

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED 20.09.2016  
CORAM  
THE HONOURABLE Mr.JUSTICE P.N.PRAKASH  
CRL.OP.No.19617 of 2016 and Crl.R.C.No.1054 of 2016

K.V.Pownraj

...Petitioner in both Crl.O.P.  
and Crl.R.C.

vs.

State rep. by the Inspector of Police  
EOW II Unit, Erode  
Erode District  
Crime No.5/2012

...Respondent in both Crl.O.P.  
and Crl.R.C.

Prayer:

Crl.O.P.No.19617 of 2016:

Criminal Original Petition filed under section 482 of the Code of Criminal Procedure seeking a direction to the learned Special Judge, TNPID Act Cases, Coimbatore, to receive and dispose of the petition in C.F.R.No.2444 of 2016 in C.C.No.20 of 2012 on merits.

Crl.R.C.No.1054 of 2016:

Criminal Revision filed under Section 397 and 401 of Cr.P.C., praying to call for the records pertaining to the order dated 22.07.2016 made in Crl.M.P.No.1789 of 2016 in C.C.No.20 of 2012 on the file of the learned Special Judge, TNPID Act cases, Coimbatore and set aside the same.

Appearance:

For Petitioner : Mr.N.Manokaran  
[Crl.O.P.No.19617 of 2016]  
Mr.S.Vinoth kumar  
[Crl.R.C.No.1054 of 2016]

For Respondent : Mr.C.Emalias,  
Additional Public Prosecutor  
[in both Crl.O.P. and  
Crl.R.C.]

## C O M M O N   O R D E R

Crl.O.P.No.19617 of 2016 has been filed to call for the records pertaining to the order dated 22.07.2016 made in Crl.M.P.No.1789 of 2016 in C.C.No.20 of 2012 on the file of the learned Special Judge, TNPID Act cases, Coimbatore and set aside the same. Crl.R.C.No.1054 of 2016 has been filed against the order dated 22.07.2016 made in Crl.M.P.No.1789 of 2016 in C.C.No.20 of 2012 on the file of the learned Special Judge, TNPID Act cases, Coimbatore.

2. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. The respondent police registered a case in Crime No.5 of 2012 against one M/s.Bhavani Alma Emu Farms and the persons who were running it and after completing the investigation, filed a final report in C.C.No.20 of 2012 before the Special Court for TNPID Act cases, Coimbatore against five accused, namely Bhavani Alma Emu Farms @ Alma Emu Farms (A1), K.Venkatachalam (A2), Madumathi (A3), P.Sathishkumar (A4) and S.Viswanathan A5. Charges were framed by the Special Court, against the five accused for offences u/s.120(B), 406, 420 IPC and Section 5 of the TNPID Act. The accused pleaded not guilty and the prosecution had examined more than 78 witnesses. During the course of trial, it is stated that, about 28 witnesses had implicated the petitioner herein. Therefore, the Investigating Officer filed an application in Crl.M.P.No.3083 of 2015 u/s.319 Cr.P.C. for impleading the petitioner as a co-accused in the prosecution, which was allowed by the trial Court on 22.12.2015, without notice to the petitioner. After the petitioner was impleaded as an accused, he received summons from the Special Court and he appeared before the Special Court on 23.08.2016. The petitioner was served with the papers u/s.207 Cr.P.C.

4. At that juncture, the petitioner wanted to challenge the order dated 22.12.2015 in Crl.M.P.No.3083 of 2015 that was passed by the Special Court u/s.319 Cr.P.C. Therefore, the petitioner filed a criminal revision petition before this Court with a delay of 127 days. The condone delay petition was numbered as Crl.M.P.No.8311 of 2016 in Crl.R.C. S.R.No.31624 of 2016. In the order dated 22.12.2015 passed by the Special Court, the five accused who were already in the prosecution were shown as respondents. Therefore, those five persons had to be necessarily included in the Criminal Revision Petition and in the condone delay application filed by the petitioner before this Court. Notice was ordered in the condone delay application in Crl.M.P.No.8311 of 2016 in Crl.R.C. S.R.No:31624 of 2016 and the petitioner was not able to serve notice on A1 to A3. While

so, the trial Court started proceeding with the trial by examining more witnesses. The petitioner filed CrI.M.P. SR No:2444 of 2016 before the Special Court, requesting the trial Court not to proceed with the trial on account of the pendency of the Criminal Revision Petition before the High Court. The trial Court did not even number the petition and rightly dismissed the same on 23.08.2016.

5. Challenging the said order, the petitioner has filed CrI.O.P.No.19617 of 2016. The petitioner has also filed an application in CrI.M.P.No:1789 of 2016 u/s.239 Cr.P.C. before the Special Court for discharge and the Special Judge dismissed the petition on 22.07.2016. Challenging the said order, the petitioner has filed CrI.R.C.1054 of 2016. In the meantime, the petitioner has withdrawn CMP.No.8311 of 2016 in CrI.R.C. SRNo:31624 of 2016 on 07.09.2016, as he was not able to serve notice on three of the accused as their whereabouts were not known. On the orders of the Hon'ble Chief Justice, CrI.R.C.No:1054 of 2016 and CrI.O.P.No:19617 of 2016 have been posted before this Court for disposal.

6. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner and Mr.C.Emalias, learned Additional Public Prosecutor appearing for the respondent.

