



**Order Below Application Exh.50
(Passed on this 23rd day of Sept., 2024)**

The informant Vinayak Shripati Karad has filed this application under Sec. 319 of Cr.P.C. to proceed against persons namely 1] Vishwanath Dadarao Karad, 2]Ramesh Kashiram Karad, 3]Rukminbai Vishnu Karad, 4]Pallavi Bharat Karad and 5]Vijay Shahaji Gambhire with the accused as these persons were also members of the unlawful assembly and committed the offences with the charge-sheeted accused.

2. It is contended that, as per the report lodged by the informant on 2.5.2020 while he was undergoing treatment in Hospital, Crime No.66/2020 came to be registered against the accused for the offences punishable under Sections 307, 324, 341, 504, 506, 143, 147, 148, 149 of I.P.C. and Sec. 135 of Bombay Police Act against the accused namely i] Bharat Vishnu Karad, ii]Bhaskar Harishchandra Gambhire, iii]Uttereshwar @ Uttam Antram Gambhire, iv] Daulat Kashinath Karad, v] Pravin Shesherao Gambhire, vi] Rajesh Kashiram Karad and vii] Santosh BhaskarGambhire.

At the time of lodging complaint, the informant has stated the names of Vishwanath Dadarao Karad, Ramesh

Kashiram Karad, Rukminbai Vishnu Karad, Pallavi Bharat Karad and Vijay Shahaji Gambhire. But, Police omitted names of these persons. These persons are politically influenced persons having man and money power. The informant has told names of these persons in his statement recorded under Sec.164 of Cr.P.C. before J.M.F.C., Latur on 20.6.2020. In the evidence of P.W. No.2 i.e., informant, he has deposed about the complicity of these five persons and their specific role in the assault. Hence, this application to summons these five persons and be tried together with the accused for the offences punishable under Sections 307, 324, 341, 504, 506, 143, 147, 148, 149 of I.P.C. and Sec. 135 of Bombay Police Act.

3. The accused filed reply vide Exh.54 and denied all the allegations in the application. It is contended that, since last 50 years, Vishwanath Dadarao Karad is permanently residing in Pune. He is running various Colleges in Maharashtra and other States. He never used to come to village Rameshwar. Ramesh Kashiram Karad is Member of Maharashtra Legislative Assembly. He is also Co-ordinator in Medical College at Latur. The informant wants to add two other ladies as an accused as his mother Gavalanbai Shripati Karad is accused in a counter case in Crime No.67/2020. It is further contended that, the statement of the informant under Sec.164 of Cr.P.C. was recorded on 20th June, 2020 i.e., after 25 days of the incident and no specific role of these persons is stated by him. If, the Police omitted the names of assailants from the FIR, then remedy available to the informant was either to approach

Judicial Magistrate F.C. by private complaint or to approach higher Police authorities i.e., Superintendent of Police. It is further contended that, the evidence of the informant is not complete. Without cross examination it can not be called as evidence. So, urged to reject the application.

4. Heard Ld. A.P.P., Ld. Private Advocate appearing for the informant and Ld. Advocate appearing for the accused.

5. Ld. Advocate for the informant drew attention of this Court on the evidence of informant i.e., P.W. No.2, the statement of informant recorded under Sec.164 of Cr.P.C. and the copy of application filed before Superintendent of Police, Latur and submitted that, the evidence of informant clearly shows about role played by the accused and the persons named in this application. The evidence of informant clearly shows about complicity of these five persons with the accused. On the point of scope of Sec.319 of Cr.P.C. and standard of evidence required to invoke said provision, the Ld. Advocate placed reliance upon following case laws-

- i] **Nahar Singh Vs. The State of Uttar Pradesh & Anr.** DLD(Cri) 2022-784,
- ii] **Sandeep Kumar Vs. The State of Haryana & Anr.,** DLD(Cri) 2023-2638,
- iii] **Sartaj Singh Vs. The State of Haryana & Anr.,**DLD(Cri) 2021-62,
- iv] **Jitendra Nath Mishra Vs. State of U.P. & Anr.,** DLD(Cri) 2023-2496,
- v] **Manjeet Singh Vs. The State of Haryana & Ors.,**DLD(Cri) 2021-259.

