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Crl.O.P.No.8899 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.8899 of 2021
and Crl.M.P.Nos.5777 & 5779 of 2021

Rajesh @ Rajeshkumar

...Petitioner

Vs.

1. State Rep. by
Inspector of Police,
Nannillam Police Station,
Tiruvarur District.

2. Murali
3. Kalaiselvi
(R3 impleaded as per order
dated 18.08.2023 in Crl.
M.P.No.11257 of 2023 in
Crl.O.P.No.8899 of 2021)

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records and set aside the order in Crl.M.P.No.238 of 2021, dated 30.04.2021 passed under Section 319 of the Code of Criminal Procedure adding the petitioner as an accused in S.C.No.109 of 2014 in the Court of the Additional District & Sessions and Fast Track Mahila Judge, Tiruvarur.



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For Petitioner : Mr.R.John Sathyan
Senior Counsel
For Mr.Swami Subramanian

For Respondents
For R1 : Mr.Mr.A.Gopinath
Government Advocate (Crl. Side)
For R3 : Mr.P.Vinod Kumar
For Ms.V.Mythili

ORDER

This petition has been filed to set aside the order in Crl.M.P.No.238 of 2021, dated 30.04.2021, passed under Section 319 of the Code of Criminal Procedure, thereby adding the petitioner as an accused in S.C.No.109 of 2014 on the file of the learned Additional District & Sessions Judge Fast Track Mahila Court, Tiruvarur.

2. The case of the prosecution is that the first accused fell in love with the deceased. He used to pick the deceased from her work place and spend time with her. He was already married person. Subsequently, the deceased was fixed with one Gopi for marriage. Even then, the first accused continued to harbour his intentions to have sexual intercourse with her. When the deceased fiance went abroad on employment, the first accused devised a plan to have sexual intercourse with her.



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3. On 25.12.2012 at about 7.45 p.m., the first accused had picked the deceased in his motorcycle and stopped his motorcycle near the railway track stop signal at Tirupanaiyur and dragged the deceased to there. After consuming alcohol, he asked for sexual intercourse. When the deceased refused and tried to escape, the first accused had taken her near banyan tree and tied her hands and gagged her mouth with her shawl and committed rape on her and the deceased had strangled with her shawl. Thereafter, the first accused thrown her body near by the railway track.

4. On the complaint, the first respondent registered an FIR and after completion of investigation, filed final report for the offence under Sections 376, 302 and 301 of IPC, as against the first accused. It was taken cognizance by the trial Court and commenced the trial. While examining the third respondent as P.W.2, she deposed about the involvement of the petitioner along with the first accused. After chief examination of P.W.2, the third respondent filed an application under Section 319 of Cr.P.C., and the same was allowed and implicated the petitioner as second accused and issued summon. Aggrieved by the same, the petitioner filed this present petition.



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5. The learned Senior Counsel appearing for the petitioner submitted that there is absolutely no oral or material evidence to implicate the petitioner as an accused in this case. The third respondent filed petition for transfer of investigation before this Court in Crl.O.P.No.3792 of 2013 and this Court by an order dated 22.08.2013, dismissed the transfer petition and directed the first respondent to complete the investigation and filed final report within a period of two months. This Court observed that the said petition was filed merely on assumption that some other persons also would involve in committing murder. Therefore, this Court dismissed the petition for transfer of investigation.

5.1. He further submitted that after filing of final report, while it was pending for committal in P.R.C.No.5 of 2014, once again the third respondent filed petition before this Court in Crl.O.P.No.30262 of 2014 for seeking further investigation. It was also dismissed by this Court by an order dated 18.12.2014, on the ground that third respondent failed to make out any worthy point considering for further investigation. Once again, the third respondent filed petition before this Court in



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Crl.O.P.No.15127 of 2018 for direction to direct the trial Court to treat her statement to be given in S.C.No.109 of 2014 as her first statement. It was also dismissed by this Court by an order dated 11.06.2018 and observed that it is always open to the petitioner to give evidence before the trial Court and it is open to the trial Court to invoke Section 319 of Cr.P.C., if there are credible and reliable materials against the person who was not arrayed as an accused. Further, the third respondent did not even whisper about the documents which were marked as Ex.P.2 to Ex.P.7, while seeking transfer of investigation, further investigation and in the petition to treat her statement, to be recorded, as her first statement.

5.2. That apart, the trial Court without considering the procedure to be followed while invoking 319 of Cr.P.C., mechanically implicated the petitioner as an accused and issued summon. Even according to the prosecution, the third respondent was examined only in chief. The provision under Section 319 of Cr.P.C., can be invoked after evidence which means chief examination and cross examination of the witnesses. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2023) 5 SCC 406** in the case of **Juhru & ors Vs. Karim &**



ors., which reads as follows:-

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“17. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319 Cr.P.C. is not to be exercised routinely and the existence of more than a prima facie case is sine quo 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 319 Cr.P.C., 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 is, 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 319 Cr.P.C. ought not to be invoked”.

