

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2015

CORAM

THE HON'BLE MR. JUSTICE S. MANIKUMAR

Criminal Revision Case No.1154 of 2011

1. D.Jayapal
 2. A.Gnaavel
 3. S.Subramanian
 4. Saminathan
 5. A.Vetrivel
 6. K.Padmanaban
- ... Petitioners

Vs.

The Deputy Superintendent of Police,
Panruti,
Nellikuppam Police Station.
(Crime No.959 of 2006)

... Respondents

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order passed by the learned District and Sessions Judge, Cuddalore, made in CrI.M.P.No.2697 of 2010 in S.C.No.19 of 2008, dated 25.07.2011.

For Petitioners : Mr.C.Prasanna Venkatesh

For Respondent : Mr.P.Govindarajan,
Addl. Public Prosecutor

O R D E R

Being aggrieved by the order, made in CrI.M.P.No.2697 of 2010 in S.C.No.19 of 2008, dated 25.07.2011, on the file of the learned District and Sessions Judge, Cuddalore, the Criminal Revision Case is filed.

2. Material on record discloses that a case in Cr.No.959 of 2006, has been registered on the file of the Station House Officer, Nellikuppam Police Station, for the offences, under Sections 147, 148, 294, 323, 436, 427, 506(ii) IPC., r/w. 149 IPC., and 3(i)(x) of the SC/ST Act, 1989. The Deputy Superintendent of Police, has taken up the investigation. Charge sheet has been filed. During examination of PW.1, he had named that certain were there, at the time of occurrence on 14.10.2006 and attributed specific overtact. Their

names were also found in FIR and statements recorded under Section 161 Cr.P.C., as A2, A8, A10, A13, A14 and A19, respectively. While deposing in the Sessions Court, PW.1 - Purushothaman, PW.2 - Adikesavan, PW.3 - Valli (Injured), PW.4 - Seetharaman (Injured) and PW.9 - Jagannathan (Injured), have implicated the abovesaid FIR named persons. Therefore, the Special Public Prosecutor, has filed an application, under Section 319 Cr.P.C., to proceed against them.

3. Counter affidavit has been filed by the petitioners, contending inter alia that after investigation, a final report has been filed. Names of the persons, do not find place in the report. Defacto complainant did not file any protest petition, before the learned Judicial Magistrate. The petitioners in their counter affidavit have submitted that on the basis of the exaggerated version of the prosecution witnesses, the learned Public Prosecutor has filed the petition, belatedly. After considering the submission advanced by both the parties, vide order, dated 25th July, 2011, in CrI.M.P.No.2697 of 2010 in S.C.No.19 of 2008, the learned Principal District Judge, has ordered as follows:

"From a perusal of the FIR in this case, it is found that the names of the proposed accused are finding a place therein already. Likewise during the time of deposition, PW.1, as well as the other witnesses have categorically spelled out the names of the proposed accused. Therefore, a legal requirement arises that there accused also have to be arraigned as the accused and the trial has to be proceeded with comprehensively. The proposed accused have not placed any cogent and convincing reason, as to why they should not be added as accused in this case. Therefore, the existing materials such as names finding a place in the FIR and in the deposition, warrants that they also have to be proceeded and tried with.

6. Therefore, this Court finds that in the circumstances of the case the petition deserves to be allowed. Therefore, this point is answered in the affirmative in favour of the State and as against the proposed accused.

7. In the result, the petition is allowed. The proposed accused shall be arraigned as accused No.15 to 20 and be proceeded with. Petition is ordered accordingly."

4. Though the learned counsel for the petitioner assailed the correctness of the order, reiterating the same grounds, this Court is not inclined to accept the same, for the reason that as per Section 319 of the Criminal Procedure Code, 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 and 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. 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.

5. In Jagadish Sahai Mathur v. State (Delhi Admn.) reported in 1991 Cr.L.J. 1069, the Court held that Section 319 of the Code is self-contained, complete in itself and independent of Section 190. It empowers the Magistrate to add any person not being the accused before him, but against whom there appears during inquiry or trial sufficient evidence indicating his involvement in offence.

6. In Damjibhai Bachubhai Patel v. State of Gujarat reported in 2000 Cr.L.J. 699, the Gujarat High Court has held that it is only when the Court reaches the stage of recording evidence, application under Section 319 Cr.P.C., lies, before that it cannot be entertained.

