

IN THE COURT OF THE CIVIL JUDGE AND JMFC.,
AT HANGAL

Present: Smt.Aishwarya Chidanand Pattanshetti, B.COM, LL.M.,
Civil Judge and JMFC., Hangal.

C.C.No.406 of 2024

DATED THIS THE 1st DAY OF JULY - 2026

Complainant:	State by Adur police station
	(By Learned APP)

V/s

Proposed Accused	4	Rathanavva W/o Shivabasappa Malkannanavar
	5	Laxmi W/o Shankarlingappa Malakannanavar
		(A1 to 3, 6 to 10 By Sri.M.S.Hullur – Adv) (Proposed Accused 4 and 5 By Sri.M.S.Hullur – Adv)

I	Provision under which the application is filed	U/s.319 of Cr.P.C.,
II	Relief sought for	Seeking to permission to implead proposed accused No.4 and 5
III	Date on which the application is filed	25-06-2025
IV	Number of application	Application U/s.319 of Cr.P.C.,

V	The date of which objection filed by the opponent	24-03-2026
VI	Date on which the orders were passed on said application	01-07-2026

(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.

ORDERS ON APPLICATION FILED UNDER SEC.319 of
CrPC

The present application was filed by the prosecution when the matter was posted for reissue bailable warrant to CW-2 and CW-3. Learned APP for state has filed instant application U/s.319 of Cr.P.C., seeking to issue summons to the proposed accused No.4 and 5 and include them as additional accused No.4 and 5.

2. In response to notice of said application, proposed accused No.4 and 5 appeared through their counsel and resisted the application by filing objections inter alia among various grounds.

3. Heard arguments of both the sides and perused materials available on record.

4. The points that would arise for consideration of this court are as follows:-

POINTS

1. Whether there is prima facie evidence or materials on record to proceed against proposed accused No.4 and 5?

2. What order?

5. Finding of this court on the above points are follows:-

Point No.1: In the negative

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

REASONS

6. **Point No.1:-** In the application, learned APP for the state has specifically contended that, the investigating officer has filed charge sheet against the accused persons for the offences P/U/Ss. 143, 148, 323, 324, 354, 504, 506 R/w 149 of I.P.C., and during the trial, first informant CW-1/PW-1 during his examination in chief has specifically deposed involvement of proposed accused No.4 and 5 by names 4.Rathanavva W/o Shivabasappa Malkannanavar and 5.Laxmi W/o Shankarlingappa Malakannanavar including their overt act in the incident and in fact, initially FIR was also registered against them. However, during the investigation, based on alleged restatement of CW-1 it was found that the said persons were not involved in the incident and consequently they were dropped in the charge sheet. Further, CW-1/PW-1 during his examination in chief has specifically deposed involvement of proposed accused No.4 and 5.

7. The learned APP has relied upon the judgment of Hon'ble Apex court reported in ***Hardeep Singh V/s. State of Punjab reported in (2014) 2 SCC 86***, wherein it is held that, the Hon'ble Court has ample power to include and array the proposed accused persons during the course of trial. On said grounds, learned APP has prayed to allow the application.

8. On the other hand, in the objections the learned counsel for the proposed accused No.4 and 5 specifically contended that, the application is not maintainable under law and it is filed only on basis of evidence of interested witness who is CW-1/PW-1 complainant. It is further contended that, there are contradictions in the evidence of PW-1 and in the averments of the complaint which raises a doubt on the veracity of the complainant. It is further contended that, PW-1 has filed false complaint though proposed accused No.4 and 5 were not present at the spot at the time of alleged incident. It is further contended that, the complainant has himself given restatement voluntarily on 25-11-2023 before the I.O., and on that basis and as no evidence was available proposed accused No.4 and 5 were dropped from the charge sheet. It is further contended that, the accused No.1 also filed suit against the present complainant in O.S.No.96/2025 it is also pending for adjudication of the case. At the time of arguments the counsel for the proposed accused No.4 and 5

have also relied upon the judgment of Hon'ble Apex court reported in ***Hardeep Singh V/s. State of Punjab and others SC Criminal Appeal No.1750/2008*** 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”. By stating all these grounds, it is prayed to reject the present application.

9. In the context of relief sought for in the application and objections thereto filed by the counsel for the proposed accused persons, on perusal of entire materials available on record at this stage, it is forthcoming that initially based on alleged first information as per Ex.P1 lodged by CW-1/PW-1, S.H.O of Adur police station has registered FIR in Cr.No.172/2023 of Adur police station against the accused No.1 to 10 found therein and subsequently after the investigation, the investigating officer (CW-10) has filed charge sheet against the accused No.1 to 3, 6 to 10 for the offences P/U/Ss.143, 147, 323, 324, 354, 504 and 506 R/w 34 of I.P.C, and consequently, dropped the proposed accused No.4 and 5 whose names arrayed as accused No.4 and 5 respectively in the FIR.

10. It is pertinent to note that, based on the charge sheet filed by CW-10, originally this court took cognizance of aforesaid offenses against the accused No.1 to 3, 6 to 10 and there after, hearing both sides charges for aforesaid offenses

were framed and recorded and explained to them on 13-12-2024 and accordingly, fixed the case for trial by issue of witness summons to CW-1 on 04-02-2025.

11. As could be seen from the record, on 22-04-2025 first informant/CW-1 witness in the incident i.e., CW-1 was present before the court and prosecution has examined him as PW-1 and also got marked complaint as Ex.P1, spot panchanama as Ex.P2 and photograph as Ex.P3 respectively.

12. To the contrary, the CW-1/PW-1 during his evidence denied very restatement given by him to the investigating officer and as he turned partly hostile he was cross examined by the learned APP and admitted that he has given restatement to the police on 25-11-2023 and also denied that in the said restatement about the participation of the proposed accused No.4 and 5.

13. The Hon'ble Apex Court in a case between **Hardeep Singh V/s State of Punjab reported in (2014) 3 SCC 92** by dealing with circumstances in which proposed accused person can be summoned in a criminal trial has categorically held as follows:-

“A person not named in the FIR or a person though not named in the FIR but has not been charge sheeted or a person has been discharged can be summoned U/s. 319 of Cr.P.C., provided from the evidence it appears that such person

can be tried along with the accused already facing trial.”

14. In the present case CW-10 who has filed the charge sheet has not been examined and until and unless the I.O., is examined the court cannot blindly consider the contradictory evidence of PW-1 who is interested witnesses to add proposed accused No.4 and 5 as accused in the present case. For aforesaid reasons, the application filed by the learned APP for the state deserves to be rejected at this stage. Accordingly, point No.1 is answered in the negative.

15. **Point No.2:-** In the light of said reasons and discussions, this Court has proceed to pass the following:-

ORDER

***Application filed by the
prosecution U/s.319 of Cr.P.C., to add
proposed accused No.4 and 5 is
hereby rejected.***

No order as to costs.

(Dictated to Stenographer, directly typed by him on computer, once corrected and later initialed by me and then pronounced by me in the open court on this the 1st day of July - 2026)

***(Smt.Aishwarya Chidanand Pattanshetti)
Civil Judge & JMFC.,
Hangal.***