

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.670 of 2018
and
Crl.M.P.Nos.7773 and 7774 of 2018

Habib Abdul Latif

...Petitioner

-Vs-

The State
Rep. by its Inspector,
T1 Ambattur Police Station,
Ambattur,
Crime No.767 of 2007.

...Respondent

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. to set aside the order passed by the learned Judicial Magistrate, Ambattur in Crl.M.P.No.1630 of 2018 in C.C.No.234 of 2010 against the petitioner in the interest of justice.

For Petitioner : Mr.R.Gopinath

For Respondent : Mr.R.Ravichandran
Govt. Advocate (Crl. Side)

O R D E R

This revision has been filed to set aside the order passed by the learned Judicial Magistrate, Ambattur in Crl.M.P.No.1630 of 2018 in C.C.No.234 of 2010.

2. Based on the complaint given by one Selvaraj/defacto complainant, the respondent police registered a case against the revision petitioner and others in Crime No.967 of 2007. After investigation, the respondent police filed a charge sheet against the revision petitioner and others before the learned Judicial Magistrate, Ambattur for the offences under Sections 405, 406, 419 and 420 of IPC. The revision petitioner is arrayed as A4 in the charge sheet. After framing the charges, the trial was commenced by the Magistrate. Thereafter, the revision petitioner filed a petition under Section 482 of Cr.P.C. in Crl.O.P.No.15260 of 2011 to quash the proceedings and seeking interim stay on the proceedings. Subsequently, the learned counsel sought permission from this Court to withdraw the

petition. Thereafter, the revision petitioner has filed a petition under Section 239 Cr.P.C., to discharge him from the case in Crl.M.P.No.5170 of 2015, that petition was dismissed by the learned Magistrate.

3. Challenging the said order, the learned counsel for the petitioner preferred a revision before this Court in Crl.R.C.No.637 of 2015 praying to set aside the order in C.M.P.No.1630 of 2018, dated 05.04.2018 and to be discharged from C.C.No.234 of 2010. This Court has allowed the revision by an order dated 15.06.2017 and discharged the petitioner from the above offences. This Court made an observation that "in the event of any material which would probablize the conviction of the petitioner surfacing during trial it would be open to the Court below to proceed under Section 319 of Cr.P.C."

4. In the meanwhile, the trial commenced and charges were framed and P.W.1 was examined. After disposal of the revision, P.W.1 was examined further in chief, wherein P.W.1 has clearly deposed about the involvement of the revision petitioner in this case. After examining the witnesses the prosecution found that there are materials against the petitioner which would probablize the conviction of the petitioner if it is un-rebutted. Therefore, the respondent police filed a petition under 319 Cr.P.C. in Crl.M.P.No.1630 of 2018 in C.C.No.234 of 2010 to implead the revision petitioner as accused. The Magistrate, after considering the evidence, allowed the petition and impleaded the revision petitioner as A4 under 319 Cr.P.C. Aggrieved against the said order passed by the learned Magistrate, the revision petitioner/A4 has preferred the present revision before this Court.

5. The learned counsel for the petitioner would submit that the petitioner is the Managing Director of Latif Estate. The complaint has been preferred in the year 2007 and the case was registered in Crime No.967 of 2007. The petitioner was approached by A1 who had informed the property, in respect of which offences were allegedly committed, belonged to the 2nd accused and the same was available for sale. Intending to purchase the same for his friend who was abroad and being led by A1 to believe that A2 was the defacto complainant and finding A2 to be in possession of the original sale deed registered in favour of the defacto complainant under document No.102/1992 and also being satisfied with the identity of A2 and A3, established to the satisfaction of the Sub-Registrar, he innocently obtained a power of attorney in his favour. The Petitioner is a law abiding person, holding a good reputation and status in the society and had absolutely no bad antecedents. After framing charges, this Court dismissed the revision and discharged the petitioner in this case. During trial, the learned Magistrate,

impleaded the petitioner as accused. There are no materials to connect the revision petitioner as accused and also 161 statements of the witnesses have not revealed the involvement of the petitioner. No witnesses have spoken in respect of this petitioner. Therefore, the learned Magistrate failed to consider all these aspects and impleaded the petitioner, after the disposal of the criminal revision before this Court. Based on the materials, he cannot be impleaded as accused under Section 319 Cr.P.C.

6. In support of his contention, the learned counsel for the petitioner has placed reliance on the following judgments of the Hon'ble Supreme Court of India:

1. (2014) 3 SCC 92 (Hardeep Singh Vs. State of Punjab and others)

2. (2017) 16 SCC 226 (S.Mohammed Ispahani Vs. Yogendra Chandak)

3. (2018) CrI.L.J 98 (Brijendra Singh and others Vs. State of Rajasthan)

7. The learned Government Advocate (Crl. side) would submit that if the Court finds, there is a prima facie allegation made out against this accused, the Court can implead him as accused under Section 319 Cr.P.C. The learned counsel referred to the deposition of P.W.1/defacto complainant. He has clearly stated that all the accused joined together, colluded and created the forged power of attorney and committed the offence. When the defacto complainant questioned about them and the accused threatened him. The evidence of defacto complainant clearly says that all the accused including this revision petitioner committed the offence. The learned Magistrate after going through the evidence of P.W.1, impleaded the revision petitioner as one of the accused, arrayed as A4. Therefore, there is no need to interfere with the order passed by the Court below.

