Reserved on : 23.01.2025
Pronounced on : 07.02.2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 07TH DAY OF FEBRUARY, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.577 OF 2025

BETWEEN:

SRI S.MUTHAIAH
S/O SANNA SURAIAH,
AGED ABOUT 68 YEARS,
RETIRED DEPUTY
CONSERVATOR OF FOREST,
BELLARY DISTRICT
RESIDING AT NO.1762, DATRI NILAYA,
SHIVAKUMARASWAMY BADAVANE
DAVANGERE – 577 005.

... PETITIONER

(BY SRI HASHMATH PASHA, SR.ADVOCATE FOR
SRI KARIAPPA N.A., ADVOCATE)

AND:

STATE BY CBI
ANTI CORRUPTION BRANCH
BENGALURU
(REPRESENTED BY
LEARNED SPECIAL

PUBLIC PROSECUTOR FOR CBI
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

... RESPONDENT

(BY SRI P.PRASANNA KUMAR, SPL.PP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DATED 6-1-2025 PASSED IN SPL.CC NO.116/2012 ON THE FILE OF HON'BLE LXXXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR ELECTED REPRESENTATIVES, MP'S/MLA'S, BANGALORE CITY AS PER ANNEXURE-'A' AND CONSEQUENTLY DIRECT THE HON'BLE TRIAL COURT TO TREAT THESE WITNESSES CW-9-M.HONNURSAB, CW-10-SANJEEV KUMAR MAHADEV AGSAR, CW-11-K.KENCHAPPA, CW-12-D.MARANNA, CW-13- SYED SHAREEF, CW-14-BASANA GOWDA, CW-15-B.SHEKAR, CW-18 - N.BASAVARAJ, CW-23- K.M.MADHUSUDAN, CW-34- MOHAMED ATAULLA, CW-37- BALLARY RAGHAVENDRA, CW-38- GANTI RAJESH, CW-47- A.A.GOPAL, CW -49-MAHANTESH S NYAMATI, CW-51 - T.K.CHANDRAPPA, CW-52-K.GANGE GOWDA, CW-53-K.C.NAGARAJAIAH, CW-54 B.NAGARAJ, CW-55 SUNIL KUMAR CHAVAN, CW-56-B.RANGAIAH, CW-57 K.R.CHETHANA, CW-58 V.NAGABHUSHAN, CW-126 - K.K.POOVAIAH IN THE CASE, NOT TO EXAMINE THEM AS WITNESSES BUT TO TREAT THEM AS ACCUSED IN ACCORDANCE WITH LAW.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.01.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/accused No.4 is at the doors of this Court calling in question an order dated 06-01-2025 passed by the LXXXI Additional City Civil and Sessions Judge and Special Judge for Elected Representatives, MPs/MLAs, Bangalore City in Special C.C.No.116 of 2012, whereby the application filed by the petitioner under Section 319 of the Cr.P.C., to treat the witnesses named in the application to be the accused and not to examine them as witnesses is rejected.

2. Heard Sri Hashmath Pasha, learned senior counsel appearing for the petitioner and Sri P. Prasanna Kumar, learned Special Public Prosecutor appearing for the respondent.

3. *Shorn* of unnecessary details, brief facts are as follows:

On 01-10-2011 the respondent/CBI registers a crime in R.C.18-A/2011 on the directions of the Apex Court against the accused for offences punishable under Sections 120B, 379, 411,

420, 427, 447, 468, 471, 477-A of the IPC and under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Post the investigation in the aforesaid crime, the CBI files its charge sheet against accused Nos. 1 to 8. The concerned Court takes cognizance of the offences and registers Special C.C.No.116 of 2012 and on 30-11-2015 the concerned Court frames its charge against the accused. The charge that was framed was that the accused have conspired and used forged permits in Form No.27 for the purpose of illegal transportation of iron ore, which is the offence punishable as afore-quoted. The trial commences and moves. On 27-07-2022 the prosecution examined 20 witnesses, out of 350 witnesses. Certain documents which are alleged to have been forged are marked as Ex.P72, Ex.P77 and Ex.P80. It was in evidence that the witnesses themselves have committed offence of forgery and fabrication of documents. The offence was signing of blank permits and allowing accused 1 to 5 and their associates to use those permits for illegal transportation and sale of illegal iron ore. 19 witnesses were said to have signed on blank permits. All the witnesses who had signed blank permits were officials in the Forest Department.

4. The petitioner files an application under Section 319 of the Cr.P.C., seeking PWs-18 to 20 and other 19 witnesses to be tried as accused for the offences committed by them and cannot be brought in as witnesses against the petitioner and other accused. On 06-01-2025 answering the said application, the concerned Court rejects it on the ground that there was no reason to bring them as accused, as the Court has not treated them as hostile. It is at that juncture the petitioner is at the doors of this Court in the subject petition.

5. The learned senior counsel Sri Hashmath Pasha appearing for the petitioner would vehemently contend that the witnesses who are named and numbered in the application are all persons who had to be accomplices of the accused. They ought not to be shown as witnesses and examined against the petitioner. They are equal to accused. They have admitted in the cross-examination that they have themselves signed on blank permits and given to the accused. Therefore, they are also guilty of the offence, but now they are being treated as witnesses against the petitioner and others. The learned senior counsel would submit that an accused posing as a

witness, cannot depose against other accused. He would submit that the Court ought to have followed the procedure under Section 319 of the Cr.P.C., to bring in those witnesses as accused.

