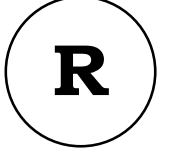


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF JULY, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA



CRIMINAL PETITION No. 8421 OF 2022

C/W

CRIMINAL PETITION No.8740 OF 2022

CRIMINAL PETITION No.8741 OF 2022

CRIMINAL PETITION No.8742 OF 2022

CRIMINAL PETITION No.8768 OF 2022

CRIMINAL PETITION No.8797 OF 2022

CRIMINAL PETITION No.8800 OF 2022

CRIMINAL PETITION No.8805 OF 2022

IN CRIMINAL PETITION No. 8421 OF 2022

BETWEEN:

SRI C.P.YOGESHWARA
S/O SRI PUTTAMADEGOWDA
AGED ABOUT 58 YEARS
FORMER MANAGING DIRECTOR OF
MEGACITY (BENGALURU) DEVELOPERS
AND BUILDERS LIMITED
NO.464, 1ST 'G' CROSS
2ND PHASE, BSK 3RD STAGE
BENGALURU - 560 085.

... PETITIONER

(BY SRI KIRAN S.JAVALI, SENIOR ADVOCATE FOR
SRI ARJUN P. K., ADVOCATE)

AND:

- 1 . SERIOUS FRAUD INVESTIGATION OFFICE
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN
CGO COMPLEX, LODHI ROAD
NEW DELHI - 110 003.
REPRESENTED BY ITS
ASSISTANT DIRECTOR.

- 2 . MEGACITY (BANGALORE) DEVELOPERS
AND BUILDERS LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
NO.120, MEGA TOWER
KENGAL HANUMANTHAIHAH ROAD
REPRESENTED BY ITS
NOMINEE DIRECTOR
SRI SAJEEVAN C. V.,

... RESPONDENTS

(BY SRI MADHUKAR DESHPANDE, SPL.CGSC FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING THAT THIS HONBLE COURT MAY BE PLEASED TO SET ASIDE THE ORDER DATED 08.07.2022 PASSED BY THE HONBLE XLII A.C.M.M., AT BENGALURU IN C.C.NO.30796/2021 (ANNEXURE-A).

IN CRIMINAL PETITION No.8740 OF 2022

BETWEEN:

SRI C.P.YOGESHWARA
S/O SRI PUTTAMADEGOWDA
AGED ABOUT 58 YEARS,
FORMER MANAGING DIRECTOR OF

MEGACITY (BENGALURU) DEVELOPERS
AND BUILDERS LIMITED
NO.464, 1ST 'G' CROSS
2ND PHASE, BSK 3RD STAGE
BENGALURU - 560 085.

... PETITIONER

(BY SRI KIRAN S.JAVALI, SENIOR ADVOCATE FOR
SRI ARJUN P. K., ADVOCATE)

AND:

1 . SERIOUS FRAUD INVESTIGATION OFFICE
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN
CGO COMPLEX, LODHI ROAD
NEW DELHI - 110 003
REPRESENTED BY ITS
ASSISTANT DIRECTOR.

2 . MEGACITY (BANGALORE) DEVELOPERS
AND BUILDERS LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
NO.120, MEGA TOWER
KENGAL HANUMANTHAIAH ROAD
BENGALURU - 560 027
REPRESENTED BY ITS
NOMINEE DIRECTOR
SRI SAJEEVAN C.V.,

... RESPONDENTS

(BY SRI GOWTHAMDEV C.ULLAL, CGC FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 08.07.2022 PASSED BY THE HONBLE XLII ADDL.C.M.M., AT BENGALURU IN C.C.NO.30788/2021 (ANNEXURE-A) AND CONSEQUENTLY DISCHARGE RESPONDENT NO.2 IN THE SAID PROCEEDINGS.

IN CRIMINAL PETITION No.8741 OF 2022

BETWEEN:

SRI C.P.YOGESHWARA
S/O SRI PUTTAMADEGOWDA
AGED ABOUT 58 YEARS
FORMER MANAGING DIRECTOR OF
MEGACITY (BENGALURU) DEVELOPERS
AND BUILDERS LIMITED
NO.464, 1ST 'G' CROSS
2ND PHASE, BSK 3RD STAGE
BENGALURU - 560 085.

... PETITIONER

(BY SRI KIRAN S.JAVALI, SENIOR ADVOCATE FOR
SRI ARJUN P. K., ADVOCATE)

AND:

- 1 . SERIOUS FRAUD INVESTIGATION OFFICE
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN
CGO COMPLEX, LODHI ROAD
NEW DELHI - 110 003
REPRESENTED BY ITS
ASSISTANT DIRECTOR.
- 2 . MEGACITY (BANGALORE) DEVELOPERS
AND BUILDERS LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956

NO.120, MEGA TOWER, SECOND FLOOR
KENGAL HANUMANTHAIAH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS
NOMINEE DIRECTOR
SRI SAJEEVAN C.V.,

... RESPONDENTS

(BY SRI GOWTHAMDEV C.ULLAL, CGC FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 08.07.2022 PASSED BY THE HONBLE XLII ADDL.C.M.M., AT BENGALURU IN C.C.NO.30790/2021 (ANNEXURE-A) AND CONSEQUENTLY DISCHARGE RESPONDENT NO.2 IN THE SAID PROCEEDINGS.

IN CRIMINAL PETITION No.8742 OF 2022

BETWEEN:

SRI C.P.YOGESHWARA
S/O SRI PUTTAMADEGOWDA
AGED ABOUT 48 YEARS
FORMER MANAGING DIRECTOR OF
MEGACITY (BENGALURU) DEVELOPERS
AND BUILDERS LIMITED
NO.464, 1ST 'G' CROSS
2ND PHASE, BSK 3RD STAGE
BENGALURU - 560 085.

