

IN THE COURT OF MUNICIPAL MAGISTRATE 4th COURT, CALCUTTA.

Present:

Smt. Kadambari Adhikari

J O Code No: W B 1282

Case No. CrI.Misc.2290 of 2017

CNR- WBCS – 03-005-801-2016

Dated. 25.03.2025

Today is fixed for passing order.

Ld. APP is present.

All the four accused persons are absent and a petition u/s 317 has been filed for their representation through their pleader.

Ld. Advocate for the accused persons is also present.

Prayer is considered and allowed.

Now the record is taken up for passing order in respect of petition u/s.319 CrPC filed by the prosecution.

As per the contention of the petition, the certified copies of the agreement discloses involvement of two developers namely Joynal Hossain and Azad Hassan in the alleged illegal construction. Accordingly, she contended that these two alleged developers may be summoned as accused.

Ld advocate for the accused persons did not raise any objection.

Hd. Considered.

The backdrop of the case lies in the fact that the instant case was started with the complaint lodged by the Assistant engineer,building department,Br-VIII alleging illegal construction at premises no.9, Ahiripukur road,ward-69,Br-VIII. The case was registered vide Kareya FIR no.461 of 2017 dated 04.11.2017. Upon completion of investigation, charge-sheet was submitted against Fazle Ilahi,Tahera Wahab @Khaton,Murad Ali and Omme Saleh. Accordingly, cognizance was taken,charges were framed against persons and the trial started. Prosecution examined six witnesses. Thereafter,accused persons were examined on the evidence adduced by the prosecution. Defence adduced evidence of accused Fazle elahi and some documents were tendered.

Among the exhibited documents, ExbtD1/1 appears to be an agreement for construction between the present accused persons and the two persons namely Jainal Hossain of 93,Taltala lane,PS- Taltala and Azad Hasan of 50/1,Taltala lane, PS-Taltala as developers in respect of the case premises . ExbtD1/2 is a power of attorney executed between same parties.

It is found that there is prima facie materials against the said two persons as developers in the alleged illegal construction.

As per section 319 of the CrPC, if in the course of any enquiry or trial, it appears from the evidence that any person not arraigned as the accused has committed any offence for which he can be tried together with the accused persons he may be proceeded against for the said offence.

In Hardeep Singh vs State of Punjab(2014) the Honb'le Court has observed that S.319 CrPC can be invoked at any stage before the pronouncement of the judgment provided evidence on record justifies summoning additional accused.

Further, in Rajesh vs. state of Haryana (2019) 6 SCC 368, the Hon'ble court has observed that even if evidence emerges at the argument stage, the Court can exercise its power under section 319 CrPC.

Accordingly, in the light of the statutory provision and the observation of the Honb'le Court discussed above, it transpires that there is sufficient prima facie incriminating materials to proceed against the said persons namely, **Jainal Hossain of 93,Taltala lane,PS- Taltala and Azad Hasan of 50/1,Taltala lane, PS-Taltala.**

The prayer made by the prosecution is allowed.

Accordingly issue summons upon Jainal Hossain of 93,Taltala lane,PS- Taltala and Azad Hasan of 50/1,Taltala lane, PS-Taltala at once.

Fix 08.05.2025 for S/R and appearance.

Municipal Magistrate,
4th Court, Calcutta