

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CrI.RC.No.346 of 2015 &
CrI.MP.No. 1 of 2015

S.Nallasamy ... Petitioner

Vs.

1. Ramalingam
2. Lakshmi
3. Thangamani
4. Senthil Kumar
5. Lakshmaniram @ Samy
6. Balakrishnan
7. Kulandaivel
8. Thangavel
9. Subramani
10. Chandrasekaran
11. Rudramurthy ... Respondents

PRAYER : Criminal Revision Case filed under Section 397 r/w 401 Cr.P.C. to set aside the order dated 27.02.2015 made in C.M.P.No.4062 of 2014 in C.C.No.123 of 2011, on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

For Petitioner : Mr.V.P.K.Gowtham
For Respondents : Mr.A.Thiagarajan

ORDER

The present Criminal Revision Case has been filed to set aside the order dated 27.02.2015 made in C.M.P.No.4062 of 2014 in C.C.No.123 of 2011, on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

2. The revision petitioner is the defacto complainant in Crime No.100 of 2011. After conducting investigation, the Police have filed charge sheet before

the District Munsif cum Judicial Magistrate, Kodumudi and the same was taken on file in C.C.No.123 of 2011. Charges were framed against the respondents 1 to 11. During the pendency of the trial, the petitioner/defacto complainant has filed C.M.P.No.4062 of 2014 before the District Munsif cum Judicial Magistrate, Kodumudi, to implead 20 more persons in the said case. The District Munsif cum Judicial Magistrate, Kodumudi, has dismissed C.M.P.No.4062 of 2014 on the ground that the proposed respondents names have not been mentioned either in the FIR or in the statement recorded by the Police under Section 161 Cr.P.C. Therefore, the revision petitioner/defacto complainant is before this Court with this Criminal Revision Case to set aside the order passed by the District Munsif cum Judicial Magistrate, Kodumudi, in C.M.P.No.4062 of 2014 dated 27.02.2015.

3. During trial, the defacto complainant who is examined as P.W.1 clearly deposed about the offences committed by the 20 persons/proposed respondents. P.W.1, in his deposition has stated that these 20 persons/proposed respondents have also come along with 11 persons/the accused respondents herein. P.Ws.2, 3 and 4 also corroborated the same. Therefore, solely based on the evidence of P.Ws.1, 2, 3 & 4, P.W.1/the defacto complainant has filed C.M.P.No.4062 of 2014 to implead those 20 persons also in C.C.No.123 of 2011 as accused/proposed respondents. Whereas, the District Munsif cum Judicial Magistrate, Kodumudi, has failed to consider the depositions of P.Ws.1,2,3 & 4 and has dismissed the petition, which warrants interference of this Court.

4. The District Munsif cum Judicial Magistrate, Kodumudi, in the impugned order has stated that no complaint has been given against these 20 persons / proposed accused. Further, neither in the F.I.R., nor in the statement recorded by the Police under Section 161 Cr.P.C., no mention has been made about these 20 persons/proposed accused. P.Ws.1,2 & 3 have not mentioned the names of these 20 persons in their statements. Though P.W.1 was examined at length, he has named the 11 persons/ the respondents herein as the accused in the case and further has deposed that 35 men and 15 women came to the scene of occurrence and they also involved in the crime. P.W.2, in his statement has stated that only few persons came and committed the offence. P.W.3 deposed that more than 5 persons came.

Moreover, P.Ws.2 and 3 have not named all the 20 persons/proposed accused herein. On these grounds, the District Munsif cum Judicial Magistrate, Kodumudi, dismissed C.M.P.No.4062 of 2014.

5. The learned counsel for the respondents submitted that originally, the above C.M.P.No.4062 of 2014 was filed by the Police. The revision petitioner/the defacto complainant is not a party to the above C.M.P.No.4062 of 2014. However, he filed the present revision petition to set aside the order dated 27.02.2015 made in C.M.P.No.4062 of 2014 in C.C.No.123 of 2011, on the file of the District Munsif cum Judicial Magistrate, Kodumudi, which is not maintainable. In support of his contention, he placed reliance on the Judgment of "(2017) 4 Supreme Court Cases 177, Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and Others".

6. Heard both sides and perused the materials available on record.

7. The revision petitioner / defacto complainant lodged a complaint and based on his complaint, Police have registered the case in Crime No.100 of 2011. Thereafter, they conducted investigation and filed charge sheet for the offences punishable under Sections 147, 448, 294(b) and 506(ii) and the same has been taken on the file of District Munsif cum Judicial Magistrate, Kodumudi, in C.C.No.123 of 2011.

8. During trial, the defacto complainant / P.W.1, categorically stated that apart from the 11 named accused persons shown in C.C.No.123 of 2011, 20 other persons also involved in the offence and he clearly named all the 20 more persons. P.W.2 has stated that along with 11 named persons, 20 more persons also came to the scene of occurrence however, she did not mention their names. P.W.3 has stated that other than the accused persons, 5 other persons also came to the scene of occurrence however, he has not stated their names. P.W.4 has mentioned some of the names of the persons who committed offence.

9. From the evidence of P.Ws.1 to 4, it is very clear that apart from the 11 named accused, some other persons also committed offence and the District Munsif cum Judicial Magistrate, Kodumudi, failed to consider the evidence and also the scope of Section 319 Cr.P.C.,. Hence, apart from the present accused persons in

C.C.No.123 of 2011, 20 more persons/proposed accused also involved in the case and hence, they have to be arrayed as accused. Under these circumstances, the judgment in (2017) 4 Supreme Court Cases 177, Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and Others" upon which reliance has been placed by the learned counsel for the respondents is not applicable to the facts of the present case.

10. In view of the above discussions, I am inclined to set aside the order passed by the District Munsif cum Judicial Magistrate, Kodumudi, dated 27.02.2015 made in C.M.P.No.4062 of 2014 in C.C.No.123 of 2011.

11. In the result, the Criminal Revision Case is allowed and the order in C.M.P.No.4062 of 2014 passed by the District Munsif cum Judicial Magistrate, Kodumudi dated 27.02.2015 is set aside. Further, the District Munsif cum Judicial Magistrate, Kodumudi, is directed to implead 20 persons/proposed accused as mentioned in C.M.P.No.4062 of 2014 and proceed with the case further, in accordance with law. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

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To

District Munsif cum Judicial Magistrate,
Kodumudi.

+1cc to Mr.V.P.K.Gowtham, Advocate SR.No.59250

+1cc to Mr.A.Thiagarajan, Advocate SR.No.58925

CrI.RC.No.346 of 2015 &

CrI.MP.No. 1 of 2015

ASK(30/10/2018)

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