

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.06.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.23632 of 2015

N.Elumalai

... Petitioner/Defacto Complainant

Vs.

1. State rep by its
S.H.O., Elavanasurkottai P.S,
Ulundurpet, Villupuram District,
(Crime No.259 of 2012) ... Respondent/Complainant
2. Soundarajan,
Village Administrative Officer,
S.Malaiyanoor Village,
Ulundurpet Taluk,
Villupuram District.
3. Chinraj,
Deputy Tahsildar (Election)
Office of the Tahsildar,
Ulunthurpet,
Villupuram District.
4. T.Subethachandran
S/o.Thangaraj,
Village Administrative Officer (Retd)
S.Malaiyanoor, Thirupeyar Post,
Ulunthurpet Taluk,
Villupuram District.
5. Arunachalam
Village Assistant Officer,
S.Malaiyanoor,
Ulunthurpet Taluk,
Villupuram District.

... Respondents/Accused

Prayer: This Criminal Original Petition filed under Section 482 of Cr.P.C. to set aside the order passed by the learned First Additional Munsif-Cum-Judicial Magistrate No.1, Ulundurpet in

CMP.No.3619 of 2014 in CC.No.67 of 2013 dated 31.03.2015 and further direct the learned First Additional Munsif-Cum-Judicial Magistrate No.1, Ulundurpet to proceed with the 319 Cr.P.C petition after issuing of summon to the respondents 2 to 5 in accordance with law.

For Petitioner : Ms.A.Preethi Prasanna
for Mr.K.Thilageswaran

For Respondents : M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed challenging the order passed by the Court below dismissing the petition filed under Section 319 of Cr.P.C in order to array respondents 2 to 4 herein as accused in the case.

2. The petitioner is the defacto complainant. He lodged a complaint before the respondent alleging that on 18.07.2012, when the Revenue Inspector and the Village Administrative Officer were conducting the enquiry with regard to running a brickkiln without licence, the petitioner was attacked by six named accused persons and he was also threatened with dire consequences. The complaint was registered in Cr.No.259 of 2012 and upon investigation, a final report came to be filed before the Court below as against these accused persons for an offence punishable under Sections 147, 148, 323, 324 and 506(ii) of IPC. The charges were framed and the case was at the stage of trial. The petitioner, who is the defacto complainant was examined as P.W.1. During the course of examination, the defacto complainant, namely, the petitioner made a statement to the effect that when he went for enquiry on 18.07.2012 at about 4.00 p.m to the Revenue Office, the Village Administrative Officer and the Revenue Inspector informed the other accused persons that it was the petitioner who had complained against the accused persons about the illegal brickkiln that was run by them and hearing the same, the accused persons attacked the petitioner. The petitioner virtually made an allegation that the proposed accused persons instigated the other accused persons to commit the crime.

3. Based on this statement made during the examination-in-chief, the prosecution filed a petition under Section 319 of Cr.P.C in order to add respondents 2 to 5 as accused persons. This petition was dismissed by the Court below by an order dated 31.03.2015. Aggrieved by the same, the present petition has been filed before this Court.

4. Ms.Preethi Prasanna, the learned counsel for the petitioner vehemently submitted that the Court below went wrong in dismissing the petition filed by the prosecution under Section 319 of Cr.P.C and the learned counsel submitted that the materials available makes out a case more than a prima facie case. The learned counsel submitted that the petitioner had made a categorical statement when he was examined as witness-P.W.1 and the said statement itself makes out a case for adding the respondents 2 to 5 as the accused persons. The learned counsel for the petitioner further submitted that even at the time of giving the complaint to the respondent police, the petitioner had referred to the overt act committed by the respondents 2 to 5 who had instigated other accused persons to commit the crime.

5. The learned counsel for the petitioner in order to substantiate her submissions brought to the notice of this Court, the judgment of the Hon'ble Supreme Court in Hardeep Singh vs. State of Punjab and Others - (2014) 3 Supreme Court Cases 92 and Periyasami and Others Vs. S.Nallasamy - (2019) 2 MLJ (Cr1) 191 (SC)

6. The learned Additional Public Prosecutor made his submissions in support of the case of the petitioner and submitted that the Court below ought to have add respondents 2 to 5 as accused persons in exercise of its powers under Section 319 of Cr.P.C.

7. This Court has carefully considered the submissions made on either side and also the materials placed on record.

8. It is seen from the records that at the time, when the complaint was given by the petitioner to the respondent police, the petitioner had taken a stand that only because the Revenue Inspector and the Village Administrative Officer informed about the complaint given by the petitioner regarding the illegal brickkiln run by the accused persons, the accused persons attacked the petitioner and caused him grievous injuries.

