HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1914 OF 2017

JUDGMENT:

Questioning the order, dated 09.06.2017, in Crl.M.P. No.457 of 2016 in Sessions Case No.120 of 2015, passed by the learned Special Judge constituted under Protection of Children from Sexual Offences Act - cum - I Additional Sessions Judge, Guntur, the present Criminal Revision Case is filed by the revision petitioner - *de facto* complainant under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code'),

2. The learned Special Judge in an application filed by the revision petitioner under Section 319 of the Code requesting to implead proposed respondent Nos.3 to 5 herein as accused Nos.3 to 5 in the main Sessions Case did not accede to it and dismissed the same, by the aforesaid order. Aggrieved over the same, the present Criminal Revision is filed.

3. Heard Sri N. Srirama Murthy, learned counsel for the revision petitioner, and Sri T. Nagarjuna Reddy, learned counsel for respondent Nos.1 and 2 - accused Nos.1 and 2, and Sri C. Nageswara Rao, learned senior counsel, for Sri K. Siva Prasad, learned counsel for respondent Nos.3 and 4 - proposed accused Nos.3 and 4. Respondent No.5 - proposed accused No.5 though, served with notice, has not entered appearance.

4. The revision petitioner was the *de facto* complainant, and she filed Crl.M.P. No.457 of 2016 in the Sessions Case requesting to implead proposed respondent Nos.3 to 5 as accused Nos.3 to 5, after she gave her evidence as PW.1 in chief-examination, deferring the cross-examination at the request of the learned counsel for the victim for taking steps to implead three other persons, whose names were spoken to by her in her chief examination.

5. Main arguments were tendered by the learned counsel for respondent Nos.3 and 4 for the reason that respondent Nos.3 to 5 are sought to be impleaded so as to arraign them as accused Nos.3 to 5 in the Sessions Case.

6. The learned counsel for the revision petitioner would submit that in fact, though, there was strong *prima-facie* material to prove the complicity of respondent Nos.3 to 5, as their participation has been shown by the complainant as *de facto* complainant along with respondent Nos.1 and 2 and also in her statement made to the Investigating Officer recorded under Section 161 of the Code, still, the Investigating Officer just referring to the statements of LWs.5 to 8 that they did not speak about the participation of the proposed accused, filed the charge sheet only against accused Nos.1 and 2, deleting the names of proposed accused Nos.3 to 5. But, however, when the *de facto* complainant examined herself as PW.1 in Court, she has spoken to the participation of respondent Nos.3 to 5,

attributing incriminating material. After completion of her chief-examination only, Crl.M.P. No.457 of 2016 was filed to implead them as accused Nos.3 to 5. But, the learned Special Judge, making certain observations in paragraph No.11 of the order, went wrong in holding that it is not a fit case where proposed respondent Nos.3 to 5 can be added as accused Nos.3 to 5 in the Sessions Case and tried along with accused Nos.1 and 2.

i) The learned counsel would submit that the finding recorded by the learned Special Judge is utterly perverse as just basing on the statements of LWs.5 to 8 though, they were yet to be examined as witnesses before the Court, taken their statements and given precedence and dismissed the petition.

ii) The learned counsel also would submit that what ought to be done by the learned Special Judge after completion of trial, in assessing the evidence of PW.1 and the statements of other witnesses, went on tendering findings on the statements on record which ought not to have been done at this stage.

a) The learned counsel referred on the ruling in **Lok Ram v. Nihal Singh**[1], where the Hon'ble Apex Court emphasizing parameters for exercise of power under Section 319 of the Code, held in paragraph Nos.12 and 13 thus:

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[1]. AIR 2006 Supreme Court 1892

“12. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it. If it is satisfied that any person other than accused has committed an offence he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub-section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned.

