

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.11577 of 2011

and M.P.Nos.1 of 2011 and M.P.No.1 of 2015

1.Ramadass
2.Rajaprakash
3.Krishnadass
4.Sivakolunthu
5.Ravichandran

... Petitioners/Accused 5 to 9
Vs.

1.The State, rep by
The Station House Officer
CID, Police Station
Puducherry.

2.Arivagan
3.Subramani
4.Vinayagamurthi-
5.Natarajan
6.Sankar

... Respondents

Prayer:- Criminal Original Petitions filed under Section 482 Cr.P.C. to call for the records in Cr.M.P.No.27 of 2008 dated 16.02.2011 in S.C.No.73 of 2007 on the file Assistant Sessions Court cum Judicial Magistrate at Puducherry and quash the same as illegal.

For Petitioners : Mr.T.Ravidevan
For R1 : Mr.Thangavel, Addl.Public Prosecutor(P)
For R2 : Mr.Tamilvannan

ORDER

The petitioners herein who were proposed to be added as accused 5 to 9 in S.C.No.73 of 2007 are before this Court challenging the order dated 16.02.2011 passed by the Assistant Sessions Court-cum-Judicial Magistrate in Crl.M.P.No.27 of 2008 in S.C.No.73 of 2007 under Section 319 Cr.P.C.

2. On a complaint lodged by Shankar, the respondent police registered a case in Cr.No.66 of 2007 on 29.04.2007 under Section 324 r/w 34 IPC against Sengadhiravan [A1], Raju [A2], Arumugam [A3] and Rathnavel [A4]. On the complaint lodged by Arivazhagan, the respondent police registered a case in Cr.No.67 of 2007 on 29.04.2007 under Section 324 IPC r/w 34 IPC against Subramani [A1], Vinayagamurthy [A2], Natarajan [A3] and Shankar [A4/defacto

complainant in Cr.No.66/2007]. It is seen that both the FIRs are case and counter, each party making allegations against the other party alleging the other party to be the aggressor.

3. After completing the investigation in Cr.No.66 of 2007, the respondent police filed a Final Report in C.C.No.14 of 2007 under Sections 324, 326 r/w 34 IPC against Sengadhiravan [A1], Raju [A2], Arumugam [A3] and Rathnavel [A4]. Similarly in Cr.No.67 of 2007, the police filed a Final Report for an offence under Section 307 IPC r/w 34 IPC against Subramani [A1], Vinayagamurthy [A2], Natarajan [A3] and Shankar [A4]. Since the Final Report disclosed the offence under Section 307 IPC, the case in Cr.No.67 of 2007 was committed to the Court of Sessions in S.C.No.73 of 2007 and was made over to the Assistant Sessions-cum-Chief Judicial Magistrate, Pondicherry, for trial. It appears that during the investigation of the case in Cr.No.67 of 2007, the defacto complainant Arivazhagan was pressurising the local police to add these petitioners also as accused, which came to the knowledge of these petitioners and therefore, they petitioned to the superior Police Officers, on account of which, the case in Cr.No.67 of 2007 was directed to be investigated by the CID, Pondicherry. The Inspector of Police CID, Pondicherry, filed a report before the learned Judicial Magistrate-I, Pondicherry stating that the petitioners herein were not involved in the alleged offence and that Arivazhagan [defacto complainant] and his brother Sengathiravan [A1 in Cr.No.66 of 2007] are falsely implicating these petitioners. The trial commenced before the learned Assistant Sessions Judge in S.C.No.73 of 2007 and Arivazhagan, Sengathiravan and his group of witnesses gave evidence implicating these petitioners in the evidence. Thereafter, Arivazhagan [defacto complainant] filed CMP No.27 of 2008 in S.C.No.73 of 2007 under Section 319 Cr.P.C. to include these petitioners also as accused in S.C.No.73 of 2007, which was allowed by the trial Court on 16.02.2011, challenging which the petitioners are before this Court.

4. Heard the learned counsel for the petitioners; learned counsel for the defacto complainant/second respondent herein and the learned Additional Public Prosecutor appearing for the State.

5. Learned counsel for the defacto complainant submitted that under Section 319 Cr.P.C., if the involvement of other persons surfaces during the evidence in Court, the trial Court can implead them as accused and therefore, there is no infirmity in the impugned order inasmuch as all the 5 witnesses who were examined by the prosecution, have spoken about the involvement of these petitioners in the offence.

6. Per contra, the learned counsel for the petitioners submitted that when the complaint was given by Arivazhagan to the police, he had not named these petitioners and when the defacto complainant was attempting to manipulate the local police for including the name of these petitioners in the Final Report, the petitioners complained to the senior Police Officers, on whose direction CID investigation was done, in which, it was shown that

these petitioners were never involved in the offence.

7. This Court gave its anxious consideration to the rival submissions. There is no quarrel with the proposition that under Section 319 Cr.P.C., if evidence about the involvement of a person surfaces, he can be impleaded as an accused.

