

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.29474 of 2012
and
M.P.Nos.1 and 2 of 2012

A.Periyasamy

... Petitioner/ Petitioner/
Petitioner/Defacto/Compainant

vs

1. State, rep. By
Inspector of Police
Kunnam Police Station
Perambalur District. ...R1/R1/R1Complainant

2. Karunanithi
3. Natarajan
4. Rajendran
5. Periyasamy
6. Sellamuthu
... Respondents 2 to 6/R2
to R6/R2 to R6 A2 to AS
(Respondents 2 to 6 are made as party
in lower Court so they are pro forma
parties in the Crl.O.P.)

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, against the order dated 1.10.2012 made in Crl.R.C.No.2 of 2012 by the Principal District and Sessions Judge, Perambalur, confirming the order dated 25.6.2012 passed in Crl.M.P.No.72 of 2010 in S.C.No.64 of 2010 on the file of the Assistant Sessions Judge, Perambalur, and to set aside the same and allow Crl.M.P.No.72 of 2010 in S.C.No.64 of 2010.

For Petitioner : Mr.S.Parthasarathy

For Respondents : Mr.P.Govindarajan
Addl. Public Prosecutor
for 1st respondent

No Appearance (for R2 to R6)

ORDER

The petitioner has filed this original petition challenging the order dated 1.10.2012 made in CrI.R.C.No.2 of 2012 by the Principal District and Sessions Judge, Perambalur, confirming the order dated 25.6.2012 passed in CrI.M.P.No.72 of 2010 in S.C.No.64 of 2010 on the file of the Assistant Sessions Judge, Perambalur, and to set aside the same and allow CrI.M.P.No.72 of 2010 in S.C.No.64 of 2010.

2. The facts in a nutshell are as under: The petitioner herein is the defacto complainant. He had filed an application under Section 319 of the Criminal Procedure Code to add additional accused in the case. The learned Subordinate Judge, Perambalur, by order dated 25.6.2012, passed in CrI.M.P.No.72 of 2010, finding that the available evidence and materials on record are not suffice to array the alleged Periyasamy as accused and dismissed the application.

3. Calling in question the above said order, the petitioner filed Criminal Revision No.2 of 2012 before the learned Principal District and Sessions Judge, Perambalur. The Appellate Court, vide order dated 1.10.2012, dismissed the criminal revision petition holding that there is no material to summon and array Periyasamy son of Chellamuthu as an accused in S.C.No.64 of 2010 on the file of the Assistant Sessions Judge, Perambalur, as claimed by the petitioner.

4. Assailing the said order, the present original petition is filed.

5. It is the contention of the learned counsel appearing on behalf of the petitioner that when this Court vide order dated 27.11.2006 passed in CrI.O.P.No.28760 of 2006 had granted liberty to the petitioner to adduce materials during the course of trial and when trial is not yet commenced, the petitioner is at liberty to adduce evidence and seek addition of an accused, viz., Periyasamy, son of Sellamuthu, the sixth respondent herein.

6. He further submitted that Periyasamy (fifth respondent), son of Raja Padayachi, had been implicated unlawfully instead of

implicating Periyasamy, son of the Sellamuthu, the sixth respondent herein, as the sixth respondent is a Head Constable in the Police Department and since the petitioner had deposed evidence in his examination in chief as to the complicity of Periyasamy, son of the Sellamuthu, the sixth respondent herein, the Courts below ought not to have dismissed his plea.

7. Per contra, the learned Additional Public Prosecutor appearing on behalf of the first respondent reiterated the reasons that weighed with the Courts below in dismissing the application and criminal revision filed by the petitioner and prayed for dismissal of this criminal original petition.

8. I heard Mr.S.Parthasarathy, learned counsel for the petitioner and Mr.P.Govindarajan, learned Additional Public Prosecutor for the 1st respondent and perused the documents available on record. No representation on behalf of the respondents 2 to 6.

9. It is to be noted that this Court as early as 3.12.2012 granted an interim order of stay and by order dated 1.6.2017, the said order has been made absolute.

10. At the outset, it is to be noted that the petitioner as early as 2006 filed a criminal original petition, being CrI.O.P.No.28760 of 2006, before this Court, which was closed by an order dated 27.11.2006, the operative portion of which reads as under:

"3. I have perused the materials available on record. In view of the facts and circumstances of the case, as the petitioner, being the complainant, he is at liberty to adduce materials during the course of trial and if he is so desirous, he may also request the learned Magistrate on the basis of those materials to take up the proceedings against the persons in accordance with law."

11. It is on the strength of the above said order that the petitioner had sought addition of one Periyasamy, son of Sellamuthu, as an accused in the sessions case and when a miscellaneous petition was filed the learned Subordinate Judge, Perambalur, finding that the available evidence and material on record are not suffice to array the alleged Periyasamy as accused, dismissed the miscellaneous petition. The said order was on revision filed by the petitioner confirmed.

12. The real question centres around the scope and ambit of Section 319 of the Code of Criminal Procedure 1973, under which power has been conferred upon a criminal court to add a person,

not being the accused before it and against whom during the trial evidence comes forth showing his involvement in the offence, as an accused and try him along with those that are being tried.

13. Section 319 of the Criminal Procedure Code should be read as an enabling provision and it should not be considered to be exhaustive of the powers of the Court to add an accused at any stage of any inquiry or trial. A plain reading of Section 319(1) dealing with the general provisions as to inquiries and trials, clearly shows that it applies to all the Courts, including a Sessions Court, and as such a Sessions Court will have the power to add any person, not being the accused before it, but against whom there appears during trial sufficient evidence indicating his involvement in the offence, as an accused and direct him to be tried along with the other accused.

