

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

CRIMINAL PETITION No.7789 of 2015

ORDER:

The criminal petition is filed by petitioners against the order dated 24.03.2015 in CrI.M.P.No.324 of 2015 in S.C.No.296 of 2012 on the file of the Metropolitan Sessions Judge, Vijayawada, by and under which, the learned Sessions Judge added and arrayed the petitioners herein as A8 to A10 in the sessions case.

2. Heard the learned counsel appearing for the petitioners, the learned Public Prosecutor, representing the State and the learned counsel appearing for the 1st respondent.

3. Basing on the complaint of the 1st respondent/*de facto* complainant stating that his brother was killed by A1 to A7 and the petitioners herein on 19.06.2011 at 21.30 hours while he was getting the road works done by the side of Water Tank in Doravanigudem village, the Station House Officer, Challapalli P.S. registered Cr.No.87 of 2011 under Section 302 r/w.34 IPC. The investigation was conducted by CID, RCIU, Vijayawada and after investigation, the police filed charge sheet against A1 to A7 and deleted the names of the petitioners herein, stating that their role is not established. After committal of the case by the jurisdictional Magistrate, the case was numbered as SC No.296/2012 on the file of the Metropolitan Sessions Judge, Vijayawada. During course of trial, the *de facto* complainant was examined as PW1 and he named the petitioners as assailants, who committed the offence along with A1 to A7. The *de facto* complainant/PW 1 filed a petition under Section 319 Cr.P.C before the Court below

requesting to add the petitioners as accused in the above Sessions case. The Court below by order dated 24.03.2015, allowed the said petition, observing that in the complaint as well as in his evidence, PW 1 stated the involvement of the petitioners herein in the commission of offence. Questioning the said order, the present petition is filed.

4. The learned counsel for the petitioners submitted that after thorough investigation, the police deleted the names of the petitioners finding that there was no role played by the petitioners in the commission of offence. He further contends that after filing of the charge sheet, the 1st respondent/*de facto* complainant has not filed any protest petition at PRC stage. He further contends that except PW 1 no witness stated about the participation of the petition in their 164 Cr.P.C statements. He further contends that basing on solitary statement of PW 1, the Court below erroneously allowed the petition filed under Sec.319 Cr.P.C and arrayed the petitioners as A8 to A10. The learned counsel further submitted that the Court before exercising the discretion under section 319 Cr.P.C has to consider each case on its own set of facts and circumstances and whether such evidence would be sufficient to convict the person being summoned. The learned counsel further submitted that power under section 319 Cr.P.C is to be invoked not as a matter of course, but in circumstances where the invocation of such power is imperative to meet the ends of justice. In support of his contentions, the learned counsel for the petitioners relied on the decisions of the Apex Court in ***Brindaban Das v. State of W.B***^[1], ***Palanisamy Gounder v. State***^[2], ***Sarabjit Singh v. State of Punjab***^[3], and ***Hardeep Singh v.***

State of Punjab^[4].

5. The learned counsel for the 1st respondent/*de facto* complainant as well as the learned Additional Public Prosecutor submitted that the Court below has properly appreciated the evidence of PW 1 and statements of the witnesses available on record and after following the principles as laid down by the Apex Court in *Y.Saraba Reddy v. Puthur Rami Reddy* {(2007) 4 SCC 773}, *Anju Chaudhary v. State of U.P and Anr.* {2013 CrI.L.J 776}, and *Rakesh v. State of Haryana* {AIR 2001 Supreme Court 2521} allowed the petition filed under Section 319 Cr.P.C and arrayed the petitioners as A8 to A10.

6. In ***Brindaban Das v. State of W.B*** (1 *supra*) the Apex Court while dealing with nature, scope and applicability of the provision under Section 319 Cr.P.C, held as under:

25. The common thread in most matters where the use of discretion is in issue is that in the exercise of such discretion each case has to be considered on its own set of facts and circumstances. In matters relating to invocation of powers under Section [319](#), the Court is not merely required to take note of the fact that the name of a person who has not been named as an accused in the F.I.R. has surfaced during the trial, but the Court is also required to consider whether such evidence would be sufficient to convict the person being summoned. Since issuance of summons under Section [319](#) Cr.P.C. entails a *denovo* trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay the trial, the Trial Court has to exercise such discretion with great care and perspicacity.

26. Although, a somewhat discordant note was struck in Rajender Singh's case (*supra*) the views expressed in the majority of decisions of this Court on the point subscribe to the view that the power under Section [319](#) Cr.P.C. is to be invoked, not as a matter of course, but in circumstances

where the invocation of such power is imperative to meet the ends of justice

27. The fulcrum on which the invocation of Section [319](#) Cr.P.C. rests is whether the summoning of persons other than the named accused would make such a difference to the prosecution as would enable it not only to prove its case but to also secure the conviction of the persons summoned.

29. Section [319](#) Cr.P.C. contemplates a situation where the evidence adduced by the prosecution not only implicates a person other than the named accused but is sufficient for the purpose of convicting the person to whom summons is issued. The law in this regard was explained in Ram Kishan Rastogi's case (supra) and as pointed out by Mr. Ghosh, consistently followed thereafter, except for the note of discord struck in Rajender Singh's case (supra). It is only logical that there must be substantive evidence against a person in order to summon him for trial, although, he is not named in the charge-sheet or he has been discharged from the case, which would warrant his prosecution thereafter with a good chance of his conviction.

