

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.5985 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to call for the records in C.F.R No.2118 of 2015 on the file of Junior Civil Judge, Jammalamadugu, Y.S.R. District in Cr.No.39 of 2015 of Tallaproduddatur Police Station, Tallaproduddatur, Y.S.R District, in which it was ordered to impelad the accused Nos.5,6,7 & 16 respectively and to take cognizance for the offences punishable under Sections 147, 148, 324, 307 r/w 149 of IPC and quash the same.

The main contention before this Court is that the duty of the Magistrate is to comply with Section 207 Cr.P.C. and when the Magistrate concluded that the offence is triable by the Court of Sessions, he has to commit matter under Section 207 Cr.P.C except that it has nothing to do with the same, but passing an order by exercising jurisdiction under Section 319 of Cr.P.C is illegal and to support his contention, he placed reliance on the judgment of the Supreme Court reported in **Hardeep Singh & others v. State of Punjab & others**¹ wherein, in paragraph 47 of the said judgment, the Supreme Court held as follows:

“43. Since after the filing of the charge-sheet, the court reaches the stage of inquiry and as soon as the court frames the charges, the trial commences, and therefore, the power under Section 319(1) Cr.P.C. can be exercised at any time after the charge-sheet is filed and before the pronouncement of judgment, except during the stage of Section 207/208 Cr.P.C., committal etc., which is only a pre-trial stage, intended to put the process into motion. This stage cannot be said to be a judicial step in the true sense for it only requires an application of mind rather than a judicial application of mind.

¹ (2014) 3 Supreme Court Cases 92

44. At this pre-trial stage, the Magistrate is required to perform acts in the nature of administrative work rather than judicial such as ensuring compliance of Sections 207 and 208 Cr.P.C., and committing the matter if it is exclusively triable by Sessions Court. Therefore, it would be legitimate for us to conclude that the Magistrate at the stage of Sections 207 to 209 Cr.P.C. is forbidden, by express provision of Section 319 Cr.P.C., to apply his mind to the merits of the case and determine as to whether any accused needs to be added or subtracted to face trial before the Court of Sessions.”

Learned counsel for the respondent Sri K. Sita Ram requested this Court to afford an opportunity to the defacto complainant for filing an application before the Court to add any accused by exercising jurisdiction under Section 319 of Cr.P.C, without raising any other contention.

Therefore, in view of the law declared by the Apex Court in the judgment, referred supra the order passed in C.F.R No.2118 of 2015 on the file of Junior Civil Judge, Jammalamadugu, Y.S.R. District in Cr.No.39 of 2015 of Tallaprodatur Police Station, Tallaprodatur, Y.S.R District, is illegal and the Magistrate exceeded his jurisdiction while passing such an order. Therefore, the order is set-aside. However, the Trial Court is at liberty to exercise such power if the Court finds any evidence or material against any person other than the accused, either to implead or subtract any party to the charge sheet.

With the above observation, the criminal petition is allowed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

M. SATYANARAYANA MURTHY, J

Date: 16.11.2016
SP