

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR.J

Cr1.R.C. No.1331 of 2012

1. Vignesh
2. Karthick

.. Petitioners/Accused 3 & 4

Vs

1. S. Bharathi

2. State by : Inspector of Police  
Puduchatram Police Station  
Namakkal District  
(Cr.No.468/2011)

.. Respondents/Defacto Complainant  
and Complainant

Prayer: The Criminal Revision Petition filed under Section 305(4) of the Criminal Procedure Code, to call for the records and set aside the order dated 11.09.2012 passed by the Principal Sessions Judge, Namakkal in C.M.P.No.1182 of 2012 in S.C.No.26 of 2012 on the file of the Principal Sessions Judge, Namakkal

For Petitioners : Mr.B.Vasudevan

For Respondents : Mr.E.Raja (for R2)  
Additional Public Prosecutor

No Appearance for Respondent 1

सत्यमेव जयते  
O R D E R

This Revision Petition is filed against the order passed by the learned Principal Sessions Judge, Namakkal on 11.09.2012 in C.M.P.No.1182 of 2012 in S.C.No. 26 of 2012 impleading the petitioners as accused No.3 and 4 in the session case.

2. The brief facts leading to the filing revision is as follows:

Originally the prosecution has laid charge sheet as against one Arul and Mani under section 302 I.P.C. and under various other sections for allegedly murdering one Karthick. The

investigation officer has filed the final report and after committal, the learned Sessions Judge took cognizance of the offence and proceeded with the trial. After P.W.1 was examined, on the basis of the application filed by P.W.1 under section 319 Code of Criminal Procedure, the revision petitioners have been arrayed as accused in the Sessions Case. As against the same, the present revision has been filed.

3. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor. There is no representation for the defacto complainant. Perused the records.

4. Even though the trial court has adequate powers to summon any person, not named as an accused in the charge sheet as additional accused under section 319 of Code of Criminal Procedure, such powers can be exercised by the trial court only in the course of enquiry or trial and when it appears to the trial court from the evidence that any other person, who are not arrayed as an accused, has committed any offence, then the trial court can proceed to implead the person, who is not originally charged for the offence. For invoking power under section 319 of Code of Criminal Procedure, the trial court should see that there is evidence with regard to the involvement of any other person, who could be impleaded as an accused. The trial court in this case, based on the petition filed under section 319 Code of Criminal Procedure, simply perused the First Information Report and 161 statements of witnesses and also the evidence of P.W.1, has come to the conclusion that these accused can be tried as an accused along with originally charged accused.

5. It is to be noted that the trial court is not supposed to refer the charge sheet and 161 statements of the witnesses and the First Information Report to invoke the power under section 319 Code of Criminal Procedure. Such approach of the trial court is not according to law. Section 319 Code of Criminal Procedure contemplates that the trial court on satisfying the evidence before it can add any person as an accused. As on the date of order of the trial court, except P.W.1's evidence, there is no evidence, whatsoever, available on record. P.W.1, mother of the deceased was examined in chief and cross examined. Her evidence, when carefully perused by this Court reveals that she is not an eye witness at all and she has stated only about the lodging of the complaint that she has strong suspicion against the revision petitioners. Except stating that, her evidence no way implicate the complicity of the accused in the alleged crime. Even in the cross examination, except stating that previously there was some enmity between her son and the accused, she has not stated anything about the involvement of the accused in the crime.

Therefore, the trial court arraying the petitioners as accused is baseless and without application of mind. There is no evidence, whatsoever, available on record on the date of filing of the application filed by the defacto complainant, to implicate the petitioners as the accused.

6. Therefore, the order of the trial court has to be interfered and the same has to be set aside. It is also made clear that if the trial court is satisfied that any offence is made out from any other witnesses, who are to be examined by the prosecution during trial and the trial court being satisfied on the evidence about the involvement of the other accused, the trial court can very well exercise such power.

7. Accordingly, the order passed by the trial court impleading the revision petitioners as accused is hereby set aside and the trial court shall proceed with the trial and if the trial court finds any evidence from the rest of the prosecution witnesses, it is open to the trial court to exercise the power under section 319 Cr.P.C.

8. With these observations, this Criminal Revision Case is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-  
Assistant Registrar(CS VI)

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Sub Assistant Registrar

vrc/mm

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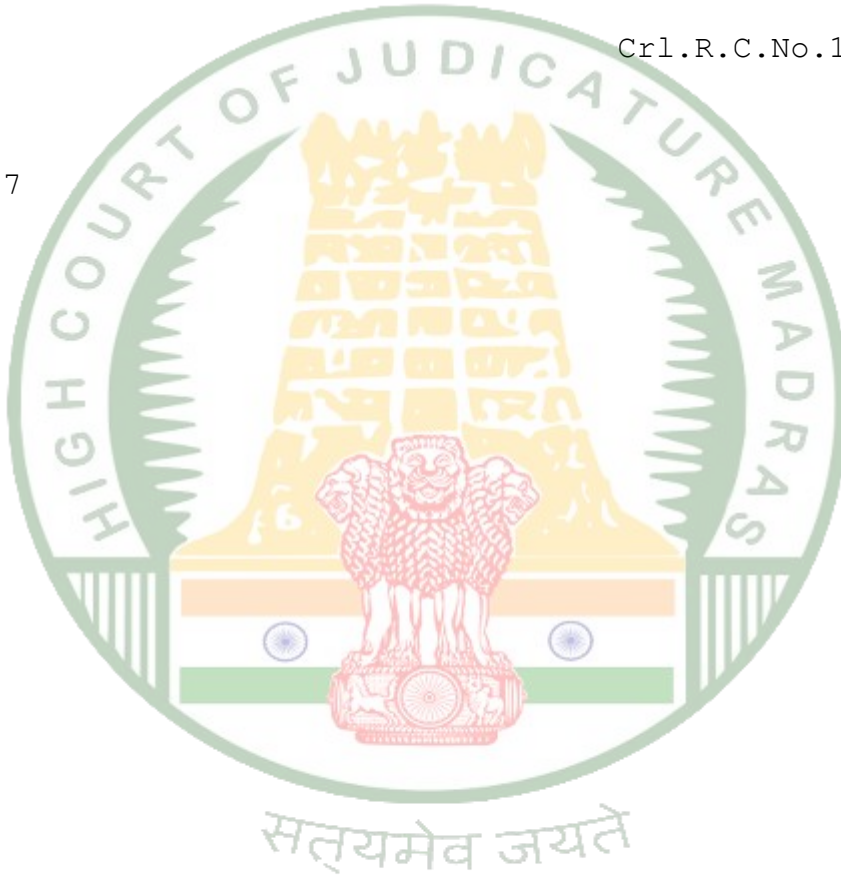
1. The Principal Sessions Judge,  
Namakkal.
2. The Inspector of Police  
Puduchatram Police Station  
Namakkal District.

3. The Public Prosecutor,  
High Court,  
Madras.
4. The Section Officer,  
Criminal Section,  
High Court, Madras-104.

+lcc to Mr.B.Vasudevan, Advocate, S.R.No.44784

Cr1.R.C.No.1331 of 2012

MSM(CO)  
CS/12/07/17



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