

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 15TH DAY OF JANUARY 2015/25TH POUSHA, 1936

Crl.Rev.Pet.No. 61 of 2015 ()

AGAINST ORDER IN CMP.6482 OF 2014 IN C.C.419/2010 OF JFCM-I, PERAMBRA

REVISION PETITIONER(S)/4TH ACCUSED:

NARAYANAN, AGED 66 YEARS
S/O.MADHAVAN, MAVULLAPARAMBIL HOUSE
KADIYANGAD POST, PERAMBRA, KOZHIKODE DISTRICT
PIN-673 525

BY ADVS.SRI.K.P.SUDHEER
SRI.ARUN MATHEW VADAKKAN

RESPONDENT(S)/RESPONDENT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM
REPRESENTING SUB INSPECTOR OF POLICE
PERAMBRA POLICE STATION
PERAMBRA -673 525, KOZHIKODE DISTRICT.

BY PUBLIC PROSECUTOR SMT.SEENA RAMAKRISHNAN

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
15-01-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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Crl.R.P. No.61 OF 2015

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Dated this the 15th day of January, 2015

ORDER

This revision petition is filed challenging order dated 29.11.2014 in CMP No.6482 of 2014 in C.C.No.419 of 2010 passed by the Court of Judicial First Class Magistrate-I, Perambra. The said CMP was filed by the prosecution seeking addition of accused No.4 (the revision petitioner herein) in the FIR as an accused in the calender case. Consequently, the revision petitioner herein is arrayed as accused No.4 in the calender case and he is none other than the father of the other accused in the case. Evidently, the learned Magistrate after taking into account the evidence thus far collected found that the revision petitioner had also involvement in the offence involved for which the others are facing trial. In such circumstances, after issuing summons to the revision petitioner and complying with

all statutory formalities, the learned Magistrate allowed CMP No.6482 of 2014 filed by the prosecution and added the revision petitioner herein as accused No.4 in the C.C. This revision petition is filed challenging the said order.

2. I have heard the learned counsel for the revision petitioner and also the learned Public Prosecutor. The learned counsel for the revision petitioner submitted that the impugned order cannot be sustained in the light of the decision in **Hardeep Singh v. State of Punjab [2014 (1) KLT 336 SC]**. The learned counsel gave emphasis on paragraphs 98 and 99 of the said decision. In paragraph 98, it was held that the power under section 319 is a discretionary and extraordinary power and it is to be exercised sparingly and only in those cases where the circumstances of the case warrant such exercise of power. It was also found therein that 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. In paragraph 99, it was held thus:-

“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 S.319 Cr.P.C.”

3. Per contra, the learned Public Prosecutor contended that a bare perusal of the order passed by the learned Magistrate would reveal that it was taking into consideration all the evidence collected during trial and finding that in the interest of justice, it is necessary to implead the person who got involvement in the offence for which the others are facing trial, that the learned Magistrate invoked the power under section 319 for the purpose of trying and disposing of the case

not only expeditiously but also simultaneously. While considering the scope of power under section 319 Cr.P.C, the very object of the provision has to be looked into. The Hon'ble Apex Court had occasion to consider the same in the decision in **Brindaban Das v. State of West Bengal** [AIR 2009 SC 1248]. It was observed therein that the primary objective of section 319 Cr.P.C is that the whole case against all the accused should be tried and disposed of not only expeditiously but also simultaneously. There cannot be any doubt with respect to the position that for exercising the power under section 319 Cr.P.C, the court should arrive at the satisfaction that the person so summoned in all likelihood would be convicted. Bearing in mind the decisions referred (supra), I may examine the sustainability of the impugned order. In this case, though the learned Magistrate perused the FI statement and also Ext.P3 and observed that a perusal of FI statement would reveal that the role played by the revision petitioner herein was specifically stated therein and the petitioner's name was also mentioned in Ext.P3. A scanning of the order would reveal that

the learned Magistrate has exercised the power not by relying on those aspects. There cannot be any doubt with respect to the position that such aspects could not be looked into for the purpose of exercising the power under section 319, Cr.P.C and materials to be looked into for invoking the power under section 319, Cr.P.C is the evidence collected during the trial. In fact, the very decision relied on by the revision petitioner himself will throw light on that aspect. The Apex Court considered the question as to what exactly is the meaning to be given to the expression 'evidence' appearing in section 319, Cr.P.C. The Apex Court held that the materials 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 and therefore, for the exercise of power under section 319 Cr.P.C the use of word 'evidence' means material that has come before the court during an inquiry or trial by it and not otherwise. It was further held thereunder that 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 Cr.P.C. Now the question is whether the impugned order has been passed after arriving at such satisfaction. The answer is evident in the order itself. The learned Magistrate found that PW5 deposed the role played by the petitioner and he deposed that the particular accused were among the persons who beated him with stone on his nose and beaten him with hands. Evidently, the other accused are the sons of the revision petitioner and all of them were roped in this case with the aid of section 149, IPC. In the first Information Statement as also in Ext.P3, the presence of the revision petitioner was mentioned and PW5 deposed before court regarding the role paid by the revision petitioner. I have already taken note of the object of the provision as held by the Hon'ble Apex Court in **Brindaban Das's** case (supra). The learned Magistrate arrived at the satisfaction that when another person has also involvement in the case the whole case against all the accused should be tried and disposed of not only expeditiously but also

simultaneously. In such circumstances, it cannot be said that the order passed by the learned Magistrate is infected with any illegality or impropriety warranting interference by this Court exercising revisional power. Whether ultimately, the revision petitioner's complicity would be revealed with the evidence adduced is a matter to be considered later, by the trial court and this Court has not made any observation with regard to those aspects. In view of the above discussions, this revision petition is liable to fail and accordingly, it is dismissed.

**Sd/-
C.T. RAVIKUMAR
(JUDGE)**

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010