6. Per contra, the learned Special Public Prosecutor Sri P. Prasanna Kumar representing the CBI would vehemently refute the submissions to contend that the accused cannot plead that some other person should be brought in as an accused. If at all there is evidence and if it is found necessary, the prosecution itself will file an application. That necessity has not yet arisen. It may be true that a departmental enquiry was sought to be initiated against all those witnesses who are said to be forest officials, which would not clothe the petitioner to invoke Section 319 of the Cr.P.C., to bring in those persons as accused. He would seek dismissal of the petition.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts, link in the chain of events and dates are not in dispute. The Apex Court on 23-09-2011 directed investigation to be conducted into the affairs of illegal mining. This resulted in the aforesaid crime for offences as indicated *supra*. The CBI then files the charge sheet after investigation. Charge was framed by the concerned Court against the accused on 23-07-2016. The issue in the *lis* does not pertain to the offence alleged by the CBI against the petitioner or the defence of the petitioner. The trial commenced on 30-11-2015 and PW-1 to PW-20 were examined. 23 Forest officials were sought to be examined as witnesses. The names of those forest officials and their respective witness number is as follows:

"(1)	CW-9	M.Honnursab
(2)	CW-10	Sanjeev Kumar Mahadev Agsar
(3)	CW-11	K.Kenchappa
(4)	CW-12	D.Maranna
(5)	CW-13	Syed Shareef
(6)	CW-14	Basana Gowda
(7)	CW-15	B.Shekar
(8)	CW-18	N.Basavaraj
(9)	CW-23	K.M.Madhusudan
(10)	CW-34	Mohamed Ataulla
(11)	CW-37	Ballary Raghavendra
(12)	CW-38	Ganti Rajesh
(13)	CW-47	A.A. Gopal
(14)	CW-49	Mahantesh S.Nyamati
(15)	CW-51	T.K.Chandrappa
(16)	CW-52	K.Gange Gowda

(17)	CW-53	K.C.Nagarjaiah
(18)	CW-54	B.Nagaraj
(19)	CW-55	Sunil Kumar Chavan
(20)	CW-56	B.Rangaiah
(21)	CW-57	K.R.Chethana
(22)	CW-58	V.Nagabhushan
(23)	CW-126	K.K.Poovaiah"

The allegation is that accused No.1 Sri G.Janardhana Reddy had used in Form 27, forged permits for illegal transportation of iron ore. The aforesaid 23 officials who were holding office at intermittent intervals, were said to have acted in connivance with the accused. During the investigation, the aforesaid 23 officials had tendered their statement under Section 161 of the Cr.P.C., and every one of them had confessed to the crime. The crime is of handing over blank permits with their signature. The forest officials then give their statements under Section 164 of the Cr.P.C., before the concerned Court, admitting that they had signed blank permits and those permits had been utilized by accused Nos. 1 to 5 for illegal transportation of iron ore. Permits signed by each one of the afore-quoted witnesses are appended to the petition. The kind of timber or description of forest produce is left blank. Person to whom it is issued is also left blank. This is marked as D-1977 series. Statements made under Section 161 and Section 164 of the

Cr.P.C., are also produced before the Court. Statement of one M.Honnur Sab working as Forest Guard who is also now sought to be a witness is as follows:

"…. …. ….

> Now I have also been shown book Nos. 10185 to 10203 containing office copies of Form No.27 having 50 leaves in each book from Sl. Nos. 509201 to 510150. On perusal, I state that these 19 books were also signed by me on 22-03-2010 on each leaf on the direction of Shri Mahesh A. Patil, the then Range Forest Officer, Sandur Range to save my life and family, as M/s Associated Mining Company Mines Manager Shri Sanjeev Kumar and others have threatened me to sign on them.
>
> **I further state that on 25-03-2010 Shri Sharieff, Forester, Sandur Range has told me that Shri Sanjeev Kumar, Assistant Manager (Mines), M/s Associated Mining Company has brought back the office copies of way permits issued in my name and asked me to return the same under my signature. Accordingly, I signed on the covering letter and Form No.35 kept with them and returned back. Shri Sharieff, Ballary Raghavendra and Rajesh, Foresters have checked and received back the same."**

(Emphasis added)

Sri. M.Honnur Sab is CW-9. Likewise, the Range Forest officer one K.Kenchappa who is also a witness admits the fact of signing blank permits. Every witness has tendered their statement under Section 161 of the Cr.P.C. admitting signing of blank papers. The same gets

carried out before the concerned Court. CW-10 one Sanjeev Kumar Mahadev Agsar admits to the allegation in his deposition. It reads as follows:

"…. …. ….

> 3. **The investigating officer had shown me with the books containing office copies of Form No.27 which were from 10403 to 10412 wherein each consisted of 50 leaves. On perusal of the same I had stated that A-7 Mr. Mahesh A Patil who was the then Range Forest Officer at Sandur had exerted pressure on me and had got my signature affixed to the same. I had not written the date, volume and other details in the said form No.27**. I do not have any intimation with respect to the same. The entries in the said form were made after obtaining my signature. .. .. .."

(Emphasis added)

Every other witness has the same story to tell that they were all threatened by one Sanjeev Kumar, Assistant Manager (Mines), M/s Associated Mining Company. This is the same swan song that is sung by the witnesses. On 16-03-2013 the Principal Chief Conservator of Forests communicates to the Competent Authority to initiate inquiry for the alleged acts. The communication reads as follows:-

"ಕರ್ನಾಟಕ ಅರಣ್ಯ ಇಲಾಖೆ

ಸಂಖ್ಯೆ: ಚ 2/ಸಿಇವಿ/ವಿವ/64/2011-12

ಪ್ರಧಾನ ಮುಖ್ಯ ಅರಣ್ಯ ಸಂರಕ್ಷಣಾಧಿಕಾರಿ
(ಅರಣ್ಯ ಪಡೆ ಮುಖ್ಯಸ್ಥರು)
ಇವರ ಕಛೇರಿ, ಅರಣ್ಯ ಭವನ, ಮಲ್ಲೇಶ್ವರಂ,
ಬೆಂಗಳೂರು -3 , ದಿನಾಂಕ: 16.03.2013.