... PETITIONER

(BY SRI KIRAN S.JAVALI, SENIOR ADVOCATE FOR
SRI ARJUN P.K., ADVOCATE)

AND:

1 . SERIOUS FRAUD INVESTIGATION OFFICE

MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN
CGO COMPLEX, LODHI ROAD
NEW DELHI – 110 003
REPRESENTED BY ITS
ASSISTANT DIRECTOR.

2 . MEGACITY (BANGALORE) DEVELOPERS
AND BUILDERS LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
NO.120, MEGA TOWER, SECOND FLOOR
KENGAL HANUMANTHAIAH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS
NOMINEE DIRECTOR
SRI SAJEEVAN C.V.,

... RESPONDENTS

(BY SRI GOWTHAMDEV C.ULLAL, CGC FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 08.07.2022
PASSED BY THE HONBLE XLII ADDL.C.M.M., AT BENGALURU IN
C.C.NO.30786/2021 (ANNEXURE-A) AND CONSEQUENTLY
DISCHARGE RESPONDENT NO.2 IN THE SAID PROCEEDINGS.

IN CRIMINAL PETITION No.8768 OF 2022

BETWEEN:

SRI C.P.YOGESHWARA
S/O SRI PUTTAMADEGOWDA
AGED ABOUT 58 YEARS
FORMER MANAGING DIRECTOR OF

MEGACITY (BENGALURU) DEVELOPERS
AND BUILDERS LIMITED
NO.464, 1ST 'G' CROSS
2ND PHASE, BSK 3RD STAGE
BENGALURU - 560 085.

... PETITIONER

(BY SRI KIRAN S.JAVALI, SENIOR ADVOCATE FOR
SRI ARJUN P.K., ADVOCATE)

AND:

1 . SERIOUS FRAUD INVESTIGATION OFFICE
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN
CGO COMPLEX, LODHI ROAD
NEW DELHI – 110 003
REPRESENTED BY ITS
ASSISTANT DIRECTOR.

2 . MEGACITY (BANGALORE) DEVELOPERS
AND BUILDERS LIMITED
A COMPANY INCORPORATED UNDER
THE COMPANIES ACT, 1956
NO.120, MEGA TOWER
SECOND FLOOR
KENGAL HANUMANTHAIAH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS
NOMINEE DIRECTOR
SRI SAJEEVAN C. V.,

... RESPONDENTS

(BY SRI GOWTHAMDEV C.ULLAL, CGC FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 08.07.2022

PASSED BY THE XLII ADDL.C.M.M., BENGALURU IN C.C.NO.30789/2021 (ANNEXURE-A) AND CONSEQUENTLY DISCHARGE RESPONDENT NO.2 IN THE SAID PROCEEDINGS.

IN CRIMINAL PETITION No.8797 OF 2022

BETWEEN:

SRI C.P.YOGESHWARA
S/O SRI PUTTAMADEGOWDA
AGED ABOUT 58 YEARS
FORMER MANAGING DIRECTOR OF
MEGACITY (BENGALURU) DEVELOPERS
AND BUILDERS LIMITED
NO.464, 1ST 'G' CROSS
2ND PHASE, BSK 3RD STAGE
BENGALURU - 560 085.

... PETITIONER

(BY SRI KIRAN S.JAVALI, SENIOR ADVOCATE FOR
SRI ARJUN P.K., ADVOCATE)

AND:

- 1 . SERIOUS FRAUD INVESTIGATION OFFICE
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN
CGO COMPLEX, LODHI ROAD
NEW DELHI - 110 003
REPRESENTED BY ITS
ASSISTANT DIRECTOR.
- 2 . MEGACITY (BANGALORE) DEVELOPERS
AND BUILDERS LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956

NO.120, MEGA TOWER
SECOND FLOOR
KENGAL HANUMANTHAIAH ROAD
BENGALURU - 560 027
REPRESENTED BY ITS
NOMINEE DIRECTOR
SRI SAJEEVAN C.V.,

... RESPONDENTS

(BY SRI GOWTHAMDEV C.ULLAL, CGC)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 08.07.2022 PASSED BY THE XLII ADDL.C.M.M., BENGALURU IN C.C.NO.30757/2021 (ANNEXURE-A) AND CONSEQUENTLY DISCHARGE RESPONDENT NO.2 IN THE SAID PROCEEDINGS.

IN CRIMINAL PETITION No.8800 OF 2022

BETWEEN:

SRI C.P.YOGESHWARA
S/O SRI PUTTAMADEGOWDA
AGED ABOUT 58 YEARS,
FORMER MANAGING DIRECTOR OF
MEGACITY (BENGALURU) DEVELOPERS
AND BUILDERS LIMITED
NO.464, 1ST 'G' CROSS
2ND PHASE, BSK 3RD STAGE
BENGALURU - 560 085.

... PETITIONER

(BY SRI KIRAN S.JAVALI, SENIOR ADVOCATE FOR
SRI ARJUN P.K., ADVOCATE)

AND:

- 1 . SERIOUS FRAUD INVESTIGATION OFFICE
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN
CGO COMPLEX, LODHI ROAD
NEW DELHI – 110 003
REPRESENTED BY ITS
ASSISTANT DIRECTOR.

- 2 . MEGACITY (BANGALORE) DEVELOPERS
AND BUILDERS LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
NO.120, MEGA TOWER, SECOND FLOOR
KENGAL HANUMANTHAIAH ROAD
BENGALURU – 560 027
REPRESENTED BY ITS
NOMINEE DIRECTOR
SRI SAJEEVAN C.V.,

... RESPONDENTS

(BY SRI GOWTHAMDEV C.ULLAL, CGC FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 08.07.2022 PASSED BY THE HONBLE XLII ADDITIONAL CHEIF METROPOLITAN MAGISTRATE AT BENGALURU IN C.C.NO.30756/2021 (ANNEXURE A) AND CONSEQUENTLY DISCHARGE RESPONDENT NO.2 IN THE SAID PROCEEDINGS.

