

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2016

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM
Crl.R.C.No.698 of 2015

&

M.P.Nos.1,2 of 2015

Sankar
S/o.Chinnasamy

.. Petitioner

vs.

1.State by
The Inspector of Police,
B-1, Dharmapuri Police Station,
Dharmapuri
Dharmapuri District.

2.Mrs.Nanjammal
w/o Late Shanmugam
2nd respondent impleaded
as per the order of this
Court order dated 31.07.2015

... Respondents

Criminal Revision filed under Section 397 and 401 Cr.P.C.
against the judgment of learned Additional District and Sessions
Judge, Dharmapuri, passed in S.C.No.118 of 2014 on 23.06.2015
u/s. 319 Cr.P.C to implead the petitioner as Accused No.2.

For Petitioner : Mr.S.Ananthanarayanan,
Senior Counsel
for
Mr.M.R.Jothimanain

For Respondents: Mr.K.Madhan
Government Advocate
(Crl.side) for R1

No Appearance for R2

O R D E R

This revision challenges the order of learned Additional District and Sessions Judge, Dharmapuri, passed u/s. 319 Cr.P.C to implead the petitioner as Accused No.2 in S.C.No.118 of 2014.

2. A case was registered in Crime No.825 of 2009 on the file of the first respondent. A reading of the FIR informs that the Defacto complainant/wife of the deceased has therein contended that the petitioner had caused the death of her husband and that she had witnessed the occurrence. Regards occurrence, alleged to have taken place on 20.04.2009 at 5.00 a.m, the FIR was recorded on 20.04.2009 at 05.35 p.m, 12 ½ hours after the occurrence, has reached the Magistrate on 21.04.2009 at 11.15 a.m. The case originally was registered for offence u/s. 307 IPC and on the deceased succumbing to injuries 10 days after, case has been altered to one u/s. 302 IPC. Petitioner initially was arrested and subsequently released on bail. One Shankar @ jaishankar, was arrested in connection with Crime No.554/2009 on the file of Perumanallur Police Station, such case initially registered in connection with a woman having gone missing, subsequently having been altered to one u/s. 302,379 and 366 I.P.C. The prosecution would admit to the involvement of such Shankar@ Jaishankar in as many as 17 cases of grave nature. Such person has confessed to being the assailant in the present case (i.e) registered in Crime No.895 of 2009 on the file of the first respondent. Pursuant to investigation in the case, the first respondent has filed charge sheet informing commission of offence u/s. 302 IPC by the said Shankar @ Jaishankar. It has deleted the petitioner from the array of accused. Subsequent to committal, the case is being tried in S.C.No.118 of 2014. The defacto complainant/wife of the deceased was examined as P.W.1. Her deposition was to the effect that she knew not who the assailant was. To similar effect is the deposition of P.W.2/her son. P.W.3/daughter has also spoken to not having witnessed the occurrence. The deposition of P.W.4, a neighbour, is to the effect that he was called by P.W.2 son of the deceased to take the deceased to hospital. His evidence which may be read as res gestae is to the effect that P.W.2 informed him of not knowing who had assaulted his father. It is in these circumstances, that the trial Court has chosen to invoke Section 319 Cr.P.C towards requiring the petitioner to face trial in the case.

3. We have heard the learned Senior counsel for the petitioner and the learned Government Advocate (Crl.side).

4. The narration of facts above informed is as submitted by learned Senior counsel. Further submission of learned senior counsel is that even in the statement of P.W.1 recorded u/s. 164 Cr.P.C she had informed that before she or her son/P.W.2 or

daughter/P.W.3 could arrive at the scene somebody had assaulted her husband and made good their escape. Such statement further informs that they 'decided' that the assailant would be the petitioner herein.

5. We would now reproduce the order of the Court below dated 23.06.2015.

"Accused in custody. Accused produced today before this Court. On perusing the earlier records filed in this case. It is revealed that one Sankar son of Chinnasamy was remanded in this case as accused and confession was also obtained from Sankar son of Chinnasamy. Before the VAO of Vellgoundanpalayam and Assistant of the above said VAO and those person as cited as witnesses in this case. This case charge sheet also filed against him on 29.07.2009. Later on, the present accused who is facing trial has been inducted, after further investigation and the charge sheet was filed against him. On perusing the evidence of P.W.1 to 3. They are deposed that they have no knowledge about the present accused and complaint was lodged only against Sankar son of Chinnasamy and on perusing the 161 statement also they are mentioned the name of one Sankar son of Chinnasamy later on further statement has been obtained by the Inspector Rathinakumar. But, on perusing the 164 statement given by PW-1 before the Judicial Magistrate there also PW-1 has given statement against Sankar son of Chinnasamy. Hence, this Court come to the conclusion that the suspected persons namely Sankar son of Chinnasamy has to be included in this trial to have a fair trial in this case and directing the registry to issue summons to Sankar son of Chinnasamy. Bail granted by the Principal Sessions court on 15.05.2009 and released on 16.05.2009 as per records. Hence, proceeded under Section 319 Cr.P.C array him as Accused No.2

