

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Revision Case No.1139 of 2012

ORDER:

The challenge in this CrI.R.C is the order dated 31.05.2012 in CrI.M.P.No.157 of 2011 in SCSTSC No.127 of 2007 passed by the learned Special Judge for Trial of Cases under SC and ST (POA) Act-cum-VI Additional District Judge, Kurnool, allowing the petition filed by the State under Section 319 Cr.P.C. requesting the Court to summon the other accused mentioned in the schedule and proceed against them as per law.

2a) The charge sheet allegations are that accused are residents of Dhone Town and belong to upper caste. The complainant is also resident of same town and belongs to SC caste. There was enmity between complainant and accused, as they belong to rival political parties and also in view of land disputes. The wife of complainant (LW2) contested as Ward Councillor in Municipal Elections of Dhone Town on behalf of Telugu Desam Party. A1 supported Congress party. While so, on 21.09.2005 at 11.40 PM, when the complainant was at his house, A1 and A2 went there, called him out and A1 abused him in filthy language and beat him with sticks on right forehead. A4 also beat him on right thumb. When LW2 tried to rescue her husband, accused pushed her aside. Thereby, the complainant received injuries. A1 and A4 abused the complainant touching his caste. On 22.09.2005 at 00.45 hrs., the complainant lodged a report before the police. Basing on the

same, the SI of Police, Dhone PS registered a case in Cr.No.253 of 2005. Thereafter, the police deleted the names of A2, A3 and A5 due to lack of evidence and filed charge sheet against the remaining accused (A1 and A4) for the offences under Sections 324, 307 r/w 34 IPC and Section 3(1)(x) of Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short “SC & ST Act”).

b) Aggrieved, State filed CrI.M.P.No.157 of 2011 to summon and proceed against A2, A3 and A5 also. The trial Court allowed the petition observing that as per the evidence of PWs.1 and 2, *prima facie* case is made out against A2, A3 and A5 and issued summons.

Hence, the present CrI.R.C at the instance of A2, A3 and A5.

3) Heard arguments of Sri C.Sharan Reddy, learned counsel for petitioners and learned Additional Public Prosecutor (AP) for 1st respondent.

4) Severely fulminating the order of the trial Court adding A2—Dharmavaram Subba Reddy, A3—Subhan and A5—Sai Ram Mohan @ Siddartha Sai, learned counsel for petitioners firstly argued that though the trial Court, under Section 319 Cr.P.C., has the power to take steps for proceeding against any person not being an accused, however, the power under Section 319 Cr.P.C. being discretionary and extraordinary, it has to be exercised sparingly and only in those cases where the circumstances of the case compulsorily warrant. The degree of satisfaction on the part of Court to add a person as an accused will

be more than the degree which is warranted at the time of framing of charges against the accused in respect of whom charge sheet was filed. Learned counsel would strenuously submit that in the instant case, the trial Court just reposed implicit confidence on the interested testimony of PWs.1 and 2 and acted upon their evidence to add A2, A3 and A5 in spite of the fact that the Investigating Officer during the course of investigation secured cogent material showing the absence and non-participation of petitioners/A2, A3 and A5. A2—Dharmavaram Subba Reddy and A5—Sai Mohan are concerned, there was an unimpeachable evidence to support their plea of *alibi*. Learned counsel expatiated that at the relevant time of offence, A2—Dharmavaram Subba Reddy was in Dhone Police Station along with one Maddileti to give report in connection with Cr.No.252 of 2005. This fact was clearly stated by LW5 who is the ASI of Dhone PS. Therefore, A2's complicity in the offence is impossible and unbelievable. Similarly, A3 and A5 are concerned, some of the prosecution witnesses in their 161 Cr.P.C. statements have clearly stated that A2, A3 and A5 have not participated in the offence. They further stated that A5 proceeded to Kurnool in the Train on the evening of 21.09.2005. Learned counsel would vehemently argue that basing on unimpeachable evidence on record, the IO has rightly deleted the names of A2, A3 and A5 and filed charged only against A1 and A4. However, the trial Court without considering this aspect added them in a callous manner. He thus prayed to allow the CrI.R.C.

5) Per contra, learned APP argued in support of the impugned order.

