



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2018

CORAM:

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD)No.697 of 2017

and

Crl.M.P.(MD)No.7954 of 2017

1.Prabhakaran

2.Sivarajan

: Petitioners /Proposed Accused 3,4 /
Proposed Accused 3,4

-Vs.-

State represented through
The Sub Inspector of Police,
Chekkanoorani Police Station,
Madurai District.

: Respondent / Petitioner /
Complainant

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C., to call for the records and set aside the order passed in Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 dated 29.06.2017 on the file of the learned Judicial Magistrate No.2, Usilampatti.

For Petitioners

: Mr.R.G.Shankar Ganesh

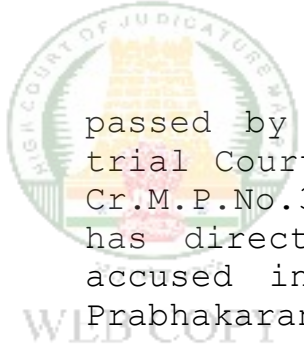
For Respondent

: Mrs.S.Bharathi,
Government Advocate (Crl. Side)

O R D E R

On the complaint lodged by one Pandiyarajan, the respondent police registered a case in Crime No.31 of 2010 and after completing the investigation, has filed a charge sheet in C.C.No.329 of 2013 before the learned Judicial Magistrate No.II, Usilampatti for offence under Section 341 and 323 IPC against one Pandi and Rani. During the course of trial, three prosecution witnesses spoke about the involvement of Prabhakaran and Sivarajan also in the offence.

2. At that juncture, the respondent police filed a petition in Cr.M.P.No.3876 of 2015 under Section 319 Cr.P.C., to include Prabhakaran and Sivarajan as accused in this case. The petition was allowed by the trial Court by a non-speaking order dated 02.11.2015, challenging which, Pandi and Rani filed Crl.R.C.(MD) No.567 of 2015 before this Court. This Court, by order dated 01.12.2015 in Crl.R.C.(MD)No.567 of 2015, set aside the order



passed by the trial Court and remanded the matter back to the trial Court for fresh hearing. The trial Court, once again, heard Cr.M.P.No.3876 of 2015 and by the impugned order dated 29.07.2017, has directed the impleadment of Prabhakaran and Sivarajan as accused in the case. Challenging the order dated 29.07.2017, Prabhakaran and Sivarajan are before this Court.

3. Heard Mr.R.G.Shankar Ganesh, learned counsel appearing for the petitioners and Mrs.S.Bharathi, learned Government Advocate appearing for the respondent.

4. The learned counsel appearing for the petitioners submitted that ordering the impleadment of Prabhakaran and Sivarajan, the trial Court had not even issued any notice.

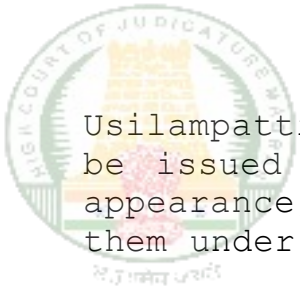
5. Per contra, the learned Government Advocate appearing for the respondent refuted the contention.

6. In the case of **Jogendra Yadav vs. State of Bihar** reported in **(2015) 8 Scale 442**, the Supreme Court has stated that the accused have to be heard before he is being impleaded and once if he is impleaded as accused, he does not have a second chance of filing a discharge application under Sections 239 or 227 Cr.P.C.. In this case, the trial Court had heard only Pandi and Rani [A-1 & A-2] and not the present revision petitioners.

7. In such view of the matter, this Criminal Revision Case is allowed and the order dated 29.07.2017 in Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013 passed by the learned Judicial Magistrate No.II, Usilampatti is hereby set aside and the matter is remanded back to the trial Court. Consequently, the connected Miscellaneous Petition is closed.

8. The petitioners are directed to surrender before the learned Judicial Magistrate No.II, Usilampatti in C.C.No.329 of 2013 within a period of two weeks from the date of receipt of a copy of this order. On such surrender, they shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) without sureties to the satisfaction of the learned Judicial Magistrate No.II, Usilampatti under Section 88 Cr.P.C.. Thereafter, the learned Judicial Magistrate No.II, Usilampatti is directed to furnish to the petitioners the copy of the final report, accompanying documents including the copy of the deposition of PW-1 to PW-3. The copy of the petition in Cr.M.P.No.3876 of 2015 is available with the petitioners.

9. The learned Judicial Magistrate No.II, Usilampatti shall hear the petitioners and thereafter, pass fresh orders in Cr.M.P.No.3876 of 2015 in C.C.No.329 of 2013. If the petitioners do not appear before the learned Judicial Magistrate No.II,



Usilampatti within a period of two weeks, Non Bailable Warrant can be issued against them for ensuring their presence. After their appearance, if they abscond, a fresh FIR can be registered against them under Section 229-A IPC and they can be remanded to custody.

Sd/-

Assistant Registrar(Protocol)

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/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,
Usilampatti.
2. The Sub Inspector of Police,
Chekkanoorani Police Station,
Madurai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.G.Shankar Ganesh, Advocate Sr.No.48099

SM

VB/GT/SAR3/01.03.2018/3P/5C

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Order made in
Cr1.R.C. (MD) No.697 of 2017
12.02.2018