

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 19.08.2016

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.OP.No.18675 of 2016

AND

CRL.MP.Nos.8777 and 8778 of 2016

A.Jeevakarunyam

... Petitioner

Vs

State rep. by
The Inspector of Police,
Central Crime Branch,
Salem City.

.... Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and quash the proceedings in C.C.No.506 of 2005 on the file of the Judicial Magistrate No.3, Salem as against the petitioner.

For Petitioner : Mr.R.Neethi Perumal
For Respondent : Mr.C.Emalias, APP

O R D E R

This petition has been filed to quash the proceedings in C.C.No.506 of 2005 on the file of the learned Judicial Magistrate No.III, Salem.

2. Heard the learned counsel for the petitioner; learned Additional Public Prosecutor appearing for the respondent and perused the materials placed on record.

3. The respondent Police have registered a case in Crime No.12 of 2005 and after completing the investigation, filed a final report in C.C.No.506 of 2005 before the learned Judicial Magistrate No.III, Salem against one S.V.Elumalai for an offence under Section 420 IPC. The allegation against Elumalai is that, he participated in a public auction and failed to pay the balance amount of bid to the Government. But, taking advantage of the auction, had taken away the auctioned goods. During trial, three witnesses were examined before the trial Court. At that juncture, the Assistant Public Prosecutor filed a memo under Section 319 Cr.P.C. to include the name of the petitioner as an accused, on the ground that the name of the petitioner surfaced from the

evidence of PW1, PW2 and PW3. On the memo filed by the prosecution, the trial Judge, by order dated 26.08.2015, directly impleaded the petitioner as co-accused and summoned him. Challenging which, the petitioner is before this Court.

4. In Jogendra Yadav & Others Vs State of Bihar & Another reported in 2015[9] SCC 244, the Hon'ble Supreme Court has held as follows:

"... However, a person who is added as an accused under Section 319 of the Cr.P.C., is necessarily heard before being so added."

From the above, it is clear that, first an opportunity should be given to the proposed accused, as to why, he should not be included as co-accused and after hearing him and analysing the sufficiency of the materials, the Court can either include him or drop action against him.

5. In Hardeep Singh Vs State of Punjab & Others reported in 2014[3] SCC 92, the Constitution Bench of the Hon'ble Supreme Court has laid down, the standard of proof for summoning a person under Section 319 Cr.P.C.

6. In this case, the petitioner has not been heard by the trial Court, before he was impleaded as accused. On that short score, the order dated 26.08.2015 passed by the learned Judicial Magistrate No.III, Salem in C.M.P.No.4948 of 2015 in C.C.No.506 of 2005 is hereby set aside and the matter is remanded to the trial Court. It appears that Non-Bailable Warrant is pending against this petitioner.

7. Under such circumstances, the petitioner is directed to appear before the learned Judicial Magistrate No.III, Salem on 01.09.2016 and on such appearance, the Non-Bailable Warrant shall be recalled and he should be released on bail, on he executing a bond for Rs.10,000/- with two sureties to the satisfaction of the learned Magistrate. Thereafter, the Magistrate shall furnish him the copies of the final report, evidence of PW1, PW2 and PW3, the memo filed by the prosecution in CMP.4948 of 2015 and after hearing both sides, it is open to the learned Magistrate to pass orders in accordance with law.

With the above direction, this petition is closed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.III,
Salem.

2.-do- Thro'Chief Judicial Magistrate,
Salem.

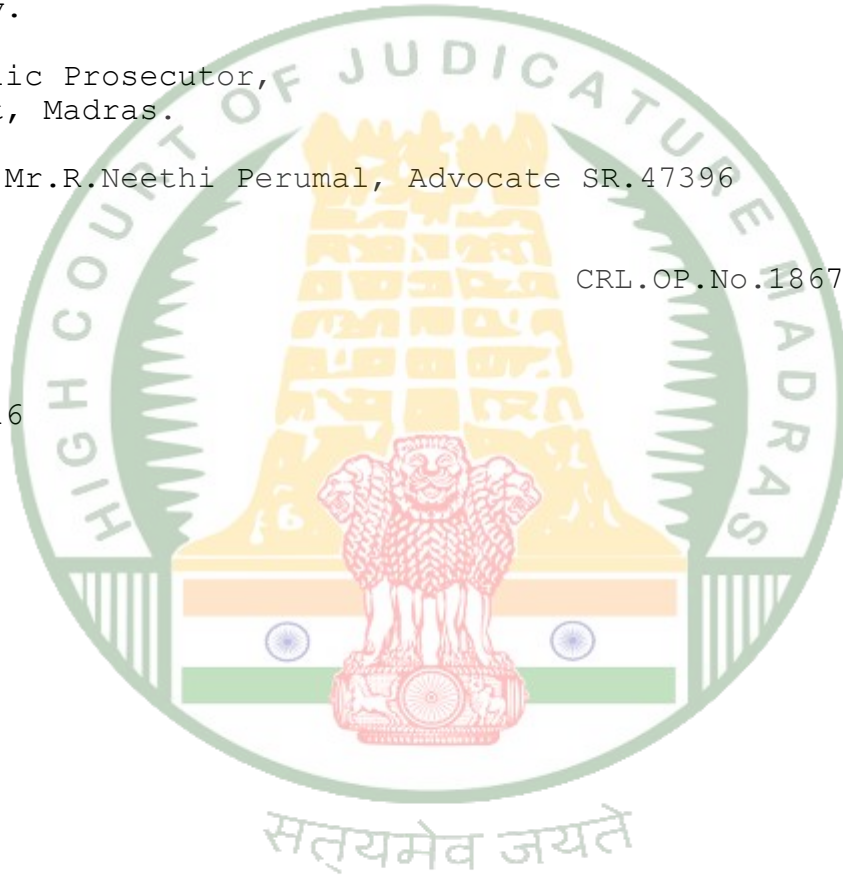
3.The Inspector of Police,
Central Crime Branch,
Salem City.

4.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.R.Neethi Perumal, Advocate SR.47396

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SKV(CO)
Eu 30.09.16



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