6) Section 319 Cr.P.C. is a special provision inasmuch as it confers power on the trial Court to add any person hitherto not being an accused as an accused during the course of enquiry or trial of an offence. For exercising such an extraordinary power, it must appear from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused. On the aspect when such power can be exercised, we have a catena of decisions, of which, the recent one being ***Brijendra Singh and others vs. State of Rajasthan***¹. In this decision, relying upon its earlier decision in ***Hardeep Singh vs. State of Punjab and others***², the Apex Court observed thus:

“Para-13. In order to answer the question, some of the principles enunciated in Hardeep Singh's case may be recapitulated:

Power Under Section 319 Code of Criminal Procedure can be exercised by the trial court at any stage during the trial, i.e., before the conclusion of trial, to summon any person as an Accused and face the trial in the ongoing case, once the trial court finds that there is some 'evidence' against such a person on the basis of which evidence it can be gathered that he appears to be guilty of offence. The 'evidence' herein means the material that is brought before the Court during trial. Insofar as the material/evidence collected by the IO at the stage of inquiry is concerned, it can be utilised for corroboration and to support the evidence recorded by the Court to invoke the power Under Section 319 Code of

¹ 2017 (3) ALT (CrL.) 17 (AP)

² (2014) 13 SCC 92 = MANU/SC/0025/2014

Criminal Procedure. No doubt, such evidence that has surfaced in examination-in-chief, without cross-examination of witnesses, can also be taken into consideration. However, since it is a discretionary power given to the Court Under Section 319 Code of Criminal Procedure and is also an extraordinary one, same has to be exercised sparingly and only in those cases where the circumstances of the case so warrants. The degree of satisfaction is more than the degree which is warranted at the time of framing of the charges against others in respect of whom charge sheet was filed. Only where strong and cogent evidence occurs against a person from the evidence led before the Court that such power should be exercised. It is not to be exercised in a casual or a cavalier manner. The prima facie opinion which is to be formed requires stronger evidence than mere probability of his complicity.”

Applying the above principles in ***Bijendra Singh’s*** case (1 supra) the Apex Court, having found that there was an unimpeachable evidence collected by the IO during the course of investigation to establish the plea of *alibi* of the accused who was subsequently added under Section 319 Cr.P.C., set aside their inclusion in the offence.

7) In the light of above jurisprudential jurimetrics the case on hand has to be scrutinized.

8) LW1—Godana Sreeramulu is the victim in this case. LW2—Godana Chinamma is his wife. The FIR No.253 of 2005 was registered on the intervening night of 21/22.09.2005 at about 00.45 hours in Dhone PS on the statement given by LW1 (complainant). His version is that he is the resident of Dhone; on the night of 21.09.2005 at about

11.45 PM, while he was in the house, Marri Ramana (A1), Dharmavaram Subba Reddy (A2), Subhan (A3), P.Syam Mohammed Khan (A4) and Sai Ram Mohan @ Siddartha Sai (A5) and some others totalling about 10 persons came to his house and called him out and abused in the name of his caste saying “REIH MALA NAA KODAKA NUVVU O.C. LATHO POTI CHESI GELAVALANUKUNTAVA” and so saying they attacked him with knives and sticks; A1 dragged the complainant out of the house; A2 shouting “KILL THIS MALA FLELOW” hit him with a sickle and thereby the complainant sustained injury on his thumb. A1 hit him with stick over his right cheek. He was also beaten by other accused. On hearing his cries when neighbours rushed, they fled away leaving their motorcycles. On that night he went to the Police Station and gave statement which was registered as a case in Cr.No.253 of 2005 at about 00.45 hours on 22.09.2005 for the offences under Sections 147, 148, 324, 307 r/w 149 IPC and Section 3(1)(x) of SC & ST Act against A1 to A5. However, while filing charge sheet the IO has deleted the names of A2—Dharmavaram Subba Reddy, A3—Subhan and A5—Sai Ram Mohan @ Siddartha Sai A2 on the ground that on the night of 21.09.2005 at about 23:30 hours, A2 along with one Erukala Maddileti went to Dhone PS to give report in connection with Cr.No.252 of 2005 and LW5—S.A.Gafoor who is ASI of Dhone PS registered the crime and gave statement that from 23.30 hours till 00.15 hours on the intervening night of 21/22.09.2005 A2—Dharmavaram Subba Reddy was along with Erukala Maddileti.

