

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.10.2018

PRONOUNCED ON : 11.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.23329 of 2018
and CrI.M.P.No.13035 of 2018

1.Arumugam
2.Palaniammal
3.Viruthambal

... Petitioners

Vs.

State rep. by
The Station House Officer
Tirukoilur Police Station
Villupuram District.

... Respondent

Prayer:- Petition filed under Section 482 Cr.P.C., to set aside the order dated 28.08.2018 made in CRP No.21 of 2017 on the file of Additional District Judge (FTC), Villupuram, which confirms the order dated 03.05.2017 made in CMP No.1168 of 2016 in S.C.No.68 of 2015 on the file of Chief Judicial Magistrate, Villupuram.

For Petitioners: Mr.G.Arul Murugan
For Respondent : Mrs.M.Prabhavathi
Additional Public Prosecutor

O R D E R

This petition has been filed to set aside the order dated 28.08.2018 made in CRP No.21 of 2017 on the file of the Additional District Judge (FTC), Villupuram, which confirms the order dated 03.05.2017 made in CMP No.1168 of 2016 in S.C.No.68 of 2015 on the file of the Chief Judicial Magistrate, Villupuram.

2. On the complaint lodged by Sundar, the respondent police registered a case in Cr.No.25 of 2014 on 18.01.2014 under Sections 147, 148, 294(b), 323, 324 and 506(ii) IPC against Sudhakar [A1], Arumugam [A2], Palaniammal [A3], Viruthambal [A4] and Chandran [A5]. After completing the investigation, the police filed a charge sheet against Sudhakar [A1] alone under Sections 294(b) and 307 IPC before the Judicial Magistrate,

Tirukoilur. The case was committed to the Court of Session in S.C.No.68 of 2015 and made over to the Chief Judicial Magistrate/Assistant Sessions Judge, Villupuram, for trial. Charges were framed against Sudhakar [A1] and trial began with the examination of Sundar, the de facto complainant as P.W.1. P.W.1 in his chief-examination repeated the FIR averments and implicated not only Sudhakar [A1], but also the other four, whose name figured in the FIR. The Public Prosecutor moved an application in CrI.M.P.No.1168 of 2016 in S.C.No.68 of 2015 under Section 319 Cr.P.C., in which, notice was ordered to the proposed accused and after hearing them, they were included as accused by order dated 03.05.2017. Challenging the said order, the proposed accused filed a Criminal Revision Petition in CRP No.21 of 2017 before the Sessions Judge, Villupuram, which has been dismissed on 28.08.2018, challenging which, the proposed accused are before this Court.

3. Heard the learned counsel for the petitioners/proposed accused and the learned Additional Public Prosecutor appearing for the respondent-State.

4. Under normal circumstances, this Court would not interfere under Section 482 Cr.P.C. when two Courts below have exercised their powers to include the petitioners herein as accused in the main case under Section 319 Cr.P.C., however, in this case the facts warrant interference. The trial Court and the Sessions Court have relied upon a catena of judgments, wherein, the power of the trial Court under Section 319 Cr.P.C. has been expatiated.

5. Learned counsel for the petitioners submitted that in the complaint which formed the basis for registration of the FIR, the de facto complainant has stated that he was held by the petitioners herein, when Sundar [A1] attacked him. However, all the other witnesses, whose statements the police have recorded, have clearly stated that Sudhakar [A1] was the lone attacker and the petitioners were not there in the place of occurrence. In fact, Natarajan [L.W.2] the brother of Sundar [P.W.1], who is an eye witness, has stated that Sudhakar [A1] attacked Sundar [P.W.1] with a knife and that the petitioners were nowhere in the scene and that his brother Sundar [P.W.1] has given an exaggerated account of the incident in the complaint. Similar is the police statement of Suresh [L.W.3], Tirunavukkarasu [L.W.4], Sathyachandran [L.W.5] etc. Only in those circumstances, the police deleted the petitioners from the array of the accused in the final report and filed the final report only against Sudhakar [A1].

6. The trial Court and the revisional Court failed to appreciate this aspect and had proceeded to array the petitioners herein as accused on the ipse dixit of Chandran [P.W.1] in his examination-in-chief. In the opinion of this Court, the trial Court could have initiated this process after recording the evidence of at least some of the witnesses. In *Brijendra Singh vs. State of Rajasthan* [(2017) 7 SCC 706], the Supreme Court has held as under:

"15. This record was before the trial court. Notwithstanding the same, the trial court went by the depositions of the complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the "evidence" recorded during trial was nothing more than the statements which were already there under Section 161 CrPC recorded at the time of investigation of the case. No doubt, the trial court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where a plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty-bound to look into the same while forming prima facie opinion and to see as to whether much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the revision petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing the agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny."

7. As in the above case, in this case, on the solitary testimony in chief of P.W.1, the trial Court has chosen to exercise its power under Section 319 Cr.P.C. in a hurry. Hence, this petition is allowed and the orders passed by the trial Court and the revisional Court are set aside. It is common knowledge that the police statement is not a substantive piece

of evidence and no witness can be nailed to it. Hence, apart from Sundar [P.W.1], if any other witness implicates the petitioners in the offence, it is open to the trial Court to exercise its power under Section 319 Cr.P.C. once again. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Station House Officer
Tirukoilur Police Station
Villupuram District.

2.The Chief Judicial Magistrate,
Villupuram.

3.The Public Prosecutor
High Court, Madras.

+2cc to Mr.G.Arul Murugan, Advocate sr.no.68020, 70455

Crl.O.P.No.23329 of 2018

nr 12/10/2018

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