



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.12.2015

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THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.R.C.(MD)No.567 of 2015

and

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

1. Pandi

2. Rani

... Petitioners

Vs.

State represented through
the Sub Inspector of Police,
Chekkanoorani Police Station,
Madurai District.

... Respondent

Prayer: Criminal Revision Petition is filed under Sections 397 r/w. 401 of Cr.P.C., to call for the records and set aside the order passed in Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 in Crime No.31 of 2010 dated 02.11.2015 on the file of the learned Judicial Magistrate No.II, Usilampatti.

For Petitioners	:	Mr.R.G.Shankar Ganesh
For Respondent	:	Mr.P.Kandasamy
		Govt. Advocate (Crl.side)

O R D E R

The Petitioners 1 and 2 / A1 and A2 have focused the instant Criminal Revision Petition as against the order dated 02.11.2015 in Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 in Crime No.31 of 2010 passed by the learned Judicial Magistrate No.II, Usilampatti.

2. The Learned Judicial Magistrate No.II, Usilampatti, while passing the impugned order in Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013, on 02.11.2015, had observed the following:

"Heard. Perused records. Accused Praphakaran and Sivarajan names were mentioned in the FIR and complaint. P.W.1, P.W.2, P.W.3 stated about the involvement of accused Praphakaran and Sivarajan. Other accused has no locus standi at this stage to oppose this petition. Prima facie case made out against the accused Praphakaran and Sivarajan from the evidence on file. Cognizance of the offence under Section 323 Cr.P.C."

and resultantly allowed the Petition filed by the

Respondent/Police/Complainant (as petitioner).

3. The Learned Counsel for the Petitioners / A1 and A2 urges before this Court that the Learned Judicial Magistrate No.II, Usilampatti had committed an error in observing that the accused Nos.3 and 4 in Crime No.31 of 2010 were deleted in the charge sheet on the basis of statement furnished by the de-facto complainant.

4. According to the Learned Counsel for the Petitioners / A1 and A2, the Learned Judicial Magistrate No.II, Usilampatti had wrongly observed that the First Information Report was registered on 15.01.2010 and the charge sheet was filed on 26.02.2010 after completing the investigation. At this stage, the Learned Counsel for the Revision Petitioners projects an argument that the de-facto complainant and other witnesses had witnessed that the accused Nos.3 and 4 in Crime No.31 of 2010 were no way connected with the occurrence that took place on 15.01.2010. Added further, it is represented on behalf of the Petitioners that the de-facto complainant had admitted that he had falsely given the complaint against the accused Nos.3 and 4 in Crime No.31 of 2010.

5. Yet another plea on the side of the Revision Petitioners is that there is no provision of Law to include the accused Nos.3 and 4, who were already deleted from the First Information Report after detailed investigation, lastly it is the submission of the Learned Counsel for the Revision Petitioners that the Learned Judicial Magistrate No.II, Usilampatti had not considered and properly perused the documents and evidence available on records at the time of passing the impugned order.

6. It comes to be known that before the Learned Judicial Magistrate No.II, Usilampatti, the Respondent / Police had filed Cr.M.P.No.3876 of 2015 under Section 319 of Cr.P.C., to include one Praphakaran and Sivarajan as accused because of the reason that P.W.1 Pandiyarajan in the police enquiry and before Court in his evidence had stated about the role played by the accused Prapakaran and Sivarajan, likewise, the injured P.W.2 Meenakshi, P.W.3 Chellam and P.W.4 Lakshmi in their evidence before Court had also fallen in tune with the evidence of P.W.1 in regard to the role / offence committed by the accused Prapakaran and Sivarajan.

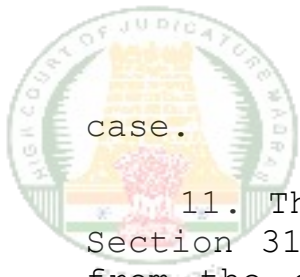
7. The Revision Petitioners/A1 and A2 in their counter to Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 before the trial Court had categorically stated that on 16.01.2010, P.W.1 Pandiyarajan was examined by the Investigating Officer and when he made an endeavour to obtain a statement under Section 161(3) of Cr.P.C., the said P.W.1 had stated that he had falsely included the names of Praphakaran and Sivarajan. Similarly, P.W.2 Meenakshi and P.W.3 Chellam in their Section 161(3) of Cr.P.C., statement had also stated that Praphakaran and Sivarajan were falsely

included as if they had taken part in the occurrence. Likewise, P.W.4 Lakshmi, P.W.5 Sandhanam in their Section 161(3) of Cr.P.C., statements had also not stated that the aforesaid Praphakaran and Sivarajan had indulged in the occurrence.