Accordingly, the trial Court must evaluate the evidence against the person 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.



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5.3. He also submitted that the petitioner had lost his opportunity to put forth his defence. If the investigation officer examined the petitioner, he would have placed all the defence before the investigating officer in order to disprove the allegations against him if any. Therefore, the order passed by the Session Court cannot be sustained and it is liable to be dismissed.

6. Per contra, the learned Government Advocate (Crl. Side) submitted that this Court categorically observed in Crl.O.P.No.15127 of 2018, the grievance of the third respondent is that the investigation has not be conducted properly and that the investigation officer has left out the petitioner as an accused. Further, observed that it is open to the third respondent to give evidence before the trial Court and it is open to the trial Court to invoke the provision under Section 319 of Cr.P.C., if credible and reliable materials against the persons who was not arrayed as an accused.

6.1. He further submitted that after deposition of P.W.2 and after marking the documents Ex.P.2 to Ex.P.7 viz., the complaints which were lodged by the third respondent, the trial Court rightly implicated the



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petitioner as an accused and issued summon. Before adding an accused, the proposed accused cannot be given opportunity to put forth his defence. Only after adding as an accused, he can be given opportunity of defence. Therefore, it will not amount to violation of principal of natural justice. In support of his contention, he relied upon the judgment reported in **(2014) 3 SCC 92** in the case of **Hardeep Singh Vs. State of Punjab & ors.**, in which the the Hon'ble Supreme Court of India held that under Section 319 of Cr.P.C., a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) of Cr.P.C., the proceedings against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

6.2. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in **2023 LiveLaw (SC) 576** in the case of **Yahodhan Singh & ors Vs. The State of Uttar Pradesh & anr.**, which held as follows :-

“32. Merely because in certain proceedings the persons summoned had been provided an opportunity of



being heard cannot be the same thing as stating that it is a mandatory requirement or a precondition that at the time of summoning a person under Section 319 of the Cr.P.C., he should be given an opportunity of being heard. That is not the mandate of law inasmuch as Section 319 clearly uses the expression "to proceed" which means to proceed with the trial and not to jeopardise the trial at the instance of the persons) summoned by conducting a mini trial or a trial within a trial thereby derailing the main trial of the case and particularly against the accused who are already facing trial and who may be in custody. A person who is summoned in exercise of the power under Section 319 Cr.P.C. cannot hijack the trial so to say and deviate from its focus and take it to a tangent in order to bolster his own case in a bid to escape trial. All that is contemplated when a person is summoned to appear is to ascertain that he is the very person who was summoned and if any summoned person fails to appear on the given date. On the appearance of the summoned person, no procedure of an inquiry or opportunity of being heard is envisaged before being added as an accused to the list of accused already facing trial unless such a summoned person had already been discharged, in which event, an inquiry is contemplated as discussed above. Thus, the contention that a summoned person must be given an opportunity of being heard before being added as an



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accused to face the trial is clearly not contemplated under Section 319 Cr.P.C. It is also observed by this Court in Hardeep Singh that such a summoned person can assail a summoning order before a superior Court and will also have the right of cross examining the witnesses as well as can let in his defence evidence, if any.”

6.3. Thus, it is clear that the later entry of a person summoned in exercise of power under Section 319 of Cr.P.C., is only to face the trial along with other accused. This being a salutary provision in order to meet the ends of justice, the same cannot be diluted by importing within the scope of Section 319 of Cr.P.C., principles of natural justice which in any case would be followed during the trial. Hence, he prayed for dismissal of the present petition.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. On perusal of the deposition given by the third respondent before the trial, she alleged that on 23.12.2012 at about 9.45 p.m., the petitioner along with the first accused had attempted to kidnap the



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deceased. It is also relevant to extract the portion of evidence of the third

