

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.R.C.Nos.510 & 474 of 2019
and
Crl.M.P.No.6766 of 2019

R.Sumithra ... Revision Petitioner
in Crl.R.C.No.510 of 2019

N.Manogar ... Revision Petitioner
in Crl.R.C.No.474 of 2019

Vs.

1.The Inspector of Police,
F2, Egmore Police Station,
Egmore, Chennai.

2.Grace Selvarani ... Respondents
in Crl.R.C.No.510 of 2019

1.R.Sumithra

2.The State rep. by the
Inspector of Police,
F-2 Egmore Police Station,
Egmore, Chennai - 600 008.

3.P.Grace Selvarani ... Respondents
in Crl.R.C.No.474 of 2019

Prayer in Crl.R.C.No.510 of 2019 : Criminal Revision Case filed under Section 397 and 401 Cr.P.C., praying to call for the records pertaining to order dated 06.05.2019 made in M.P.No.4749 of 2019 in C.C.No.7243 of 2018 in Crime No.200 of 2018 passed by the 14th Metropolitan Magistrate at Egmore and set aside the same and allow the M.P.No.4749 of 2019 in C.C.No.7243 of 2018 in Crime No.200 of 2018.

Prayer in Crl.R.C.No.474 of 2019 : Criminal Revision Case filed under Section 397 and 401 Cr.P.C., praying to call for the records pertaining to order dated 06.05.2019 made in M.P.No.4749 of 2019 in C.C.No.7243 of 2018 passed by the 14th Metropolitan Magistrate at Egmore, Chennai and set aside the same by allowing this Criminal Revision Petition.

For Petitioner : Mr.J.Chelladurai Caldwell
in Crl.R.C.No.510 of 2019

: Mr.N.Manoharan
in Crl.R.C.No.474 of 2019

For R1 : Ms.P.Kritika Kamal
Government Advocate (Crl. Side)
in Crl.R.C.No.510 of 2019

: Mr.J.Chelladurai Caldwell
in Crl.R.C.No.474 of 2019

For R2 : Ms.P.Kritika Kamal
Government Advocate (Crl. Side)
in Crl.R.C.No.474 of 2019

C O M M O N O R D E R

These Criminal Revision Cases are filed with a common prayer to set aside the order dated 06.05.2019, passed by the XIV Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.4749 of 2019 in C.C.No.7243 of 2018.

2.For the sake of convenience, the parties will be referred to by their name.

3.An unsavory incident took place in the police quarters at Pudupet on 09.01.2018, pursuant to which, on the complaint lodged by Sumithra, the Sub-Inspector of Police, Egmore Police Station, Chennai, registered a case in Crime No.200 of 2018 on 20.04.2018, for the offences under Sections 448, 294(b), 323 and 506 (1) IPC against Gracy, Head Constable. Admittedly, Ragupathi, husband of Sumithra, Gracy and her husband Manohar are working in the lower echelons of the Police Department as Constables and Head Constables. They were living in the police quarters at the relevant point of time. In the First Information Report, it is merely alleged that, Gracy, her husband and another person came to the house of Sumithra on 09.01.2018 at around 17.30 hours and Gracy thrashed Sumithra's son R.Vithul, studying in 8th Std. Beyond these allegations, there is no other averment in the FIR as to the motive behind the offence. After completing the investigation, the police filed a final report in C.C.No.7243 of 2018 before the XIV Metropolitan Magistrate Court at Egmore, Chennai, against Gracy for the offences under Sections 294(b), 323, 506(1) and 452 IPC. After the charges were framed, Sumithra was examined as P.W.1 and in her evidence, she implicated Manohar and one Balamurugan. It appears that, Sumithra filed Crl.O.P.No.3020 of 2019 for change of investigation, alleging that the police had failed to include Manohar and

Balamurugan as accused in C.C.No.7243 of 2018. This Court passed the following order in CrI.O.P.No.3020 of 2019 on 05.02.2019.

