

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHARA PRADESH**

CRIMINAL PETITION No.12242 of 2010

Between:

Vemuri Radhakrishna

.....Petitioner

and

Pathuri Prasad and another

.....Respondents

Date of Judgment pronounced on : 12-10-2017

HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No

*** HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO**

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< **GIST:**

> **HEAD NOTE:**

! Counsel for the petitioner : Sri D. Srinivas

^ Counsel for the respondents : Sri G.L. Narasimha Rao
Learned Public Prosecutor

? **Cases referred**

1. (2014) 3 SCC 92
2. (2017) 7 SCC 706



HON'BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO**CRIMINAL PETITION No.12242 of 2010****ORDER:**

The petitioner V. Radhakrishna is the Managing Director of Andhra Jyothi is the A.9 among other accused of C.C.No.126 of 2008 pending on the file of Additional Judicial Magistrate of First Class, Chilakaluripet, for the defamatory imputation published in the daily newspaper, Andhra Jyothi apart from Vaartha and Eenadu respectively on 09.06.2007. It is the private complaint dated 11.06.2007 of P. Prasad, the complainant, that was taken cognizance for the offence punishable under Section 500 r/w 34 IPC by the learned Magistrate, where there was array of 8 accused originally. The petitioner as Managing Director of Andhra Jyothi or the Editor K.Radha Krishna Murthy or Sub Editor as the case may be, were not the accused originally in the private complaint. It is during the course of trial from the evidence of PW.1 and the learned Magistrate taken cognizance against the petitioner being Managing Director as A.9 and the Editor and Sub Editor as A.10 & A.11 under Section 319 Cr.P.C. vide order dated 24.07.2009 in CrI.M.P.No.998 of 2009. It is the same now impugned in the quash petition.

The averments in the quash petition show that the impugned order of the learned Magistrate is unsustainable, without jurisdiction and contrary to the provisions of law and thereby liable to be quashed. The deposition of PW.1 during trial, on 27.02.2009 reads that he is resident of Edlapadu and Managing Partner of Saibaba Stone Crusher. In 1992 Vankayalapadu Gram Panchayat leased out land of an extent of Ac.1-25 cents in D.No.28/C and the

lease was for 99 years and the said land is in the possession of the complainant. On 23.05.2007, Communist party of India leaders who came about 300 persons entered into the land and plugged flags, all armed with crow bars and sticks and when complainant tried to stop them, they assaulted him then he gave report to Edlapadu Police Station, police did not register case and as the lease stands in the name of wife of the complainant PW.1, his wife filed the private complaint against the CPI party people. For that on 08.06.2007, A.1 to A.5 and 3 others convened a press meeting at party office at Chilakaluripet and A.7 among other accused 6 to 8 are also were in the press meeting and said 8 persons gave statement against him stating he is a printer and circulator of counter feet and fake currency and how can such a person can file a private complaint against the CPI party leaders. One Shaik Baji at Saibaba Stone Crusher in the premises of the complainant heard the news and purchased the paper of Andhra Jyothi and read out the news. To the shock and humiliation of him from said news, he filed the private complaint as the news publication defamed in the eyes of public to diminish from growing politically and financially, he was implicated in a false currency case that was ended in acquittal. It is from that deposition though the learned Magistrate allowed with observation that Court can proceed against the person who is not already accused basing on evidence of witnesses under Section 319 Cr.P.C.

As held by the Constitution Bench of the Apex Court in **Hardeep Singh Vs. State of Punjab**¹ for taking cognizance against the persons other than accused from the evidence during trial

¹ (2014) 3 SCC 92

under Section 319 Cr.P.C., it is something more than the strong suspicion to frame a charge that is required to be made out. Whether it is made out or not is now a matter for consideration herein from the impugnement of the order in question on sustainability. In the private complaint filed against 8 persons only on 11.06.2007 no doubt list of witnesses shows as to summon the news reporter of Andhra Jyothi, Chilakaluripet, among the news reports of Vaartha and Eenadu, also out of Lws.1 to 8 as 6 to 8 and the documents filed are document No.2 Andhra Jyothi District Edition dated 09.06.2007. In the complaint, it is averred on 09.06.2007 complainant, one B.Venkateswamy, A. Sateesh, S.Ramana and S.Krishna among Lws.1 to 5 sat at his crushing machine, one Baji brought the newspaper and told defamatory imputation published in Andhra Jyothi page No.13 and then he took the newspaper read over the defamatory imputation loudly to the shock and surprise of the complainant hurt its feelings and making imputation and all the persons there felt bad of the imputation with character assassination and to disrepute him and the intention of the accused making such defamatory imputation falsely and maliciously is fraudulent. It is mentioned that earlier a fake currency case booked against him, the III Additional Assistant Sessions Judge (FTC), Guntur, acquitted him on 09.03.2007 for same not proved and he is a respectable person in the society. Though the name of the petitioner/A.9 or A.10 or A.11 of Andhra Jyothi not referred in the private complaint as array of accused specifically the news item published therein in Andhra Jyothi was referred. By the time the learned Magistrate has taken cognizance by 24.07.2009 even from the date of publication of news item on