6. Ld. Advocate for the accused submitted that, this

application can not be considered at this stage. Mere recording of examination in chief of the informant can not be said to be evidence. It is further submitted that, other remedies were available to the informant like private complaint and to approach higher Police authorities. But, the informant has not invoked said remedies. So, this application is not maintainable. Hence, urged to reject the application. To support his submissions, Ld. Advocate placed reliance upon following case laws-

- i] **N. Manogar Vs. The Inspector Of Police**, 2024 ALL SCR (Cri) 1269,
- ii] **Sunil Pandurang Mantri Vs. The State of Maharashtra**, 2024 ALL MR(Cri) 2253,
- iii] **Vikas Rathi Vs. The State of U.P. & Anr., 2023**, ALL SCR(Cri) 844,
- iv] **Juhru & Ors Vs. karim & Anr., 2023**, ALL SCR (Cri) 752,
- v] **Aarif & Ors Vs. The State of Rajasthan & Anr., 2023** ALL SCR (Cri) 1966.

7. This Court carefully gone through the submissions at bar and material on record.

8. So far as the scope of Sec. 319 of CrPC. and the stage at which it is to be invoked is concerned, the judgment of constitutional Bench of the Hon'ble Apex Court in the case of **Hardeep Singh Vs. State of Punjab**, 2014(3) SSC 92, has been considered by the Hon'ble Apex Court, almost in all the case laws cited by both the sides. In the case of **Manjeet Singh Vs. The State of Haryana** (cited supra) after referring the judgments in the case of **Hardeep Singh, S.Mohammad Ispahani, Rajesh Vs. State of**

Haryana, the Hon'ble Apex Court summarized the ratio in these decisions on the scope and ambit of the powers of the Court under Sec.319 of Cr.PC. in para No.13 . The said para is reproduced as under-

(i) That while exercising the powers under [Section 319 CrPC](#) and to summon the persons not charge-sheeted, the entire effort is not to allow the real perpetrator of an offence to get away unpunished;

(ii) for the empowerment of the courts to ensure that the criminal administration of justice works properly;

(iii) the law has been properly codified and modified by the legislature under the [CrPC](#) indicating as to how the courts should proceed to ultimately find out the truth so that the innocent does not get punished but at the same time, the guilty are brought to book under the law;

(iv) to discharge duty of the court to find out the real truth and to ensure that the guilty does not go unpunished;

(v) where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial;

(vi) [Section 319 CrPC](#) allows the court to proceed against any person who is not an accused in a case before it;

(vii) the court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency;

(viii) [Section 319 CrPC](#) is an enabling provision empowering the court to take appropriate steps for proceeding against any person not being an accused for also having committed the offence under trial;

(ix) the power under [Section 319\(1\) CrPC](#) can be exercised at any stage after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of [Sections 207/208 CrPC](#), committal, etc. which is only a pre-trial stage intended to put the process into motion;

(x) the court can exercise the power under [Section 319 CrPC](#) only after the trial proceeds and commences with the recording of the evidence;

(xi) the word “evidence” in [Section 319 CrPC](#) means only such evidence as is made before the court, in relation to statements, and as produced before the court, in relation to documents;

(xii) it is only such evidence that can be taken into account by the Magistrate or the court to decide whether the power under [Section 319 CrPC](#) is to be exercised and not on the basis of material collected during the investigation;

(xiii) if the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, it can exercise the power under [Section 319 CrPC](#) and can proceed against such other person(s);

(xiv) that the Magistrate/court is convinced even on the basis of evidence appearing in examination-in-chief, powers under [Section 319 CrPC](#) can be exercised;

(xv) that power under [Section 319 CrPC](#) can be exercised even at the stage of completion of examination-in-chief and the court need not has to wait till the said evidence is tested on cross-examination;

(xvi) even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of [Section 319 CrPC](#) and even those persons named in FIR but not implicated in the charge-sheet can be summoned to face the trial, provided during the trial some evidence surfaces against the proposed accused (may be in the form of examination-in-chief of the prosecution witnesses);

(xvii) while exercising the powers under [Section 319 CrPC](#) the Court is not required and/or justified in appreciating the

deposition/evidence of the prosecution witnesses on merits which is required to be done during the trial.

9. By keeping in mind this legal position about scope and ambit of the power of the Court under Sec.319 of Cr.PC. this Court has to decide whether the persons named in this application are involved in commission of offence and can be tried with the charge-sheeted accused.

10. On 2.5.2020, the informant lodged report, while undergoing treatment in Civil Hospital and crime came to be registered against the seven accused for the offences punishable under Sections 307, 324, 341, 504, 506, 143, 147,148, 149 of I.P.C. and Sec. 135 of Bombay Police Act.

11. In the report lodged on 2.5.2020, the informant referred about three incidents. In the first paragraph of the report the informant has stated about motive of the accused i.e., pendency of civil dispute about field Gat No.181 between him, the accused and persons named in this petition.