ಇವರಿಗೆ,

ಮುಖ್ಯ ಅರಣ್ಯ ಸಂರಕ್ಷಣಾಧಿಕಾರಿ,
ಬಳ್ಳಾರಿ ವೃತ್ತ,
ಬಳ್ಳಾರಿ

ವಿಷಯ: ಬಳ್ಳಾರಿ ಅಕ್ರಮ ಗಣಿಗಾರಿಕೆಯಲ್ಲಿ ಭಾಗಿಯಾಗಿದ್ದರೆಂದು ಮಾನ್ಯ ಲೋಕಾಯುಕ್ತರು ನೀಡಿದ ವರದಿಯ ಆಧಾರದಲ್ಲಿ ವನಪಾಲಕ, ಅರಣ್ಯ ರಕ್ಷಕ, ಆರಣ್ಯ ವೀಕ್ಷಕ, ಮತ್ತು ದ್ವಿತೀಯ ದರ್ಜೆ ಸರ್ವೇಯರ್ ಮೇಲಿನ ಶಿಸ್ತುಕ್ರಮದ ಕುರಿತು.

ಉಲ್ಲೇಖ: 1. ನಿಮ್ಮ ಕಚೇರಿಯ ದಿನಾಂಕ: 24.07.2012 ರ ಸಂ: ಎ4; ಸಿಬ್ಬಂದಿ ಶಿಸ್ತುಕ್ರಮ 2012-13ರ ಪತ್ರ.

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ಬಳ್ಳಾರಿ ಅಕ್ರಮ ಗಣಿಗಾರಿಕೆಯಲ್ಲಿ ಭಾಗಿಯಾಗಿದ್ದಾರೆ ಎನ್ನಲಾದ ವನಪಾಲಕರುಗಳ ಮೇಲೆ ಕರಡು ರೋಷಾರೋಪಣಾ ಪಟ್ಟಿಗಳನ್ನು ಈ ಕಚೇರಿಗೆ ಉಲ್ಲೇಖದ ಪತ್ರದಲ್ಲಿ ಸಲ್ಲಿಸಿರುತ್ತೀರಿ. ಹಾಗೆಯೇ ಅದರೊಂದಿಗೆ ಸಿಬಿಐ ಅಧಿಕಾರಿಗಳು ನಿಮಗೆ ಪತ್ರ ಬರೆದು ಅವರಿಗೆ ಸೆಕ್ಷನ್ 161 ಮತ್ತು 164 ಸಿಆರ್‌ಪಿಸಿ ಅಡಿ ಹೇಳಿಕೆ ನೀಡಿದ ವನಪಾಲಕರುಗಳ ವಿರುದ್ಧ ಕ್ರಮವನ್ನು ತಡೆಹಿಡಿಯಲು ಕೋರಿದ ಪತ್ರದ ಪ್ರತಿಯನ್ನು ಸಹ ಸಲ್ಲಿಸಿರುತ್ತೀರಿ.

ವನಪಾಲಕರು ಹಾಗೂ ಕೆಳಗಿನ ಸಿಬ್ಬಂದಿಗಳಿಗೆ ಗರಿಷ್ಟ ದಂಡನೆಯನ್ನು ನೀಡುವ ಶಿಸ್ತು ಪ್ರಾಧಿಕಾರ ನಿಮಗೆ ಇರುತ್ತದೆ. ಆದ್ದರಿಂದ, ಸಿಬಿಐ ಅಧಿಕಾರಿಗಳು ಹೇಳಿದ ವನಪಾಲಕರನ್ನು ಹೊರತುಪಡಿಸಿ, ಉಳಿದ ವನಪಾಲಕರುಗಳು ವಿರುದ್ಧ ಲೋಕಾಯುಕ್ತ ವರದಿಯಲ್ಲಿ ಹೇಳಿರುವ ಇತರೆ ಆರೋಪಗಳ ಮೇಲೆ ನಿಮ್ಮ ವತಿಯಿಂದ ಶಿಸ್ತುಕ್ರಮ ಕೈಗೊಳ್ಳಲು ಸೂಚಿಸಿದೆ.

ಯಾರ-ಯಾರ ವಿರುದ್ಧ ಯಾವ-ಯಾವ ಆರೋಪಗಳ ಮೇಲೆ ಶಿಸ್ತುಕ್ರಮ ಕೈಗೊಳ್ಳಬೇಕೆಂಬ ಬಗ್ಗೆ ಸ್ಪಷ್ಟೀಕರಣ ಬೇಕಾಗಿದ್ದಲ್ಲಿ ಸಿಬಿಐ ಅಧಿಕಾರಿಗಳನ್ನು ಸಂಪರ್ಕಿಸಿ, ಸ್ಪಷ್ಟೀಕರಣ ಪಡೆದು ಮುಂದುವರೆಯಲು ಸೂಚಿಸಿದೆ. ನೀವು ಸಲ್ಲಿಸಿದ ಎಲ್ಲಾ ದಾಖಲಾತಿಗಳನ್ನು ಈ ಲಗತ್ತು ಹಿಂದಿರುಗಿಸಿದೆ.