8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. On a reading of the entire records, it is seen that the case was registered by the respondent police, based on the complaint given by the defacto complainant for the offence under Sections 405, 406, 419 and 420 of IPC. The respondent police have investigated the matter and laid charge sheet before the

learned Magistrate. The learned Magistrate has taken cognizance of the charge sheet on file in C.C.No.234 of 2010. During the pendency of the case, the revision petitioner has filed a petition before the learned Judicial Magistrate under Section 239 of Cr.P.C. in C.M.P.No.1630 of 2018 for discharging him from the above offences. But the learned Magistrate dismissed the petition. Against which the petitioner approached this Court in Crl.RC.No.637 of 2015. This Court, allowed the revision on 15.06.2017 in Crl.RC.No.637 of 2015 and directed the Magistrate that in the event of any material which would probablise the conviction of the petitioner surfacing during trial, it would be open to the Court below to invoke power under Section 319 Cr.P.C. The Hon'ble Supreme Court and this Court have reiterated that after recording all the evidence, if the Court comes to the conclusion that there are materials, it can implead a person as accused. At the time of impleading, the materials found out during investigation need not be taken into consideration. Subsequently, during trial if any material surfaces, the Court can impleaded such persons as accused. At that time of considering the petition under section 319 Cr.P.C., the evidence culled out during the trial from the evidence of prosecution has to be considered.

10. After disposal of the Crl.RC.No.637 of 2015, P.W.1 was examined on 10.04.2017. In his evidence, he has clearly stated that A1 to A4 including this revision petitioner, joined together and created a forged power of attorney and also impersonated, which shows that they all together conspired and created documents. It shows that there is more than prima facie case made out against this petitioner. Therefore, the contention raised by the learned senior counsel for the petitioner is not acceptable and there is no quarrel with the law laid down by the Hon'ble Supreme Court.

11. In this case on hand, from the evidence of P.W.1, the prosecution has clearly established that there is more than a prima facie case available against the revision petitioner, if it is unrebutted it would lead to conviction. The learned Magistrate has also considered the serious nature of the offence and also oral evidence of the prosecution and arrayed the revision petitioner as one of the accused. At the time of allowing the revision in Crl.R.C.No.637 of 2015 this Court has granted liberty to the trial Court that in the event of any material which would probablize the conviction of the petitioner surfacing during trial it would be open to the Court below to proceed under Section 319 of Cr.P.C. Therefore, there is no perversity in the order passed by the learned Magistrate.

12. Under these circumstance, this Court does not find any infirmity in the order impugned in this criminal revision case and the same is therefore dismissed. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.IV, Ambattur.

2. -do - Through' The Chief Judicial Magistrate,
Tiruvallur District.

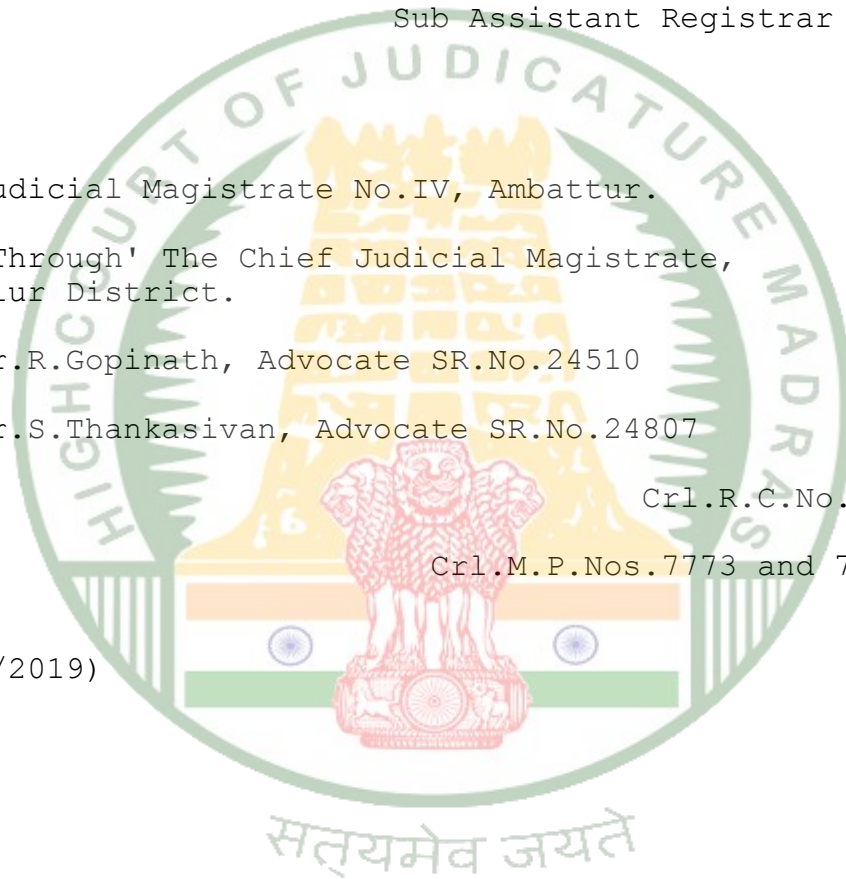
+1cc to Mr.R.Gopinath, Advocate SR.No.24510

+1cc to Mr.S.Thankasivan, Advocate SR.No.24807

CrI.R.C.No.670 of 2018
and

CrI.M.P.Nos.7773 and 7774 of 2018

KJ(CO)
GMY(09/05/2019)



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