IN CRIMINAL PETITION No.8805 OF 2022

BETWEEN:

SRI C.P.YOGESHWARA
S/O SRI PUTTAMADEGOWDA

AGED ABOUT 58 YEARS,
FORMER MANAGING DIRECTOR OF
MEGACITY (BENGALURU) DEVELOPERS
AND BUILDERS LIMITED
NO.464, 1ST 'G' CROSS
2ND PHASE, BSK 3RD STAGE
BENGALURU - 560 085.

... PETITIONER

(BY SRI KIRAN S.JAVALI, SENIOR ADVOCATE FOR
SRI ARJUN P.K., ADVOCATE)

AND:

1 . SERIOUS FRAUD INVESTIGATION OFFICE
MINISTRY OF CORPORATE AFFAIRS
GOVERNMENT OF INDIA
2ND FLOOR, PARYAVARAN BHAWAN
CGO COMPLEX, LODHI ROAD
NEW DELHI - 110 003
REPRESENTED BY ITS
ASSISTANT DIRECTOR.

2 . MEGACITY (BANGALORE) DEVELOPERS
AND BUILDERS LIMITED
A COMPANY INCORPORATED
UNDER THE COMPANIES ACT, 1956
NO.120, MEGA TOWER, SECOND FLOOR
KENGAL HANUMANTHAIAH ROAD
BENGALURU - 560 027
REPRESENTED BY ITS
NOMINEE DIRECTOR
SRI SAJEEVAN C.V.,

... RESPONDENTS

(BY SRI GOWTHAMDEV C.ULLAL, CGC FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF
CR.P.C., PRAYING TO SET ASIDE THE ORDER DATED 08.07.2022
PASSED BY THE XLII ADDL.C.M.M., BENGALURU IN

C.C.NO.30793/2021 (ANNEXURE-A) AND CONSEQUENTLY DISCHARGE RESPONDENT NO.2 IN THE SAID PROCEEDINGS.

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 16.06.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is common in all these cases, so also the respondents. It is, therefore, the matters are taken up together and considered by this common order. For the sake of convenience facts pertaining to Criminal Petition No.8421 of 2022 are narrated.

2. The petitioner is before this Court calling in question order dated 08-07-2022 by which the XLII Additional Chief Metropolitan Magistrate at Bengaluru in C.C.No.30796 of 2021 allows an interlocutory application filed by the 1st respondent under Section 319 of the CrPC ordering impleadment of 2nd respondent/Megacity (Bangalore) Developers and Builders Limited as accused No.2 in the aforesaid proceedings. The numbers of the proceedings would vary in every case. But, the issue and the parties remain the same.

3. Heard Sri Kiran S.Javali, learned senior counsel appearing for the petitioner and Sri Madhukar Deshpande, learned Special Central Government Standing Counsel appearing for respondent No.1.

4. The facts, in brief, germane are as follows:-

The 2nd respondent who is now sought to be impleaded as accused No.2 is a Company incorporated on 11-08-1994 under the provisions of the Companies Act, 1956. The petitioner is said to be the erstwhile Managing Director of the 2nd respondent. The 2nd respondent was in the business of developing and constructing properties of lands into dwelling houses, letting or selling them. In the year 1994-95, the 2nd respondent had launched a real estate project in the name and style of 'Vajragiri Township Project', a housing scheme for allotment of residential plots to the public. The project attracted about 3100 applications at the time of its launch itself. The Directors were sought to be holding 48 acres of land and had also acquired 490 acres of land in and around Bidadi area for development of residential sites between 1995 and 2001. It

appears that due to steep increase in land prices, several land owners who had agreed to sell their lands to the Directors sought to terminate the agreements. In several cases the family members of erstwhile land owners filed suits claiming rights of inheritance and about 130 acres were notified for acquisition by the Karnataka Industrial Area Development Board for the Bangalore-Mysore Infrastructure corridor project. It is further averred that due to aforesaid set back in the project, the 2nd respondent developed and registered 1360 residential plots to the applicants and refunded money along with interest to 1030 applicants under various Court orders.

5. The 1st respondent/Serious Fraud Investigation Office investigated into the affairs of the 2nd respondent, its promoters/Directors under Section 35(1) of the Companies Act, 1956 and filed its investigation report on 30-07-2011 before the Ministry of Corporate Affairs. In the said report it was alleged *inter alia* that promoters/Directors of the 2nd respondent have misappropriated subscription money paid by the applicants and certain lands purchased by the 2nd respondent were from the funds generated

from the project and were subsequently sold to Prestige Bidadi Holdings Private Limited. On 09-09-2011, the 2nd respondent filed its objections to the investigation report before the 1st respondent. In furtherance of both the report and objections thereto, the Central Government approaches the National Company Law Tribunal, Bangalore ('the Tribunal' for short) seeking to replace erstwhile Directors of the 2nd respondent and in their place put in 5 new Directors. The Tribunal, in terms of its order dated 14-03-2019 in Company Petition No.2 of 2014, directed the then existing Board of Directors of the 2nd respondent to be replaced with the Directors nominated by the Central Government.