ಸಹಿ/-

ಪ್ರಧಾನ ಮುಖ್ಯ ಅರಣ್ಯ ಸಂರಕ್ಷಣಾಧಿಕಾರಿ
(ಮುಖ್ಯಸ್ಥರು, ಅರಣ್ಯ ಪಡೆ)''

But, by then the CBI had communicated to the Deputy Conservator of Forests to keep the departmental enquiry in abeyance. The communication reads as follows:

"No.C2/RC.18(A)/2011/CBI/ACB/BLR/2012/3410

Dated: 26-04-2012

To

The Deputy Conservator of Forests,
Forest Department,
Bellary Division,
Bellary.

Sir,

Sub: RC No.18(A)/2011 – BLR – Providing certified copies of Form-27 pertaining to M/s AMC for preparing charges against Accused Government Officials (AGO) – reg.

Ref: Your letter No.Store/BLY/Form-27/AMC/2011-12 dated 20-04-2012.

-0-

With reference to your letter cited above, this is to inform that since the said case is still under investigation the Forest Department is hereby advised to keep the Departmental action in abeyance, until the trial in this case is over, against the foresters who had given statement to CBI u/s 161 and 164 Cr.P.C.

Yours faithfully,
Sd/-
(R.Hithendra)
Head of Branch,
CBI:ACB:Bangalore."

In the light of the later communication, it appears, departmental enquiry is initiated and charge sheets are issued against all the witnesses afore-quoted. The charge sheets so issued are produced before this Court. The charges are issued against CW-10, CW-14, CW-37, CW-38, CW-54, CW-55, CW-57 and CW-126. The allegation against those accused in the charge sheet is signing of blank permits. It is at that juncture, the petitioner files an application under Section 319 of the Cr.P.C., seeking to draw those witnesses as accused into the web of proceedings, on the principle that a witness who is also an accused cannot depose against any other accused, unless he is granted pardon under Section 306 or Section 307 of the IPC.

9. The issue now would be, **whether the witnesses who are *particeps criminis* can depose against other accused and whether they can be transposed under Section 319 of the Cr.P.C., from the status of witnesses to accused**?

10. In that light, I deem it appropriate to notice the law as elucidated by the Apex Court interpreting the purport of Section 319 of the Cr.P.C. A Constitution Bench of the Apex Court in the

case of **HARDEEP SINGH v. STATE OF PUNJAB**[1]**,** considers this issue and holds as follows:

> ***"Question (i) — What is the stage at which power under Section 319 CrPC can be exercised?***
>
> **25.** The stage of inquiry and trial upon cognizance being taken of an offence, has been considered by a large number of decisions of this Court and that it may be useful to extract the same hereunder for proper appreciation of the stage of invoking of the powers under Section 319 CrPC to understand the meaning that can be attributed to the words "inquiry" and "trial" as used under the section.
>
> … … …
>
> **39.** Section 2(*g*) CrPC and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under CrPC by the Magistrate or the court. The word "inquiry" is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial.
>
> **40.** Even the word "course" occurring in Section 319 CrPC, clearly indicates that the power can be exercised only during the period when the inquiry has been commenced and is going on or the trial which has commenced and is going on. It covers the entire wide range of the process of the pre-trial and the trial stage. The word "course" therefore, allows the court to invoke this power to proceed against any person from the initial stage of inquiry up to the stage of the conclusion of the trial. The court does not become functus officio even if cognizance is taken so far as it is looking into the material qua any other person who is not an accused. The word "course" ordinarily conveys a meaning of a continuous progress from one point to the next in time and conveys the idea of a period of time :

[1] **(2014) 3 SCC 92**

duration and not a fixed point of time. (See *CIT* v. *East West Import & Export (P) Ltd.* [(1989) 1 SCC 760 : 1989 SCC (Tax) 208 : AIR 1989 SC 836])

41. In a somewhat similar manner, it has been attributed to the word "course" the meaning of being a gradual and continuous flow advanced by journey or passage from one place to another with reference to period of time when the movement is in progress. (See *State of Travancore-Cochin* v. *Shanmugha Vilas Cashewnut Factory* [(1953) 1 SCC 826 : AIR 1953 SC 333] .)

42. To say that powers under Section 319 CrPC can be exercised only during trial would be reducing the impact of the word "inquiry" by the court. It is a settled principle of law that an interpretation which leads to the conclusion that a word used by the legislature is redundant, should be avoided as the presumption is that the legislature has deliberately and consciously used the words for carrying out the purpose of the Act. The legal maxim *a verbislegis non estrecedendum* which means, "from the words of law, there must be no departure" has to be kept in mind.

43. The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology, etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot rewrite, recast or reframe the legislation for the reason that it has no power to legislate.

… … …

Question (iii)—Whether the word "evidence" used in Section 319(1) CrPC has been used in a comprehensive sense and includes the evidence collected during

investigation or the word "evidence" is limited to the evidence recorded during trial?

58. To answer the questions and to resolve the impediment that is being faced by the trial courts in exercising of powers under Section 319 CrPC, the issue has to be investigated by examining the circumstances which give rise to a situation for the court to invoke such powers. The circumstances that lead to such inference being drawn up by the court for summoning a person arise out of the availability of the facts and material that come up before the court and are made the basis for summoning such a person as an accomplice to the offence alleged to have been committed. **The material should disclose the complicity of the person in the commission of the offence which has to be the material that appears from the evidence during the course of any inquiry into or trial of offence. The words as used in Section 319 CrPC indicate that the material has to be "where … it appears from the *evidence*" before the court.**

… … …

76. Ordinarily, it is only after the charges are framed that the stage of recording of evidence is reached. A bare perusal of Section 227 CrPC would show that the legislature has used the terms "record of the case" and the "documents submitted therewith". It is in this context that the word "evidence" as appearing in Section 319 CrPC has to be read and understood. The material collected at the stage of investigation can at best be used for a limited purpose as provided under Section 157 of the Evidence Act i.e. to corroborate or contradict the statements of the witnesses recorded before the court. Therefore, for the exercise of power under Section 319 CrPC, the use of word "evidence" means material that has come before the court during an inquiry or trial by it and not otherwise. If from the evidence led in the trial the court is of the opinion that a person not accused before it has also committed the offence, it may summon such person under Section 319 CrPC.

