wash of their liability on a technical plea that notice is not issued to Mrs. Rupa Banerji and the plea of Mr. Jolly Banerji that he is not the signatory to the cheques or any other hypertechnical plea cannot be taken to escape the clutches of law. As observed hereinabove, the proprietorship concern is answerable through the proprietor or the proprietrix, be it Mr. Jolly Banerji or Mrs. Rupa Banerji. It is an admitted fact that Mrs. Rupa Banerji is the proprietrix. Therefore, the learned Magistrate was right in allowing the application filed under Section 319 of the Cr.P.C. and permitting Mrs. Rupa Banerji and Mr. P.K. Majumdar to be arrayed as accused along with proprietorship concern and they will have to meet the accusation. Mr. P.K. Majumdar is roped in on the ground that he is signatory to several cheques. A caveat, this principle would not become applicable to a Company or a partnership firm. These observations and finding are limited only to a proprietorship concern, as there cannot be more than one proprietor or proprietrix"



15. Applying the said ratio and with what has been discussed above, I am of the considered opinion that sufficient materials are available to invoke Section 319 of Cr.P.C and summon the Proposed Accused No.2 as an Additional Accused to face trial with the present Accused. Accordingly, **Point No.1** which has arisen for my consideration is answered in the **Affirmative**.
16. **Point No.2:** For the foregoing reasons, the following -

ORDER

Application filed by the Complainant under Section 319 of Cr.P.C is hereby allowed.

Resultantly, Proposed Accused No.2 viz., Smt. Netravathi W/o Rohit, is allowed to be added as Accused No.2 in the present case.

The Complainant shall carry out the consequential amendment to the Complaint and furnish the amended Complaint along with sufficient copies for its delivery to the Accused persons.

Issue Summons to Accused No.2 to her both addresses by way of R.P.A.D, if P.F paid and postal covers furnished. R/by 01.06.2024

(Typed, computerized and corrected by me and then pronounced in the Open Court, on this the 6th DAY OF MAY, 2024)

Sd/-

(Rahul Shettigar)
Civil Judge & J.M.F.C,
Sringeri.