

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2017

CORAM

THE HONOURABLE MR. JUSTICE C.T.SELVAM

Crl.R.C.No.1700 of 2016

1.D.Ganesan

2.B.Selvaraj

3.M.K.Manivannan ... Petitioners

Vs.

State represented by
The Inspector of Police
Vaniyampadi Town Police Station
Vellore District ... Respondent

Criminal Revision filed under Section 397 and 401 Cr.P.C. against the order of learned District Munsif cum Judicial Magistrate, Vaniyampadi, passed in Crl.M.P.No.4208 of 2016 in C.C.No.15 of 2015 on 22.12.2016.

For Petitioners : Mr.R.Sankara Subbu

For Respondents : Mr.M.Mohammed Riyaz,
Govt. Advocate (Crl.side)

O R D E R

This revision is preferred against the order of learned District Munsif cum Judicial Magistrate, Vaniyampadi, passed in Crl.M.P.No.4208 of 2016 in C.C.No.15 of 2015 on 22.12.2016.

2. The case in C.C.No.15 of 2015 on the file of learned Principal District Munsif cum Judicial Magistrate, Vaniyambadi, is one being tried for offences u/s.465, 468, 471, 120 r/w 109 IPC. Prosecution moved Crl.M.P.No.4208 of 2016 u/s.319 Cr.P.C., to include the respondents therein as proposed accused 9 to 13 in the case, which came to be allowed under order dated 22.12.2016. There against, the petitioners have filed this revision.

3. Heard learned counsel for petitioner and learned Government Advocate [Crl.side].

4. Petition u/s.319 Cr.P.C. stands moved by the prosecution seeking to implead the petitioners as accused in the case based on the statement given by the second accused under Section 164 of Cr.P.C.. Learned counsel for the petitioner placed reliance on the decision of this Court in (P. Raju and another vs. State) (2014) 2 Law Weekly (Cr1) 473 to contend that an order under Section 319 of Cr.P.C. can be passed by the trial court only during the course of trial on the basis of the evidence let in by the prosecution and not on the basis of the materials placed along with the final report. Thus, only during trial, based on the evidence available, the trial court can take a decision to array a person as an accused and not before commencement of trial. In the present case, charges have not been framed against the accused 1 to 8 and trial has not commenced. In such view of the matter, the order passed by learned District Munsif cum Judicial Magistrate, Vaniyampadi, in Cr1.M.P.No.4208 of 2016 in C.C.No.15 of 2015 on 22.12.2016 to implead the petitioners as proposed accused shall stand set aside. Accordingly, the Criminal Revision Case is allowed. It will be open to Court below to exercise power u/s.319 Cr.P.C at an appropriate stage, if considered appropriate.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kpr

To

1. The District Munsif cum Judicial Magistrate, Vaniyampadi,

2. The Inspector of Police
Vaniyampadi Town Police Station
Vellore District

3.The Public Prosecutor
High Court, Madras

+1cc to M/s.R.Sankarasubbu,Advocate sr.5434

Cr1.R.C.No.1700 of 2016

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