

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.No.976 of 2018
and CrI.M.P.Nos.334 and 335 of 2018

Mr.S.Sathiyamoorthi ... Petitioner
Vs.

1. The State rep. by
the Deputy Superintendent of Police,
Velur Sub Division,
Namakkal District.

2. The State rep. by
the Inspector of Police,
Nallur Police Station,
Namakkal District.

3. Mr.S.Muthan ... Respondents

Prayer:Criminal Original Petition filed under Section 482
Cr.P.C. to call for the records of the summons and proceedings
in C.M.P.No.1112 of 2017 in S.C.No.22 of 2013 pending on the
file of the Principal Sessions Court, Namakkal and to quash the
same.

For Petitioner : Mr.I.Abdul Basith

For Respondents

For R1 & R2 : Mr.Mohamed Riyaz
Additional Public Prosecutor

For R3 : No appearance

ORDER

This Criminal Original Petition has been filed to quash
the summons issued in the proceedings in C.M.P.No.1112 of 2017
in S.C.No.22 of 2013 pending on the file of the Principal
Sessions Court, Namakkal, thereby, issued notice to the
petitioner to appear on 22.11.2017, for hearing.

2. The learned counsel for the petitioner would submit that the second respondent filed final report for the offences under Sections 3(1)(iv) and 3(1)(v) of the SC/ST (POA) Act, 1989, r/w 506(i) of IPC, as against the four accused persons. The petitioner did not arraign as an accused in this case. While examining PW1, he has stated that the subject property originally belonged to him and he handed over the original title deed to the first accused, who in turn, mortgaged the subject property with the petitioner. The petitioner thereafter sold out the property in favour of third and fourth accused, respectively. After recording PW1's evidence, the second respondent filed a petition under Section 319 Cr.P.C. to implead the petitioner as an accused. On the said petition, the learned Sessions Judge, without even considering the evidence and material, implead the petitioner as accused, and simply issued summons and directed the petitioner to appear before the Trial Court.

2.1. The learned counsel appearing for the petitioner further submitted that even according to the charge for the offences under Sections 3(1)(iv) and 3(1)(v) of the SC/ST (POA) Act, 1989, r/w 506(i) of IPC, the petitioner is not an accused. Further, he submitted that even from the evidence or deposition of PW1, there is absolutely no material to attract any of the offences as against the petitioner to implead him as an accused. The petitioner being an advocate, only to harass him in order to wreck vengeance, the learned Sessions Judge issued summons as against the petitioner. Therefore, he prayed for quashing the summons issued by the learned Sessions Judge.

3. Per contra, the learned Additional Public Prosecutor submitted that there are four accused charged for the offences under Sections 3(1)(iv) and 3(1)(v) of the SC/ST (POA) Act, 1989, r/w 506(i) of IPC and the trial Court has taken cognizance for those offences in S.C.No.22 of 2013 and examined PW1. PW1/defacto complainant categorically deposed that he owned the property, thereafter, he handed over the original title deed to the first accused. The first accused mortgaged the property with the petitioner. Thereafter, the petitioner sold out the property in favour of third and fourth accused respectively, without the consent of P.W.1/defacto complainant. On the basis of this averments, the second respondent filed a petition under Section 319 Cr.P.C. to implead the petitioner as an accused. On the said petition, the learned Sessions Judge simply issued summons and directed the petitioner to appear before the Court below, in respect of the petition filed by the prosecution under Section 319 Cr.P.C. Therefore, the summons cannot be quashed and he has to establish whatever the points raised here, before the trial

Court. Therefore, he vehemently opposed this petition and prayed for dismissal of this petition.

4. Heard Mr.I.Abdul Basith, learned counsel for the petitioner and Mr.Mohamed Riyaz, learned Additional Public Prosecutor for the respondent 1 & 2/Police.