7. The Inspector of Police had filed a strong counter refuting the allegations and submitted that, the petitioner was aware of the proceedings in the year 2015 itself and that he has approached this Court very belatedly, when several witnesses have already been examined.

8. This Court gave its anxious consideration to the rival submissions. At the first blush, this Court finds certain glaring irregularities in the order passed by the Special Court. The Constitution Bench of the Supreme Court in Hardeep Singh Vs State of Punjab & Others [(2014) 3 SCC 92] has laid down the parameters for invoking the provisions of Section 319 Cr.P.C. In Jogendra Yadav and three others v.State of Bihar and another [(2015) 9 SCC 244] the Supreme Court has laid down the procedure for adding a person as an accused by invoking the powers u/s.319 Cr.P.C. In Jogendra Yadav's case the Supreme Court has stated that the proposed accused should be heard by the trial Court and only thereafter, he should be added as an accused. Once he is added as an accused, the proposed accused cannot file a discharge application either u/s.239 or u/s.227 Cr.P.C. It may be relevant to quote para 9 of the Jogendra Yadav's case as under.

" An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under Section 319 Cr.PC, is necessarily heard before being so added".

9. From the above, it is clear that, the proposed accused should have been heard by the trial Court before impleading him as an accused and the material against him should be "very strong and cogent". The quality of material should be superior to the one that is required for framing a charge u/s.239 and 227 of Cr.P.C.

10. In the light of the Jogendra Yadav's case, the trial Court ought not to have entertained Crl.M.P.No.1789 of 2016 filed by the petitioner u/s.239 Cr.P.C.

11. In view of the above, Crl.R.C.1054 of 2016 is allowed and the order dated 22.07.2016 passed by the Special Court in Crl.M.P.No.1789 of 2016 is set aside. As notice in Crl.M.P.3083 of 2015 was not served on the petitioner, the order dated 22.12.2015 passed by the Special Court is bad in law and is therefore, set aside by this Court in exercise of its powers u/s.482 Cr.P.C.

12. Mr.N.Manokaran, learned counsel for the petitioner submitted that the petitioner has already been served with the copies u/s.207 Cr.P.C. and also the deposition of the witnesses who have implicated him.

13. Under such circumstances, the Special Court is directed to hear the prosecution and the petitioner and pass orders afresh u/s.319 Cr.P.C. within one month from the date of receipt of a copy of this order.

14. In view of the above, Crl.O.P.No.19617 of 2016 has become infructuous and accordingly, it is dismissed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

dpq/gms

To

1. Special Judge,  
TNPID Act cases,  
Coimbatore

2. The Inspector of Police  
EOW II Unit, Erode  
Erode District

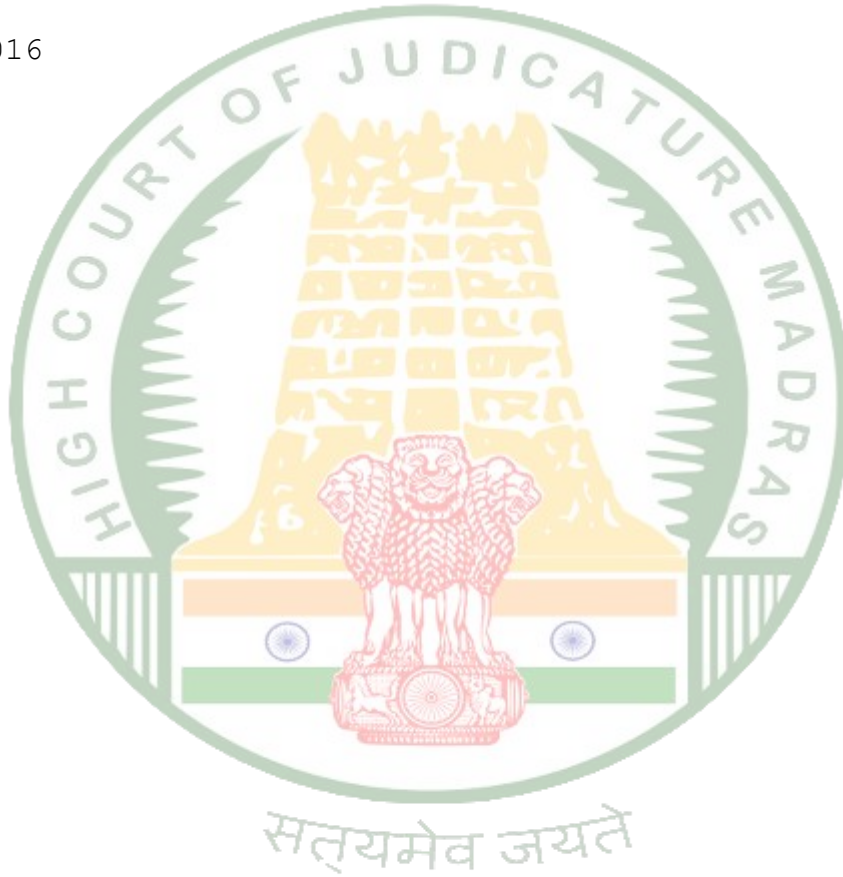
3. The Public Prosecutor  
High Court, Madras.

+1 cc to M/s.N.Manokaran Advocate sr 53555

+1 cc to M/s.S.vinoth kumar Advocate sr 53187 dt 10/11/2016

CRL.OP.No.19617 of 2016

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