13. It is to be noted that the trial court rejected the application only on the ground that the complainant was an interested witness and therefore, sufficient ground did not exist to take action against the accused persons. As noted above though the power is an extra-ordinary and is used only if compelling reasons exist; the factor which weighed is that the trial court does not appear to be relevant and, therefore, the High Court has rightly interfered in the matter. The impugned judgment does not suffer from any infirmity. However, we make it clear that we have not expressed any opinion on the merits of the case. Since the

matter is pending long the trial court is requested to complete the trial as early as possible."

b) Next ruling relied on by the learned counsel is in **Hardeep Singh v. State of Punjab with Manjit Pal Singh v. State of Punjab**[2], wherein the Hon'ble Apex Court in the context of primary object underlying Section 319 of the Code expressed in paragraph No.28 thus:

> "28. The primary object underlying Section 319 is that the whole case against all the accused should be tried and disposed of not only expeditiously but also simultaneously. Justice and convenience both require that cognizance against the newly added accused should be taken in the same case and in the same manner as against the original accused. The power must be conceded as incidental and ancillary to the main power to take cognizance as part of normal process in the administration of criminal justice."

The Hon'ble Apex Court, while explaining the meaning of term **'evidence'** used in sub-section (1) of Section 319 of the Code, held in paragraph No.54 thus:

> "54. It is thus difficult to accept the contention of the learned Counsel for the appellants that the term 'evidence' used in Sub-section (1) of Section 319 of the Code would mean evidence which is tested by cross examination. The question of testing the evidence by cross-examination would arise only after addition of the accused. There is no question of cross-examining the witness prior to adding such person as accused. Section does not contemplate an

[2]. AIR 2009 Supreme Court 483

> additional stage of first summoning the person and giving him an opportunity of cross-examining the witness who has deposed against him and thereafter deciding whether such person should or should not be added as accused. The word "evidence" occurring in Sub-section (1) of Section 319 is used in comprehensive and broad sense which would also include the material collected by the investigating officer and the evidence which comes before the Court and from which the Court is satisfied that person not arraigned before it is involved in the commission of the crime."

c) The learned counsel referred to the ruling rendered by a learned Single Judge of this Court in **Kotla Hari Chakrapani Reddy v. State of Andhra Pradesh**[3], in the context of plea of *alibi* put forth by the accused during interrogation by the Investigating Officer, holds that when the Investigating Officer proposed to delete the name of a particular accused when he files the final report, he is under legal obligation to inform the same to the Informant - *de facto* complainant about his proposal to refer the case in so far as the said accused is concerned, giving notice of reference of the case in so far as the said accused, before filing final report into Court. The learned Single Judge in the context of procedure to be followed, thus, expressed in paragraph Nos.7 to 9 thus:

> "7. In case the investigating officer took the revision petitioners who were A-1 and A-2 in F.I.R into custody and recorded their statements during their interrogation, in which they pleaded alibi, then it is open to the investigating

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[3]. 2012 (2) ALD (Crl.) 657 (AP)

officer to proceed as per prescribed procedure in Cr.P.C to make investigation into the plea of alibi put forth by the said accused during interrogation. After completing investigation, it is for the investigating officer to submit final report to the Magistrate in accordance with Section 173(2) Cr.P.C. In the final report, it is open to the investigating officer to mention his conclusions on the evidence collected during investigation and to show names of the accused who are proposed to be charged and names of the accused who are proposed to be deleted, in which event it is for the Magistrate to take decision as to cognizance of the offences under Section 190(1)(b) Cr.P.C against the persons who are arrayed as accused initially. Without placing evidence collected during investigation and conclusions of the investigating officer before the Court/Magistrate, it is not for the investigating police officer and for the Superintendent of Police to delete any accused from the case unilaterally. After investigation, in case the investigating officer finds that plea of alibi of the revision petitioners is correct, then Section 169 Cr.P.C provides for release of such accused persons in case they are in custody, after obtaining bond from such accused person. Release of an accused person under Section 169 Cr.P.C is ultimately subject to jurisdiction of the Magistrate under Section 190(1)(b) Cr.P.C of taking cognizance of the offences against the persons who are named in the charge sheet and who are not named in the charge sheet and who are proposed to be deleted by the investigating agency.

8. The public prosecutor stated that there is no provision in law for deleting an accused person from the case by the police officers, either the investigating officer or Superintendent of Police of the district concerned and that it is for the investigating officer to place all the

material before the Magistrate after investigation and seek decision of the Magistrate as to taking cognizance or not of an offence against a particular accused person. Without there being judicial decision on cognizance, no police officer can unilaterally delete or direct deletion of an accused person from a case. If it is allowed to do so, then it would lead to despotic and tyrannical results, which are unsafe to the society and not provided by rule of Law.

