

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.6.2015

Coram

The Honourable Mr. Justice B. RAJENDRAN

Crl. R.C. No. 755 of 2013

and

M.P. No. 1 of 2013

1. Hemalatha
2. Bhindhu
3. Rathinasamy

.... Petitioners/Respondent

Versus

The Sub Inspector of Police,
All Women Police Station
Vadapalani, Chennai

... Respondent/Complainant

Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C against the order dated 25.4.2013 passed in CMP No. 5770 of 2012 in C.C.No.26 of 2011 on the file of the Judicial Magistrate - I, Poonamallee whereby included the petitioners in the charge sheet filed in the above C.C.No.26 of 2011 as accused.

For petitioner : Mr.C.Prakasam

For respondent : Mr.T.Arul,

Government Advocate (Crl.side)

O R D E R

The Criminal Revision has been filed by the petitioners aggrieved by the order dated 25.4.2013 passed by the learned Judicial Magistrate No.1, Poonamallee, by which the Court below included the petitioners herein as accused in C.C.No.26 of 2011 pending on its file.

2. On the basis of the complaint given by the defacto complainant, the respondent police has registered a case and layed charge sheet, after completing the investigation, under Section 498 (A), 406, 506(ii) IPC and Section 4 of Dowry Prohibition Act and the same was taken cognizance in C.C.No.26 of 2011 by the learned Judicial Magistrate No.1, Poonamallee. During the course of trial, the defacto complainant examined herself as PW1 and she deposed that the petitioners herein, have also committed offences for harassment by demanding dowry and Criminal intimidation to her. Therefore, based on her deposition, which has been marked as Ex.P1, the respondent police filed a petition under Section 319 Cr.P.C. before the Court below seeking to implead the petitioners herein also as accused. The Court below, by order dated 25.4.2013, allowed the

petition filed by the prosecution against which the present Criminal Revision has been filed.

3. The learned counsel for the revision petitioners would contend that the revision petitioners are in-laws of the defacto complainant and only after due investigation, the police have come to a conclusion that the petitioners are in no way connected with the case and rightly omitted their names in the charge sheet. The learned counsel for the revision petitioners further submitted that the Court below, without giving any reason, has ordered to include these petitioners as accused. According to the learned counsel, merely because the name of the petitioners find place in the FIR, the Court below ordered to include their names and issued summons to them, which is legally not correct. The learned counsel also pointed out that no specific overt act has been made against these petitioners in the evidence of P.W.1. It is further submitted that the defacto complainant and the accused are now living together and they have already approached the Court below for compromise but the Court below dismissed the petition stating that the alleged offence was not compoundable.

4. The learned Government Advocate (Crl.side) appearing for the respondent would contend that since the name of the petitioners find place in the FIR, the Court below allowed the petition filed under Section 319 Cr.P.C. The Learned Government Advocate would further contend that if the petitioners are aggrieved by the order of the Court below, it is always open to them to subject the prosecution witnesses to cross-examination to prove their innocence. The Court below, based on the materials available on record passed the order to implead the petitioners also as accused and it need not be interfered with.

5. Heard both sides and perused the materials available on record. By consent of the counsel for both sides, the main Criminal Revision case itself is taken up for final hearing.

6. It is the case of the petitioners that the order passed by the Court below is a non-speaking order and there is no discussion as to why the petitioners are sought to be impleaded as accused in the Calander Case or what is the material available to implicate them. The Court below has simply allowed the petition without assigning any reasons. In this connection, the learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in Sarabjit Singh and another vs. State of Punjab and another [2009(16) SCC 46] and also the decision reported in Hardeep Singh vs. State of Punjab [2009 (16) SCC 785] for the proposition that the Court has to see whether there is prima facie case against the person sought to be summoned or against whom process is sought to be issued. Thus, the power under Section 319 of Cr.P.C. is an extraordinary power which is required to be exercised sparingly and if compelling reasons exist for taking cognisance against persons against whom action has not been taken, the power under Section 319 of Cr.P.C. can be exercised.

7. In the decision reported in Sarabjit Singh and another vs. State of Punjab and another reported in 2009(16) SCC 46, in paragraph 21 it has been held as follows:

"21. An order under Section 319 of the Code, therefore, should not be passed only because the first information or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent test; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned."