5. The trial Court has taken cognizance for the offences under Sections 3(1)(iv) and 3(1)(v) of the SC/ST (POA) Act, 1989, r/w 506(i) of IPC in S.C.No.22 of 2013, against the four accused. The petitioner did not arraign as an accused in the trial. The prosecution examined PW1 and PW1 deposed that he owned the property to the extent of 1.92 acres and the said title deed of the property was handed over to one Rav, who arraigned as first accused. In turn, the first accused mortgaged the property with the petitioner herein. Thereafter, the petitioner sold out the property in favour of the third and fourth accused respectively. Therefore, the second respondent/police filed a petition under Section 319 of Cr.P.C. to implead the petitioner as an accused, in which, the trial Court issued summons in C.M.P.No.1112 of 2017 in S.C.No.22 of 2013 and directed the petitioner to appear for hearing.

6. The charges as against the accused are that in the year 2008, the first accused and his father approached the defacto complainant and received the original sale deed for loan purpose and there was a false declaration deed created by the first accused in favour of the defacto complainant and based on the above declaration deed, the first accused created power of attorney in favour of the second accused. In turn, the second accused executed sale deed in favour of the third and fourth accused. When the defacto complainant approached the accused for return back of the sale deed, the accused persons refused to give the sale deed belonged to the defacto complainant. The accused persons being non members of the scheduled caste and scheduled tribe and they are wrongfully occupied the complainant's land. Further, they wrongfully dispossessed of the defacto complainant from the subject land by creating false documents, hence the charges.

7. It is seen from the deposition of PW1, there is absolutely no averments and allegations as against the petitioner that he created false documents and dispossessed the defacto complainant from the subject land. Further, along with the charge, there is no documents to attract the offence as against the petitioner. Similarly, the trial Court ought not to have issued any summons, only on the basis of the deposition of the evidence. There must be some material to prove the deposition of the witness and also to connect the accused

persons. The trial Court has also failed to note that to prove the said deposition, any materials available are not.

8. It is seen from the entire records that there is no materials to connect the petitioner to the charges for the offences under Section 3(1)(iv) and 3(1)(v) of the SC/ST (POA) Act, 1989, r/w 506(i) of IPC. Further, it is seen that there is no charge for the offences under Sections 465, 467, 468 or 471 of IPC. Even the case of the prosecution is that the first accused obtained the original title deed from the defacto complainant and created power of attorney in favour of the second accused, in turn, the second accused sold out the property in favour of the third and fourth accused respectively. Therefore, even before sending summons, the prosecution has to satisfy the trial Court as if there is a material to connect the petitioner for the charges.

9. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in 2014 (3) SCC 92, in the case of Hardeep Singh Vs. State of Punjab and others which reads as follows:-

Question No.II :-

Q. II Whether the word "evidence" used in Section 319(1) Code of Criminal Procedure 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?

A. Considering the fact that under Section 319 Code of Criminal Procedure a persons against whom material is disclose is only summoned to fact the trial and in such an event under Section 319(4) Code of Criminal Procedure 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."

In the case on hand, there is absolutely no material to connect the petitioner and to issue summons to implead him as an accused under Section 319 Cr.P.C.

10. The learned counsel appearing for the petitioner also relied upon the judgment reported in 2017 (7) SCC 706, in the case of Brijendra Singh and others Vs. State of Rajasthan, and the relevant portion of the judgment is extracted hereunder:

12. The moot question, however, is the degree of satisfaction that is required for invoking the powers under Section 319 Cr.P.C. and the related question is as to in what situations this power should be exercised in respect of a person named in the FIR but not charge-sheeted. These two aspects were also specifically dealt with by the Constitution Bench in Hardeep Singh's case and answered in the following manner:

"95. At the time of taking cognizance, the court has to see whether a prima facie case is made out to proceed against the accused. Under Section 319 CrPC, though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. A two-Judge Bench of this Court in *Vikas v. State of Rajasthan* [(2014) 3 SCC 321], held that on the objective satisfaction of the court a person may be "arrested" or "summoned", as the circumstances of the case may require, if it appears from the evidence that any such person not being the accused has committed an offence for which such person could be tried together with the already arraigned accused persons.

xx xx xx

105. Power under Section 319 CrPC is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

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 unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused. (emphasis supplied)"

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

Power under Section 319 Cr.P.C. 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 Cr.P.C. 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 Cr.P.C. 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 chargesheet 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.