6. When things stood thus, the Central Government seeks appointment of an Official Liquidator to take charge of the affairs of the 2nd respondent and wind it up. During the pendency of those proceedings, the 1st respondent/Serious Fraud Investigation Office coming under the Ministry of Corporate Affairs, Government of India registers a crime before the Special Court against the person involved i.e., the Managing Director invoking Section 200 of the Cr.P.C. The learned Magistrate takes cognizance of the offence and

registers the crime in C.C. No. 6415 of 2012 which later became C.C.No. 30796 of 2021 for offence punishable under Sections 403 and 409 of the IPC. During the pendency of proceedings, several developments happen before the Tribunal. Owing to those developments the complainant therein/1st respondent heren files an application before the concerned Court to implead the 2nd respondent as a party respondent in those proceedings. The application was seriously resisted before the concerned Court. The concerned Court, on considering the application filed by the 1st respondent allows the same by an order dated 08-07-2022 directing the 2nd respondent/Megacity (Bangalore) Developers and Builders Limited to be impleaded as accused No.2, which would be represented by its nominee Director one Sri C.V. Sanjeevan. Challenging the said order, the present petitions are preferred. It is this order that has driven the petitioner to this Court in these petitions. Identical applications were filed in every criminal case and they were allowed by separate orders and all those orders form challenge in these petitions before this Court.

7. The learned counsel appearing for the petitioner would seek to contend that the project was in the name and style of Vajragiri Township Project. The 2nd respondent/Megacity (Bangalore) Developers and Builders Limited could not have been impleaded as an accused in the proceedings as it has nothing to do with the allegations. Though it is through the nominee Director who had initiated several proceedings and are pending before the Tribunal including a petition to wind up, the 2nd respondent could not have been made an accused in those criminal cases. He would submit that the power under Section 319 Cr.P.C. could not have been invoked in the cases at hand. The expression used in the provision is "may" and is not "shall". Therefore, it is apparent that the legislature left it to the discretion of the concerned Court to regulate impleadment of an accused only if the situation warrants and cannot be done as a matter of course.

8. Per-contra, the learned counsel appearing for the 1st respondent would urge a threshold bar of maintenance of the petitions, as the erstwhile Managing Director of the 2nd respondent is before the Court and not the nominee Director who is now sought

to be impleaded representing the 2nd respondent. He would, therefore, contend that the petitions are not maintainable and have to be dismissed. Without prejudice to the said contention, the learned counsel taking this Court through the complaint indicates that the allegations were clearly against the Company as well. Therefore, to complete the trial in a manner known to law, the 2nd respondent is a proper and necessary accused to be brought into the web of criminal case. He would seek dismissal of the petitions.

9. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record. In furtherance whereof, the only issue that falls for consideration is,

"Whether the 2nd respondent could have been impleaded into the web of criminal cases as accused No.2 on an application filed by the 1st respondent under Section 319 of the Cr.P.C.?"

10. To consider the said issue, it is germane to notice Section 319 of the Cr.P.C. It reads as follows:

“319. Power to proceed against other persons appearing to be guilty of offence.—(1)

Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then—

- (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;*
- (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”*

Section 319 of the Cr.P.C. empowers the Court to try any other accused and proceed against them who appears to be guilty of the offence. It can be at any stage during the trial. The interpretation

and purpose of Section 319 of the Cr.P.C. need not detain this Court for long and delve deep into the matter, as the Apex court has considered, interpreted and laid down guidelines as to when and how additional accused could be dragged into the web of criminal case on an application filed under Section 319 of the Cr.P.C. A Constitution Bench of the Apex Court rendered its judgment on 05-12-2022 in the case of **SUKHPAL SINGH KHAIRA v. STATE OF PUNJAB**¹. After consideration of the entire spectrum of law, the conclusions drawn are as follows:

"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

¹ (2023) 1 SCC 289

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)

Five Judge Bench of the Apex Court lays down guidelines for the competent Court to follow while exercising power under Section 319 of the Cr.P.C., The Apex court holds that if the Court would feel on evidence that the application filed under Section 319 with regard to involvement of any person on the basis of evidence recorded at any stage in the trial before passing the order of acquittal or sentence, it shall pause the trial at that stage, call upon, by issuance of

summons, to the additional accused and follow the procedure on the appearance of the accused. What would emerge from the guidelines laid down is that, if during the trial at any stage, if one is to be brought in as accused in terms of the evidence, the Court shall pause the trial, issue summons and then continue the trial after arraigning of the said accused. Therefore, it is the power that is available, which has to be exercised cautiously and not in a routine manner. The said judgment is followed by the Apex Court in the case of **VIKAS RATHI v. STATE OF U.P.**² wherein it is held as follows:

"9. The principles of law with reference to exercise of jurisdiction under 319 Cr. P.C. are well settled.

10. The Constitution Bench in Hardeep Singh's case (supra), opined as under:—

"105. Power u/s 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the magistrate or the sessions judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence laid before the court that such power should be exercised and not in a casual and cavalier manner.

² 2023 SCC Online SC 211

106. Thus we hold that though only a prima facie case is to be established from the evidence laid before the court, not necessarily tested on the anvil of cross-examination, it requires much strong evidence that near probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power u/S 319 CrPC”.

(emphasis supplied)

....

15. One of the arguments raised by learned counsel appearing for the parties was that in the case in hand, the High Court instead of appreciating the material placed on record by the parties in the form of evidence to find out as to whether a case was made out for summoning of the appellant as an additional accused, remitted the matter back to the trial court for consideration afresh. Remand in such a matter will only result in prolonging the litigation. The High Court only recorded that reasons assigned by the trial court for rejecting the application were not sufficient. To avoid delay, it would have been proper exercise of power in case the High Court would have considered the material and opine as to whether a case was made out for summoning of additional accused. Whatever reasons have been recorded by the trial court in the order so passed, may not have been happily worded to the satisfaction of the High Court, but that error could have been corrected in exercise of revisional power.”

