



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2016

(Orders Reserved on 09.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.642 of 2016

and

CRL MP(MD)No.8719 of 2016

1.Esakkiappa Manikaraj @ Raja
2.Murugan
3.Amjath Kumar
4.Murugan

: Petitioners/Accused

Vs.

State Rep. By
The Inspector of Police,
Valliyoor Police Station,
Tirunelveli District
(Crime No.566 of 2012)

: Respondent/Complainants

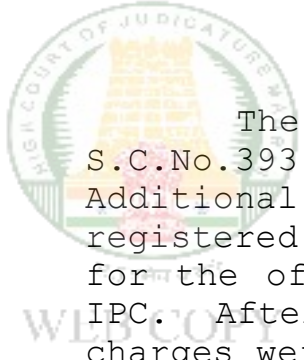
Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to allow the above Criminal Revision Petition and consequently set aside the order as made in Cr.M.P.No.221 of 2016 in S.C.No.393 of 2013 on the file of the learned IV Additional Sessions Judge, Tirunelveli, dated 24.06.2016 and consequently order the relief as sought for in the said application.

For Petitioners : Mr.S.Palani Velayutham

For Respondent : Mr.P.Kandasamy
Government Advocate (crl.side)

ORDER

This Criminal Revision Case is filed praying to set aside the order made in Cr.M.P.No.221 of 2016 in S.C.No.393 of 2013, on the file of the learned IV Additional Sessions Judge, Tirunelveli, dated 24.06.2016.



The petitioners are Accused Nos.1 to 4 respectively in S.C.No.393 of 2013, pending on the file of the learned IV Additional Sessions Judge, Tirunelveli. The respondent police have registered the First Information Report against the petitioners for the offences under Sections 294(b), 342, 506(ii) and 302 of IPC. After hearing the prosecution and the accused, the following charges were framed, on 18.11.2014:-

- A1 - 302 r/w 34, 294(b) (2 counts) and 506(ii) of IPC
- A2 - 302 r/w 34, 294(b), 352 and 506(ii) of IPC
- A3 - 302 r/w 34, 294(b) and 506(ii) of IPC, and
- A4 - 302 r/w 34 of IPC

After completion of the prosecution evidence, the trial Court altered the above charges and added charges on 01.12.2015, as follows:-

- A1 - 302 r/w 120(b) of IPC
- A2 - 302 r/w 109 of IPC
- A3 - 302 of IPC., and
- A4 - 302 r/w 34 and 120(b) of IPC

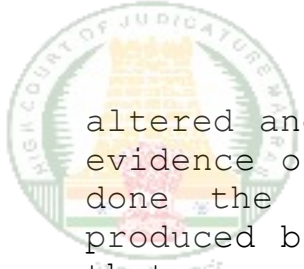
3.Mr.S.Palani Velayutham, the learned counsel appearing for the petitioner contends that the trial Court has altered and also added new charges against the accused filed CrI.M.P.No.221 of 2016 for ordering new trial, on the basis of added and altered charges framed in the pending cases and the same was dismissed by the trial Court. The impugned dismissal order is being questioned in this Revision contending that the trial Court has not given an opportunity to prove the innocence of the accused and they are deprived of ventilating their case before the trial Court.

4. Perused the impugned order passed by the learned trial Judge and the materials on record. Arguments submitted by either side is also considered.

5. As per Section 216 of Cr.P.C., any Court may alter or add to any charge at any time before the Judgment is pronounced. Section 217 of Cr.P.C., states that whether a charge is altered or added to by the Court after the commencement of the trial, the prosecutor and 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 declaring the ends of justice.

6. It is admitted in this case that the charges framed



altered and also added by the trial Court after completion of the evidence of the prosecution, as stated above, the trial Court has done the above, after considering the evidence and materials produced by the prosecution. The impugned order reveals the fact that opportunity was given to the prosecution and also to the accused, as per Section 217 of Cr.P.C. The prosecution made an endorsement that no further witnesses need to be examined on the side of the prosecution for the charges altered and added in this case. The burden of proof in respect of charge is only on the prosecution. No burden lies on the accused to prove the charges levelled against them, as per the Criminal Jurisprudence and the trial Court has also given sufficient opportunity to the accused. Having availed such opportunity given to them after alteration and addition of charges, the trial Court is of the opinion that the alteration and addition of charges would not prejudice the accused. In contra, the accused has not shown anything before the trial Court or before this Court. The impugned order further states that even after questioning the accused under Section 313 (1)(b) of Cr.P.C., witnesses summoned by the accused were not examined on the side of the accused, though they were present. Sufficient opportunity was given to the accused persons. On the basis of the altered and also added charges prior to filing of the petition under Section 216(4) of Cr.P.C., the trial Court has also decided that there is no necessity for ordering new trial and the ingredients mentioned in Section 217 Cr.P.C., is also complied with by the trial Court. In the above stated circumstances, this Court finds that there is no irregularity or illegality in the proceedings of the trial Court and also there is no grounds to interfere with the findings of the trial Court.

7. In the result, the Revision stands dismissed. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1.The IV Additional Sessions Judge,
Tirunelveli,

2.The Inspector of Police,
Valliyoor Police Station,

<https://hcservices.courts.gov.in/services> District



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

4. The Record Keeper,
Vernacular Section
Madurai Bench of Madras High Court.

+1 cc to MR.S.PALANI VELAYUTHAM, Advocate SR.No.80243

Pre-Delivery Order made in

Cr1.RC(MD)No.642 of 2016

Dated:-

08.12.2016

SMA/PV/02.01.2017:4P/6C