

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 24TH DAY OF FEBRUARY 2015/5TH PHALGUNA, 1936

Crl.Rev.Pet.No.1882 of 2014 ()

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AGAINST THE ORDER IN CMP NO.3483/2014 IN CC 117/2011 of J.M.F.C., RAMANKARY
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REVISION PETITIONER(S)/PETITIONER/ACCUSED NO.3 :

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MANIYAPPAN, AGED 42 YEARS
S/O.SIVARAMAN, AZHIKKATHARA, PANANGADU P.O.
PANANGADU KARA, ERNAKULAM DISTRICT.**

**BY ADVS.SRI.S.RAJEEV
SRI.K.K.DHEERENDRA KRISHNAN**

RESPONDENT(S)/RESPONDENT/STATE:

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STATE OF KERALA
REP.BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA
ERNAKULAM-682031 (CRIME NO.8/2011 OF NEDUMUDY POLICE STATION
ALAPPUZHA DISTRICT).**

BY PUBLIC PROSECUTOR SMT.BINDU GOPINATH.

**THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 24-02-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

VS

Crl.Rev.Pet.No.1882 of 2014 ()

APPENDIX

PETITIONER(S)' ANNEXURES :

**ANNEXURE I : COPY OF ORDER DATED 23.7.2014 PASSED BY THE JUDICIAL
MAGISTRATE OF FIRST CLASS, RAMANKARY, IN CMP
NO.3483/14 IN CC NO.117/2011.**

RESPONDENT(S)' ANNEXURES :

NIL

/TRUE COPY/

PA TO JUDGE

VS

K.HARILAL, J

Crl.R.P.No.1882 of 2014

Dated this the 24th day of February, 2015

ORDER

The petitioner is the third accused, who has been implicated in C.C.No.117/2011 on the files of Judicial First Class Magistrate Court, Ramankary, invoking the jurisdiction and power under Section 319 of the Code of Criminal Procedure. The prosecution case is that, the 1st and 2nd accused while working as driver and cleaner of a Tanker lorry bearing No.KL-02/AA-2369, in contravention of the permit issued to the vehicle, on 7.1.2011 at 3.30 P.M, transported dirty and foul materials in the vehicle and unloaded it into AC Canal and thereby defiled the water flowing through the said canal and thereby committed the offences punishable u/ss. 268, 269, 277 r/w. 34 IPC and sec.66 r/w. 192 of M.V.Act.

2. It is the case of the petitioner that, during the course of trial, after the examination of PW1, the learned Magistrate erroneously invoked the jurisdiction under Section 319 of the Code of Criminal Procedure

without any evidence, so as to implicate the petitioner as an accused. The petitioner is made as an accused on the sole reason that, he is the owner of the vehicle, by which the accused numbers 1 and 2 transported dirty and foul materials and unloaded the same into AC Canal.

3. Aggrieved by the erroneous implication of the petitioner as the third accused, though the petitioner had preferred C.M.P.No.3483/2014 under Section 258 of Cr.P.C., the learned Magistrate dismissed the said petition on a finding that the evidence just commenced and there is no reason to discharge him from the prosecution, though, PW1 has not deposed to the effect that 1st and 2nd accused have transported those materials with active support of the petitioner. The legality and correctness of the said finding whereby, the learned Magistrate dismissed the above C.M.P is under challenge in this revision petition.

4. The learned Counsel for the petitioner advanced arguments challenging the findings of the learned Magistrate whereby, dismissed the impugned order under challenge. The learned Counsel drew my

attention to the deposition to PW1 and pointed out that, PW1 has not given evidence, so as to implicate the petitioner invoking the power under Section 319 of Cr.P.C. The learned Counsel for the petitioner further pointed out the statutory mandate under Section 319 of the Cr.P.C. and contended that, unless it appears from the evidence that, any person not being an accused has also committed any offence, he cannot be implicated under Section 319 of the Cr.P.C. In the instant case, there is no materials to make it to appear that the petitioner is also involved in the offence.

5. Per contra, the learned Government Pleader advanced arguments to justify the findings whereby, the learned Magistrate passed the impugned order under challenge. The short question that arises for consideration is, whether there is any illegality or impropriety in the findings whereby, the learned Magistrate implicated the petitioner as the 3rd accused in the above said crime, invoking jurisdiction and power under Section 319 of Cr.P.C.

6. According to the statutory mandate under

Section 319 of Cr.P.C., if it appears from the evidence that, any person not being an accused has committed any offence, he can also be tried along with the other accused who has been undergoing a prosecution. Coming to the instant case, originally, the petitioner was not arrived as an accused, though he was the owner of the lorry by which the alleged dirty and foul materials were transported and unloaded into the canal. It shows that, the complicity of the petitioner in the commission of the said offence was not found out during the course of investigation. It is true that, even though a person has not been arrived as an accused by the prosecution, during the course of trial, he can be implicated as an accused, if it appears from the evidence that he is also involved in the offence. In the instant case, apart from the prosecution documents, the evidence available on record is the oral evidence of PW1 only.

7. Going by the deposition of PW1, it could be seen that, he has not stated anything indicating the involvements on the petitioner in the commission of the offence, except revelation of the fact that, he is the owner

of the vehicle which was used for the commission of the offence. Thus now he is also made an accused merely on the reason that, his vehicle was used for the commission of the offence. He cannot be implicated as an accused, unless it is brought out in evidence that accused numbers 1 and 2 have used the vehicle for the commission of the said offence, in connivance with the petitioner. There is no evidence, which would reveal the complicity of the petitioner in the commission of the offence. In the absence of such materials, the learned Magistrate should not have implicated the petitioner as an accused invoking the power under Section 319 of the Cr.P.C. The impugned order is vitiated by jurisdictional error and infirmity. Consequently, the C.M.P.No.3483/2014 in CC No.117/2011 will stand allowed and the petitioner will stand discharged from the prosecution.

This revision petition is disposed of accordingly.

**K.HARILAL
JUDGE**

VS