(Emphasis supplied)

The Apex Court further holds that there should be sufficient material to bring in an accused back into the web of trial or any other accused into the web of crime who has been

dropped while filing the charge sheet or who was never an accused in a case.

11. It is again followed in **JUHRU v. KARIM**³. The usage of power under Section 319 of the Cr.P.C. is further elucidated in the said judgment in the following paragraphs:

"11. Section 319 CrPC contemplates that:

"319. Power to proceed against other persons appearing to be guilty of offence.—(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed."

12. Illuminating the scope of Section 319CrPC, the Constitution Bench of this Court in *Hardeep Singh v. State of Punjab* [*Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] laid down that : (SCC pp. 126 & 138, paras 57 & 105-106)

"57. Thus, the application of the provisions of Section 319CrPC, at the stage of inquiry is to be understood in its correct perspective. The power under Section 319CrPC can be exercised only on the basis of the evidence adduced before the court during a trial. So far as its application during the course of inquiry is concerned, it remains limited as referred to hereinabove, adding a person as an accused, whose name has been mentioned in Column 2 of the charge-sheet or any other person who might be an accomplice.

³ (2023) 5 SCC 406

105. Power under Section 319CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court, not necessarily tested on the anvil of cross-examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319CrPC. In Section 319CrPC the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words 'for which such person could be tried together with the accused'. The words used are not "for which such person could be convicted". There is, therefore, no scope for the court acting under Section 319CrPC to form any opinion as to the guilt of the accused."

(emphasis in original)

13. This Court has very recently, in *Sukhpal Singh Khaira v. State of Punjab* [*Sukhpal Singh Khaira v. State of Punjab*, (2023) 1 SCC 289: (2023) 1 SCC (Cri) 454] , succinctly explained the powers bestowed on the Court under Section 319CrPC and ruled that : (SCC p. 300, para 15)

"15. At the outset, having noted the provision, it is amply clear that the power bestowed on the Court is to the effect that in the course of an inquiry into, or trial of an offence, based on the evidence tendered before the Court, if it appears to the Court that such evidence points to any person other than the accused who are being tried before the Court to have committed any offence and such accused has been excluded in the charge-sheet or in the process of trial till such time could still be summoned and tried together with the accused for the offence which appears to have been committed by such persons summoned as additional accused."

14. *In Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] , it has been eloquently held that the word "evidence" in Section 319CrPC has to be broadly understood and thus materials which have come before the court in course of enquiry can be used for:*

- (i) corroboration of evidence recorded by court after commencement of trial;*
- (ii) for exercise of power under Section 319CrPC; and*
- (iii) also to add an accused whose name is shown in Column 2 of the charge-sheet.*

It was further explained that statement made in examination-in-chief also constitutes "evidence" and the court while exercising power under Section 319CrPC post commencement of trial, need not wait for evidence against person proposed to be summoned, to be tested by cross-examination.

15. *In Sukhpal Singh Khaira [Sukhpal Singh Khaira v. State of Punjab, (2023) 1 SCC 289 : (2023) 1 SCC (Cri) 454] , the Constitution Bench refreshed the guidelines that the competent court must follow while*

exercising power under Section 319CrPC. It was ruled that:

15.1. 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 and the court shall proceed to decide the fate of the application under Section 319CrPC.

15.2. If the court decides to summon an accused under Section 319CrPC, such summoning order shall be passed before proceeding further with the trial in the main case and depending upon the stage at which the order is passed, the trial court shall apply its mind to the fact as to whether such summoned accused is to be tried along with other accused or separately.

15.3. If the power under Section 319CrPC is not invoked or exercised in the main trial till its conclusion and if there is a split-up case, such power 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).

16. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319CrPC is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same

weightage and value as has been testified against those who are already facing trial. In the absence of any credible evidence, the power under Section 319CrPC ought not to be invoked.

... ..
D. Conclusion

20. In light of the above discussion, we are of the considered view that while summoning of Appellant 1 sustains, but that of Appellants 2 and 3 will be far-fetched and they cannot be subjected to trial on the basis of mere strong suspicion. The High Court order under challenge is accordingly set aside qua Appellants 2 and 3.

21. Having held that Appellant 1 has been rightly summoned and is liable to be tried along with his son and wife, the next question that requires consideration is as to the manner in which the trial will proceed hitherto.

(Emphasis supplied)

This is again reiterated in the case of **JITENDRA NATH MISHRA v. STATE OF U.P.**⁴, wherein it is held as follows:

"9. Section 319, Cr.P.C., which envisages a discretionary power, empowers the court holding a trial to proceed against any person not shown or mentioned as an accused if it appears from the evidence that such person has committed a crime for which he ought to be tried together with the accused who is facing trial. Such power can be exercised by the court qua a person who is not named in the FIR, or named in the FIR but not shown as an accused in the charge-sheet. Therefore, what is essential for exercise of the power under section 319, Cr. P.C. is that the evidence on record must show the involvement of a person in the commission of a crime and that the said person, who has not been arraigned as an accused, should face trial together with

⁴2023 SCC OnLine SC 726

the accused already arraigned. However, the court holding a trial, if it intends to exercise power conferred by section 319, Cr. P.C., must not act mechanically merely on the ground that some evidence has come on record implicating the person sought to be summoned; its satisfaction preceding the order thereunder must be more than prima facie as formed at the stage of a charge being framed and short of satisfaction to an extent that the evidence, if unrebutted, would lead to conviction."