8. Apart from that, P.W.4 Lakshmi in her chief examination before the trial Court had stated that she had not seen as to how the injury had occurred and that they came to separate the persons and before she could arrive at the place of occurrence, the quarrel was over. In short, P.W.4 Lakshmi had turned hostile. Even P.W.5, in his chief examination had stated that he had not seen the occurrence and before he could proceed to the place of occurrence, the incident was over. P.W.7 Subhulakshmi in her chief and cross-examination had not stated that Praphakaran and Sivarajan had taken part in the occurrence. Therefore, it is forcefully pleaded on the side of the Revision Petitioners before this Court that there is no imminent need or necessity to include one Praphakaran and Sivarajan as accused in the case. That apart, the Cr.M.P.No.3876 of 2015 was filed by the Respondent/Complainant/Police at a belated point of time and prayed for dismissal of the said Cr.M.P.No.3876 of 2015.

9. At this juncture, this Court has perused the impugned order dated 02.11.2015 passed by the Learned Judicial Magistrate No.II, Usilampatti in Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 in Crime No.31 of 2010. The Learned Judicial Magistrate No.II, Usilampatti, in the impugned order had only stated that accused Praphakaran and Sivarajan names were mentioned in the F.I.R. and the complaint. Further, P.Ws.1 to 3 stated about the involvement of accused Praphakaran and Sivarajan etc. Ultimately, the Learned Judicial Magistrate No.II, Usilampatti had opined that a prima facie case was made out against the accused Praphakaran and Sivarajan for taking cognizance of an offence under Section 323 of I.P.C.

10. It is to be borne in mind that the power to be exercised in terms of the ingredients of Section 319 of Cr.P.C., is an extra-ordinary wide power conferred on a Court of Law mainly aimed at to do substantial real justice to the parties. The said power ought to be exercised with great care, caution and with utmost circumspection only when there are compelling reasons exist for proceeding against concerned persons in respect of whom action was not taken earlier. It cannot be gainsaid that whether the evidence indicates the involvement of a person in the commission of an offence / crime, a Court of Law should exercise its power under Section 319 of Cr.P.C. and summon him as an additional accused. Also, it cannot be brush aside that the power under Section 319 of Cr.P.C. can be exercised by a Court of Law at any such of the cases. Needless to say for this Court to make a significant mention that the power under Section 319 of Cr.P.C., is to be sparingly exercised depending upon the facts and circumstances of a given



case.

11. The essential requirement for invoking the ingredients of Section 319 of Cr.P.C., is that it must appear to a Court of Law from the evidence collected during trial or in the enquiry that some other person, who is not arraigned as an accused in that accused, had committed an offence, for which that such person could be tried together with the accused already arraigned. It is not enough that the Court entertained some doubt from the evidence about the involvement of another person in the offence, the Court must have reasonable subjective satisfaction from the evidence already collected /gathered regarding two essential aspects (i) that the other person had committed the offence (ii) for such an offence that other person could have as well been tried with already arraigned as accused. A person can be summoned as an accused under Section 319 of Cr.P.C., even after conclusion of the trial. Continuing further, the power under Section 319 of Cr.P.C., is of course a discretionary one.

12. Be that as it may, as far as the present impugned order in Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 dated 02.11.2015 passed by the Learned Judicial Magistrate No.II, Usilampatti is concerned, the said order in the considered opinion of this Court had not dealt with the contents of the counter filed by the Revision Petitioners/accused Nos.1 and 2 in Cr.M.P.No.3876 of 2015 and in fact, the said order is a non-speaking one bereft of qualitative and quantitative necessary details. In short, the said order does not speak of outline of process of reasoning in a detailed and elaborate fashion. In fact, the said order is in brevity and also cryptic one. As such, this Court on this ground alone is interfering with the said impugned order dated 02.11.2015 in Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 in Crime No.31 of 2010 passed by the Learned Judicial Magistrate No.II, Usilampatti and sets aside the same. In the result, the Criminal Revision Petition succeeds.

13. Resultantly, the order dated 02.11.2015 in Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 in Crime No.31 of 2010 passed by the learned Judicial Magistrate No.II, Usilampatti is set aside by this Court for the reasons assigned in this revision. The matter is remitted back to the learned Judicial Magistrate No.II, Usilampatti, who is directed to take the Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 in Crime No.31 of 2010 on his file and to pass a fresh, reasoned order outlining the process of reasoning in a qualitative and quantitative manner in the manner known to law and in accordance with law. Liberty is granted to the respective parties to raise all factual and legal pleas at the time of fresh hearing of Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 in Crime No.31 of 2010 before the trial Court and further, the trial Court is directed to provide adequate opportunities to the parties in this regard by adhering to the principles of natural justice and



the Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar (Writ)

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Sub Assistant Registrar

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To

1. The Sub Inspector of Police,
Chekkanoorani Police Station,
Madurai District.

2 The Judicial Magistrate No.ii
Usilampati

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

JAM/11.12.15/ PM/5P-4C

Cr1.R.C. (MD) No.567 of 2015
01.12.2015