HC-KAR

NC: 2026:KHC:17544
CRL.P No. 2272 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF MARCH, 2026

BEFORE

THE HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

CRIMINAL PETITION NO. 2272 OF 2025

BETWEEN:

1. C MAHESH KUMAR
   S/O. LATE SRI. CHIKKAIAH,
   AGED ABOUT 59 YEARS
   OCC: LIFE TRUSTEE AND
   FINANCIAL ADMINISTRATOR,
   R/AT-AVVANA MANE, GANDHINAGAR,
   BHADRAVATHI TALUK,
   SHIVAMOGGA-577 401

... PETITIONER

(BY SRI. NAGARAJ M. BHAT, ADVOCATE)

AND:

Digitally signed by PRAKASH N
Location: HIGH COURT OF KARNATAKA

1. THE STATE OF KARNATAKA BY
   PAPER TOWN POLICE STATION,
   BHADRAVATHI,
   SHIVAMOGGA DISTRICT- 577 401

   (REPRESENTED BY STATE PUBLIC PROSECUTOR,
   HIGH COURT BUILDINGS,
   BENGALURU - 560 001)

2. SRI. B.K. SHIVAKUMAR
   S/O B. KOTRAPPA,
   AGE MAJOR,

R/AT- GANDHINAGAR,
BHADRAVATHI- 577 401.

… RESPONDENTS

(BY SRI. B.N. JAGADISH, ADDL. SPP FOR R1;
SRI C.H. HANUMANTHARAYA, ADVOCATE FOR R2)

THIS CRL.P. IS FILED U/S 482 CR.PC (FILED U/S 528 BNSS) PRAYING TO QUASH THE IMPUGNED ORDER DATED 11.10.2019 PASSED BY THE LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-82) IN SPL.C.C.NO.828/2018 AND ALLOW THE APPLICATION FILED BY PROSECUTION U/S 319 OF CR.P.C. TO IMPLEAD RESPONDENT NO.2 AS ACCUSED IN THE ABOVE CASE.

THIS PETITION COMING ON FOR ORDERS THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE S SUNIL DUTT YADAV

ORAL ORDER

The present petition has been filed by the original complainant seeking to set aside the order passed by the Special Court dated 11.10.2019 in Spl.C.C.No.828/2018 dismissing the application filed under Section 319 of Cr.P.C., to implead respondent no.2 as accused.

2. The brief facts are that on the complaint filed by one Mahesh Kumar, Paper Town Police Station, Bhadravathi, have registered a case in Crime No.74/2010

for the offences punishable under Sections 120B, 147, 307 r/w 149 IPC, against five persons. It is made out that charge sheet was filed only against accused no.6.

3. It is further made out from the facts that insofar as accused no.6 against whom charge sheet was filed, the case was committed to the Sessions Court. It is made out that only subsequently, on an application filed under Section 319 of Cr.P.C., on 27.02.2017, additional accused came to be arrayed. The proceedings before the Trial Court are at the stage of final arguments.

4. The application under Section 319 to array respondent no.2 as additional accused came to be filed on 05.09.2019.

5. The averments made in the application are that there was material as against Sri.B.K.Shivakumar and that deposition of prime witnesses recorded, evidences the same. It is to be noticed that application was filed on

05.09.2019, while earlier application filed under Section 319 was on 27.02.2017.

6. Learned counsel for petitioner would submit that respondent no.2 had threatened PW.2-Jayamma of dire consequences for not having invited the Member of Legislative Assembly for the function. It is further submitted that evidence of PW.2 would support arraying respondent no.2 as accused. It is stated that the prosecution has not been conducted properly and the true accused should be brought to justice.

7. It is also contended by the learned counsel for respondent no.2 that on an earlier occasion, petition under Section 482 came to be filed by PW.2 on 19.12.2011, in which petition no allegation was made regarding leaving out of respondent no.2 as an accused.

8. Learned counsel for respondent no.2 submits that application was filed and order was passed as on 11.10.2019 and the petition itself was filed on 12.02.2025

after undue delay. It is further contended that the petition is an effort to prolong the proceedings without showing any due diligence.

9. Heard both sides.

10. Perused the order dated 11.10.2019.

11. The trial court after detailed consideration has rejected the application. The Trial court has noticed that the petitioner has merely relied on the statement of PW.2-Jayamma recorded under Section 161 Cr.P.C. The trial court has observed that reference to conversation between PW.2-Jayamma and the proposed accused by itself would not throw any light of alleged conspiracy to commit the offences as sought to be made out. It is further submitted that the application is bald and suffers from absence of material particulars.

12. The trial court has also observed that the material on record does not lead to the court recording

subjective satisfaction to array the proposed accused as co-accused.

13. It must be noticed at the outset that the application is bald as rightly pointed out by the trial court. Reliance is placed on 161 statement of PW.2-Jayamma.

14. As on the date of filing of the application i.e., on 05.09.2019, the evidence of PW.2 was not recorded, however evidence of PW.2 was recorded only on 06.12.2019. Accordingly, petitioner cannot rely on the evidence of PW.2 which was recorded subsequent to filing of the application under Section 319 Cr.P.C.

15. Even taking note of the statement of PW.2-Jayamma recorded under Section 161, it is to be noticed that the said statement though makes a reference to the threat held out by respondent no.2, however, statement under Section 161 Cr.P.C., of Mahesh Kumar does not refer to the consequent events as made out by the

petitioner by placing reliance on the statement made by PW.2-Jayamma.

16. It must be noticed that though Section 319 can be invoked as an enabling provision, however mere filing of application relying on some evidence does not lead to the logical conclusion requiring arraying of person as an additional accused. There must be some evidence worthy to be considered.

17. Insofar as quality of evidence, the Apex Court in the case of ***Labhuji Amratji Thakor and Others v. State of Gujarat and Another*** *reported in* ***(2019) 12 SCC 644*** while referring to the judgment of Constitution Bench in Hardeep Singh case has observed that: "the test has to be applied is one which is more than prima-facie case as exercised at the time off framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction."

18. In the present case, there is absolutely no material as on the date of filing of application under Section 319 which would meet the test as aforesaid. It is also necessary to note that there is no compelling duty of the court to proceed against other persons and to bring them within the ambit of trial as an additional accused unless there is additional material worthy of serious trial made against them.

19. Taking note of the bald particulars in the application and absence of justified submission to allow the application filed under Section 319 Cr.P.C., this court finds no reason to interfere with the order of the trial court.

20. Accordingly, the petition is dismissed.

Sd/-
(S SUNIL DUTT YADAV)
JUDGE

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