(Emphasis supplied)

On the bedrock of the principles laid down by the Apex Court in the aforesaid cases, the issue at hand requires consideration. The complaint is filed under Section 200 of the Cr.P.C. for offences punishable under Sections 403 and 409 of the IPC. The complaint is registered by the 1st respondent against the petitioner arraigning him as the Managing Director of Megacity (Bangalore) Developers and Builders Limited. In the complaint the averment insofar as 2nd respondent is concerned reads as follows:

"12. The complainant submits that Megacity (Bangalore) Developers & Builders Ltd. (MDBL) was incorporated as a private limited company under the name Megacity (Bangalore) Developers & Builders Private Ltd. On 11.08.1994. The registered office and corporate office of megacity (Bangalore) Developers and Builders Ltd. (MDBL) is in Mega Tower, 120, Kengal Hanumanthaiah Road, Bangalore - 560027. According to the Memorandum of Association the object of Megacity (Bangalore) Developers & Builders Ltd. is to carry on the

business to develop, construct, furnish, letout, sell, deal in and to carry on all or any of the functions of proprietors of land, flats, maisonettes, dwelling houses, shops, offices, commercial complexes, factory sheds and buildings and accommodation of all kinds etc. (Copies of Memorandum of Association & Article of Association are annexed herewith as ANNEXURE -6."

.. ..

The complainant submits that the above amount which was received from the members of Vajragiri Project scheme year-wise by MDBL, was shown and included under the 'Head' "Current Liabilities & Provisions" in the Balance Sheets as at 31/03/1995 to 31/03/2003 as follows:-

Sl. No	BALANCE SHEET AS AT	HEAD	AMOUNT SHOWN IN BALANCE SHEET (Rs.)	SCHEDULED NO.OF BALANCE SHEET
1	31/03/1995 (1994-95)	Current Liabilities & provisions	6,07,143.00	4
2	31/03/1996 (1995-96)	Current Liabilities & provisions	8,67,31,334.00	4
3	31/03/1997 (1996-97)	Current Liabilities & provisions	226582728.00	4
4	31/03/1998 (1997-98)	Current Liabilities & provisions	35,06,28,409.00	3
5	31/03/1999 (1998-99)	Current Liabilities & provisions	46.54.83.968.00	3
6	31/03/2000 (1999-2000)	Current Liabilities & provisions	5,36,21,33,83.00	3
7	31/03/2001	Current	59,45,26,291.00	2

	(2000-2001)	Liabilities & provisions		
8	31/03/2002 (2001-2002)	Current Liabilities & provisions	60,06,72,362.00	2
9	31/03/2003 (2002-2003)	Current Liabilities & provisions	60,10,95,738.00	2

1. The complainant submits that during investigation was revealed from above documents (Balance Sheet & Schedules attached to Balance Sheet) that approx.Rs.60 crores were deposited by the members of Vajragiri Scheme as installments/membership fees with MDBL. During investigation Shri C.P.Yogeshwara. MD of MDBL has given his statement on oath about the Vajragiri Project and the collection of money from public as follows:-

"We have launched 2 schemes for the public. As per these schemes members were given option to take 60 months installments and 66 months installments for the plot of Vajragiri Township. After the launch of projects, we started collecting money from potential members. The company has collected in total about approx. Rs.60 crores from the members during the period 1995 to 2002. (Copy of statement dated 3/12/2009 is annexed as ANNEXURE-10)"

Shri C. P.Gangadhareswara, Whole Time Director in MDBL has also given his statement on oath about the Project and collection of money from public as follows:-

Our company M/s MDBL had collected around Rs.60 crores from members of "Vajragiri Township". The company had received the said amount of Rs.60 crores from the members over period of 6 to 7 years under two schemes. The said schemes were month base i.e. the member had to pay monthly installment for the land to be acquired by him. There were two schemes one is for 60 months and other for 66 months. In these two schemes about 2759 members had completed their monthly

subscription and the company had received about Rs.35 crores from the members.

*(Copy of statement dated 2/12/2009 is annexed us **ANNEXURE – 11)**“*

Thus during investigation, the above statements on oath of both Directors and balance sheets along with their schedule as documentary evidence proved that an amount of Rs.60 crores approx. was collected by MDBL from the public.

*18. The complainant submits that as per the Ledger Account of the investments of Megacity (Bangalore) Developers & Builders Ltd. (MDBL) for the period 01/04/2008 to 19/12/2008 (**ANNEXURE 12**), MDBL has invested Rs. 3,03,77,455.00 in construction of a building at Channa Patana, Hanu Manth Nagar, Bangalore - Mysore Road at Fashion Forum (India) Pvt. Ltd. MDBL invested the above amount from members fund for its Vajragiri Project. This building was subsequently rented to Fashion Forum (India) Pvt. Ltd. The Fashion Forum (India) Pvt. Ltd. is neither a subsidiary nor a sister concert of MDBL. However, Fashion Forum (India) Pvt. Ltd. is being run by Mr. C. P. Yogeshwara as Its Managing Director.*

*19. The complainant submits at in his written statement on oath Mr.C.P.Yogeshwara, MD of MDBL stated that MDBL constructed a building at Channa Patana, Hanumanth Nagar, Bangalore – Mysore Road for above amount and subsequently rented it Fashion Forum India Ltd. As such the property belongs to MDBL. However, as per the Lease Deed (rent agreement) made in this regard shows that the said lease dated 25/01/2007 (Copy enclosed as **ANNEXURE-13**) has been made in between Mr. C.P. Yogeshwara, S/O Puttra Degewada, r/o 2158, Cross Kuvempu Nagar, Channa Patana -871 501 and Fashion Forum India Ltd. 2158 Cross Kuvempu Nagar, Channa Patana 571 501, thereby showing the said property as personal property of Mr. C. P. Yogeshwara and not the property of MDBL.*

20. The complainant submits that as per the rent agreement, the property of MDBL at Channa Patana, Hanu Manth Nagar, Bangalore-Mysore Road has been let out to Fashion Forum India Ltd. on a monthly rent for Rs. 25,000/- as personal property of Mr. C. P. Yogeshwara. This resulted in unlawful financial gains to Sh. C.P. Yogeshwara as the said building was not his personal property rather belonged to MDBI, raised from the members money of Vajragiri project. This resulted in gain of Rs. 25,000/- p.m for Mr. C. P. Yogeshwara, MD of MDBL causing unlawful loss to the company (MDBL) and the members of Vajragiri Project. Hence Shri C. P. Yogeshwara, MD of MDBL is liable to be charged for dishonest misappropriation of property Section 403 and Criminal Breach of Trust as a agent of MDBL Sec. 409 of IPC."

