

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE **R.SURESH KUMAR**

Crl.R.C.No.1010 of 2017

and

Crl.M.P.Nos.9542 and 9543 of 2017

1. Kalyanakumar
2. Vinitha

.. Petitioners

Vs

The State, Represented by
Thiruvennainallur Police Station,
Crime No.88 of 2017

.. Respondent

Prayer : The Criminal Revision Case has been filed under Section 397 and 401 Cr.P.C., to call for the entire records culminating in the impugned order dated 18.07.2017 passed by the learned Judicial Magistrate-II, Ulundurpet in CMP. No.3152 of 2017 in made therein, set aside the same.

For Petitioner

: Mr.Arun Anbumani

For Respondent

: Mr.R.Sekar,
Govt. Advocate (Crl.side)

ORDER

This Criminal Revision Case has been filed against the order passed by the learned Judicial Magistrate-II, Ulundurpet in Criminal M.P.No.3152 of 2017 in CC. No.255 of 2017 dated 18.07.2017. By the said impugned order, the court below has allowed the petition filed by the prosecution under section 319 Code of Criminal Procedure (in short, "the code").

2. Assailing the said order, the petitioners have filed this revision on the ground that originally though their names were mentioned in the FIR, subsequently on investigation their names were dropped in the final report.

3. Though initially the said final report was refused to be taken on file by the learned Magistrate, subsequently, the investigating officer, since has filed a report dated 25.11.2009 stating that even after his thorough investigation and the personal attention given by him, enquiry revealed that these petitioners were not said to be involved in the crime, therefore, the petitioners have not been arrayed as accused persons in the final report. Pursuant to the said explanation given by the investigating officer, the final report was accepted by taken on file by the learned Magistrate.

4. Only thereafter, during trial, since PW1 and PW2 in their deposition, have referred the names of the petitioners and reiterated the allegations made against these petitioners, which has been reduced into FIR, the prosecution had filed the petition under section 319 of the Code, seeking proper direction from the court below, to summon these two petitioners to array them as accused in the crime.

5. Only in that circumstance, challenging the order passed by the learned Magistrate concerned, who allowed the petition filed by the prosecution under section 319 of the Code, the present revision has been filed.

6. Mr.Arun Anbumani, learned counsel for the petitioners had submitted that though the names of the petitioners were found in the FIR, after thorough investigation, the investigation agency has filed a final report where they have categorically stated that the petitioners had not involved in the crime. When the said report was refused to taken on file by the learned Magistrate, the investigating officer had filed an explanation before the court below on 25.11.2009, reiterating his stand that there is absolutely no scope to implicate the petitioners in the crime.

7. Thereafter, since the learned Magistrate has accepted the final report and proceeded with the trial only with regard to other

accused persons, therefore, the said position cannot be altered based on the deposition of PW1 and PW2.

8. In this regard, the learned counsel for the petitioner has relied upon the following decisions namely:

1. *2010 SCC Online P&H 11377 in the matter of Rajwinder Kaur Vs. State of Punjab*
2. *2017 SCC Online SC 491 in the matter of Brijendra Singh and others Vs. State of Rajasthan.*

9. By citing these decisions, the learned counsel for the petitioner would urge that merely based on the depositions made by the defacto complainant (which is verbatim of the same as has been stated in the FIR), the learned Magistrate cannot take it as a ground to use his discretion to invoke section 319 of the Code.

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10. In this regard, the learned counsel would also submit that only after registering the FIR, the investigating agency, after having thoroughly investigating the issue, filed final report. In this case, initially, final report was refused to be taken on file by the learned Magistrate on the specific objection that the two petitioners'

name had been mentioned in the FIR, and the involvement in the

crime of the two petitioners since have not been mentioned in the final report. However, the same was taken on file subsequently inspite of the said earlier refusal. The investigating officer has given valid reasons for not including the names of the petitioners in the final report. Still, the learned Magistrate has invoked section 319 of Cr.Pc. based on the deposition of PW1 and PW2.

11. I have also heard Mr.R.Sekar, Government Advocate (Crl. Side) appearing for the respondent. In fact he has stated that, investigation was completed and final report was filed where the petitioners' name had not been found. Though the petitioners name were not found in the final report and the reason for the same also was explained by the investigating officer before the magistrate concerned, subsequently, the situation got changed, because of the evidence adduced by PW1 and PW2.