8. This Court carefully perused the complaint and other records. Arivazhagan, in his complaint to the police, has clearly stated that on 29.04.2007, around 4 o'clock, he saw his brother Sengathiravan and Arumugam being assaulted by Subramani [A1], Vinayagamurthy [A2], Natarajan [A3] and Shankar [A4]. In his complaint, he has also stated that they were armed with stick and iron rods. On seeing them assaulting his brother, he went to aid his brother and on seeing him, they ran away. Thereafter, he took his brother Sengathiravan and Armugam to General Hospital, Pondicherry, where, they were taking treatment. Even in the Accident Register, Sengathiravan has stated that he was attacked by four known persons. Arivazhagan has not stated that apart from four persons there were others in the group. Though an FIR is not the encyclopaedia of a prosecution case, yet, in cases of this nature, where, there is a case and counter, the averments in the FIR about the involvement of the accused become relevant. It must be remembered that Sengathiravan and Arumugam who are the injured in Cr.No.67 of 2007 are the accused in Cr.No.66 of 2007 in which Shankar [A5 in Cr.No.67 of 2007] is the defacto complainant]. At least, if the injured had stated to the doctor at the time of admission that he did not know how many people had assaulted him, then, the benefit of doubt can be given, to some extent, to the version of the defacto complainant.

9. In the light of the categorical assertion by Arivazhagan and Sengathiravan that only four named persons were involved in the attack, their subsequent parrot-like evidence before the Sessions Court that, apart from the four named persons, these petitioners were also involved, indeed becomes very suspicious. The Pondicherry CID's report also assumes significance.

10. In the facts and circumstances of appraisal of the evidence of the witnesses, this Court is of the view that this is not a fit case to implead the petitioners herein as accused by invoking Section 319 Cr.P.C.

11. In the result, this petition is allowed and the prosecution in Cr.M.P.No.27 of 2008 dated 16.02.2011 in S.C.No.73 of 2007 on the file of the Assistant Sessions Court-cum-Judicial Magistrate at Puducherry are quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

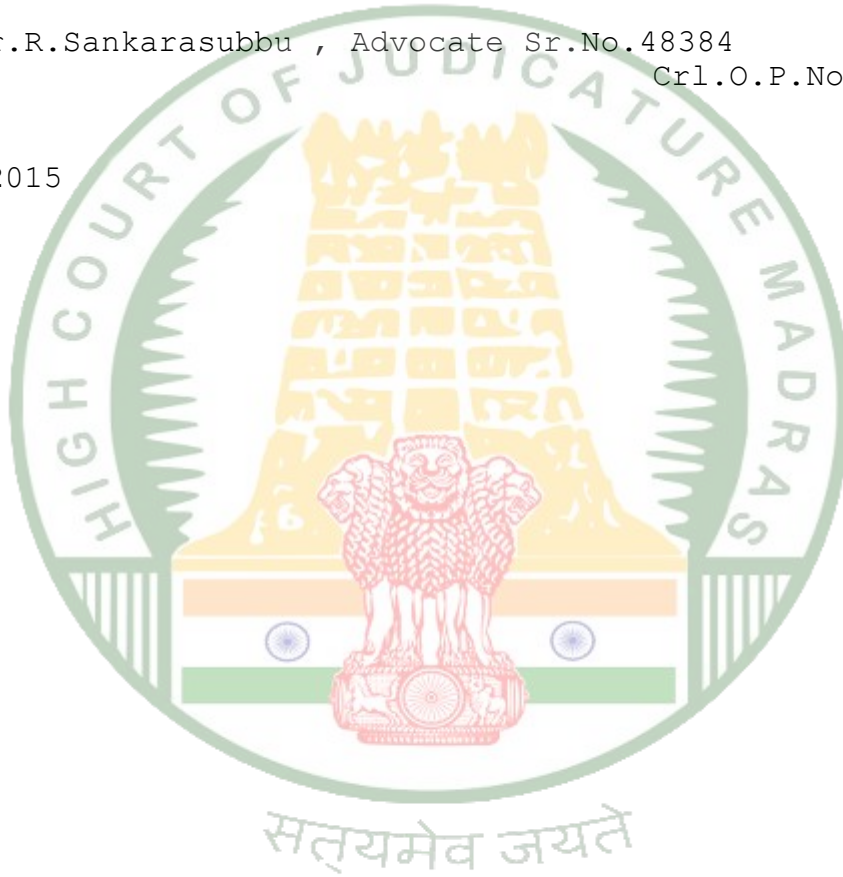
1.The Station House Officer
CID, Police Station
Puducherry.

2. Assistant Sessions Court-cum-
Judicial Magistrate at Puducherry

3.The Public Prosecutor,
High Court, Madras.

1 cc to Mr.R.Sankarasubbu , Advocate Sr.No.48384
CrI.O.P.No.11577 of 2011

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pmk.5.10.2015



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