9. In case the investigating officer comes to the conclusion after collection of evidence during investigation that a particular accused person is not involved in commission of the offence and his name was unnecessarily or wrongly included as an accused person in the case, then while reporting the same to the Magistrate in his final report, the investigating officer is under legal obligation to inform the same to the first informant/defacto-complainant about his proposal to refer the case in so far as the said accused is concerned, giving notice of reference of the case in so far as the said accused, before filing final report into Court. In this connection, a reference to the Andhra Pradesh Police Manual also becomes relevant. Though police manual has no force of law, it serves as guidance to the police officers and the police personnel in day-to-day performing of their duties as such. Order No.487-3 contained in Part-I Volume-II of the Andhra Pradesh Police Manual at Page-494 relating to referred reports reads:

> "When a final report is sent to the magistrate the SHO shall inform the complainant about the action. The magistrate also shall send notice to the complainant directing him to show as to why the report should not be accepted. Before acting on the referred report, the magistrate shall hear both the police and complainant. On the orders of magistrate, the aggrieved party can go to the higher courts for revision."

This provision is applicable not only to a case where the entire case against all the accused is referred, but also to a case where the case relating to some only out of all the accused is referred. After final report is filed by the investigating officer under Section 173(2) Cr.P.C, then it is for the Magistrate to apply his/her mind to the facts stated in the final report and to the oral and documentary evidence collected during investigation and come to a conclusion regarding taking cognizance of the offence against any accused under Section 190(1)(b) Cr.P.C. Before taking such decision on a final report contained in referred charge sheet in so far as a particular accused is concerned, the Magistrate is expected to give notice to the defacto-complainant/1st informant in Form No.52 of the Criminal Rules of Practice and Circular Orders, 1990……"

d) In **Hardeep Singh v. State of Punjab**[4], relied on by the learned counsel, wherein, a larger Bench of the Hon'ble Supreme Court, pursuant to the reference made in the ruling (2 Supra), the Hon'ble Supreme Court referred to the ruling in *Ranjit Singh v. State of Punjab [(1998) 7 SCC 149]* that it is not necessary for the Court to wait until the entire evidence is collected for exercising the said powers under Section 319 of the Code. The learned counsel also relies on the expression of the Hon'ble Apex Court in paragraph No.90, where the Hon'ble Apex Court referred to its earlier ruling in *Mohd. Shafi v. Mohd. Rafiq [(2007) 14 SCC 544]*, as to exercise of power under Section 319 of the Code held thus:

"90. As held in *Mohd. Shafi* and *Harbhajan Singh*, all that is required for the exercise of the power under Section 319 Code of Criminal Procedure is that, it must appear to the court that some other person also who is not facing the

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4. (2014) 3 SCC 92

trial, may also have been involved in the offence. The pre-requisite for the exercise of this power is similar to the prima facie view which the magistrate must come to in order to take cognizance of the offence. Therefore, no straight-jacket formula can and should be laid with respect to conditions precedent for arriving at such an opinion and, if the Magistrate/Court is convinced even on the basis of evidence appearing in Examination-in-Chief, it can exercise the power under Section 319 Code of Criminal Procedure and can proceed against such other person(s). It is essential to note that the Section also uses the words 'such person could be tried' instead of should be tried. Hence, what is required is not to have a mini-trial at this stage by having examination and cross-examination and thereafter rendering a decision on the overt act of such person sought to be added. In fact, it is this mini-trial that would affect the right of the person sought to be arraigned as an accused rather than not having any cross-examination at all, for in light of Sub-section 4 of Section 319 Code of Criminal Procedure, the person would be entitled to a fresh trial where he would have all the rights including the right to cross examine prosecution witnesses and examine defence witnesses and advance his arguments upon the same. Therefore, even on the basis of Examination-in-Chief, the Court or the Magistrate can proceed against a person as long as the court is satisfied that the evidence appearing against such person is such that it prima facie necessitates bringing such person to face trial. In fact, Examination-in-Chief untested by Cross Examination, undoubtedly in itself, is an evidence."

iii) The learned counsel would submit that in the presence of strength of *prima-facie* material occurring in the complaint and the statement recorded by the Investigating Officer under Section 161 of the Code of the *de facto* complainant in her chief examination as PW.1, the learned Special Judge was not right to view the statements of LWs.5 to 8 and probing into the evaluation of evidence of PW.1 in the light of statement made by her under Section 161 of the Code and the allegations in the complaint, which exercise can only be taken while rendering the judgment after a full-fledged trial and rejecting the request of the *de facto* complainant in impleadment of respondent Nos.3 to 5 as accused Nos.3 to 5 in the Sessions Case.