09.06.2007 it is not barred by limitation for the offence under Section 500 IPC of 2 years for limitation is 3 years, the learned Magistrate should have been considered from the evidence on record as to there is any offence so far that news item concerned with reference to the original complaint averments and the sworn statement also and without which and that too with no explanation from complainant as to why he originally not impleaded, but later though there is no bar of limitation, the taking of cognizance by the learned Magistrate invoking Section 319 Cr.P.C. against the petitioner & 2 others as additional accused 9 to 11 cannot survive for the parameter required in the expression of the Apex Court not satisfied of the prima facie accusation.

In **Brijendra Singh Vs. State of Rajasthan**² reiterating Hardeep Singh supra held at Paras 9 to 12 as follows:

9. Powers of the Court to proceed under Section 319 Cr.P.C. even against those persons who are not arraigned as accused, cannot be disputed. This provision is meant to achieve the objective that real culprit should not get away unpunished. A Constitution Bench of this Court in **Hardeep Singh supra** explained the aforesaid purpose behind this provision in the following manner:

“8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book

² (2017) 7 SCC 706

under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

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12. Section 319 CrPC springs out of the doctrine *judex damnatur cum nocens absoluitur* (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 CrPC.

13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 CrPC?

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19. The court is the sole repository of justice and a duty is cast upon it to uphold the rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence.”

10. It also goes without saying that Section 319 Cr.P.C., which is an enabling provision empowering the Court to take appropriate steps for proceeding against any person, not being an accused, can be exercised at any time after the charge-sheet is filed and before the pronouncement of the judgment, except during the stage of Section 207/208 Cr.P.C., the committal etc., which is only a pre-trial stage intended to put the process into motion.

11. In Hardeep Singh’s case, the Constitution Bench has also settled the controversy on the issue as to whether the word ‘evidence’ used in Section 319(1) Cr.P.C. has been used in a comprehensive sense and indicates the evidence collected during investigation or the word ‘evidence’ is limited to the evidence recorded during trial. It is held that it is that material, after cognizance is taken by the Court, that is available to it while making an inquiry into or trying an offence, which the court

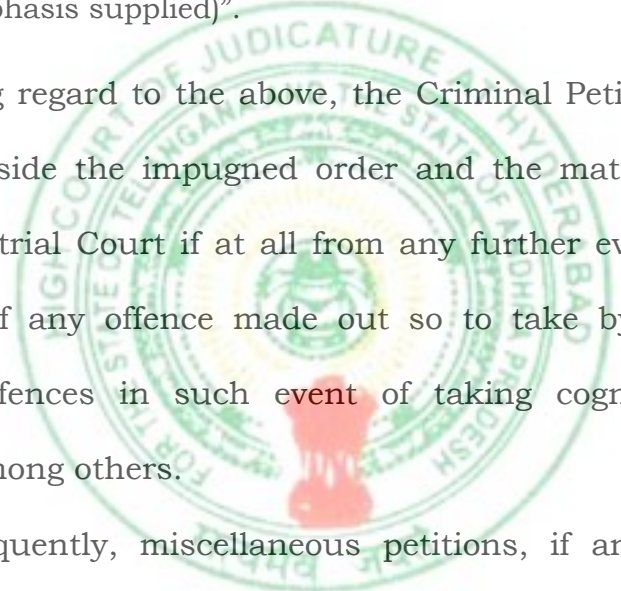
can utilise or take into consideration for supporting reasons to summon any person on the basis of evidence adduced before the Court. The word 'evidence' has to be understood in its wider sense, both at the stage of trial and even at the stage of inquiry. It means that the power to proceed against any person after summoning him can be exercised on the basis of any such material as brought forth before it. At the same time, this Court cautioned that the duty and obligation of the Court becomes more onerous to invoke such powers consciously on such material after evidence has been led during trial. The Court also clarified that 'evidence' under Section 319 Cr.P.C. could even be examination-in-chief and the Court is not required to wait till such evidence is tested on cross-examination, as it is the satisfaction of the Court which can be gathered from the reasons recorded by the Court in respect of complicity of some other person(s) not facing trial in the offence.

12. The moot question, however, is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by the Constitution Bench in Hardeep Singh's case and answered in the following manner:

"95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in **Vikas v. State of Rajasthan** [(2014) 3 SCC 321], held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

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105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

106. Thus, we hold that 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 at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused. (emphasis supplied)”.

Having regard to the above, the Criminal Petition is allowed by setting aside the impugned order and the matter is remitted back to the trial Court if at all from any further evidence to take cognizance if any offence made out so to take by left open all available defences in such event of taking cognizance to the petitioner among others.

Consequently, miscellaneous petitions, if any shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 12.10.2017

Note: L.R. Copy to be marked

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