

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

Crl.O.P.No.29743 of 2019
and
Crl.M.P.Nos.16047 & 16049 of 2019

1.Kovai Lenin
2.Elaya Selvan

...Petitioners/Petitioners/Accused 4 & 5

Vs

Inspector of Police,
D-4 Zam Bazaar Police Station,
Royapettah, Chennai.
(In Crime No.212 of 2018)

...Respondent/Respondent/
Investigation officer

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the order in Crl.M.P.No.2751 of 2019 in PRC No.68 of 2019 on the file of the II Metropolitan Magistrate Court, Egmore and quash the same against the petitioner and quash the same against the petitioner.

For Petitioners: Mr.P.T.Perumal

For Respondent : M/s.Vijaya Narayanan AG
Asst by
Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

The Hon'ble Apex Court in the decision in State of Gujarat Vs Girish Radhakrishnan Varde [2014 3 SCC 659] has held that inclusion or exclusion of charge for any offence under the IPC into the charge sheet by the Magistrate at the stage of cognizance of the matter is not permissible. The relevant portion of the said order read as follows:

"14. But if a case is registered by the police based on the FIR registered at the police station under Section 154 CrPC and not by way of a complaint under Section 190(10)(a) CrPC before the Magistrate, obviously the magisterial enquiry cannot be held in regard to the FIR which had been registered as it is the investigating agency of the police which alone is legally entitled to conduct the investigation and, thereafter, submit the charge-sheet unless of course a complaint before the Magistrate is also lodged where the procedure prescribed for complaint cases would be applicable. In a police case, however after submission of the charge-sheet, the matter goes to the Magistrate for forming an opinion as to whether it is a fit case for taking cognizance and committing the matter for trial in a case which is lodged before the police by way of FIR and the Magistrate cannot exclude or include any section into the charge-sheet after investigation has been completed and charge-sheet has been submitted by the police.

15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacuna can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time

of framing of charge under Sections 216, 2018 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the charge-sheet."

2.Relying on the same, the learned II Metropolitan Magistrate had found that, while taking cognizance of the offence, including Section 125 of IPC read with 34 of IPC, the Magistrate Court cannot include or exclude any section in the final report. The said order taking cognizance was passed on 18.03.2019 and has become final.

3.On the basis of an application filed under Section 323 of Cr.P.C seeking for trial of the cognizance in the charge sheet by excluding Section 124 of IPC, the petitioners had sought for the matter to be tried by the learned Magistrate inspite of the committal Sessions Court. When the cognizance for the offence including the offence under Section 124 IPC, which is triable by the Sessions Judge, has been taken, the petitioner may not have a legal status to seek for such a request for exclusion of Section 124 of IPC and to have the matter tried by the Magistrate Court itself. The learned Magistrate also, had made a similar observation to the effect that the Court had consequently taken a decision to take cognizance of Section 124 of IPC and when that the order has not been challenged the question of having the case tried by the Magistrate will not arise. I do not find any infirmity in such a finding. In the light of the decisions rendered by the Hon'ble Apex Court in State of Gujarat Vs Girish Radhakrishnan Varde case, I am of the view that the learned Magistrate was correct in observing that the matter has to be committed to the Sessions Court in view of the taking cognizance of the offence under Section 124 of IPC. As such, no interference is required to the impugned order

passed by the II Metropolitan Magistrate Court, Egmore in Crl.M.P.No.2751 of 2019 in PRC No.68 of 2019.

4. Accordingly, this Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

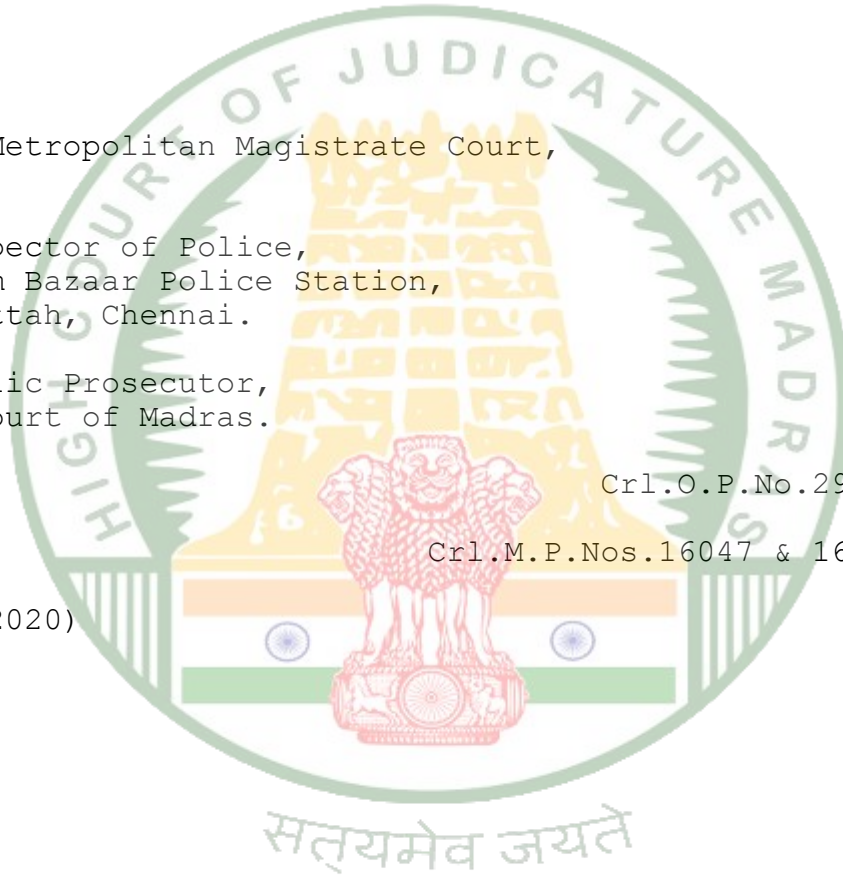
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To

- 1.The II Metropolitan Magistrate Court,
Egmore.
- 2.The Inspector of Police,
D-4 Zam Bazaar Police Station,
Royapettah, Chennai.
- 3.The Public Prosecutor,
High Court of Madras.

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SR(CO)
CB(21/01/2020)



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