



WEB COPY

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED 20.04.2015
CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH

Crl.O.P.No.7027 of 2015

1.B.Soorya Prabha

2.Prabu

..Petitioners/A3 and A6

Vs.

State through the Inspector of Police,
Economic Offence Wing,
Tiruchirappalli District

..Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code to set aside the impugned orders dated 22.04.2014 and 17.06.2014 of the learned TANPID Court, Madurai passed on the unnumbered petition filed under Section 319 Cr.P.C and direct the said trial court to array the above said K.Sundarrajan formerly the Manager-Investments and C.Parthiban the Head, Equity Section in the said Financial Establishment 'Money Cube' as additional accused and proceed against them in accordance with law and pass such further or other orders as this Court may deem fit and proper.

For Petitioners : Mr.M.Saravanan

For Respondent : Mr.S.Prabha
Govt.Advocate (Crl.Side)

O R D E R

This petition has been filed under Section 482 Cr.P.C, seeking to set aside the impugned orders dated 22.04.2014 and 17.06.2014 of the learned TANPID Court, Madurai passed on the unnumbered petition filed under Section 319 Cr.P.C and direct the said trial court to array the above said K.Sundarrajan formerly the Manager-Investments and C.Parthiban the Head, Equity Section in the said Financial Establishment 'Money Cube' as additional accused and proceed against them in accordance with law.

2.Heard the learned counsel for the petitioners and also the learned Government Advocate (Crl.side).

3.The petitioners being accused in C.C.No.2 of 2012 on the file of TANPID Court, Madurai, having been arrayed as the accused 3 and 6 filed an application seeking to invoke the power of the court under Section 319 Cr.P.C. The said application was returned on the ground that the petitioners being accused cannot maintain the same.

4.The learned counsel for the petitioners placing reliance on the [judgements of the Hon'ble Supreme Court in Y.Saraba Reddy Vs. Puthur Rami Reddy and Another](https://hcservicescourts.gov.in/hcservices/judgements-of-the-hon-ble-supreme-court-in-y.saraba-reddy-vs.-puthur-rami-reddy-and-another) reported in (2007)2 MLJ (Crl.) 372 SC submitted that even the accused can maintain the application. In the said decision



referred supra, the Hon'ble Supreme Court was pleased to hold as follows:

"13. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it. If it is satisfied that any person other than accused has committed an offence he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub-section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned".

5. In view of the law laid down, the order passed is hereby set aside and the jurisdictional court is directed to take the application on file and proceed in accordance with law keeping in mind the proceedings enunciated by the courts while exercising the power under Section 319 Cr.P.C.

6. In the result, this Criminal Original petition is allowed.

Sd/-

20.04.2015

For Being Mentioned

This petition in CrI.OP(MD)No.7027 of 2015 having been posted this day viz., on 04/06/2015 for being mentioned in pursuance to the order of this Court dated 20/04/2015 made herein, in the presence of Mr.M.Saravanan, Advocate for petitioner and of Mr.S.Prabha, Govt.Advocate(CrI.Side) for the respondent, the Court made the following order:-

The matter is listed today under the Caption "for being mentioned".

2. The learned counsel for the petitioners submitted that this Court vide order dated 20.04.2015 allowed the Criminal Original Petition (MD)No. 7027 of 2015 and set aside the order of the Court below and directed the jurisdictional Court to take the application filed by the



petitioners on file. But, in the order, there was no direction to return the original petition to the petitioners.

3. In view of the above, the Registry is directed to return the original petition filed by the petitioners to them, by substituting a copy of the same.

Sd/-
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

To be substituted the order copy already despatched on 08/03/2015.

- 1.The Special Judge, TNPID Court, Madurai.
 - 2.The Inspector of Police,Economic Offence Wing II,
Tiruchirappalli District.
 - 3.The Additional Public Prosecutor, Madurai Bench of Madras High Court,
Madurai.
- +1cc to Mr.M.Saravanan,Advocate, SR.No.27940

Crl.O.P.No.7027 of 2015
20.04.2015

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PA/07.05.2015/2P/5C

PA/KBM/10.06.2015/3P/5C