77. With respect to documentary evidence, it is sufficient, as can be seen from a bare perusal of Section 3 of the Evidence Act as well as the decision of the Constitution Bench [*RamnarayanMor* v. *State of Maharashtra*, AIR 1964 SC 949 : (1964) 2 Cri LJ 44] , that a document is required to be produced

and proved according to law to be called evidence. Whether such evidence is relevant, irrelevant, admissible or inadmissible, is a matter of trial.

78. It is, therefore, clear that 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. 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.

79. The inquiry by the court is neither attributable to the investigation nor the prosecution, but by the court itself for collecting information to draw back a curtain that hides something material. It is the duty of the court to do so and therefore the power to perform this duty is provided under CrPC.

80. The unveiling of facts other than the material collected during investigation before the Magistrate or court before trial actually commences is part of the process of inquiry. Such facts when recorded during trial are evidence. It is evidence only on the basis whereof trial can be held, but can the same definition be extended for any other material collected during inquiry by the Magistrate or court for the purpose of Section 319 CrPC?

81. An inquiry can be conducted by the Magistrate or court at any stage during the proceedings before the court. This power is preserved with the court and has to be read and understood accordingly. The outcome of any such exercise should not be an impediment in the speedy trial of the case. Though the facts so received by the Magistrate or the court may not be evidence, yet it is some material that makes things clear and unfolds concealed or deliberately suppressed material that may facilitate the trial. In the context of Section 319 CrPC it is an information of complicity. Such material therefore, can be used even though not an evidence in strictosensu, but an information on record collected by the court during inquiry itself, as a prima facie satisfaction for exercising the powers as presently involved.

82. This pre-trial stage is a stage where no adjudication on the evidence of the offences involved takes place and therefore, after the material along with the charge-sheet has been brought before the court, the same can be inquired into in order to effectively proceed with framing of charges. After the charges are framed, the prosecution is asked to lead evidence and till that is done, there is no evidence available in the strict legal sense of Section 3 of the Evidence Act. The actual trial of the offence by bringing the accused before the court has still not begun. What is available is the material that has been submitted before the court along with the charge-sheet. In such situation, the court only has the preparatory material that has been placed before the court for its consideration in order to proceed with the trial by framing of charges.

83. It is, therefore, not any material that can be utilised, rather it is that material after cognizance is taken by a court, that is available to it while making an inquiry into or trying an offence, that the court can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the court, who may be on the basis of such material, treated to be an accomplice in the commission of the offence. The inference that can be drawn is that material which is not exactly evidence recorded before the court, but is a material collected by the court, can be utilised to corroborate evidence already recorded for the purpose of summoning any other person, other than the accused. This would harmonise such material with the word "evidence" as material that would be supportive in nature to facilitate the exposition of any other accomplice whose complicity in the offence may have either been suppressed or escaped the notice of the court.

(Emphasis supplied)

Another Constitution Bench in the case of **SUKHPAL SINGH KHAIRA v. STATE OF PUNJAB**[2], laid down certain principles for exercise of power under Section 319 of the Cr.P.C., as follows:

"…. …. ….

> **33. In that view of the matter, if the court finds from the evidence recorded in the process of trial that any other person is involved, such power to summon the accused under Section 319CrPC can be exercised by passing an order to that effect before the sentence is imposed and the judgment is complete in all respects bringing the trial to a conclusion. While arriving at such conclusion what is also to be kept in view is the requirement of sub-section (4) to Section 319CrPC. From the said provision it is clear that if the learned Sessions Judge exercises the power to summon the additional accused, the proceedings in respect of such person shall be commenced afresh and the witnesses will have to be re-examined in the presence of the additional accused**. In a case where the learned Sessions Judge exercises the power under Section 319CrPC after recording the evidence of the witnesses or after pronouncing the judgment of conviction but before sentence being imposed, the very same evidence which is available on record cannot be used against the newly added accused in view of Section 273CrPC. As against the accused who has been summoned subsequently a fresh trial is to be held. However while considering the application under Section 319CrPC, if the decision by the learned Sessions Judge is to summon the additional accused before passing the judgment of conviction or passing an order on sentence, the conclusion of the trial by pronouncing the judgment is required to be withheld and the application under Section 319CrPC is required to be disposed of and only then the conclusion of the judgment, either to convict the other accused who were before the Court and to sentence them can be proceeded with. This is so since the power under Section 319CrPC can be exercised only before the

[2] **(2023) 1 SCC 289**

conclusion of the trial by passing the judgment of conviction and sentence.

34. Though Section 319CrPC provides that such person summoned as per sub-section (1) thereto could be jointly tried together with the other accused, keeping in view the power available to the court under Section 223CrPC to hold a joint trial, it would also be open to the learned Sessions Judge at the point of considering the application under Section 319CrPC and deciding to summon the additional accused, to also take a decision as to whether a joint trial is to be held after summoning such accused by deferring the judgment being passed against the tried accused. If a conclusion is reached that the fresh trial to be conducted against the newly added accused could be separately tried, in such event it would be open for the learned Sessions Judge to order so and proceed to pass the judgment and conclude the trial insofar as the accused against whom it had originally proceeded and thereafter proceed in the case of the newly added accused. However, what is important is that the decision to summon an additional accused either *suomotu* by the court or on an application under Section 319CrPC shall in all eventuality be considered and disposed of before the judgment of conviction and sentence is pronounced, as otherwise, the trial would get concluded and the court will get divested of the power under Section 319CrPC. Since a power is available to the court to decide as to whether a joint trial is required to be held or not, this Court was justified in holding the phrase, "could be tried together with the accused" as contained in Section 319(1)CrPC, to be directory as held in *Shashikant Singh* [*Shashikant Singh* v. *Tarkeshwar Singh*, (2002) 5 SCC 738 : 2002 SCC (Cri) 1203] which in our opinion is the correct view.

