

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.08.2018

Coram :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.927 of 2013

and M.P.No.1 of 2013

Seenuvasan

... Petitioner/Defacto Complainant

Vs

1. The Inspector of Police,
Thiruvannainallur Police Station,
Villupuram District. ... R1/Complainant
2. Venkataramana
3. Sankar ... R2 & R3/Accused
4. Kalyanakumar
5. Chandrakuptha
6. Vanitha
7. Ramadoss ... Respondents 4 to 7/Proposed Accused

Criminal Revision is filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records and set aside the order dated 07.08.2012 passed in Crl.M.P.No.3397 of 2009 in C.C.No.123 of 2009 on the file of the Learned Judicial Magistrate No. II, Ulundurpet, Villupuram District.

For Petitioner : Mr.S.Saravana Kumar
For Respondents : Mr. R.Ravichandran [for R1]
Government Advocate (Crl.Side)
Mr.R.Rajarajan [for RR2 to 7]

सत्यमेव जयते
O R D E R

The first respondent laid a charge sheet before the learned Judicial Magistrate No.II, Ulundurpet, the same was taken up on file in C.C.No.123 of 2009. After framing of charge, the trial was commenced, after examining P.W.1 to P.W.4, the 1st respondent herein filed the petition to implead some of the accused as Proposed accused/respondents 3 to 6 in C.M.P.No.3397 of 2009. After giving opportunity to both sides, the Magistrate dismissed the petition.

2. Feeling aggrieved against the order the defacto complainant has filed the present revision.

3. The learned counsel for the petitioner would submit that the Magistrate has dismissed the petition on two grounds, first one is that the names of all the accused were not mentioned in C.S.R.Register, only two names of the accused alone were mentioned. Second one is that before Cross examination, this application cannot be filed and after cross examination only, if any materials are available to implead the other persons whose names were not mentioned in the charge sheet can be impleaded. It is against the principle of law and against the factual aspects, the register does not show any name of the accused. Therefore, the factual finding of the Magistrate is not correct. Further the Chief examination of the witnesses is sufficient and the Court need not wait till the cross examination of the witnesses.

4. The learned counsel for the respondent would submit that for impleading any person as accused under Section 319 mere prima facie case is not sufficient and a strong suspicion would be enough and if the evidence has not been rebutted, the accused has to be convicted. Therefore, in this case, it is a prima facie power of the Magistrate that there is no material to convict the accused, if otherwise, not rebutted and need not be impleaded as party. Therefore, under these circumstances the Magistrate has already elaborately discussed materials under Section 161 statement recorded from the witnesses and the earlier complaint, which was subsequently suppressed. Therefore, the finding of the Magistrate is correct and does not require interference.

5. The learned Government Advocate (Crl.Side) appearing for the 1st respondent would submit that from the available records it is seen that prima facie material is strongly available against the accused. Even the materials show the prima facie case and the Magistrate failed to consider these aspects and dismissed the petition.

6. The learned counsel for the respondents 2 to 7, during the course of arguments relied on the decision of the Constitution Bench of Hon'ble Supreme Court in the case of [Hardeep Singh Vs. State of Punjab and others] reported in (2014) 3 SCC 92.

7. Heard both sides and perused the records.

8. Though, the 1st respondent is the petitioner, in C.M.P.No.3397 of 2009 before the Magistrate, as against the dismissal order, the 1st respondent has not preferred any revision. However, the defacto complainant was examined as P.W.1 and he has filed the present revision against the order passed by the Magistrate. It is well proposed principle of law, if there is no prima facie case against the accused, he can be

discharged and when there is a prima facie case, the accused need not be discharged. But, for impleading any party as an accused under Section 319 more than prima facie case is required. If any material in chief examination otherwise not rebutted in the cross examination, the accused is liable to be convicted with those materials. The parties can be impleaded as accused. In this regard, the reading of the FIR and also the chief examination of the witnesses, show that there are sufficient materials to convict the accused, if otherwise, not rebutted during the cross examination.

9. This Court finds there is no quarrel with regard to the proposition laid down by the Hon'ble Supreme Court in the judgment referred to by the learned counsel for respondents 2 to 7. But at the time of dealing with petition under Section 319 Cr.P.C, the court has to go into the materials available before it. Even though from the available materials the accused need not be convicted, but, at the same time, when the strong suspicion is available from the materials and in other words materials show more than prima facie case, any person can be impleaded in that case as an accused. So in this case, a perusal of the entire records, it is a fit case to implead the persons/accused. The Magistrate failed to consider those aspects and conclusion given by the Magistrate and factual findings as well as the legal proposition are not correct. Therefore, this Court finds that there is an infirmity and illegality in the order passed by the Magistrate and the order passed by the Magistrate in CrI.M.P.No.3397 of 2009 in C.C.No.123 of 2009 is liable to be set aside.

10. In the result, the Criminal Revision is Allowed, by setting aside the order dated 07.08.2012 made in CrI.M.P.No.3397 of 2009 in C.C.No.123 of 2009 passed by the Learned Judicial Magistrate No. II, Ulundurpet, Villupuram District. Further the Learned Judicial Magistrate No. II, Ulundurpet, is directed to implead the persons mentioned in the petition in CrI.M.P.No.3397 of 2009 as accused and proceed with the case further in accordance with law, after giving adequate opportunity to the newly impleaded accused. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

bri

To

1. The Chief Judicial Magistrate,
Villupuram District.
2. The Judicial Magistrate No. II,
Ulundurpet, Villupuram District.
3. Public Prosecutor,
High Court, Madras.
4. The Inspector of Police,
Thiruvannainallur Police Station,
Villupuram District.

+1cc to Mr. S.Saravana Kumar, Advocate, S.R.No. 5614
+1cc to Mr. T.Gandhi, Advocate, S.R.No. 55628

CrI.R.C.No.927 of 2013

NRL (CO)
GN (30/10/2018)



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