7. Sri C. Nageswara Rao, learned senior counsel appearing on behalf of respondent Nos.3 and 4, while supporting the order passed by the learned Special Judge, refers to the chief-examination of PW.1 and would contend that the allegations are only against accused Nos.1 and 2, and that has been the reason why the Investigating Officer when laid final report deleted the names of the proposed accused herein, who were originally arraigned as accused Nos.3 to 5 when the First Information Report (FIR) was registered and issued and even the statements of eye-witnesses examined as LWs.5 to 8 under Section 161 of the Code would clearly rule out the presence of accused Nos.3 to 5 and, therefore, the learned Special Judge was right in refusing to implead them as accused Nos.3 to 5 in the Sessions case.

i) The learned counsel also places reliance in **Brijendra Singh v. State of Rajasthan**[5] and relies on the expression of the Hon'ble Supreme Court in paragraph No.9 thus:

> "9. Powers of the Court to proceed under Section 319 Code of Criminal Procedure even against those persons who are not arraigned as accused, cannot be disputed. This provision is meant to achieve the objective that real culprit should not get away unpunished. A Constitution Bench of this Court in Hardeep Singh v. State of Punjab and Ors., [(2014) 3 SCC 92 : AIR 2014 SC 1400, (Paras 7, 12, 17)], explained the aforesaid purpose behind this provision in the following manner:
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> "8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the Accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under Code of Criminal Procedure indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.

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5. AIR 2017 Supreme Court 2839

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> 12. Section 319 Code of Criminal Procedure springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Code of Criminal Procedure.
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> 13. It is the duty of the court to do justice by punishing the real culprit. Where the investigating agency for any reason does not array one of the real culprits as an accused, the court is not powerless in calling the said Accused to face trial. The question remains under what circumstances and at what stage should the court exercise its power as contemplated in Section 319 Code of Criminal Procedure?
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> 19. The court is the sole repository of justice and a duty is cast upon it to uphold the Rule of law and, therefore, it will be inappropriate to deny the existence of such powers with the courts in our criminal justice system where it is not uncommon that the real accused, at times, get away by manipulating the investigating and/or the prosecuting agency. The desire to avoid trial is so strong that an Accused makes efforts at times to get himself absolved even at the stage of investigation or inquiry even though he may be connected with the commission of the offence."

The learned senior counsel further refers to the ruling in **Hardeep Singh**[4], more particularly, the degree of satisfaction that required for invoking the power under Section 319 of the Code enunciated by the Hon'ble Apex Court in paragraph Nso.93 and 94 thus:

> "93. Section 319(1) Code of Criminal Procedure *empowers the court to proceed against other persons who* ***appear*** *to be guilty of offence, though not an accused*

before the court. The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof.

94. In *Pyare Lal Bhargava v. State of Rajasthan [AIR 1963 SC 1094]*, a four-Judge Bench of this Court was concerned with the meaning of the word 'appear'. The court held that the appropriate meaning of the word 'appears' is 'seems'. It imports a lesser degree of probability than proof. In *Ram Singh and Ors. v. Ram Niwas and Anr.[(2009) 14 SCC 25]*, a two-Judge Bench of this Court was again required to examine the importance of the word 'appear' as appearing in the Section. The Court held that for the fulfillment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as an accused in the case."

There cannot be any dispute in regard to the legal principles enunciated by the Ho'ble Apex Court in the rulings referred to by the learned counsel for the petitioner and the learned senior counsel for respondent Nos.3 and 4.

8. What is required now to be seen is, whether the request made by the *de facto* complainant to implead proposed respondent Nos.3 to 5 as accused Nos.3 to 5 in the Sessions Case can be acceded to, by applying legal principles enunciated by the Hon'ble Apex Court

and whether the case at hand falls within the parameters laid down by the Hon'ble Apex Court while exercising power under Section 319 of the Code. Incidentally, it is to be seen whether the order passed by the learned Special Judge suffers from any legal infirmity warranting interference?