7. In ***Palanisamy Gounder v. State*** (2 supra) the Supreme Court held as under:

“The power under Section [319](#) of the Code cannot be exercised so as to conduct a fishing inquiry. We have already noticed the observations of the learned trial Judge that though the case against the appellants was not on solid foundation but it was felt that to find out the real truth they deserved to be added as accused. The manner in which the power under Section [319](#) deserves to be exercised has been laid down in *Michael Machado v. Central Bureau of Investigation*, 2000(1) Apex Court Journal 404 (S.C.): (2000)3 SCC 262:2000 SCC (Cri.) 609, holding that unless the Court is hopeful that there is a reasonable prospect of the case against the newly added accused ending in their conviction for the offence concerned, the Court shall refrain from adding them as accused.”

8. In ***Sarabjit Singh v. State of Punjab*** (3 *supra*) the Supreme Court as under:

21. Section [319](#) of the Code should not be passed only because the first informant or one of the witnesses seeks to implicate other person(s). Sufficient and cogent reasons are required to be assigned by the court so as to satisfy the ingredients of the provisions. Mere *ipse dixit* would not serve the purpose. Such evidence must be convincing one at least for the purpose of exercise of the extraordinary jurisdiction. For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

22. The observation of this Court in Municipal Corporation of Delhi (supra) and other decisions following the same is that mere existence of a prima facie case may not serve the purpose. Different standards are required to be applied at different stages. Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section [227](#) of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction.

23. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section [319](#) of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof, viz., (i) an extraordinary case and (ii) a case for sparingly exercise of jurisdiction, would not be satisfied.

9. In ***Hardeep Singh v. State of Punjab*** (4 *supra*) the Supreme Court held as under:

“106.though only a *prima facie* case is to be established from the evidence led before the court not

necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than *prima facie* case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Code of Criminal Procedure In Section 319 Code of Criminal Procedure the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "*for which such person could be tried together with the accused.*" The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under Section 319 Code of Criminal Procedure to form any opinion as to the guilt of the accused."

10. Bearing the above principles in mind, the facts of the present case have to be seen so as to determine as to whether the impugned order of the learned Metropolitan Sessions Judge adding the petitioners herein as A.8 to A.10 in the Sessions Case is proper.

11. The facts that are borne from the record are that the *de facto* complainant is the brother of the deceased. He also claims to be an eyewitness to the incident. In the complaint Ex.P1 which was lodged at the earliest point of time, he has given minute details about the entire incident, including participation made by the petitioners herein. During course of investigation, the Investigating Officer recorded the statement of PW 1 under Section 161 Cr.P.C. and even there at also, he gave details of the incident including the involvement of the petitioners. Thereafter, the statements of the material witnesses were recorded under Section 164 Cr.P.C. In the statement made before the learned

jurisdictional Magistrate, PW 1 has once again reiterated the specific role played by the petitioners herein in the gruesome murder of his brother. Not only PW 1, some other eyewitnesses were also given statements both under Section 161 Cr.P.C as well as under Section 164 Cr.P.C and they named the petitioners as the persons who have actively participated in the alleged crime.

12. The learned counsel for the petitioners submitted that merely on the basis of the evidence of PW 1, the petitioners ought not to have impleaded as accused, more particularly, in view of the fact that the investigating agency has excluded them.

13. Perusal of the charge sheet shows that except for stating that since the role of the petitioners is not established in the commission of offence, they were deleted in the list of the accused. No other details are stated as to on what basis their names have been deleted even though their names were mentioned in the complaint Ex.P1 and in the statements of witnesses under Section 161 Cr.P.C and 164 Cr.P.C. That apart, merely because the investigating agency has excluded some of the persons suspected of commission of the crime that cannot be said to exclude the power of the trial Court for impleading the accused persons whether mentioned in the charge sheet or otherwise. If what the investigating agency states in the charge sheet is the final word, then the provision adumbrated under Section 319 Cr.P.C. will become redundant.

14. A careful perusal of the order of the trial Court clearly shows that not only the learned Metropolitan Sessions Judge has referred to various authorities on the subject, but also referred to the facts of the present case and held that *prima facie* there is material against the petitioners to put them on trial. The discretion

exercised by the learned Metropolitan Sessions Judge cannot be said to be in any way erroneous or illegal. The same is based on the evidence on record so far gathered during course of investigation and also the trial.

15. In view of the above, I see no merit in the present petition and the same is liable to be dismissed and is accordingly dismissed. Needless to say that the observations made herein are only for the sake of disposal of the present petition and shall not have any bearing in the final analysis of the main case.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.S.K.JAISWAL,J

Date: 17.08.2016

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[\[1\]](#) (2009) 3 SCC 329

[\[2\]](#) (2006) 1 SCC (Cri) 568

[\[3\]](#) (2009) 16 SCC 46

[\[4\]](#) (2014) 3 SCC 92