12. In this regard, the learned Government Advocate would also submit that since PW1 is the injured, he has deposed as to what has happened, before the police which was reduced in FIR. When there is specific avernment made against the petitioners and specific overt act is attributed against each of the petitioners, the learned Magistrate was justified in invoking section 319 of the code. Therefore the learned Government Advocate would submit that the impugned order does not suffer from any infirmity and the same is liable to be sustained.

13. I have heard the rival submission of both side.

14. As has been rightly pointed out by the learned counsel for the petitioner, invocation of section 319 of the code depends upon the facts and circumstances of each of the case. There is a specific overt act attributed against each of the petitioners. Whether the petitioners have really committed the crime is a matter for trial and this could be ascertained only after completion of trial.

15. Therefore at this juncture this Court does not want to go into the details of the averments made in the deposition of PW1 and PW2.

16. Having considered all these scenario as well as the material placed before this court, I am of the considered view that prima facie, some justifiable reasons are found to invoke section 319 of the Code. The prosecution has moved the petitione under section 319 Cr.Pc, based on the deposition of PW1 and PW2. The learned Magistrate since has got power to try any person, if it appears to him from the evidence that such person, not being an accused, has committed an offence.

17. Therefore, for all these reasons, I am not inclined to entertain this revision as the order impugned, in the opinion of this court, is justifiable. Hence the revision fails and the same is dismissed.

18. Since the 2nd petitioner is a woman, the learned counsel requests that her petition for dispensing with for her personal appearance may be considered atleast. In this regard, it is open to the 2nd petitioner to make necessary application before the trial court and if any such application is made, the trial court shall take in to consideration the difficulty if any expressed by her and dispose of the petition as early as possible.

19. With these observations, this Criminal Revision case is dismissed. Consequently, connected miscellaneous petitions are closed.

31.07.2017

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Index:Yes/no

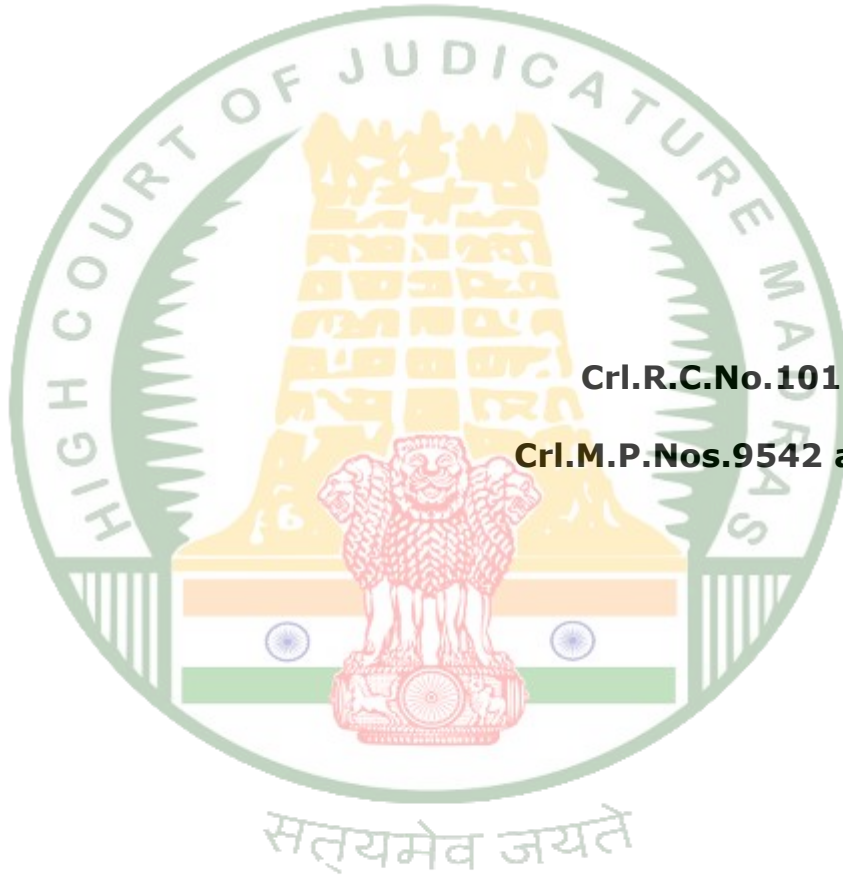
Internet: yes/no

To

1. The learned Judicial Magistrate-II
Ulundurpet.
2. The State, Represented by
Thiruvannainallur Police Station.
3. The Public Prosecutor,
High Court, Madras-104.

R.SURESH KUMAR, J.

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