

**IN THE COURT OF PRINCIPAL CIVIL JUDGE AND JMFC AT
KANAKAPURA.**

PRESENT

**SRI. HANUMANTHA G.H.
B.A.L., LL.M.**

Pri. Civil Judge and JMFC, Kanakapura.

C.C.NO.63/2013

DATED THIS 31st DAY OF JANUARY 2020.

COMPLAINANT: The State of Karnataka,
Through the P.S.I., Kanakapura Town
Police station.

(By A.P.P.)

-V/S-

**PROPOSED
ACCUSED** :

3. Karthik
In front of IPP Hospital
Kanakapura Town
Ramanagara District.
4. Keerthik
In front of IPP Hospital
Kanakapura Town
Ramanagara District.

ORDER

The prosecution has filed an application U/Sec.319 Cr.P.C seeking to implead the proposed accused as accused No. 3 and 4 to the case.

2. It is stated in the application that the Kanakapura Town Police have filed charge sheet against the accused for the offences punishable U/Secs. 448, 323, 324, 504, 427 and 506 R/w 34 IPC. The complainant has given complaint against the accused

and the proposed accused. But the proposed accused are dropped from the charge sheet. C.Ws.1 and 2 have, in their evidence, deposed that the accused and the proposed accused have unlawfully trespassed to the house of C.Ws.1 and 2; the proposed accused namely Keerthi assaulted on chest and head of C.W.2 with T.V remote and the proposed accused namely Karthik assaulted C.W.1 with hands; the accused namely Veena and the proposed accused namely Keerthi assaulted C.W.2 with hands and the accused put the life of C.Ws.1 and 2 into threat. Therefore, the proposed accused have participated in commission of offences. Accordingly, learned APP has prayed to allow I.A.

3. In response to notice, the proposed accused have appeared before the court through their counsel and they have filed objection. It is contended that the proposed accused are dropped from the charge sheet since no charge is made out against them. There is civil dispute between the accused and the complainant. The suit in O.S.No.225/2017 filed before the Hon'ble court of Senior Civil Judge, Kanakapura is pending for adjudication. In the light of the said civil dispute, C.Ws.1 and 2 have falsely deposed against the proposed accused. Since other witnesses are not examined and the proposed accused are dropped in the charge sheet, an application filed by the prosecution is not maintainable at this stage. If the application is not rejected, the proposed accused are put to great hardship. Accordingly, learned counsel for the proposed accused has prayed to reject the application.

4. Heard and perused the materials.

5. Learned counsel for the accused has relied on the Ruling of Hon'ble Apex court reported in **2019 (2) KLR 423 (SC) (Periyasamy and others Vs. S.Nallasamy)** in support of objection to I.A. It is found from the said Ruling that the additional accused cannot be summoned U/Sec.319 of Cr.P.C in a casual and cavalier manner in the absence of strong and cogent evidence. U/Sec.319 of the Cr.P.C, 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 satisfaction required at the time of conclusion of the trial convicting the accused.

6. Section 319(1) Cr. P. C. sates that “Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being 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”.

7. The perusal of FIR shows that the case is registered against the accused and the proposed accused on the basis of FIS lodged by C.W.1. But the proposed accused are dropped in the charge sheet. The perusal of the statements of C.Ws.1 to 3 recorded by the police shows that the proposed accused do not participate in commission of offences. But it is found from the evidence of P.Ws.1 and 2 that the proposed accused are found to have been participated in the commission of the offences.

8. It is found from the objection to the application that the civil case is found to have been pending between the accused and the complainant. C.Ws.1 and 2 are the wife and husband. The evidence of them in part is only recorded. Their evidence is not

completely recorded. The evidence of other witnesses and I.O who has recorded the statements of C.Ws.1 to 3 is also not recorded. Having considered the pendency of civil case between the accused and the complainant, the status of C.Ws.1 and 2 as wife and husband and non recording of the evidence of other witnesses and I.O, I am of the opinion that it is necessary to keep in abeyance the said application till recording the evidence of other material witnesses and I.O. Hence, I proceed to pass the following:

:: O R D E R ::

The application filed by the prosecution under Section 319 Cr.P.C. is ordered to be kept in abeyance till recording the evidence of material witnesses and I.O.

(Dictated to the Stenographer directly on the computer, corrected by me and then pronounced in the Open Court this 31st day of January 2020)

**(HANUMANTHA G.H.),
Pri. Civil Judge and JMFC,
Kanakapura.**