

KAHV510011952018



**IN THE COURT OF THE II ADDL. SENIOR CIVIL JUDGE AND
JMFC, RANEBENNUR**

**Present : Sri. Padmakar Vanakudre,
B.A., LL.B. (Spl),
II Addl. Senior Civil Judge & JMFC,
Ranebennur.**

DATED THIS 07th DAY OF NOVEMBER 2023

C.C No.405/2018

BETWEEN :

Basanagouda S/o Shivanagouda Patil,
Age: Major, Occ: Business & Agriculture,
R/o: Vageesh nagara, Ranebennur.

.....Complainant.

(By Sri.P.V.Kulkarni, Adv.)

VERSUS:

1. Prabhu @ Prabhugouda S/o Siddanagouda Malladad,
Age: 40 years, Occ: Business & Agriculture,
R/o: Shidenur, Tq: Byadgi, Dist: Haveri.
2. Siddanagouda S/o Basanagouda Malladad,
Age: 65 years, Occ: Business & Agriculture,
R/o: Shidenur, Tq: Byadgi, Dist: Haveri.
3. Babu @ Basanagouda S/o Siddanagouda Malladad,
Age: 45 years, Occ: Business & Agriculture,
R/o: Shidenur, Tq: Byadgi, Dist: Haveri.

.....Accused.

(By Sri.P.G.Suranagi, Adv.)



**ORDER ON APPLICATION FILED UNDER SEC. 319 OF
Cr.P.C.**

Learned counsel for the complainant has filed an application under Section 319 of Cr.P.C praying to implead the partnership firm as accused No.4 in this case.

2. It is stated in the application that the accused No.1 to 3 are the partners of Sri. Shidenur Kalleshwara and Company. Due to over sight said firm is not arrayed as the accused in the complaint. If the firm is not arrayed as accused, the complainant will put to irreparable loss. Hence, it is necessary to implead the firm as accused No.4 in this case. Hence, prayed to allow the application.

3. Learned counsel for the accused has filed objection contending that, already the complainant side evidence has been concluded. There are several contradictions in the evidence of the complainant. The complainant has not issued notice to the firm. The compliant has been lodged to harass the accused persons. There are no grounds to allow the application. Hence, prayed to reject the application.



4. I have heard the arguments of learned counsels for the complainant and accused. Learned counsel for the complainant has relied on a decisions of Hon'ble High Court of Delhi in CRL.M.C No.2856/2015 and CrI. M.A No.10176/2015 in the matter between Sarabjit Singh Vs. State of NCT of Delhi and others and a decision reported in AIR (SCW) 2951 in the matter between Krishna Texport and Capital Markets Ltd. Vs. ILA. A. Agarawal and others.

5. I have gone through the decisions relied by the learned counsel for the complainant and perused the materials placed on record.

6. Points that would arise for my consideration are as under;

- 1) Whether the complainant has made out grounds to array the partnership firm as accused No.4 in this case?
- 2) What order?

7. My findings to the above points are as under;

Point No.1: In the affirmative.

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



REASONS

8. **Point No.1:** This is a complaint lodged under Section 200 of Cr.PC alleging the commission of offence punishable under Section 138 of the N.I Act.

9. It is alleged that accused No.1 to 3 are the partners of Sri. Shidenur Kalleshwara and Company. For the legal necessity of the firm, they have borrowed Rs.6,00,000/- from the complainant. In discharge of said liability the accused No.1 has on behalf of other accused persons issued a cheque bearing No.058380 for Rs.6,00,000/-. On presentation, the cheque came to be dishonored. Despite demand notice the accused have not paid the cheque amount and thereby committed an offence.

10. The complainant examined himself as PW.1 and got exhibited seven documents at Ex.P1 to 7. The statement of accused persons as contemplated under Section 313 of Cr.PC has been recorded. Now, the complainant has filed the application praying to implead the partnership firm as accused No.4 in this case.



11. The accused have objected the application on the grounds that no notice was issued on the firm, already the evidence of complainant is concluded and at this stage of litigation the application is not maintainable.