The first incident was of 1.5.2020 at or about 5:00 p.m. At that time, the informant was doing cultivation work in his field Gat No.181 by bullocks. The accused Rajesh Kashiram Karad came to him and obstructed his work, threatened and abused him and then he called his relatives at Wangdari namely Bhaskar Harishchandra Gambhire, Santosh Bhaskar Gambhire, Pravin Shesherao Gambhire, Uttam Antram Gambhire, Daulat Kashinath Karad and Pravin Shesherao Gambhire.

The second incident in FIR is occurred at or about 5:30

p.m. It is alleged that, after obstruction for cultivation the informant came in his brother's house in Gat No.170. At that time, all the accused came having armed Sattur & sticks. Accused Rajesh Karad abused and assaulted him by stick on his hands and legs and started beating. Informant's father Shripati Karad, mother Gaulanbai, his three sons and brother Vilas came to intervene. At that time, accused Bhaskar Gambhire assaulted his father by stick on his head. Accused Santosh Gambhire assaulted informant's son Pravin by stick on head. Accused Bharat Vishnu Karad inflicted two to three blows of Sattur on his head with intention to kill him. This accused also gave blows of Sattur on his father's left hand. Accused Pravin Gambhire, Uttam Gambhire, Daulat Karad also assaulted him, his father, son Pravin and brother Vilas by sticks on their hands, legs, back and gave life threat.

The third incident in FIR is that, after second incident, the informant and injured were in the house due to fear of the accused. Police of Gategaon Police Station came and took the injured to the Civil Hospital, Jawala. The Police went back on their duty after starting treatment on the injured. After that at or about 8:00 p.m., the accused came in Civil Hospital, Jawala and attacked on informant, his father and his son Pravin and his brother Vilas by sticks on hands, legs, head and back.

12. According to informant, at the time of lodging FIR, he disclosed the names and particular role of the persons namely Vishwanath Dadarao Karad, Ramesh Kashiram Karad, Rukminbai Vishnu Karad, Pallavi Bharat Karad and Vijay Shahaji Gambhire,

but due to political influence of these persons, the Police omitted the names of these persons. The Police didn't conduct the investigation impartially, so on 22.6.2020, he approached to the Superintendent of Police, Latur and filed petition, mentioning the names of all the persons involved in the crime. The charge-sheeted accused assaulted them at the instance and say of Vishwanath Dadarao Karad and Ramesh Kashiram Karad. The informant has stated the names of all the assailants in the statement recorded under Sec.164 of Cr.P.C. and he further deposed in detail about complicity of these accused in his evidence i.e., examination-in-chief.

13. So far as deciding the question of complicity of these five persons in this crime, the examination-in-chief of the informant is material evidence. Though, it is only examination in chief, but as discussed above and as per settled legal position, this is 'evidence'. In the examination in chief, in para Nos.1 & 2, the informant has stated about Civil dispute i.e., RCS No.28/2017 about Gat No.181 and other lands against Vishwanath Dadarao Karad and Ramesh Kashiram Karad. In para No.2, the informant has stated that, these two persons were always giving him threat of killing through hire killer.

In para No.4 this witness has deposed the incident occurred on 1.5.2020 at 5:00 p.m. At the time of this incident, accused Rajesh Kashiram Karad obstructed his work of cultivation by bullocks and gave threats, abused him. So, he came to the house of his brother in Gat No.170.

In para No.5, this witness deposed about the incident occurred at 5:30 p.m. He has deposed that, when he himself, his father, brother and son were in his brother's house in field Gat No.170, at that time Rajesh Kashiram Karad, Bharat Vishnu Karad, Bhaskar Harishchandra Gambhire, Santosh Bhaskar Gambhire, Pravin Shesherao Gambhire, Uttam Antram Gambhire, Daulat Kashinath Karad, **Pallavi Bharat Karad, Rukminibai Vishnu Karad and Vijay Shahaji Gambhire** came in to the house as per the say of Vishwanath Dadarao Karad and Ramesh Kashirm Karad. At that time, Bhaskar Gambhire was armed with Sattur, Rajesh Karad and others were armed with sticks. They entered into the house and started bating informant, his father, brother and son with intention to kill. The accused, Bharat Vishnu Karad gave blow of Sattur on his head and tried to kill him. Rajesh Kashiram Karad, Vijay Shahaji Gambhire, Bhaskar Harishchandra Gambhire, Santosh Bhaskar Gambhire assaulted him by sticks on head, back, hands, legs and stomach with intention to kill him. Bharat Vishnu Karad gave blow of Sattur on the left hand of his father and tried to cut his hand. Bhaskar Harishchandra Gambhire assaulted his father by stick on his head and tried to kill him. Pravin Gambhire, Uttam Gambhire, Daulat Karad assaulted his father by sticks on head, hands, back and stomach severely and tried to kill him. Due to assault, his son Pravin Karad was frightened and when he was trying to run away from his house, at that time **Rukminibai Vishnu Karad and Pallavi Bharat Karad** caught his both hands and accused Santosh Bhaskar Gambhire assaulted him by stick on head and tried to kill him. The accused dragged them out from the