9. Two documents are necessary to examine in addition to the chief-examination of PW.1. First, the complaint lodged by the *de facto* complainant to look at whether there are any allegations levelled against the proposed accused persons. In the complaint lodged by her, she would allege that when accused No.1 took her to Santhagudipadu village on a motorcycle, his friend Raju, who is accused No.2, who was waiting there, also boarded the motorcycle, and they took her to Narsaraopet, where accused Nos.3 to 5 were present, and with their aid, accused Nos.1 and 2 took her to a room situated at Prakashnagar and confined her. She refers to the attempt made by them to commit rape on her forcibly, on which, she told them that she would telephone to her father, on which, they alleged to have told her that she cannot talk to her father on phone and she cannot leave that place and, thus, keeping her inside, bolted the room from outside. Somehow, under the pretext that she intends to attend calls of nature and on her repeated requests, they unbolted the door and while coming out she pushed them aside and ran out to some distance and she found her uncle, who was searching out for her and he took her to her parents

house. These have been the overt acts attributed to the proposed accused.

i) Second is, the statement recorded under Section 161 of the Code. In this statement also she makes the very same allegations against accused Nos.3 to 5.

ii) In her chief-examination, PW.1, instead of referring to the allegations has referred to the assertions, which would be appropriate to extract, thus:

> "I am the resident of Chejarla Village, Nakarikallu Mandal. I studying B.Tech. 1st year in Narasaraopet, LW2: Thirupathi Road is father. LW3: Venkata Narsaiah is my uncle. LW.4: A. Venkayamma mother. LW7: a Koteswara Rao, LW8: N. Venkateswarlu are resident of village. During April, 2014, I was studying 10th Class in my village, Chjarla. I know both the accused. A1 is resident of Chejarlka. A2 is residing Santhagudippadu. During 2013-14 I studied 10th class in SVSR Z.P. High School, while returning from the school the accused No.1 followed me standing that known to me and if I do not reciprocate he would died and he would kill my parents and accused gave his mobile phone number to me. The younger sister of A1 is my classmate. On one day he insisted me to make a phone call in the evening of that day. But I did not make any phone call to A1. A1 used to make phone calls to my mobile phone available in our house. During March, last week 10th class was completed. A1 telephoned me on 17-4-2014 at 4 or 4-30 PM and stated to me that he would make a phone call in the early hours of the next day and asked me to answer the phone call and asked me to come out of my house. But I did not agree for the said proposal on 18-

4-2014 at 3 PM A1 telephoned. So, I came out of my house due to fear of A1 and as per instructions of A1 boarded the motor cycle and on his motor cycle took me to sub-Station situated in the outskirts of o0ur village and he stated that he was going to take me to Narsaraopet. When we reached Santhagudipadu we phoned A2 and he boarded the motor cycle and A1 took us to the Bus Stand in Narsaraopet. At the Bus-stand I found Kasa Subbarao, Thotakonda Venkateswarlu, and Raghavulu Rama Rao who are residents of my village. A1 and A2 and the said three persons took me to a room in Narasaraopet and they confined me in the said room and they went away. When I asked Kasa Subbarao who is the uncle of A1, as to why I was brought to the said room, he stated that they are going to perform my marriage with A1, as he is in love with me. A2 and the said Ramarao also stated that they would perform my marriage with A1. Thota Venkateswarlu also supported them. One hour thereafter, A1 alone came to the said room and attempted to commit rape on me and he removed my chunni and hugged me and closed my mouth with his hand. Thereafter, he removed his pant. Thereafter, he tried to remove my legging pant. But I resisted him and cried loudly. So A1 went outside the room and talked with other persons about my marriage with A1. During that time the remaining four persons were outside the room. I knocked the door, and stated to A1 that I have to attend calls of nature. As the bath room is outside the room, A1 opened the door and I came out of the room and ran away and found my uncle Ramisetty Venkata Narsaiah (LW3) who is the resident of Narasaraopet. I narrated the incidents to my uncle. Then he took me to his house. Thereafter my uncle called my father on mobile and he came to house of my uncle and took me to my house in Chejarla village. On -4-2014 I went to Nekarikallu Police

Station and gave report which is Ex.P.1, Tehreafter, I was examined by the police. My statement was recorded by the Police."

