

ORDER ON APPLICATION FILED U/S 319 OF
Cr.P.C.

The learned APP filed an application U/Sec. 319 of Cr.P.C. praying to implead Sri. Raju M.S, as a accused No.3 in the present case and to conduct the trial against them in the interest of justice and equity.

2. In this application learned A.P.P. contended that, the above case is registered under section 341, 323, 504, 506 R/w Sec. 34 of I.P.C. against the accused persons. The prosecution in support of its case has examined CW-1 and CW-3. The prosecution has got good case on hand.

The learned A.P.P. further submitted that, CW.1 and CW.3 had got examined as PW.1 and PW.2 before this Hon'ble Court, that in the above case CW.1 complainant got examined as PW.1 before this Hon'ble court and during his evidence he submits proposed Accused No.3 by name Raju M.S S/o Shivaramegowda also involved in the commission of offence along with Shivaramegowda and Krishnegowda had also assaulted him. Further submits the proposed accused No.3 used filthy language against the complainant and assaulted the complainant by using hand.

The learned APP submits proposed Accused No.3 is also involved in commission of offences. The investigation officer not include them in the chargesheet hence it is necessary to include them in the present case and to conduct trial against the proposed accused No.3.

On the other side accused filed objection to the application and submits the application filed by the learned APP is not maintainable in the eye of law. The said Raju M.S had not involved in alleged commission of offence. Further accused had no role to play and was not present as on the date of alleged incident. Further submits the CW. 3 was also turned hostile and submits he was not present at the time of incidents. The application filed by the complainant is not maintainable only to harass the accused he filed a present application. The allegations made in the application is imaginary one, and baseless. Hence on all the above said grounds prays before the court to reject application filed by the learned APP.

3. Heard both the counsels.

4. As per the law laid down in **AIR 2006 SC 1892**. The Hon'ble Supreme Court has held that the court may proceed

against the persons as accused on the basis of the evidence adduced before it. In **1990 4 SCC 580** the court has wide scope to proceed against the persons as accused.

This court perused the entire material available on record. Firstly the complainant given complaint before the jurisdictional police station against accused No.1 to 3 for the alleged offences. On perusal of the Ex.P.1 it is clearly discloses that accused No.3 is also involved in alleged offences. But during the filing of chargesheet the concerned IO drop the charge against the accused No.3. Further during the evidence the CW -3 eye witness to the present case submits that, he does not aware of the alleged offence made by the accused person against the complainant. Further there is no material given by the prosecution to implead proposed accused No.3 in the present case. Mere oral submission by the complainant to implead proposed accused NO.3 in the present case is not enough to come to the conclusion and to implead him as a accused No.3. Hence looking at to the facts and circumstances of the case this court pass the following :

ORDER

Application Under Section 319 of
Cr.P.C. filed by the Learned A.P.P. is
hereby dismissed.

Sd/-

(VINAY .V. KUNDAPUR)
II Addl. Civil Judge & JMFC.,
Kanakapura.

(Order pronounced in open court vide separate order)

ORDER

Application Under Section 319 of Cr.P.C. filed by the Learned A.P.P. is hereby dismissed.

**II Addl. Civil Judge & JMFC.,
Kanakapura.**