house and beat severely with intention to kill. Babasaheb Bhau Karad and Madan Dnyanoba Jadhvar intervened the quarrel. The accused gave life threat and went away.

In para No.6 of evidence of this witness he deposed that due to attack, they got frightened and were sitting in home. After some time, Police of Gategaon Police Station came and they carried and admitted the informant and injured in Civil Hospital, Jawala. The treatment was started and police went on their duty. After that, at 8:00 p.m., Bharat Vishnu Karad, **Rukminbai Vishnu Karad, Pallavi Bharat Karad, Vijay Shahaji Gambhire**, Bhaskar Harishchandra Gambhire, Santosh Bhaskar Gambhire, Pravin Shesherao Gambhire, Uttam Antram Gambhire and Daulat Kashinath Karad came into the Hospital as per say of Vishwanath Dadarao Karad, Rajesh Kashiram Karad and Ramesh Kashiram Karad and they serverly attacked and beat him, his father, his son Pravin with intention to kill them.

14. On perusal of evidence of the informant, it appears that he has specifically stated the role played by Rukminbai Vishnu Karad, Pallavi Bharat Karad & Vijay Shahaji Gambhire in second and 3rd incident occurred at 5:30 p.m. and 8:00 p.m.

In the FIR the names of these five persons are not mentioned. According to the informant, he told the names of these five persons with charge-sheeted accused, but the Police didn't conduct investigation impartially and omitted the names of these five persons. There appears substance in the contention of the informant. In his statement recorded under Sec.164 of Cr.PC., he

has stated in his opening statement that, the Gategaon Police didn't record his statement dated 2.5.2020 as per his say. This witness has stated that Vishwanath Karad and Ramesh Karad gave 'Suprai' to the hire killers to kill them. In the statement under Sec.164 of Cr.P.C., the informant disclosed the names of all five persons with specific role of Rukminbai Vishnu Karad, Pallavi Bharat Karad and Vijay Shahaji Gambhire. The informant also approached to the Supdt.of Police and disclosed about involvement of these persons in the alleged incident.

15. On perusal of the evidence of P.W. No.1 i.e., victim/informant, it appears that, prima-facie there is direct evidence about complicity of Rukminbai Vishnu Karad, Pallavi Bharat Karad and Vijay Shahaji Gambhire in the incident occurred on 1.5.2020 at 5:00 p.m. and in the incident occurred at 8:00 to 8:30 p.m. in Civil Hospital, Jawala. Even after approach of the Police and shifting the injured to the Hospital, the charge-sheeted accused and these persons had dared to attack on the injured in the Civil Hospital.

16. So far as complicity of Vishwanath Dadarao Karad and Ramesh Kashiram Karad is concerned, the informant has stated that, on the ground of Civil dispute, these persons gave 'Supari' to the assailants i.e., hire killer to kill the informant and his family members and the accused attacked on them.

The informant has not stated about instigation or conspiracy by these two persons with other accused. Further the

cause of first incident was the cultivation work of informant in field Gat No.181 and then the further incidents occurred. These two persons were not present at the spot of first, second or third incident. There is no clinching evidence about complicity of these two persons in the incidents alleged by the informant.

17. There is direct evidence about complicity of Rukminbai Vishnu Karad, Pallavi Bharat Karad and Vijay Shahaji Gambhire in the incidents. So, these persons are liable to be tried together with charge-sheeted accused. Hence, this Court pass the following order.

Order

1. Application is hereby partly allowed.
2. Issue summons to the accused **Rukminbai Vishnu Karad, Pallavi Bharat Karad and Vijay Shahaji Gambhire** for facing trial for the offences punishable under Sections 143, 147, 148, 149, 307, 324, 341, 504, 506 of I.P.C. and Sec. 135 of Bombay Police Act with the charge-sheeted accused.

(Dictated and pronounced in the open Court).

Dated: 23rd Sept., 2024

(D.B. Mane)
Additional Sessions Judge-3,
Latur.