'2. It is seen that the 2nd respondent has completed the investigation and also filed a charge sheet and taken cognizable offence in C.C.No.7243 of 2018 on the file of the XIV Metropolitan Magistrate at Egmore and it is pending for trial. It is open to the petitioner/de-facto complainant and other petitioners to depose before the trial Court. They are at liberty to invoke under Section 319 of Cr.P.C to implead the accused persons and to include the offences as well as the other accused persons. The trial Court has also framed charges on 02.06.2018 and 03.09.2018. The trial Court is directed to consider that if the offences are made out as against the other accused persons, they may be impleaded and included the related offences during the course of examining the witnesses. It is open to the trial Court to consider the request of the de-facto complainant under Section 216 and 319 of Cr.P.C.

3. This Criminal Original Petition is disposed of with the above observations. Consequently, the connected miscellaneous petition is closed.'

4.It may be pertinent to state here that Manohar and Balamurugan were not shown as respondents in CrI.O.P.No.3020 of 2019. Pursuant to the order passed by this Court, Sumithra filed CrI.M.P.No.4749 of 2019 in C.C.No.7243 of 2018 under Section 319 Cr.P.C. for impleading Manohar and Balamurugan as accused. The trial Court, by the order impugned dated 06.05.2019, has directed the impleadment of Manohar, but has rejected the plea of Sumithra to implead Balamurugan as accused.

5.Challenging the inclusion of Manohar, CrI.R.C.No.474 of 2019 has been filed by Manohar. For not including Balamurugan, Sumithra has filed CrI.R.C.No.510 of 2019.

6.Heard Mr.N.Manoharan, learned counsel appearing for Manohar and Mr.J.Chelladurai Caldwell, learned counsel appearing for Sumithra.

7.These revision cases deserve to be allowed on a short ground that the trial Court had failed to follow the law laid down by the Hon'ble Supreme Court in Jogendra Yadav vs. State of Bihar [(2015) 8 Scale 442], wherein, the procedure that has to be adopted by a Court for invoking Section 319 Cr.P.C. has been clearly delineated.

The Supreme Court has held that, when the trial Court proposes to invoke Section 319 Cr.P.C., it should order notice to the proposed accused and only after hearing him, the order to implead or reject the plea to implead should be passed. Once the Court passes the order to implead the proposed accused after hearing him, then the proposed accused will not have a right to plead for discharge under Section 227 and 239 Cr.P.C. Unfortunately, in this case, the trial Court has failed to hear the proposed accused and has impleaded him straight away, after hearing the de facto complainant, Additional Public Prosecutor and the counsel for Gracy.

8. Therefore, Manohar is directed to appear before the trial Court at 10.30 a.m. on 03.07.2019. Summons may be issued to Balamurugan for his appearance on 03.07.2019 or any other date. On their appearance, the trial Court shall furnish them with copies of the final report, statements under Section 161 Cr.P.C. and all other documents adumbrated in Section 207 Cr.P.C and also the copies of the deposition of the witnesses, so far examined. A copy of the petition under Section 319 Cr.P.C. shall also be served on the proposed accused. Thereafter, the trial Court shall pass appropriate orders after hearing all the parties. The trial Court has to bear in mind the law laid down by the Constitution Bench of the Hon'ble Supreme Court in Para Nos.105 and 106 in the case of Hardeep Singh v. State of Punjab and others [(2014) 3 SCC 92], while exercising the powers under Section 319 Cr.P.C. to include or not to include the proposed accused.

9. With the above directions, these two Criminal Revision Cases are allowed and the order of the XIV Metropolitan Magistrate, Egmore, Chennai, dated 06.05.2019, made in Crl.M.P.No.4749 of 2019 in C.C.No.7243 of 2018 is hereby set aside and the matter stands remanded to the trial Court. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

mkkn

To

1.The XIV Metropolitan Magistrate,
Egmore,
Chennai.

2.The Inspector of Police,
F2, Egmore Police Station,
Egmore, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+3ccs to Mr.N.Manoharan , Advocate SR.No.46367,46613

+1cc to Mr.J.Chelladurai Caldwell , Advocate SR.No. 46485
Crl.R.C.Nos.510 & 474 of 2019
and Crl.M.P.No.6766 of 2019

A.SK(11/07/2019)

A.SK(30/07/2019)