



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2015

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THE HONOURBLE MR.JUSTICE M.SATHYANARAYANAN

CrI.R.C.(MD).No.1 of 2015

and

M.P.(MD)No.1 of 2015

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.. Petitioner/sole accused

Vs.

State rep. by its
Sub Inspector of Police,
Nagudi Police Station,
Pudukkottai District.
(Crime No.22118/2009)

.. Respondent/Complainant

Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C. to call for the records of the proceedings dated 25.04.2014 in alteration of charges in C.C.No.47 of 2011 passed by the learned Judicial Magistrate, Aranthangi and set aside the same.

For Petitioner : Mr.B.Tamilnidhi

For Respondent : Mr.P.Kandasamy

Government Advocate (crl.side)

ORDER

The petitioner is the sole accused in C.C.No.47 of 2011 on the file of the Court of Judicial Magistrate, Aranthangi and he was originally charged for the commission of the offences under Sections 294(b), 323 and 325 IPC and it was altered into Sections 294(b), 324 and 326 IPC in Crime No.18 of 2009 registered by Nagudi Police Station.

2. The respondent police after investigation has filed the final report charging the accused for the commission of the said offences and it was taken on file in C.C.No.47 of 2011.

3. The grievance expressed by the petitioner is that out of ten prosecution witnesses nine witnesses were already examined and at this juncture the trial Court has altered the charge from Sections 323 and 325 IPC into Sections 324 and 326 IPC and the same is in violation of Sections 216 and 217 of Cr.P.C.

4. It is useful to relevant Sections 216 and 217 of Cr.P.C., which reads as follows:-

"216. Court may alter charge.- (1) Any Court may alter or add to any charge at any time before judgment is pronounced.



(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if he altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) If the offence stated in the altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.

217. Recall of witnesses when charge altered.- Whenever a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed -

(a) to recall or re-summon, and examine with reference to such alteration or addition, any witness who may have been examined, unless the Court, for reasons to be recorded in writing, considers that the prosecutor or the accused, as the case may be, desires to recall or re-examine such witness for the purpose of vexation or delay or for defeating the ends of justice;

(b) also to call any further witness whom the Court may think to be material."

5. It is obligatory on the part of the trial Court to follow Sections 216 and 217 of Cr.P.C., which speaks about the procedure to be followed while altering the charges. The trial Court not even recorded its finding and simply chosen to alter the charges.

6. In my considered opinion, the non following of procedure under Sections 216 and 217 of Cr.P.C. is unsustainable and hence on that sole ground, the impugned order is liable to be interfered.

7. In the result, the Criminal Revision Case is allowed and the impugned order dated 25.04.2014 is set aside and the lower Court shall follow the procedure contemplated under Sections 216 and 217 of Cr.P.C. and proceed further in accordance with law. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(Crl.Side)

/True copy/



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To

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1.The Judicial Magistrate ,Aranthangi.

2.Sub Inspector of Police,
Nagudi Police Station,
Pudukottai & District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1cc to MR.B.TAMIL NIDHI, ADVOCATE IN SR NO. 2587

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