35. One other aspect which is necessary to be clarified is that if the trial against the absconding accused is split up (bifurcated) and is pending, that by itself will not provide validity to an application filed under Section 319CrPC or the order of court to summon an additional accused in the earlier main trial if such summoning order is made in the earlier concluded trial against the other accused. This is so, since such power is to be exercised by the court based on the evidence recorded in that case pointing to the involvement of the accused who is sought to be summoned. If in the split up (bifurcated)

case, on securing the presence of the absconding accused the trial is commenced and if in the evidence recorded therein it points to the involvement of any other person as contemplated in Section 319CrPC, such power to summon the accused can certainly be invoked in the split up (bifurcated) case before conclusion of the trial therein.

… … …

39.(I) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial with respect to other co-accused has ended and the judgment of conviction rendered on the same date before pronouncing the summoning order?

The power under Section 319CrPC is to be invoked and exercised before the pronouncement of the order of sentence where there is a judgment of conviction of the accused. In the case of acquittal, the power should be exercised before the order of acquittal is pronounced. Hence, the summoning order has to precede the conclusion of trial by imposition of sentence in the case of conviction. If the order is passed on the same day, it will have to be examined on the facts and circumstances of each case and if such summoning order is passed either after the order of acquittal or imposing sentence in the case of conviction, the same will not be sustainable.

40.(II) Whether the trial court has the power under Section 319CrPC for summoning additional accused when the trial in respect of certain other absconding accused (whose presence is subsequently secured) is ongoing/pending, having been bifurcated from the main trial?

The trial court has the power to summon additional accused when the trial is proceeded in respect of the absconding accused after securing his presence, subject to the evidence recorded in the split-up (bifurcated) trial pointing to the involvement of the accused sought to be summoned. But the evidence recorded in the main concluded trial cannot be the basis of the summoning order if such power has not been exercised in the main trial till its conclusion.

41.(III) What are the guidelines that the competent court must follow while exercising power under Section 319CrPC?

41.1. If the competent court finds evidence or if application under Section 319CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

41.2. The court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

41.3. If the decision of the court is to exercise the power under Section 319CrPC and summon the accused, such summoning order shall be passed before proceeding further with the trial in the main case.

41.4. If the summoning order of additional accused is passed, depending on the stage at which it is passed, the court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

41.5. If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

41.6. If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the court to continue and conclude the trial against the accused who were being proceeded with.

41.7. If the proceeding paused as in para 41.1 above, is in a case where the accused who were tried are to be acquitted, and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

41.8. If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319CrPC can be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split-up (bifurcated) trial.

41.9. If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319CrPC, the appropriate course for the court is to set it down for re-hearing.

41.10. On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

41.11. Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and *de novo* proceedings be held.

41.12. If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier:

(*a*) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.

(*b*) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused."

(Emphasis supplied)

The Apex Court in the case of **RAGHUVEER SHARAN v. DISTRICT SAHAKARI KRISHI GRAMIN VIKAS BANK**[3], steers clear the controversy as follows:

> "***ANALYSIS***
>
> **9. The issue to be decided herein is whether in the facts and circumstances of the case, the appellant is entitled for protection under Section 132 of the Act, as his statement was recorded earlier at the pre-summoning stage as a witness for the complainant/respondent bank.**
>
> **10.** Before proceeding further, it would be appropriate to refer and reproduce the provisions contained in Section 132 of the Indian Evidence Act, 1872 as under:—
>
> > **"132. Witness not excused from answering on ground that answer will criminate. -**
> >
> > A witness shall not be excused from answering any question, as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind:
> >
> > Proviso : - Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him, in any criminal proceeding, except a prosecution for giving false evidence by such answer."
>
> **11.** In order to have clear understanding of the sweep and import of the provisions contained in Section 132 of the Act and the proviso, in particular, it is necessary to dwell on the principle on which the provision is introduced in the statute.

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[3] **2024 SCC OnLine SC 2489**

12. The proviso to Section 132 of the Act is based on the maxim nemo *Teneturprodereseipsum* i.e. no one is bound to criminate himself and to place himself in peril. In this regard the law in England, (with certain exceptions) is that a witness need not answer any question, the tendency of which is to expose the witness, or to feed hand of the witness, to any criminal charge, penalty or forfeiture[6]. The privilege is based on the principle of encouraging all persons to come forward with evidence, by protecting them, as far as possible, from injury or needless annoyance in consequence of so doing[7]. This absolute privilege, in some cases tended to bring about a failure of justice, for the allowance of the excuse, particularly when the matter to which the question related was in the knowledge solely of the witness, deprived the court of the information which was essential to its arriving at a right decision.

13. In order to avoid this inconvenience, Section 132 of the Act, withdrew this absolute privilege and affords only a qualified privilege. The witness is deprived of the privilege of claiming excuse from testifying altogether; but, while subjecting him to compulsion, the legislature, in order to remove any inducement to falsehood, declared that evidence so obtained should not be used against him, except for the purpose in the Act declared.

