

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 630 of 2009

Sampath

.. Petitioner

Versus

1. Asaithambi

2. C.Rajan

3. Chinnan @ Chinnasettan @ Chinnattan

.... Respondents/Accused 1 to 3

4. State rep. by

The Inspector of Police,
Fair lands Police Station,
Salem

.. Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401 of Cr.P.C. against the Judgment dated 04.06.2009 passed in CrI.M.P.No.88 of 2009 in C.C.No.252 of 2008 on the file of the learned Judicial Magistrate No.V, Salem District.

For Petitioner : Mr. K.V.Sridharan

For Respondents 1 & 2 : Mr.R.Raju

For Respondent-3 : Mr.N.Manoharan

For Respondent-4 : Mr. V.Arul,
Government Advocate (CrI.side)

ORDER

The petitioner, who is the defacto complainant, has come up with the present Criminal Revision against the order of dismissal dated 04.06.2009, in CrI.M.P.No.88 of 2009 passed by the learned Judicial Magistrate No.V, Salem.

2. The petitioner has filed a petition under Section 216 of Cr.P.C. seeking permission to engage a counsel to assist the prosecution. The reason set out in the aforesaid petition for such a prayer is that the fourth respondent police had omitted to add certain sections in the final report.

3. The Court below after analysing the evidences available on record, had dismissed the petition on the ground that no witnesses had been examined so far.

<https://hcservices.ecourts.gov.in/hcservices/>

4. Heard the learned counsel on either side and perused the materials available on record. Section 216 Cr.P.C. empowers

the court to alter or add charges only on the evidences and circumstances of the case, however, in the present case, as rightly pointed out by the court below no witnesses had been examined so far. In this context, reference can be made to my own order reported in the case of (State represented by The Inspector of Police, H-8, Thiruvottriyur Police Station vs. K.P. Shankar and others) 2015 2 Law Weekly (Cr1) 384 wherein in Para Nos. 19 and 20, I held as follows:-

"19. Again, this Court in the decision in the case of (P. Krithikalakshmi vs. Sri Ganesh and others) 2013 (3) Madras Weekly Notes (Cr1) 521 has reiterated the legal position that neither the prosecution nor an accused has a right to file a petition under Section 216 of Cr.P.C. requiring the Court to frame additional charge. It is within the domain of Court to frame additional charge or alter an existing charge. It was also held that a revision under Section 397 of Cr.P.C. is not maintainable as against an order passed by the Court below in the application filed under Section 216 of Cr.P.C. in view of the specific bar under Section 397 (2) Cr.P.C. that no Revision could be filed as against an order passed in an interlocutory Petition. Since the present Revision has been filed from the order passed in a similar application, the Criminal Revision Case is not maintainable.

20. Thus, the legal position emanates from the above decisions it that neither the prosecution nor the defacto complainant or any one interested in the criminal case is entitled to file an application under Section 216 of Cr.P.C. and it is only for the Trial Court to decide about framing of an additional charge or alter an existing charge upon arriving at a subjective satisfaction on the basis of existence of materials available on records. It can also be culled out that as against an order passed by the Trial Court in an application under Section 216 of Cr.P.C. a Criminal Revision Case under Section 397 of Cr.P.C. is not maintainable as such an order did not finally determine the prosecution case and it is an interlocutory in nature. Thus, the Trial Court, in the present case, is right in dismissing the application filed by the prosecution under Section 216 of Cr.P.C. for inclusion of an additional charge under Section 302 of IPC against the respondents/accused.

5. In the light of the above legal position enunciated in the decision mentioned supra, I am of the view that the petition filed by the petitioner is a premature one and the order passed therein by the court below does not calls for any interference by this Court.

6. In the result, the Criminal Revision case is dismissed. Consequently, connected miscellaneous petition is closed. Since the case is pending from the year 2008, the trial

court is directed to dispose of the case as expeditiously as possible preferably, preferably within a period of six months from the date of receipt of a copy of this order. However, it is needless to mention that both the parties are directed to co-operate for the speedy disposal of the case.

sd/-
ASSISTANT REGISTRAR (CO)

/ TRUE COPY /

SUB-ASSISTANT REGISTRAR

smi/rsh

To

1. The Judicial Magistrate No.V, Salem.
2. The Inspector of Police,
Fair lands Police Station,
Salem
3. The Public Prosecutor
High Court, Madras
4. The Section Officer, Criminal Section,
High Court, Madras

+1 CC to Mr.K.V.Sridharan Advocate. SR.NO.45999

सत्यमेव जयते

Cr1 RC No. 630 of 2009

CO-MSM
JD 16/10/2015

WEB COPY