LW6—B.Eshwara Reddy—Police Constable in Dhone PS also gave a statement in similar lines. Basing on those statements, the IO deleted his name from the charge sheet vide Rc.No.9152/C1/2006. A3—Subhan and A5—Sari Ram Mohan @ Siddartha Sai are concerned, their names were deleted on the basis of statements of LW10—Shaik Mohammed Sarver and LW11—M.Bhaskar who in their 161 Cr.P.C. statements stated that except Marri Ramana (A1) and P.Syam Mohammed Khan (A4) none others participated in the offence. Further, LW10 stated, on the evening of 21.09.2005, he saw Sai Ram Mohan (A5) going to Kurnool in train. Thus, the IO has charge sheeted only A1 and A4 by deleting the names of above three persons.

9) Be that it may, in the evidence, PW1—Godana Sreeramulu categorically deposed, as if all the five accused came to his house and attacked him causing injuries. Thus, he deposed about the participation of A2, A3 and A5 also. PW2— Godana Chinamma wife of PW1 also deposed in similar lines. Having been satisfied with their evidence, the trial Court in exercise of power under Section 319 Cr.P.C. added A2, A3 and A5 in the case and issued summons. Hence, the order of the trial Court needs a careful scrutiny with reference to material available on record. A2 and A5 were deleted by the IO on the strength of the material allegedly establishing their *alibi* plea, whereas A3 was deleted on the ground that his presence was not spoken by other independent witnesses. On a careful analysis, I am unable to countenance the action of IO.

10) The FIR in this case shows that the offence was occurred around 11.40 PM on the night of 21.09.2005. The report was given to police at 00.45 hours on the intervening night of 21/22.09.2005 and therefore, it can be said there was no delay in lodging the FIR as the report was given within one hour after the incident. In that view of the matter, it is generally expected no embellishments and concoctions can be made to rope in unconnected persons to the crime. In this back drop, the *alibi* plea of A2—Dharmavaram Subba Reddy has to be looked into. His case as revealed in the statements of LW5—S.A.Gafoor and LW6—M.Eshwar Reddy is to the effect that A1 along with one Erukala Maddileti was in Dhone PS between 11.30 PM to 12.15 AM on the intervening night of 21/22.09.2005¹ to lodge a report in Cr.No.252 of 2005. So, the time of offence in the instant case and the time during which A2 was allegedly in Dhone PS was proximate to each other. The FIR in Cr.No.253 of 2005 shows the distance between Dhone PS and the scene of offence (i.e. the house of complainant—Godana Sreeramulu) is two furlongs. In this factual scenario, whether A2 was really absent and did not participate in the offence or after participation of the offence, he went to PS to create some *alibi* for himself is a question of fact, the truth of which can be decided only after full-fledged trial. It must be noted that the distance between scene of offence and Dhone PS is not such a long one to improbabilize the presence of A2 at the scene of offence at the relevant time of offence. Of course, as stated supra, the veracity of evidence of PWs.1 and 2 as

well as the truth of plea of *alibi* require rigorous test during trial. Therefore, it is not apt to delete A2 on the strength of mere plea of *alibi*.

11) Sofaras A3—Subhan and A5—Sai Ram Mohan @ Siddartha Sai are concerned, in the light of categorical evidence of PWs.1 and 2 how far the version of LWs.10 and 11—Shaik Mahammed Sarver and M.Bhaskar is believable is a question which also has to be decided after full-fledged trial. Further, though petitioner/A5 claimed to have been to Kurnool on the evening of 21.09.2005, no material is placed before this Court to that effect. So, at the outset, the defence plea of *alibi* cannot be given implicit reliance without testing on the anvil of trial. Hence, in my considered view, the trial Court was right in adding petitioners/A2, A3 and A5 as accused.

12) In the result, I find no merits in the CrI.R.C. and accordingly same is dismissed with the observation that the trial Court shall proceed with the matter without being influenced by the observations made in this order.

As a sequel, pending miscellaneous petitions, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 20.12.2018
Murthy