14. It must also be borne in mind that the proviso to Section 132 of the Act is also an extension of the protection enshrined under Article 20(3) of the Constitution of India which confers a fundamental right that "no person accused of any offence shall be compelled to be a witness against himself". Under the constitutional scheme, the right is available only to a person who is accused of an offence, the proviso to Section 132 of the Act, in extension, creates a statutory immunity in favour of a witness who in the process of giving evidence in any suit or in any civil or criminal proceeding makes a statement which criminates himself. It is settled that the proviso to Section 132 of the Act is a necessary corollary to the principle enshrined under Article 20(3) of the Constitution of India which confers a fundamental right that "no person accused of any offence shall be compelled to be a witness against himself".

15. A perusal of the legislative history would reveal that the object of the law is to secure evidence which could not have

been obtained. The purpose for granting such a statutory immunity was to enable the court to reach a just conclusion (and thus assisting the process of law).

16. In *R. Dinesh Kumar alias Deena* (supra), the two judges Bench of this Court observed, after referring to Justice MuttusamiAyyar's opinion in the matter of "*The Queen* v. *Gopal Doss*" that the policy under Section 132 of the Act appears to be to secure the evidence from whatever sources it is available for doing justice in a case brought before the court. In the course of securing such evidence, if a witness who is under obligation to state the truth because of the Oath taken by him makes any statement which will criminate or tend to expose such a witness to a "penalty or forfeiture of any kind etc.", the proviso grants immunity to such a witness by declaring that "no such answer given by the witness shall subject him to any arrest or prosecution or be proved against him in any criminal proceeding". This Court in *R. Dinesh Kumar alias Deena* (supra) further observed in para 47 that no prosecution can be launched against the maker of a statement falling within the sweep of Section 132 of the Act on the basis of the "answer" given by a person while deposing as a "witness" before a Court. We are in agreement with the view taken by this Court in *R. Dinesh Kumar alias Deena* (supra). **However, the facts of the present case compel us to consider the matter in a different perspective as to when apart from his own statement made by a witness, he is still protected under the proviso of Section 132 of the Act when there is other material against him for summoning as an accused. In *R. Dinesh Kumar alias Deena* (supra) a witness examined as PW-64 during trial was sought to be summoned by moving an application under Section 319 Cr. P.C. The Trial Court dismissed the application, and the High Court affirmed the dismissal order. The High Court, in the said case, observed in para 64 that PW-64 cannot be prosecuted by summoning him as an additional accused under Section 319 Cr. P.C. on the basis of his evidence in the Sessions Case. However, the High Court held that PW-64 could be separately prosecuted for an offence under Section 120B of the Penal Code, 1860 read with Section 302 of IPC if independent evidence other than the statement under Section 164 Cr. P.C. of PW-64 and his**

evidence in Sessions Case are available to prosecute him along with other accused.

17. This Court in *R. Dinesh Kumar alias Deena* (supra) refused to consider the issue as to whether a witness protected under the proviso of Section 132 of the Act could be separately prosecuted if independent evidence is also available by observing thus in paras 7 & 52:

> "7. In our opinion, the second conclusion recorded by the High Court contained in para 64 extracted above, is really uncalled for in the context of the issue before the High Court. The question before the High Court was whether the Sessions Court was justified in declining to summon PW 64 in exercise of its authority under Section 319 of the Cr. P.C. as an additional accused in Sessions Case No. 73 of 2009. We, therefore, will examine only the question whether on the facts mentioned earlier the Sessions Court is obliged to summon PW 64 as an additional accused exercising the power under Section 319 of the Cr. P.C.
>
> 52. In the light of the above two decisions, the proposition whether the prosecution has a liberty to examine any person as a witness in a criminal prosecution notwithstanding that there is some material available to the prosecuting agency to indicate that such a person is also involved in the commission of the crime for which the other accused are being tried, requires a deeper examination."

18. In other words, if the privilege made available to a witness under the proviso to Section 132 of the Act is interpreted as a complete immunity, notwithstanding availability of other evidence, it is capable of abuse. In a particular case, a dishonest Investigating officer could cite a person as a witness in the report under Section 173 of the Cr. P.C., being fully aware that there is incriminating material against such person. Similarly, a man complicit of an offence, could very well institute a complaint under Section 200 Cr. P.C., examine himself as a witness, make statements incriminating himself and claim immunity from prosecution. It could also be so that an investigating officer, under an honest mistake examines a man complicit of an offence as a witness in the case, the Court upon examining the other evidence,

could conclude that the witness was complicit in the offence, the question then would be whether there would be complete bar on the Court to prosecute such witness for the offence on the basis of such other material.

19. The question that would then arise is whether the qualified privilege under the proviso to Section 132 of the Act, grants complete immunity to a person who has deposed as a witness (and made statements incriminating himself), notwithstanding the availability of other material with the prosecution?

> a. Whether a Court while trying an offence, is barred from initiating process under Section 319 of the Cr. P.C., against a witness in the said proceeding on the basis of other material on record?

20. As noted above, the qualified privilege under the proviso to Section 132 of the Act, is intended to ensure that all the evidence is placed before the Court to reach a just conclusion. In our view, it is not fathomable that a provision in the Evidence Act, the primary purpose of which was to ensure that all the material is before the Court and ensure that the ends of justice are met, could itself grant a blanket immunity to a witness (albeit complicit). Such an interpretation in our opinion would be unsustainable. Needless to say, that his statement cannot be used for any purpose whatsoever for the purposes of bringing such witness to trial. As such we hold that the qualified privilege under the proviso to Section 132 of the Act does not grant complete immunity from prosecution to a person who has deposed as a witness (and made statements incriminating himself).

21. However, the next question that would arise is what is the course available to a Court, which in the course of trial is confronted with evidence, other than the statement of the witness (against whom incriminating material is available)? Whether the Court can rely upon the statement of the witness for invoking the provisions of Section 319 Cr. P.C.? Whether reference to any statement tendered by the witness would vitiate the order under Section 319 Cr. P.C.?