7. In Joginder Singh v. State of Jharkhand reported in 2012 Cr.L.J. 1095, the Court held that the power under Section 319 Cr.P.C., can be exercised by the concerned Court only on the basis of evidence obtained in course of trial of the accused persons and which would suggest prima facie the need to proceed against persons other than the accused already facing trial, appearing to be the guilty of the offence. Prior to such stage, the provisions of S.319, Cr.P.C., cannot be invoked at all. It is essential that the need to proceed against the person other than the accused, appearing to be guilty of offence, arises only on evidence recorded in the course of any inquiry or trial.

8. In A.P.Aboobacker Musaliar v. Inspector of Police, CBI, reported in 2006 Cr.L.J. 491, the Court held that at any stage if the Court is satisfied that a person who is not an accused is involved in the offence, the Court can summon him under s.319 Cr.P.C., for that purpose no application by the prosecution, accused or a third person is necessary.

9. In Meherunnesha v. Narul Mean @ Nurul Main reported in 1988 (2) Crimes 223, the Court held that the expression "any person not being accused" does not exclude person dropped under Section 169 Cr.P.C." It is held in Smt. Rukhsana Khatun v. Sakhawat Hussain and Ors., reported in AIR 2002 SC 2342, that the persons named in the FIR as accused, but not charge-sheeted can be summoned and arraigned as

additional accused under Section 319 Cr.P.C. particularly when the evidence of the prosecution witnesses corroborates the role of these persons In the alleged Incident.

10. In Mahant Kunj Behari Sharan v. State of U.P., reported in 2007 CrI.L.J. 3501, in FIR, five persons were named for the offences, under Sections 147, 148, 149 and 307 IPC., but only two charge sheeted. Evidence of complainant and witnesses showed involvement of all the five specific role also assigned, remaining three rightly summoned under Section 319 Cr.P.C. The Court upheld the same.

11. In Tek Narayan Prasad Yadav v. State of Bihar reported in 1999 SCC (Cri.) 356, the Supreme Court held that where the accused persons have not been charge-sheeted and committed to the Court of Sessions, the Court can summon them during trial of the case if some evidence is found against them.

12. In Suman v. State of Rajasthan reported in 2010 AIR SCW 7078, the Supreme Court held as follows:

"Section 319 Cr.P.C. applies to all the Courts including the Sessions Court. It empowers the Court to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with other accused. If such person is not attending the Court, he can be arrested or summoned. If he is attending the Court, although not under arrest or upon a summons, he can be detained by such Court for the purpose of inquiry into, or trial of the offence which he appears to have committed. Sub-section (4) lays down that where the Court proceeds against any person under sub-section (1), the proceedings in respect of such person shall be commenced afresh and witnesses are reheard. A reading of the plain language of sub-section (1) of Section 319 Cr.P.C. makes it clear that a person not already an accused in a case can be proceeded against if in the course of any inquiry into or trial of an offence it appears from the evidence that such person has also committed any offence and deserves to be tried with other accused. There is nothing in the language of this sub-section from which it can be inferred that a person who is named in the FIR or complaint but against whom charge-sheet is not filed by the police, cannot be proceeded against even though in the course of any inquiry into or trial of any offence the Court finds that such person has committed any offence for which he could be tried together with the other accused."

13. Reverting back to the case on hand, it is evident that PW.1 - Purushothaman, PW.2 - Adikesavan, PW3 - Valli (Injured), PW.4 - Seetharaman (Injured) and PW.9 - Jagannathan (Injured), witnesses examined on behalf of the prosecution and in particular, Pws.3, 4 and 9, injured persons, have categorically deposed about the involvement of the petitioners, in the crime, which occurred on 14.10.2006. Their names are also found in FIR and statements under Section 161 Cr.P.C., as A2, A8, A10, A13, A14 and A19, respectively.

14. In the light of the decisions, stated supra and discussion, this Court is of the view that there is no manifest illegality in the impugned order, in Crl.M.P.No.2697 of 2010 in S.C.No.19 of 2008, dated 25.07.2011, on the file of the learned District and Sessions Judge, Cuddalore, this Criminal Revision Case is dismissed. No costs.

-s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Principal Sessions Judge,
Cuddalore.
2. The District and Sessions Judge,
Cuddalore.
3. The Deputy Superintendent of Police,
Panruti, Nellikuppam Police Station,
(Crime No.959/2006)
4. The PUblic Prosecutor,
High Court, Madras.

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