

ORDER ON APPLICATION U/Sec.319
CR.P.C :

This I.A. is filed by the learned APP U/Sec. 319 of Cr.P.C. praying to issue S/S to the proposed accused No.1 Kondappa S/o Mariyappa, accused no.3 Nagaraj S/o Rangappa, accused no.4 Santhosh @ Shantappa S/o Kariyappa, accused no.5 Basavaraj S/o Kariyappa. It is stated that, the first informant in the FIS has stated that the proposed accused No.1, 3 to 5 have committed offence and later in the evidence of PW-1 has clearly deposed that the proposed accused No. 1, 3 to 5 were present at the incident and committed the offence. Therefore, there are sufficient materials found against the proposed accused No. 1, 3 to 5 to try this case against them. Hence, prays to allow the I.A.

2. The learned counsel for respondents/ proposed accused No. 1, 3 to 5 have filed objection to the I.A. stating that the I.A. is not maintainable either in law or facts. That the power exercise U/Sec. 319 of Cr.P.C would appear and means clear to the comprehension requirement is much stronger evidence than a mere probability of complexity. There is no evidence against the respondents. After the

conclusion of the investigation the I.O. has filed the charge sheet wherein the proposed accused No. 1, 3 to 5 were dropped. Hence, prays to reject the I.A.

3) Heard both side counsel.

4) The points that arise for my consideration they are:

Point No. 1: Whether the I.A. deserves to be allowed ?

Point No. 2: What order?

5) My answer to the above points are as follows.

Point no. 1 : In the Affirmative.

Point no. 2 : As per final order.

REASONS

6) **Point No.1 :-** The ASI Devadurga has filed the charge sheet against the accused person for the offences punishable U/Sec. 341, 323, 504 and 506 of IPC. The I.O. has dropped the accused No. 1, 3 to 5 from this case by taking further statement of complainant on 25-02-2020. It is important to note that in the FIS Ex.P-1 given by the first informant to the Police she has clearly mentioned that proposed accused No. 1, 3 to 5 were also present and involved in the incident. but, the I.O. during investigation has taken further statement of

first informant and dropped the proposed accused No.1, 3 to 5 from this case. Later on the basis of the charge sheet the Hon'ble Court has framed the charge against the accused No.2 only. During the evidence the complainant PW-1 in her chief examination on dated 02-06-2025 has clearly stated that proposed accused No. 1, 3 to 5 were also present and involved in the incident and he has not given any further statement to the I.O. stating that the proposed accused No. 1, 3 to 5 were not present at the incident .

7). The learned counsel of accused submitted that, though in the FIR the name of proposed accused No. 1, 3 to 5 were appeared but, in the investigation the I.O. after recording further statement of first informant has dropped them from the charge sheet. Mere statement of PW-1 is not sufficient to issue summons to the proposed accused No. 1, 3 to 5. From the evidence of PW-1 it is clear that the proposed accused No. 1, 3 to 5 were also present and involved in the incident and the IO has not given any notice for dropping the accused No. 1, 3 to 5 from the charge sheet. There are sufficient materials found against the accused

persons to proceed with the trial. The following judgments as follows:

2019 (2) Kar. L.R. 423 (SC)

IN THE SUPREME COURT OF INDIA

Periyasami and Others V/s S. Nallasamy.

Criminal Procedure Code, 1973 – Section 319 – Summoning of additional accused – Requirements of – The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence – Under section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused.

2016(2) Kar. L.R. 541

IN THE HIGH COURT OF KARNATAKA

Pandurange and Others V/s The State

Through Police Sub Inspector, Afzalpur.

Criminal Procedure Code, 1973 – Section 319 – Dropped from the proceedings – Prosecution filed the application to summon accused No. 1 to 5, on the ground that the case was registered against six persons and the charge-sheet was filed only against one person –

Above said accused have been dropped from proceedings – Application allowed – Present revision filed – Held : The test that has to be applied is “the 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” is in consonance with the further opinion as regards the difference in respect of persons who have been named in the FIR but not charge-sheet or has ben discharged.

The above judgments are applicable to the present facts. Since the evidence of PW-1 is very clear and no ambiguity is found during chief examination. Therefore, the proposed accused No. 1, 3 to 5 have prima-facie case to be tried along with the other accused in this case. The I.A. deserves to be allowed. Hence I answer Point No.1 is in the Affirmative.

8). **Point No.2 :-** For the above discussion I pass the following :-

:O R D E R:

Application filed by the learned APP U/Sec. 319 of Cr.P.C. is hereby allowed.

Proposed accused No. 1, 3 to 5 are arrayed as accused No. 1, 3 to 5 to

tried along with the other accused no.2
in this case. Accused no. 2 absent E/A
filed and allowed. Call on for
appearance of accused no. 1 to 5 Rby
02-06-2026.

Sd/-
Civil Judge & JMFC.,
Devadurga.