14. On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial Court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with the other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial.

15. In the case on hand, the petitioner, when he was examined in chief as P.W.1, and also in the cross-examination, had implicated one constable Periyasamy son of Sellamuthu. It is the specific case of the petitioner that the fourth accused Periyasamy, son of Raja Padayachi is not at all involved in the incident in question, but one Periyasamy son of Sellamuthu (sixth respondent accused who is Head Constable is involved in the occurrence.

16. It is seen from the order passed by the lower Appellate Court that both the defacto complainant and his wife, who were examined as P.W.1 and P.W.2 respectively had categorically deposed that Periyasamy son of Sellamuthu induced the accused for the occurrence and that Periyasamy son of Raja Padayachi was not involved in the occurrence.

17. In Lok Ram v. Nihal Singh and another, AIR 2006 SC 1892, the Hon'ble Supreme Court held that a person who has not been charge-sheeted can also be added as an accused to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge-sheet or the case diary do not constitute evidence.

18. In such view of the matter and the specific deposition of the petitioner and his wife, as P.W.1 and P.W.2 respectively, which is also recorded in the order of the lower Appellate Court, the veracity of which is yet to be tested by the Court below, this Court deems it appropriate to allow the original petition. It is not as if all evidence deposed is gospel truth and is accepted as such by the Courts below. The trial Court has to separate the grain from the chaff and merely sticking to technicalities they cannot brush aside the evidence of P.W.1 and P.W.2. If no case is made out against the proposed party, the trial Court is always at liberty to acquit him, but that should be done after threadbare analysis of the merits and demerits of the case, on the basis of evidence adduced.

19. In the result:

(a) this criminal original petition is allowed and the order dated 01.10.2012 made in CrI.R.C.No.2 of 2012 by the learned Principal District and Sessions Judge, Perambalur, confirming the order dated 25.6.2012 passed in CrI.M.P.No.72 of 2010 in S.C.No.64 of 2010 on the file of the learned Assistant Sessions Judge, Perambalur, are set aside and CrI.M.P.No.72 of 2010 in S.C.No.64 of 2010 is allowed;

(b) the trial Court is directed to proceed with the matter on merits and in accordance with law;

(c) the learned Assistant Sessions Judge, Perambalur, is directed to dispose of the S.C.No.64 of 2010 within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District Judge,
Perambalur.

2. The Assistant Sessions Judge,
Perambalur

3. Inspector of Police
Kunnam Police Station
Perambalur District.

4. The public Prosecutor,
High Court, Madras

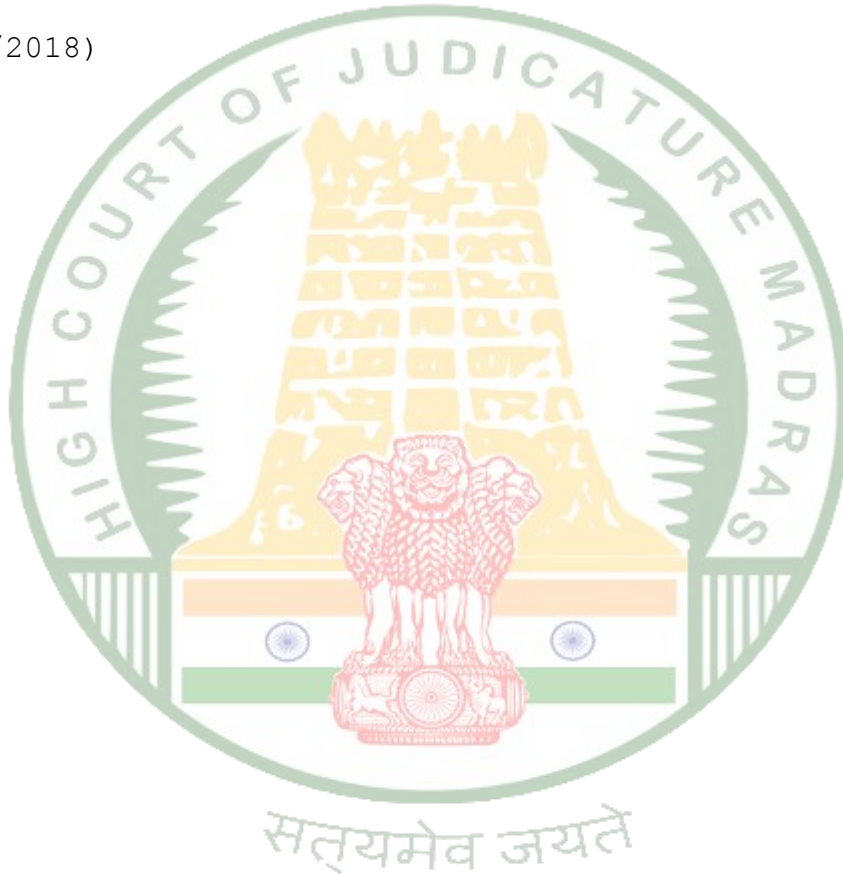
Copy to

The Section Officer,
Criminal Section,
High Court, Madras

+1cc to Mr.S.Parthasarathy, Advocate, S.R.No.68412

Cr1.O.P.No.29474 of 2012 and
M.P.Nos.1 and 2 of 2012

GJII (CO)
GSP (17/10/2018)



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