12. It is a case of the complainant that the accused No. 1 to 3 are the partners of Sri. Shidenur Kalleshwara and Company. The accused No.1 has also deposed that accused No.3 has withdrawn from his partnership in the year 2012 and accused No.2 is not a partner of Sri. Shidenur Kalleshwara and Company. In a demand notice at Ex.P3 and in the complaint it is mentioned that accused No.1 to 3 are the partners of Sri. Shidenur Kalleshwara and Company, obtained loan for the necessity of the company and issued a cheque in discharge of said liability. In both the demand notice and complaint it is pleaded that accused are the partners of the firm. Whether the accused No. 3 has withdrawn from his partnership etc., cannot be decided at this stage as it requires a trial. The evidence on record prima facie shows that accused No. 1 to 3 are the partners of Sri. Shidenur Kalleshwara and Company.



13. A document at Ex.P1 is the cheque dated 23.11.2017. It is issued by the partner of Sri. Shidenur Kalleshwara and Company. The cheque bears seal of the company. It appears that the cheque has been drawn by the accused on an account maintained by the Sri. Shidenur Kalleshwara and Company with a banker.

14. Section 141 of N.I Act deals with offence by companies. As per the provision of Section 141, if a person who commits offence under Section 138 of the N I Act is a company, the company as well as every person in charge of and responsible to the company for the conduct of business of the company at the time of commission of offence is deemed to be guilty of the offence.

15. The accused have not specifically denied the existence of partnership firm in their names. In a decision reported in **AIR 2012 SC 2795** in the matter between Aneeta Hada Vs. M/s. Godfather Travels and Tours Pvt. Ltd., Hon'ble Supreme Court of India held that;



In view of our aforesaid analysis, we arrive at the irresistible conclusion that for maintaining the prosecution under Section 141 of the Act, arraigning of a company as an accused is imperative. The other categories of offenders can only be brought in the dragnet on the touchstone of vicarious liability as the same has been stipulated in the provision itself.

16. In a judgment in **Crl.MC No.2856/2018**, in the matter between Sarabjit Singh Vs. State of NCT of Delhi and others, the cheques had been issued against the account of company acting through its Director for liability due. Initially, the company was not made as accused in that case. In the complaint, reference was made to the company as an accused. Under confusion, inadvertently the name of the company was omitted from the array of the accused. The application filed by the complainant under Section 319 of Cr.PC to implead the company as accused was allowed. In that case Hon'ble High Court of Dehli has confirmed the order and held that, notice to a director of the company was sufficient notice to the company. Hence, the company will face the prosecution in the criminal



complaint along with the other accused, it having been summon under Section 319 of Cr.PC.

17. In this case the accused No.1 to 3 are the partners of the Firm. Though a reference regarding a partnership Firm is made in demand notice and complaint, it appears that inadvertently the name of company is omitted from the array of accused. The cheque at Ex.P1 is drawn on the account maintained by the Firm and the same came to be dishonored. The demand notice has been served on the accused persons, who are the partners of the Firm. There are sufficient grounds and a prima facie case is made out to proceed against the Firm for the offence punishable under Section 141 and 138 of the N I Act. For maintaining the prosecution under Section 141 of the Act, arraigning of a Firm as an accused is imperative. Therefore, it is necessary to array the company/Firm as accused in this case is necessary. The Firm shall also be tried with other accused persons. Hence, I proceed to answer the point under consideration in the affirmative.



18. Point No.2: In view of the findings on point No.1, I proceed to pass the following;

ORDER

Application filed under Section 319 of Cr.PC is allowed.

The company i.e., Sri. Shidenur Kalleshwar and Company is arrayed as accused No.4.

Issue summons to the company/ accused No. 4.

(Dictated to the Stenographer directly on the computer, then script corrected, signed and pronounced by me in the open court on this **07th day of November 2023**)

Sd/-
(Padmakar Vanakudre)
II Addl. Senior Civil Judge & JMFC,
Ranebennur.