respondent who has examined as P.W.2 as follows:-

"எனக்கு 2 பெண் பிள்ளைகள். முதல் பெண் பெயர் விஜி. இரண்டாவது பெண் பிள்ளை பெயர் அம்மு (எ) விமலா. 23.12.2012ம் தேதி என் மகள் திருவாரூர் உள்ள மதர் லேபிற்கு வேலைக்கு சென்றது. இரவு 09.00 மணியாகியும் என் மகள் வீட்டிற்கு திரும்ப வரவில்லை. இரவு 09.45 மணிக்கு வீட்டிற்கு வந்தது. ஏன் லேட்டா வருகிறாய் என்று என் மகளிடம் கேட்டேன். அதற்கு என் மகள் சன்னாநல்லூரில் என் மகள் பஸ் ஏற நின்றபோது எம்.எல்.ஏ ஆசைமணி மகன் ராஜேஷ்குமார் என்பவரும் அவருடைய பிரண்ட் முரளி என்பவரும் குடிபோதையில் காரை கொண்டு வந்து நிறுத்தி எங்களோடு படுக்கவேண்டுமென்று கூறி கையைப்பிடித்து இழுத்து காரில் தள்ளியமாகவும், தான் திமிரி ஓடி வந்ததாகவும் என்னிடம் கூறியது. மறுநாள் 24.12.2012ம் தேதி காலை 07.00 மணியளவில் நன்னிலம் காவல் நிலையத்திற்கு நானும், என் பெரிய மகள், சின்ன மகள் ஆகியோர்கள் சென்று என் சின்ன மகள் எம்.எல்.ஏ மகன் மீதும், முரளி மீதும் புகார் எழுதிக் கொடுத்தது. பின்பு என் மகள் வேலைக்கு சென்றுவிட்டது. அன்று இரவு 09.45 மணிக்கு வீட்டிற்கு வந்தது. ஏன் லேட்டா வருகிறாய் என்று என் மகளிடம் கேட்டேன். அதற்கு என் மகள்



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சன்னாநல்லூரில் என் மகள் பஸ் ஏற நின்ற போது எம்.எல்.ஏ ஆசைமணி மகன் ராஜேஜ் குமார் என்பவரும் அவருடைய பிரண்ட் முரளி என்பவரும் குடிபோதையில் காரை கொண்டு வந்து நிறுத்தி எங்களோடு படுக்கவேண்டுமென்று கூறி கையைப்பிடித்து இழுத்து காரில் தள்ளியதாகவும், தான் திமிரி ஓடி வந்ததாகவும் என்னிடம் கூறியது. மீண்டும் 25.12.2012ம் தேதி காலை 07.00 மணிக்கு சென்று புகார் கொடுத்துவிட்டு என் மகள் வேலைக்கு சென்றுவிட்டது. அன்று இரவு 9.10 மணியாகியும் என் மகள் வீட்டிற்கு வரவில்லை. நான் அழுதுக் கொண்டு வெளியே வந்தேன் அக்கம் பக்கத்தில் உள்ளவர்கள் மதல் லேப் நம்பரை கொடுங்கள் போன் அடித்து கேட்போம் என்று சொன்னார்கள். மதர் லேபில் போன் அடித்து கேட்டதற்கு இரவு 09.00 மணிக்கு கிளம்பி விட்டதாக சென்னார்கள். மீண்டும் இரு சக்கர வாகனத்தில் எங்கள் தெருவில் உள்ள பசங்களை அழைத்துக் கொண்டு திருவாரூர் மதர் லேபிற்கு நானும் என் பெயரி பொண்ணும் தேடிக்கொண்டு போனோம். மதர் லேபிற்கு சென்று அதன் உரிமையாளர் மணி என்பவரைக் கேட்டதற்கு என் மகள் இரவு 09.00 மணிக்கு கிளம்பி சென்றுவிட்டதாக சொன்னார்கள். நாங்கள் தேடிப்பார்த்துவிட்டு சென்றபோது இரவு 01.00 மணியானதால் நன்னிலம் காவல் நிலையத்திற்கு புகார் கொடுக்கச் சென்றோம். போலிசார்



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காலையில் வந்து புகார் கொடுக்குமாறு சொன்னார்கள். நாங்கள் விடிய விடிய தேடினோம். காணவில்லை. 26.12.2012ம் தேதி விடியற்காலை 6, 6.30 மணியளவில் ஊரில் உள்ள பசங்கள் என்னிடம் வந்து ஆண்டிப்பந்தல் திருப்பணையூர் இடையே உள்ள இரயில்வே டிராக்கில் இறந்து கிடப்பதாக சொன்னார்கள். நாங்கள் சொன்ன உடனே கிளம்பி சென்று பார்த்தோம். என் மகள் தலை தனியாகவும், கால் தனியாகவும், கை தனியாகவும் கிடந்தது. பிறகு நான் காலை 08.00 மணிக்கு நன்னிலம் காவல் நிலையம் சென்று எம்.எல்.ஏ ஆசைமணி மகன் ராஜேஷ்குமாரும், அவருடைய பிரண்ட் முரளியும் தான் காரணம் என்று புகார் கொடுத்தேன். அந்த புகாரை வாங்கிக்கொண்டு நடவடிக்கை எடுக்கமாட்டோம் நீங்கள் இரயில்வே போலிசிடம் கொடுக்குமாறு சொன்னார்கள். பின்னர் இரயில்வே போலிசாரிடம் சென்று காலை 09.30 மணிக்கு புகாரைக் கொடுத்தோம். பிறகு என் மகளின் சடலத்தை திருவாரூர் மருத்துவக் கல்லூரி மருத்துவமனைக்கு அழைத்துச் சென்றதால் திருவாரூர் மருத்துவக்கல்லூரி மருத்துவமனைக்கு சென்றோம். அங்கு எம்.எல்.ஏ ஆசைமணியும், ஊராட்சி மன்ற தலைவர் வெங்கட்ராமனும் மதியம் 1லிருந்து 2 மணிக்குள் வந்து என் மகன் ராஜேஷ்குமார் பெயரைச் சொல்லக்கூடாது முரளி பெயரை மட்டும் சொல்லு நான் நிறைய காசு பணம் தருகிறேன்,