> **22. There cannot be an absolute embargo on the Trial Court to initiate process under Section 319 Cr. P.C., merely because a person, who though appears to be complicit has deposed as a witness. The finding to invoke Section 319 Cr. P.C., must be based on the evidence that has come up during the course of Trial. There must be additional, cogent material before the Trial Court apart from the statement of the witness.**
>
> **23. An order for initiation of process under Section 319 Cr. P.C. against a witness, who has deposed in the trial and has tendered evidence incriminating himself, would be tested on the anvil that whether only such incriminating statement has formed the basis of the order under Section 319 Cr. P.C. At the same time, mere reference to such statement would not vitiate the order. The test would be as to whether, even if the statement of witness is removed from consideration, whether on the basis of other incriminating material, the Court could have proceeded under Section 319 Cr. P.C."**
>
> (Emphasis supplied)

The Apex Court considers all the earlier judgments and answers the question that the Court while trying an offence is not barred from initiating process under Section 319 of the Cr.P.C., against a witness in the said proceeding, on the basis of other material on record. The Apex Court answers that it is a course permissible in law, as Section 132 offers statutory immunity against self-incrimination which a witness shall be compelled to keep. The witness who is in a position of accomplice can always be dragged to the position of an accused, only by following due process of law.

11. These authorities were placed before the concerned Court. The concerned Court has rejected the application without even initiating the process under Section 319 of the Cr.P.C., and hearing those accused on the issue of such transposition. The concerned Court answers as follows:

> "…. …. ….
>
> 33. Admittedly, in the present case, the aforesaid witnesses had not sought any order of pardon from the hands of this Court, but at the same time, that the forest officials are deposing before the Court about the pressure exerted by accused No.1 to affix their signature for signed blank permits. Though it has been vehemently argued by the learned Senior Counsel that issuance of signed blank permits by themselves would indicate their active participation by the said witnesses with other accused persons. Though the said submission seems to be attractive at the first instance, the court is required to consider the materials which are available on record in order to summon any party as additional accused person. In the instant case, the witnesses have deposed of exerting political pressure by accused No.1 G.Janardhana Reddy who was the then District in-charge Minister and also the role played by the other accused persons i.e., accused No.7 Mahesh Patil, accused No.8 Ramamurthy, accused No.4 S. Muthaiah, who were all holding coveted positions in the State Government and especially in the Forest Department and Department of Mines and Geology. Unless the court is satisfied with respect to the materials available on record, which would indicate that the materials available are on higher pedestal than that of the other accused persons, the application cannot be allowed in a mechanical manner. Even otherwise, at this juncture, only the evidence of PW-18 to 20 has been commenced and in particularly, only chief examination has been conducted. On the completion of chief - examination of PW-18 Sanjeev Kumar Mahadev Agsar the cross came to be deferred and whereas with respect to PW-19 Chethan the further cross-examination was deferred for

producing certain documents and whereas PW-20 Basanagouda, the cross-examination was deferred on the request being made by the learned counsel for accused persons. By considering the aforesaid aspects, it is apparent that still there are not sufficient materials to summon the aforesaid witnesses as additional accused persons at this juncture. As laid down by the Hon'ble Apex Court the degree of satisfaction at the time of summoning additional accused persons should be much higher than the ordinary circumstance. As such this court is of the opinion that the application has been filed prematurely and the same is devoid of merits at this juncture. It is made clear that if the materials are available subsequently, the accused shall be at liberty to file application under Section 319 of Cr.P.C if advised. By pointing out the said aspects, the points for consideration is answered in the **Negative**.

34. **Point No.2**: In view of my findings on point No.1, I proceed to pass the following:

ORDER

The application filed by accused No.4 S.Muthaiah under Section 319 of Cr.P.C., is hereby dismissed.

For FDT, call on 9-01-2025."

The concerned Court has misdirected itself in considering that those witnesses have not sought pardon. If they have not sought pardon, they cannot be examined as accused. An accused can seek pardon and become an approver and depose against the other accused. It is ununderstandable as to how prosecution witnesses can seek pardon and depose against the other accused. But, in the case at hand they are witnesses who are participants in the crime. Participants in the crime to some extent, as they have admitted

signing blank documents. If they admit signing blank documents, then they become accomplice, along with other accused who could be charged with some of the offences. Therefore, it is rudimentary that an accused cannot be a witness on behalf of the prosecution, and a person who is admittedly guilty cannot run away from punishment, merely because he has been arrayed as a witness. **He cannot be in a position of prosecution witness if he is *particeps criminis,*** *except in accordance with law*. In that light, the concerned Court has fallen in error to have rejected the application. The application should have merited consideration and the procedure stipulated in law *qua* Section 319 of the Cr.P.C. ought to have been followed. Therefore, the order, impugned becomes unsustainable.

12. For the aforesaid reasons, the following:

O R D E R

(i) Criminal Petition is allowed in part.

(ii) The order dated 06-01-2025 passed by the LXXXI Additional City Civil and Sessions Judge and Special Judge for Elected Representatives, MPs/MLAs,

Bangalore City in Special C.C.No.116 of 2012 is quashed.

(iii) The concerned Court shall now answer the application under Section 319 of the Cr.P.C. in accordance with law, bearing in mind the observations made in the course of the order.

(iv) The concerned Court is at liberty to regulate its procedure towards compliance with the order passed by this Court. Till the exercise as above gets over, the afore-named witnesses shall not be examined as prosecution witnesses.

SD/-

JUSTICE M.NAGAPRASANNA

Bkp
CT:MJ