Based upon the said premise, the prayer that was sought was to take cognizance of the complaint and try the accused for offences punishable under Sections 403 and 409 of the IPC. The learned Magistrate takes cognizance of the offence and registers it as C.C.No.6415 of 2012 which is renumbered as C.C.No.30796 of 2021. In the said proceeding, the 1st respondent files an application under Section 319 of the Cr.P.C. The application reads as follows:

"Under Section 319 of Cr.P.C the above named complainant begs to state as follows:

It is humbly submitted as follows:

- 1. The complainant submits that the private complaint filed against the accused for the*

offences under Section 403, 409 of IPC. Due to oversight the complainant has made only Directors of the companies but not made the company as the accused.

- 2. That the accused persons being the directors of the Company Megacity (Bangalore) Builders and Developers Pvt. Ltd has committed the aforesaid offence. Since the Company is not a juristic person and hence the Complainant has arrayed only the Directors of the Company as the accused.*
- 3. That the mistake on the part of the complainant in not making the accused is neither intentional nor deliberate and only for bonafide reason. The section 319 of Cr.P.C is very clear that this Honourable Court has every power to proceed against a person if there is any incriminating material against him to be guilty of the offences at any stage of the case.*
- 4. That the prosecution has not yet completed their evidence and available materials as on today discloses that there is sufficient materials to proceed against the Company as the other accused in the above case are directors of the said Company and the offence has been committed by the accused in the guise of Company. Therefore this Honourable Court has every power to proceed against the Company.*

Wherefore it is prayed that this Honourable Court may please to arraign the Company Megacity (Bangalore) Builders & Developers Ltd later it named as Megacity (Bangalore) Builders & Developers Pvt. Ltd as accused No.2, No.1 Chandralok, 5th Cross, Gandhinagar, Bangalore – 560 009, later address of the company is No.120, Mega Tower, Kengal Hanumanthiah Road, Bangalore – 560027 and to proceed against the Company in accordance with law in the interest of justice.

Bangalore

Advocate for Complainant

Date:17.07.2019."

Objections were filed by the present petitioner before the concerned Court. The objections would read as follows:

**"OBJECTIONS OF THE ACCUSED NO.1 TO
APPLICATION UNDER 319 CRIMINAL PROCEDURE
CODE**

The Accused above named state as follows:

1. *The Accused submit that in the context of the application filed and allowed by this Hon'ble Court under Section 319 of the Cr.P.C., certain subsequent events have arisen requiring the same to be brought to the notice of this Hon'ble Court.*

2. *The Accused submit that NCLT, Bangalore Bench by its order dated 13-11-2019 have removed existing Directors of the company and ordered MCA to appoint their nominee as the Directors of the Company. The Accused submit that these Government nominated Directors have now appeared before this Hon'ble Court and are willing to represent the Company in these proceedings.*

3. *The Accused would like to bring to the notice of this Hon'ble Court that these Government nominated Directors had sought for Winding-Up of the Company before NCLT, Bangalore Bench in view of their inability to manage the affairs of the Company. However, that application for Winding Up had been questioned before the NCLT, Bangalore. The Accused submit that the NCLT, Bangalore had passed an Order on 13-05-2021 directing government nominee directors to convene EGM of the shareholders of the company as early as possible, so as to elect new directors as proposed by the shareholders of*

the company in place of government nominee director. Copy of the Order is enclosed herewith.

4. *The Accused submit that the legality of the said Order has been questioned by the MCA before the NCLAT, Chennai Bench in Company Appeal (AT) (CH) no.39/40/41 of 2021.*

5. *The Accused submit that in view of the Orders of the NCLT, Bangalore, dated 13-05-2021 the purported appearance of these Directors and their office to represent the Company in these proceedings would be contrary to the Orders of the NCLT, Bangalore.*

6. *The Accused submit that in view of the above position, the application of the present nominee Directors to be present before this Hon'ble Court would be contrary to Law and hence, they cannot represent the Company.*

WHEREFORE, it is prayed that this Hon'ble Court be pleased to await the Orders of the NCLAT, Chennai, in the interest of justice and equity."

Considering the application and the objections, the impugned order is passed by the learned Magistrate ordering arraignment of 2nd respondent as accused No.2 in the proceedings. The reason rendered reads as follows:

"REASONS

07.Point No.1:- *Company is a Juristic person. It is to be represented by the Directors of the Company. So, therefore, unless company is represented in this case, the case cannot be proceeded. In the case on hand, initially the complaint is lodged only against accused No.1. Later, on when the case was set down for Evidence Before Charge, the present Application was filed to implead the Company as accused No.2. As per order dated:*

17-09-2019, the application was allowed. Aggrieved the said order, the Mega City Company represented by the accused No.1 approached the Hon'ble High Court of Karnataka whereupon the order dated:17-09- 2019 was set aside and ordered to consider the application afresh for the reasons stated therein. Accordingly, notice was issued to the proposed accused No.2 on application under section 319 of Cr.P.C and the same was also served, but no one appeared before the court.