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இல்லையென்றால் உன்னையும் கொலை செய்து விடுவேன். உன் மகளையும் கொலை செய்துவிடுவேன் என்று மிரட்டினார்கள். அங்கிருந்த போலிசாரிடம் சென்று என்னை மிரட்டுவதாக சொன்னேன். அதற்கு போலிசார் அவர்கள் மீது ஏன் குறை சொல்கிறாய் போ என்று சொல்லி விரட்டினார்கள். 27.12.2012ம் தேதி திருவாரூர் மாவட்ட காவல் கண்காணிப்பாளர் அலுவலகத்திற்கு நானும் என் மகளும் சென்று என் மகளின் இறப்பிற்கு எம்.எல்.ஏ ஆசைமணியின் மகன் ராஜேஷ்குமாரும், முரளியும் காரணம் என புகார் கொடுத்தோம். சாட்சி பின்பு திருவாரூர் எஸ்பிக்கு போஸ்டலில் புகார் அனுப்பியதாக சொல்கிறார். புகாரை எந்த போஸ்ட் ஆபிசில் போட்டோம் என்றால் அது எனக்கு ஞாபகமில்லை. மீண்டும் நன்னிலம் காவல் நிலையம் சென்று என் மகள் உயிரோடு கொடுத்த புகார் மீது என்ன நடவடிக்கை எடுத்தீர்கள் என்று கேட்டோம். அதற்கு எம்.எல்.ஏ. ஆசைமணியின் மச்சான் திருவேங்கடம் ரவி, முரளியை வைத்து மட்டும் கேசை முடித்துவிடு என்று சொல்லிவிட்டார். மீண்டும் 02.01.2013ம் தேதி திருவாரூர் மாவட்ட காவல் கண்காணிப்பாளருக்கு புகார், போஸ்டல் மூலம் அனுப்பினோம்."



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9. That apart, on perusal of Ex.P.6, revealed that the deceased herself lodged complaint before the Sub Inspector of Police, Nannilam Police Station, alleging that on 23.02.2012 at about 9.15 p.m., when she was returning from employment to home, the petitioner and the first accused came there in a white colour Bolero car and attempted to kidnap the deceased and they also scolded her with filthy language. After raising alarm, they escaped from the place of occurrence.

10. On perusal of Ex.P.2 revealed that on 27.12.2012, the third respondent lodged complaint before the Superintendent of Police, Thiruvarur District and requested for fair and proper investigation and made specific allegations as against the petitioner and A1. On perusal of Ex.P.4 dated 02.01.2013, also clear that the third respondent made specific allegations that the petitioner and other accused viz., A1 are the reason behind the entire crime and wanted to take appropriate action as against them.

11. It is also seen from the petition filed by the third respondent for transfer of investigation in Crl.O.P.No.3792 of 2013, it was filed on the ground that the first respondent failed to add the petitioner as an



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accused. However, this Court dismissed the said petition only on the ground that the third respondent filed petition for transfer of investigation on suspicious ground and without any specific allegations. Even after completion of investigation, while the matter was pending for committal, the third respondent sought for further investigation in Crl.O.P.No.30262 of 2014. Finally the third respondent filed petition to take her statement as first of it, in which also she categorically averred specific allegations as against the petitioner. It shows that the third respondent repeatedly knocking the doors of this Court for fair and proper investigation. Therefore, the trial Court rightly add the petitioner as an accused and issued summons. This Court finds no infirmity or illegality in the order passed by the trial Court.

12. Accordingly, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

06.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
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To

1. The Additional District & Sessions Judge
Fast Track Mahila Court,
Tiruvarur.
2. The Inspector of Police,
Nannillam Police Station,
Tiruvarur District.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN. J.

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Crl.M.P.Nos.5777 & 5779 of 2021

06.11.2023