9. In the 161 Statement recorded by the Investigating Officer, the petitioner has not stated anything regarding the role played by the respondents 2 to 5 and he had merely stated that the incident happened when the enquiry was conducted by the Village Administrative Officer and the Revenue Inspector. At the time of giving evidence before the Court, the petitioner made a statement as if the Village Administrative Officer and the Revenue Inspector informed the other accused persons to finish off the petitioner and that he was the one who had given the complaint about the illegal brickkiln run by the accused persons.

10. A careful reading of the statement given by the petitioner shows that the petitioner is not consistent with the stand taken by him with regard to respondents 2 to 5. The Court below, after considering the entire materials on record and the law declared by the Hon'ble Supreme Court on the scope of Section 319 of Cr.P.C, came to a categorical conclusion that no overt act has been attributed as against respondents 2 to 5 and the petitioner has not stated anything against the proposed accused persons in the 161 statement. The Court took into consideration the fact that the petitioner is not an illiterate and he is working as a clerk in the Panchayat Office and if at all, the proposed accused persons had played a role in the attack, he would have clearly said so in the complaint as well as in the statement given before the investigating officer and since the petitioner has not spoken anything on the overt act of the proposed accused persons, the mere statement made during the examination in chief by the petitioner does not satisfy the requirements to proceed further to add the proposed accused persons under Section 319 of Cr.P.C.

11. It will be relevant to rely upon the judgments cited by the learned counsel for the petitioner in this regard.

12. In Hardeep Singh vs. State of Punjab and Others (referred supra), the relevant portion of the judgment is extracted herein:

106. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting

under [Section 319 Cr.P.C.](#) to form any opinion as to the guilt of the accused. Question (v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?

116. Thus, it is evident that power under [Section 319 Cr.P.C.](#) can be exercised against a person not subjected to investigation, or a person placed in the Column 2 of the Charge-Sheet and against whom cognizance had not been taken, or a person who has been discharged. However, concerning a person who has been discharged, no proceedings can be commenced against him directly under [Section 319 Cr.P.C.](#) without taking recourse to provisions of [Section 300 \(5\)](#) read with [Section 398 Cr.P.C.](#)

117. We accordingly sum up our conclusions as follows:

Questions (i) & (iii)

- What is the stage at which power under [Section 319 Cr.P.C.](#) can be exercised?

AND

- Whether the word "evidence" used in [Section 319\(1\) Cr.P.C.](#) has been used in a comprehensive sense and includes the evidence collected during investigation or the word "evidence" is limited to the evidence recorded during trial?

117.1 In [Dharam Pal's](#) case, the Constitution Bench has already held that after committal, cognizance of an offence can be taken against a person not named as an accused but against whom materials are available from the papers filed by the police after completion of investigation. Such cognizance can be taken under [Section 193 Cr.P.C.](#) and the Sessions Judge need not wait till 'evidence' under [Section 319 Cr.P.C.](#) becomes available for summoning an additional accused.

117.2 Section 319 Cr.P.C., significantly, uses two expressions that have to be taken note of i.e. (1) Inquiry (2) Trial. As a trial commences after framing of charge, an inquiry can only be understood to be a pre-trial inquiry. Inquiries under Sections 200, 201, 202 Cr.P.C.; and under Section 398 Cr.P.C. are species of the inquiry contemplated by Section 319 Cr.P.C. Materials coming before the Court in course of such enquiries can be used for corroboration of the evidence recorded in the court after the trial commences, for the exercise of power under Section 319 Cr.P.C., and also to add an accused whose name has been shown in Column 2 of the charge sheet.

117.3 In view of the above position the word 'evidence' in Section 319 Cr.P.C. has to be broadly understood and not literally i.e. as evidence brought during a trial.

Question No.(II) - Whether the word "evidence" used in Section 319(1) Cr.P.C. could only mean evidence tested by cross-examination or the court can exercise the power under the said provision even on the basis of the statement made in the examination-in-chief of the witness concerned?

Answer

117.4. Considering the fact that under Section 319 Cr.P.C. a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C. the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross-examination.

Question No. (IV) Q.IV What is the nature of the satisfaction required to invoke the power under Section 319 Cr.P.C. to arraign an accused? Whether the power under Section 319 (1) Cr.P.C. can be exercised only if the court is satisfied that the accused summoned will in all likelihood be convicted?

Answer

117.5. Though under [Section 319\(4\) \(b\)](#) Cr.P.C. the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under [Section 319](#) Cr.P.C. would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

Question No.(V) - Does the power under [Section 319](#) Cr.P.C. extend to persons not named in the FIR or named in the FIR but not chargesheeted or who have been discharged?

Answer.

117.6 A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under [Section 319](#) Cr.P.C. provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of [Sections 300 and 398](#) Cr.P.C. has to be complied with before he can be summoned afresh.