10. Thus, it is clear that even in her chief-examination she states that the proposed accused persons, who belong to her village, were present at the bus-stand at Narsaraopet when accused Nos.1 and 2 took her to that place, and all of them took her to a room and confined her in the said room and went away. When she asked Kasa Subba Rao, who is uncle of accused No.1 who is the proposed accused No.5 as to why she was brought to that room, he told her that they were going to perform her marriage with accused No.1 as he is in love with her and accused Nos.3 and 4 supported him. Even her statement shows that when accused No.1 came inside the room, all other four persons remained outside the room. These allegations, *prima-facie,* prove the complicity of accused Nos.3 to 5 and it cannot by any stretch of imagination be construed that all the allegations are only directed against accused Nos.1 and 2. It is to be seen whether the role played by them amounts to aiding accused Nos.1 and 2, when examination in-chief is taken into consideration, though, the *de facto* complainant in her statement recorded under Section 161 of the Code, she levelled general allegations that even the proposed accused persons attempted to outrage her modesty, still, the allegations touching complicity of accused Nos.3 to 5, at this stage, cannot be

excluded unless tested during trial. PW.1 is yet to be cross-examined and other witnesses are to be examined by the prosecution.

11. Now, turning to the gravamen of charge as projected in the charge sheet, the Investigating Officer, somehow, basing on the statements of LWs.5 to 8, who were projected as eye-witnesses in the list of Memo of evidence, refers to the statements made by them consistently that proposed accused persons did not participate in the occurrence as they have not seen the proposed accused persons. It is really strange and un-understandable even at this stage as to how LWs.5 to 8 could speak to the Investigating Officer in regard to their absence. If at all, all they intended to tell or speak as to the occurrence, invariably they would be referring to the presence of accused Nos.1 and 2, but not in regard to absence of non-participation of accused Nos.3 to 5 at the time and place of occurrence. It is not forthcoming in the statements of LWs.5 to 8 that on questioning by the Investigating Officer they did make such statements as regards absence of the proposed accused persons at the relevant time and place of occurrence. Now, examining these events, touching the complicity of the proposed accused persons, in the first place, as observed by the learned Single Judge of this Court in **Kotla Hari Chakrapani Reddy**[3], the said procedure was not followed by the Investigating Officer while laying the final report in deleting them. Neither the revision petitioner, nor the respondents including

respondent No.6 - State represented through the Station House Officer concerned, did file the copy of order taking cognizance for the offences alleged against accused Nos.1 and 2 by the learned Magistrate so as to see if there was any application of mind at that stage and what was observed by the learned Magistrate so far as exclusion of the proposed accused persons from the charge in the final report. Be that as it may, the factual aspect is sufficient enough even without the aid of the principles laid down by the Hon'ble Supreme Court in the rulings referred to and relied on by the learned counsel on either side to hold that there is strong *prima-facie* material touching the complicity of proposed accused persons.

12. Adverting to the order under challenge, the learned Special Judge, somehow, travelled beyond in assessing or evaluating the evidence of PW.1 in chief-examination which exercise ought not to have taken at this stage even before PW.1 is cross-examined and other witnesses were examined. Certainly, the said observations made by the learned Special Judge in paragraph No.11 suffer from legal infirmity. No doubt, the learned Special Judge placed reliance in **Brijendra Singh**[5], in referring to the observations touching the obligation cast on the trial Court to look into the evidence collected by the Investigating Officer and to examine whether there is strong and cogent evidence that occurs against a person from the evidence led before the Court that such power under Section 319 of the Code

should be exercised and it is not to be exercised in a usual or cavalier manner, but, for the reasons hereinbefore stated, the observations made by the learned Special Judge, certainly, are perverse. Hence, the order under challenge is hereby set aside.

13. The Criminal Revision Case is, accordingly, allowed and, consequently, Crl.M.P. No.457 of 2016 in S.C. No.120 of 2015 stands allowed. The proposed accused persons, who are shown as accused Nos.3 to 5, is directed to be shown as accused Nos.3 to 5 in the aforesaid Sessions Case, and proceed in accordance with law.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the criminal revision case, stand closed.

A. SHANKAR NARAYANA, J

January 31, 2018.
Mgr