Issue summon to accused Sankar son of Chinnasamy to appear before this Court on 30.06.2015. Accused produced today remand extended till 30.06.2015. Hence, this present trial is stopped till further orders. "

6. Section 319(1) Cr.P.C reads as follows:

(1) where, in the course of inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed

(underlining supplied)

Court below has failed to understand the import of the words ' it appears from the evidence'.

7. For Section 319 to apply there must be something in the 'evidence' pointing to the involvement of the petitioner in commission of an offence. The evidence of prosecution witnesses in the instant case do not afford any material that would justify requiring petitioner to face trial. The investigative agency initially has arrayed petitioner as accused in the case and for good reason has found it fit to not inform a charge against him. Court below has required petitioner to face trial on a whim, as it were, and its doing so cannot but be deprecated.

The Criminal Revision is allowed and the suo motu order passed by the learned Additional District and Sessions Judge, Dharmapuri, in S.C.No.118 of 2014, on 23.06.2015 shall stand set aside. Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Additional District and Sessions Judge, Dharmapuri

2.The Inspector of Police, B-1, Dharmapuri Police Station,

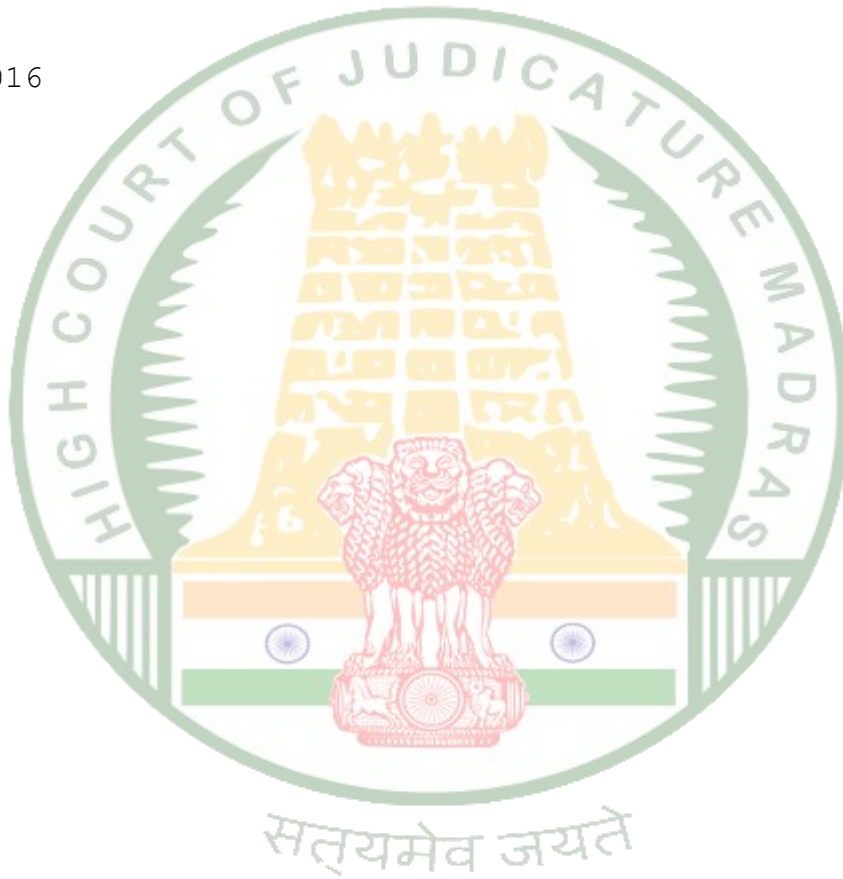
Dharmapuri, Dharmapuri District.

3.The Public Prosecutor, High Court, Chennai.

+1 cc to Mr.M.R.Jothimanian Advocate sr 66798

Cr1.R.C.No.698 of 2015

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