8. Relying on the aforesaid ruling, the learned counsel argued that unless the court is convinced with the evidence of P.W.1 for implicating the petitioners as accused, their implication as accused is unnecessary. The trial Court has not at all taken into consideration the relevant factors before allowing the petition filed by the prosecution. Further, the Court below has not assigned any reasons for allowing the petition and the order passed by the Court below is a non-speaking order which deprived the petitioners to know the materials based on which they were included as accused.

9. It is also useful to refer the judgment of the Hon'ble Supreme Court in RAMDHAN MALI AND ANOTHER VS. STATE OF RAJASTHAN AND ANOTHER (2014 3 SC 92), wherein it has been held as follows:-

105. Power under Section 319 Cr.PC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. 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.

10. In the case on hand, the fact remains that the petitioners are in-laws and they are in no way connected with the accused. The evidence of P.W.1 has not been properly appreciated by the Court below. On a careful perusal of the entire records, it is clear that the involvement of in-laws in the case has not been proved by P.W.1. In the evidence, P.W.1 has not specifically stated anything against the revision petitioners. In the absence of any specific overt act against the petitioners, it is not proper to implead them merely because their name find place in the FIR. It is pertinent to point out that though the names of the petitioners find place in the FIR, subsequently, their names have been dropped out, after due investigation. These vital points have not been considered by the Court below. Therefore, at this stage, the inclusion of in-laws, namely, the petitioners herein, is not fair, reasonable and correct.

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11. In view of such circumstances, the Criminal Revision Case is allowed. The order dated 25.4.2013 passed by the learned Judicial

Magistrate No.1, Poonamallee is set aside.
MP No. 1 of 2011 is closed.

Consequently, connected

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

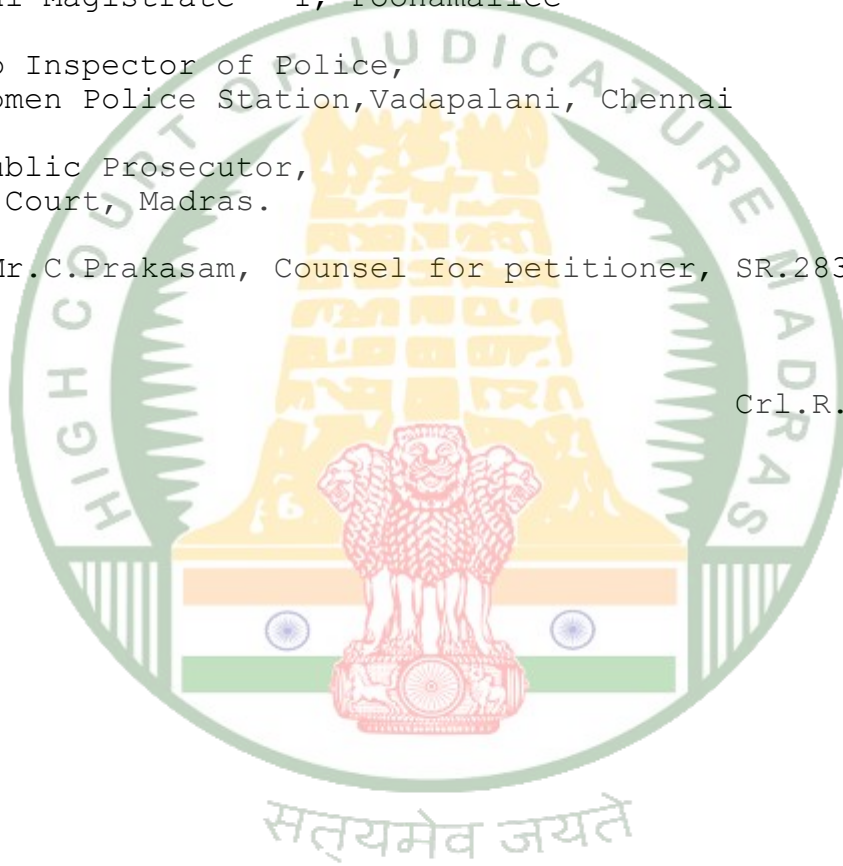
To

1. Judicial Magistrate - I, Poonamallee
2. The Sub Inspector of Police,
All Women Police Station, Vadapalani, Chennai
3. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.C.Prakasam, Counsel for petitioner, SR.28314

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