

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.P.No.12213 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C to quash the order dated 22.06.2016 in CrI.M.P.No.2190 of 2016 in C.C.No.255 of 2008 on the file of I Additional Junior Civil Judge, Narsaraopet, Guntur District.

The 1st respondent filed an application under Section 319 of Cr.P.C. alleging that the Managing Partners of M/s R.K. Associates were shown as A3 and A4, whereas the company has not been added as accused due to oversight. Therefore, it is essential to add the company i.e. M/s R.K. Associates in the array of the accused as the company is represented by the Managing Partners. Hence, prayed to add M/s R.K. Associates.

The petitioner/ the 4th respondent filed lengthy counter contending that there is no provision to implead the accused and that the section mentioned in the petition is not relevant to the present facts of the case and that the police completed investigation and filed charge sheet. If at all any petition is filed, the Court has to come to the conclusion that the earlier charge sheet is wrong and even then the Court has no power to consider the application under Section 319 Cr.P.C. It is further contended that in view of the language used under Section 319 Cr.P.C., the prosecution cannot bring partnership firm as co-accused, but the person can be brought as co-

accused, if the Court feels that some accused were not shown as accused and that too basing on documentary evidence placed before the Court. Therefore, prayed to dismiss the petition.

Upon hearing the arguments of the learned counsel for the petitioner and the respondents, the trial Court allowed the petition.

Challenging the order dated 22.06.2016 passed in CrI.M.P.No.2190 of 2016 in C.C.No.255 of 2008 by the I Additional Junior Civil Judge, Narsaraopet, Guntur District, the present criminal petition is filed on various grounds mainly on the ground that the order passed by the trial Court is not inconsonance with the power conferred by the Court under Section 319 Cr.P.C. and that the order is bereft of any reasons and therefore, requested the Court to pass orders, setting aside the order under challenge.

During hearing Sri Krishna Mohan Sikharam, learned counsel for the petitioner contended that the firm cannot be impleaded as party as no evidence brought on record and that the defect in the charge sheet cannot be cured by filing application under Section 319 Cr.P.C. Therefore, prayed to quash the said order.

Whereas, Sri V.Raghu, learned counsel for the 2nd respondent drawn the attention of the Court to the first para of the charge sheet stating that there is a reference about the company i.e. M/s R.K. Associates, which is represented by A.3

and A4, who are Managing Partners of it, but oversight, M/s R.K. Associates was not impleaded as accused at the time of filing charge sheet, which is purely a curable defect and prayed to confirm the order passed by the trial Court.

Section 319 Cr.P.C. deals with issue of summons to the person who is not accused before it and if the Court finds any evidence against such person, such power has to be exercised when evidence is brought on record either during enquiry or trial. Section 319 Cr.P.C is self-contained and independent of Sections 190 and 191 Cr.P.C. Section 319(1) confers power of the Court to take cognizance and add any person not being an accused before it and try him along with the other accused to take cognizance of offence and add any person not being the accused and try him along with other accused. If the prosecution can at any stage produce evidence which satisfies the Court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence, the Court can take cognizance against them and try them along with the other accused and such power conferred is extraordinary. Thus, the power to summon A3 and A4 should be exercised in a reasonable manner. The words "any person not being an accused" occurring in Section 319 covers a person discharged at the stage of enquiry also. Thus, from a bear reading of Section 319 Cr.P.C. it is clear that any person can be added as an accused and Court can issue summons, if any evidence is

brought on record by the prosecution at any stage of the proceedings.

In the present facts of the case, the only allegation made in the petition is that by oversight M/s R.K. Associates was not arrayed as an accused, though its Managing Partners are impleaded as A3 and A4. The Court did not take cognizance against M/s R.K. Associates, which took cognizance against the other accused though there is a clear mention about the involvement of M/s R.K. Associates in the first para of the charge sheet. But failure to implead M/s R.K. Associates by oversight is not a ground to exercise jurisdiction under Section 319 Cr.P.C. The pre-condition under Section 319 Cr.P.C. is that there must be some evidence brought on record either during enquiry or trial or at any stage of the proceedings. Here, it is not the case of the respondent that evidence is brought on record against the petitioner to issue summons by exercising power under Section 319 Cr.P.C impleading M/s R.K. Associates as accused by issuing summons.

On the other hand, the order passed by the trial Court is as follows:

“In the charge-sheet Accused No.3 and 4 are shown as Managing Partners of M/s R.K. Associates. Hence, the burden lies on the prosecution to prove the case. The company is a legal personality and the said company being represented by its Managing Director or some other persons. The Managing Partners of the said companies shown as Accused Nos.3 and 4 in the charge-sheet therefore, the above said company m/s R.K. Associates has to be added as accused in the charge sheet.”

The order extracted above did not disclose bringing on record any evidence against M/s R.K. Associates to issue summons against it and proceed in accordance with law. In the absence of finding regarding bringing any evidence against M/s R.K. Associates, the order dated 22.06.2016 in CrI.M.P.No.2190 of 2016 in C.C.No.255 of 2008 passed by the I Additional Junior Civil Judge, Narsaraopet, Guntur District is unsustainable under law and on the strength of such bald allegation in the petition that M/s R.K. Associates was not arrayed as accused by oversight can never be a ground to exercise jurisdiction under Section 319 Cr.P.C.

Accordingly, the criminal petition is allowed setting aside the dated 22.06.2016 in CrI.M.P.No.2190 of 2016 in C.C.No.255 of 2008 passed by the I Additional Junior Civil Judge, Narsaraopet, Guntur District.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

27.12.2016
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