13. In *Periyasami and Others Vs. S.Nallasamy* (referred supra) has held as follows:

"14. In the First Information report or in the statements recorded under [Section 161](#) of the Code, the names of appellants or any other description have not been given so

as to identify them. The allegations in the FIR are vague and can be used any time to include any person in the absence of description in the First Information Report to identify such person. There is no assertion in respect of the villages to which the additional accused belong. Therefore, there is no strong or cogent evidence to make the appellants stand the trial for the offences under Sections 147, 448, 294(b) and 506 of IPC in view of the judgment in Hardeep Singh Vs. State of Punjab (supra). The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused."

14. From the above, it is clear that an additional accused cannot be summoned under Section 319 of Cr.P.C in a casual manner, in the absence of strong and cogent evidence. Under Section 319 of Cr.P.C, an additional accused can be summoned for more than a prima facie case as is required at the time of framing of charges but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused.

15. In the present case, the petitioner has taken different stands at different stages. At the time of giving the complaint, the petitioner had taken stand that the Revenue Inspector and the Village Administrative Officer informed the other accused persons that it is the petitioner who gave the complaint. At the time, when the petitioner was examined by the investigating officer, the petitioner does not say anything about the involvement of the Village Administrative Officer and the Revenue Inspector. During the evidence, the petitioner for the first time, comes up with a case as if respondents 2 to 5 instigated the other accused persons to attack the petitioner. A cumulative reading of the entire materials clearly shows that there are no strong and cogent evidence available against respondents 2 to 5 and the materials available on record, does not even make out a prima facie case and it does not satisfy the test under Section 319 of Cr.P.C which requires something more than a prima facie case.

16. This Court does not find any illegality or infirmity in the order passed by the Court below and there are no grounds to interfere with the same.

17. Before parting with the case, this Court appreciates the efforts taken by the Junior Counsel who appeared and placed all the relevant materials and judgments and took pains to satisfy this Court that there are sufficient grounds available for adding accused 2 to 5 as accused persons in this case.

18. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in C.C.No.67 of 2013, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vv/kal

To

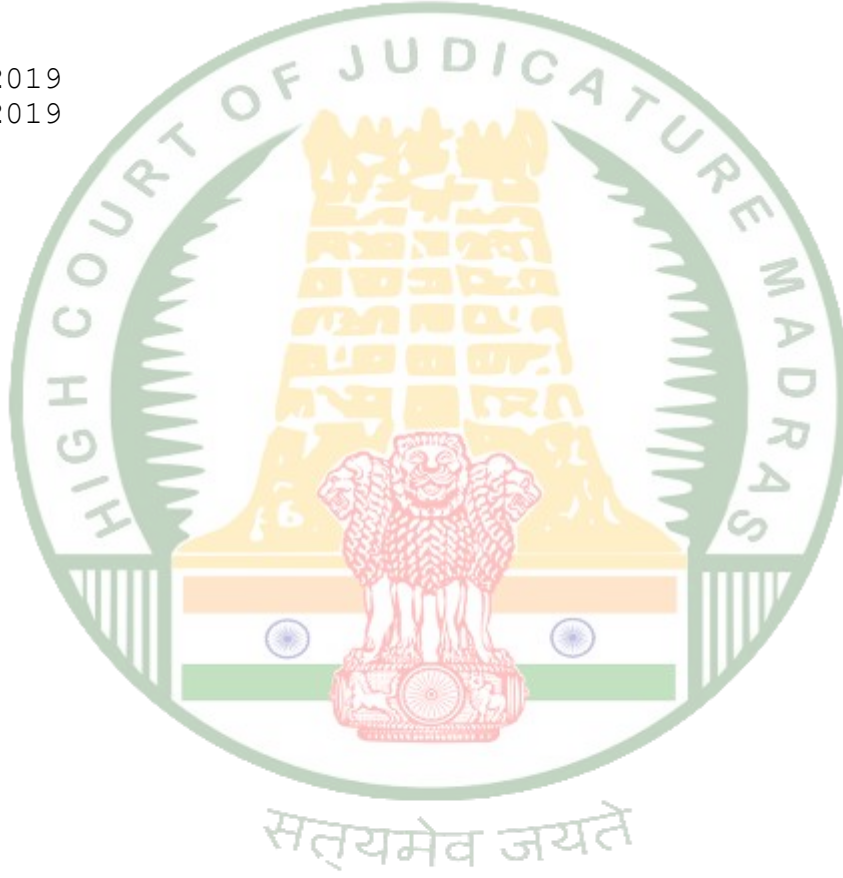
1. The Station House Officer,
Elavanasurkottai P.S.,
Ulundurpet, Villupuram District,
Crime No.259/2012
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5. Arunachalam
Village Assistant Officer,
S.Malaiyanoor,
Ulunthurpet Taluk,
Villupuram District.

6. The Public Prosecutor,
High Court of Madras,
Chennai.

Crl.O.P.No.23632 of 2015

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