08. When the matter stood thus this case came to be transferred to this court which is newly established. Accordingly, court notice was ordered to the proposed accused No.2, which is said to have been served on the Employee of the said Company and he appeared before this court and furnished the list of nominee Directors. In view of the same, this court once again issued court notice to the proposed accused No.2 through one of its nominee Directors to say about the present application filed by the complainant. In pursuance of the same, Sri.K.M.N., Advocate appeared before this court on behalf of the proposed accused No.2 and filed a memo of the nominee Directors of the proposed accused No.2 Company, wherein they have given their no objection to implead the Company as accused No.2 in this case as mentioned in the memo. The counsel for the accused No.1 has filed his objection which is narrated supra.

09. I have gone through the memo in detail and also the orders passed by the NCLT which is dated:14-03-2109(sic) and 13-11-2019 and 13-05-2021. As stated supra, in the memo the filed by the nominee Directors, they have submitted their no objection to implead the Company as accused No,2 to this case. Their only contention is that the nominee Directors cannot be made personally liable, if this court comes to the conclusion that the accused are guilty of the offences alleged. On the other hand, the counsel for the accused No.1 is contending that as per the Order dated:13-05-2021, the NCLT has directed the nominee Directors to convene EGM of the shareholders of the company as early as possible so as to elect new Directors. It is also stated that they have challenged the said order before the NCLAT,

Chennai. It is their contention that without convening a EGM as directed by the NCLT in order dated: 13-05-2021, the present nominee Directors cannot represent the accused No.2 Company.

10. At one breath, the accused No.1 is relying upon the order of the NCLT which is dated: 13-05-2021 and in another breath, he says that the said order is under challenge before the NCLAT, Chennai. As could be seen from the records, it to show that no EGM is held. But, that aspect will not CHIFF come in the way of this court to decide this application. The accused No.1 has prayed that this court should await the order of the NCLAT, Chennai. Admittedly, there is no stay for the proceedings of this case by any Higher Courts. Awaiting order of NCLAT, Chennai is not feasible in the present set of facts and circumstances of the case. If any orders touching the merits of this case is passed by the NCLAT, Chennai or if the EGM is convened and if new Directors are appointed the same can be brought to the notice of this court at any stage before the final order is passed in this case, for necessary orders, if any. Now, at this stage, this case being of the Year - 2012 and we being in the Year - 2022, this case still stagnant in the stage of Evidence Before Charge, has to be proceeded without any further delay. Admittedly, the offence is alleged against the accused No.1 in respect fo the alleged offence committed by him when he was the Director of the Proposed Accused Company. As such, without the Company being the party to this proceedings, the accused No.1 alone cannot be prosecuted.

11. The power under Section 319 Cr.P.C., is discretionary and it is extraordinary power. Thus, it is very much clear that, it has to be used sparingly. Even, the law says that, the person discharged can also be added as accused. There is no bar to implead the accused persons at the later stage. With regard to the liability of the Company, it cannot be decided at this stage. And the nominee Directors cannot be held personally liable, if this court comes to the conclusion that the Company has committed the offence. At this stage, this court also

cannot decide as to, on whom the liability will be fixed. As such, without any further discussion, in view of the memo filed by the nominee Director of the company, the contentions taken by the accused No.1 cannot be taken into consideration for the reasons stated supra. Accordingly, Point No. 1 is answered in the AFFIRMATIVE.

*12. **Point No.2:-** Based on the discussions made above, I proceed to pass the following:*

ORDER

The application filed by the complainant under section 319 of Cr.P.C., is allowed

The Company by name Megacity (Bangalore) Developers and Builders Pvt. Limited, as named in the application is ordered to be impleaded as accused NO.2 in this case, which will be represented by its Nominee Director Sri.Sanjeevan C.V.”

The concerned Court records that the complaint narrates several instances of allegations against the Company which would become ingredients of Sections 403 and 409 of the IPC and the Company is necessary to be tried along with the Directors/Promoters of the Company. Without the Company, accused No.1 i.e., Managing Director/Promoter/Directors of the Company cannot be prosecuted and for completion of trial in a manner known to law, the application is allowed. Who is impleaded is a nominee Director of the 2nd respondent by name Sri C.V. Sanjeevan who would represent the 2nd respondent. The erstwhile Director of the

Company/accused No.1 in the aforesaid crime raises a challenge to the said order.

11. In the teeth of the law laid down by the Apex Court in the aforesaid cases, the Company ought to have been made an accused before the concerned Court, as there is enough material against the Company for having allegedly misappropriated the amounts which came into the project, though the project was separate which was under the aegis of the 2nd respondent. The allegation of misappropriation is also against Promoters and Directors of the 2nd respondent, may be erstwhile. But, without the Company, the proceedings could not have gone on further. Therefore, the concerned Court has rightly allowed the application, bearing in mind the necessity of the Company to be an accused in the proceedings and it is in tune with the law laid down by the Apex Court in the form of guidelines as noticed (*supra*).

12. The issue with regard to maintainability of the petition is not gone into, as the petition is considered on the merit of the matter itself and is held that there is no error much less an error

apparent on the face of the record, for this Court to interfere with the order of the learned Magistrate allowing the application under Section 319 of the CrPC. In the light of the reasons rendered (*supra*), the other petitions which challenge an identical order passed in different criminal cases where the 2nd respondent is permitted to be arrayed as accused No.2 have also to be rejected.

13. For the aforesaid reasons, I pass the following:

ORDER

Finding no merit in all the criminal petitions, the petitions stand dismissed.

Consequently, pending applications, if any, also stand disposed.

Bkp/CT:MJ

**Sd/-
JUDGE**