14. When we translate the aforesaid principles with their application to the facts of this case, we gather an impression that the trial court acted in a casual and cavalier manner in passing the summoning order against the appellants. The appellants were named in the FIR. Investigation was carried out by the police. On the basis of material collected during investigation, which has been referred to by us above, the IO found that these appellants were in Jaipur city when the incident took place in Kanaur, at a distance of 175 kms. The complainant and others who supported the version in the FIR regarding alleged presence of the appellants at the place of incident had also made statements under Section 161 Cr.P.C. to the same effect. Notwithstanding the same, the police investigation revealed that the statements of these persons regarding the presence of the appellants at the place of occurrence was doubtful and did not inspire confidence, in view of the documentary and other evidence collected during the investigation, which depicted another story and clinchingly showed that appellants plea of alibi was correct.

15. This record was before the trial court. Notwithstanding the same, the trial court went by the deposition of complainant and some other persons in their examination-in-chief, with no other material to support their so-called verbal/ocular version. Thus, the 'evidence' recorded during trial was nothing more than the statements which was already there under Section 161 Cr.P.C. recorded at the time of investigation of the case. No doubt, the trial court would be

competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. However, in a case like the present where plethora of evidence was collected by the IO during investigation which suggested otherwise, the trial court was at least duty bound to look into the same while forming prima facie opinion and to see as to whether 'much stronger evidence than mere possibility of their (i.e. appellants) complicity has come on record. There is no satisfaction of this nature. Even if we presume that the trial court was not apprised of the same at the time when it passed the order (as the appellants were not on the scene at that time), what is more troubling is that even when this material on record was specifically brought to the notice of the High Court in the Revision Petition filed by the appellants, the High Court too blissfully ignored the said material. Except reproducing the discussion contained in the order of the trial court and expressing agreement therewith, nothing more has been done. Such orders cannot stand judicial scrutiny.

16.As a consequence, this appeal is allowed setting aside the order of summoning the appellants under Section 319 Cr.P.C."

11. In the case on hand, immediately after recording the deposition of the defacto complainant, the prosecution filed a petition under Section 319 Cr.P.C. Except the deposition of PW1, there is no other material to support the version of PW1/defacto complainant. As held by the Hon'ble Supreme Court of India, the trial Court would be competent to exercise its power even on the basis of such statements recorded before it in examination-in-chief. In the present case, examination-in-chief of PW1, there is absolutely no material to connect the petitioner. Further, it is also seen that the charges as against the accused persons are under Sections 3(1)(iv) and 3(1)(v) of the SC/ST (POA) Act, 1989, r/w 506(i) of IPC. Even assuming that the petitioner is also involved in the property transactions of the defacto complainant, there is absolutely no material to connect the petitioner for the offences under Section 3(1)(iv) and 3(1)(v) of the SC/ST (POA) Act, 1989, r/w 506(i) of IPC. This Court has no hesitation to quash the impugned summon.

12. In view of the above discussion, this Criminal Original Petition is allowed and the summons dated 10.11.2017 issued by the trial Court in C.M.P.No.1112 of 2017 in S.C.No.22 of 2013 is hereby set aside. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

nsd/rts

To

1. The Principal Sessions Judge,
Namakkal.
 2. The Deputy Superintendent of Police,
Velur Sub Division,
Namakkal District.
 3. The Inspector of Police,
Nallur Police Station,
Namakkal District.
 4. The Public Prosecutor,
High Court, Madras.
- +1 cc to mr.I.Abdul Basith, Advocate Sr.No.13184

Crl.O.P.No.976 of 2018 and
Crl.M.P.Nos.334 and 335 of 2018

AD(CO)
CSL/13.03.2019

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