

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 25.04.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.12225 of 2018
and Crl.M.P.Nos.6490 & 6491 of 2018

Rajesh .. Petitioner/Accused

Vs

The State rep. by
Inspector of Police,
Ariyalur Police Station,
Ariyalur.

.. Respondent/Respondent

Criminal Original Petition filed under Section 482 of Cr.P.C., praying to set aside the order dated 23.03.2018 in Crl.R.No.3 of 2017 passed by the Principal District and Sessions Judge at Ariyalur by confirming dated 01.06.2017 in C.C.No.26 of 2016 passed by the Chief Judicial Magistrate, Ariyalur.

For Petitioner : Mr.P.Tamilavel

For Respondent : Ms.P.Kritika Kamal
Govt. Advocate [Crl. Side]

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 23.03.2018 passed by the Principal District and Sessions Judge, Ariyalur in Criminal Revision No.3 of 2017.

2.For the sake of convenience, the parties will be referred to by their name. It is the case of the prosecution that one Suresh died, while he was cleaning an obsolete well on 26.07.2013. In this regard, on the complaint given by his wife Sumathi, the respondent Police registered a case in Crime No.411 of 2013 and after completing the investigation, filed a charge sheet in C.C.No.26 of 2016 under Section 304-A against one Saravanan before the Chief Judicial Magistrate, Ariyalur. During trial, 14 witnesses were examined. Saravanan took a defense that he is not the owner of the well, in which Suresh had lost his life. The Investigating Officer, who was

examined as P.W.14 was cross-examined by the counsel for Saravanan and in the cross-examination, the Investigating Officer admitted that he had not collected any materials to show that Saravanan was the owner of the well or the bar adjoining the well. However, the Chief Judicial Magistrate, Ariyalur examined one Kalyanasundaram as C.W.1 and in the evidence of Kalyanasundaram, he has stated that the bar and the well belongs to Rajesh. Therefore, the trial Court, in exercise of the powers under Section 319 of Cr.P.C., impleaded Rajesh as A2, by order dated 01.06.2017. Challenging the said order, Rajesh filed Criminal Revision No.3 of 2017 before the Principal District and Sessions Judge, Ariyalur, which has been dismissed on 23.03.2018. Challenging which, he is before this Court.

3. Heard Mr.P.Tamila Vel, learned counsel appearing for Rajesh and the learned Government Advocate [Crl.Side] appearing for the respondent.

4. Mr. Tamilavel submitted that Rajesh cannot be vicariously held responsible for the death of Suresh. He submitted that there are no prima facie materials to show that Rajesh had asked Suresh to clean the well.

5. The Supreme Court in Jogendra Yadav Vs State of Bihar reported in 2015 [8] Scale 442 has clearly delineated the procedure to be adopted for impleading a person as an accused under Section 319 of Cr.P.C. The Supreme Court has stated that notice should be given to the proposed accused to appear and after hearing, an order could be passed. Therefore, that portion of the order dated 01.06.2017 passed by the trial Court arraigning Rajesh as A2 is set aside. The trial Court shall bear in mind the law laid down by the Supreme Court in Hardeep Singh Vs State of Punjab reported in 2014[3] SCC 92 while deciding the question.

6. Rajesh is directed to surrender before the trial Court within four weeks from the date of receipt of a copy of this order. On appearance, he shall execute a bond for a sum of Rs.10,000/- [Rupees ten thousand only] under Section 88 of Cr.P.C. without sureties. The trial Court is directed to furnish the copies of the final report, 161 statements of witnesses, evidence of the witnesses recorded by the Court and give a show cause notice to Rajesh to explain as to why, he should not be impleaded as an accused in C.C.No.26 of 2016. After hearing Rajesh, the trial Court is directed to pass appropriate orders.

With the above direction, this petition is ordered accordingly. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Audit)

//True copy//

Sub Assistant Registrar

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To

- 1.The Principal District Sessions Judge,
Ariyalur.
- 2.Chief Judicial Magistrate Court,
Ariyalur.
- 3.The Inspector of Police,
Ariyalur Police Station,
Ariyalur.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Tamilavel, Advocate SR.No.30888

CRL.OP.No.12225 of 2018

PVS(CO)
GN(11/05/2018)

सत्यमेव जयते

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