

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Criminal Petition No.9406 of 2018

ORDER:

The petitioner is A3 among seven accused of A-Party and seven accused of B-Party in Crime No.142 of 2015 of Airport Police Station, Visakhapatnam. The police ultimately filed charge sheet for the offence under Section 160 IPC. It was taken cognizance for the offence supra by the learned Special Magistrate as S.T.C. No.280 of 2017 and the same is pending.

2. A perusal of the record either from the petition or from the arguments of both sides reflected in the impugned order of the learned Magistrate dated 03.11.2017 in CrI.M.P.No.2 of 2017 no way reflects any trial commenced even for some of the accused to ask invoking Section 319 Cr.P.C. to implead the non-accused persons as co-accused. The mandate of Section 319 Cr.P.C. is where during trial if it appears to the Magistrate from the evidence placed on record that other than the accused, who are charged and facing trial, some more accused also committed the offence, the learned Magistrate can take cognizance. For that matter either the prosecution agency or *de facto* complainant or victim or even the accused can bring to the notice of the Court such requirement of taking cognizance to sub-serve the ends of justice against the other persons who are not accused before the Court. Here, it is not even the case for the accused to ask to implead some more persons as accused without trial without evidence, leave

about the Constitution Bench expression of the Apex Court in **Hardeep Singh v. State of Punjab**¹ that it is not the material even sufficient to frame charges from pre-charge evidence/enquiry like in private warrant case; but, something more than the material required to frame charge that too only from the evidence during trial/enquiry as the case may be.

3. Having regard to the above, the order in Crl.M.P.No.2 of 2017 in S.T.C.No.280 of 2017 dated 03.11.2017 passed by the learned I Special Metropolitan Magistrate, Visakhapatnam, impleading the non-accused as accused invoking Section 319 Cr.P.C. on the request of some of the accused before commencement of trial is unknown to law and thereby, set aside. If at all there is material, remedy is left open to invoke at appropriate time by any of the parties to the case under trial at that stage from any evidence establishing the prerequisites laid down by the aforesaid expression of the Apex Court in **Hardeep Singh** (supra 1).

4. With the above observations, this Criminal Petition is allowed. Miscellaneous petitions pending, if any, shall stand closed.

13.12.2018
MVA

Dr. B. SIVA SANKARA RAO, J

¹ 2014 (3) SCC 92