

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1433 of 2018

A.K.Alva

.. Petitioner

vs

1. State represented by
Inspector of Police,
BS & FC-BLR RC 1 (E)/07 Bangalore
2. C.S.Narayani

.. Respondents

Prayer : Criminal Revision Petition is filed under Sections 397 and 401 of Cr.P.C. against the order of dismissal dated 29.06.2018 made in Crl.M.P.No.5108 of 2016, to add P.W.2 (Smt.C.S.Narayanai as an accused in C.C.No.32 of 2008 on the file of the XI Additional Sessions Special Judge for CBI Cases (Banks and Financial Institutions) Chennai, for offences under Sections 120-B r/w 409, 420 and 471 of I.P.C. and Section 13(2) r/w. 13(1) (c) and (d) of the Prevention of Corruption Act.

For Petitioner : Mr.R.John Sathyan
For R1 : Mr.V.Srinivasan
Special Public Prosecutor
for CBI Cases
For R2 : Mr.S.Patrick

ORDER

This Criminal Revision is filed against the order of dismissal, dated 29.06.2018, passed by the learned XI Additional Special Judge (for CBI Cases), Chennai, in Crl.M.P.No.5108 of 2016 in C.C.No.32 of 2008.

2. The case of the petitioner is as follows:-

The petitioner herein/A1 was the Assistant General Manager of Union Bank of India, Industrial Finance Branch,

Chennai and A4 was the General Manager of the Bank at Chennai. He was charged for the offences punishable under Section 120-B r/w. 409, 420, 468 and 471 IPC and Section 13(2) r/w. 13(1)(c) and (d) of the Prevention of Corruption Act that he and A4 entered into a conspiracy with A2 and A3 Chairman and Managing Director of M/s.India Household and Health Care Limited [IHHL], a sole distributor in India for M/s.L.G. Household and Health Care Limited, Korea, for import and sale of FMCG products, vide a license agreement dated 08.05.2004 and cheated Union Bank of India, by according sanction and release of credit facilities to the Company and in furtherance of the same, A1 and A4 abusing their official position, allowed the release of the sanctioned loan amount to the associate of M/s.India Household and Health Care Ltd./A5 knowing fully well that the agreement between A5 and M/s.L.G. Household and Health Care Limited, Korea, was terminated on 04.02.2005 itself and also that the sanction conditions were not complied with and thus, cheated the Bank to the tune of Rs.16.86 Crores as on 31.03.2006. Thereafter, the petitioner came to know that pursuant to the vigilance enquiry report, P.W.2 was implicated in the case for having participated in the above said crime. In the chief-examination, P.W.2 herself admitted that she is in part of sanctioning the loan, has approved the issuance of two D.Ds. in favour of A5 company, based on the note prepared by her and also identified the endorsement made by the Company for accepting the two D.Ds. The evidence of P.W.2 and the vigilance enquiry report make it clear about the involvement of P.W.2 in the above said occurrence. Hence, the petitioner filed a petition in CrI.M.P.No.5108 of 2016 in C.C.No.32 of 2008 under Section 319 of Cr.P.C. to add P.W.2 viz., C.S.Narayanai as an accused. The said petition was dismissed by the trial Court, vide order dated 29.06.2018. Challenging the said dismissal order, the petitioner has filed the present revision before this Court.

3. The learned counsel appearing for the petitioner submitted that at the relevant point of time, the petitioner was working as Assistant General Manager. The second respondent was working as Senior Branch Manager and both were acting in the role of preparation of notes for issuance of D.Ds. in favour of A5 Company. The Internal Vigilance Report dated 17.02.2006 clearly shows about the involvement of the second respondent/P.W.2 and P.W1 and the second respondent/P.W.2 have committed the irregularities along with others, who were In-charge of the Company affairs. The authorities of the Company have also categorically held against the second respondent/P.W.2 and hence, it is necessary to implead the second respondent/P.W.2 as one of the accused in the aforesaid crime.

4. The learned counsel further submitted that the learned Special Judge without considering the issue as to whether the

second respondent/ P.W.2 committed the offence, concluded that the second respondent/P.W.2 is only a supporting officer in preparing notes and erroneously dismissed the petition, which is unsustainable one.

5. In support of his submissions, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in Guriya @ Tabassum Tauquir Vs. State of Bihar reported in 2007 (6) Supreme 599 : 2007 (8) SCC 224, wherein it has been held as follows:-

'13. On a careful reading of Section 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence. Of course, as evident from the decision reported in Sohan Lal and others v. State of Rajasthan [AIR 1990 SC 2158] the position of an accused who has been discharged stands on a different footing.

14. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it, if it is satisfied that any person other than accused has committed an offence and he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word 'evidence' in Section 319 contemplates evidence of witnesses given in Court. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was

commenced. That would show that by virtue of Sub-section (4)(1)(b) a legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned. (See Lok Ram v. Nihal Singh and Anr. [AIR 2006 SC 1892].''

6. Per contra, the learned Special Public Prosecutor appearing for the first respondent/CBI submitted that the dates are very important to decide the petition viz., P.W.1 was examined on 03.12.2012; P.W.2 was examined on 27.03.2013; the Investigating Officer viz., P.W.27 was examined on 08.10.2013; the Enquiry Officer conducted enquiry in the year 2006 and prepared Vigilance Report on 17.02.2006; the investigation was completed in the year 2008; and after eight years, on the side of the prosecution, 19 witnesses were examined on 17.12.2015. However, the present petition was filed only on 18.10.2016 with an intention to drag on the proceedings. Though the learned counsel appearing for the petitioner relied on the Vigilance Report, in the cross-examination of P.W.2, she categorically stated that it was prepared by A1 and the Vigilance Report, which is general in nature, is about the involvement of A1 and A4. Even in the Vigilance Report, it was concluded that the amount involved was on the higher side and the party has cheated their bank by suppressing the key facts about the termination of the contracts before the credit facilities were sanctioned and disbursed to them. Thereafter, he requested the competent authority to hand over the case to outside Agency for probing further in the manner known to law. The CBI has stated that these are all the persons involved for sanctioning of the loan amount and preparation of D.Ds. in favour of A5 Company and the case of the prosecution was modified, based on the materials and evidence to implicate the said accused.

7. The learned Special Public Prosecutor further submitted that implicating the accused under Section 319 Cr.P.C. is absolutely discretionary power of the Court and the Court should exercise such power only to achieve criminal justice and that the Court should not turn against another person whenever it comes across evidence connecting the other person also with the offence. He further submitted that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has already proceeded and the quantum of evidence collected till then and implicating the accused must be proved by evidence on record, which would reasonably lead to evidence sought to be summoned under Section 319 Cr.P.C. In the present case, except the Vigilance Report and cross-examination of P.W.1, the Examination of P.W.2 is not relevant, which is only a piece of evidence to charge against the accused persons, for sanctioning of loan amount. Further, the termination of loan agreement was not known to P.W.2 before

preparation of notes to sanction the loan. Hence, the investigating agency rejected these materials and implicated only the persons participated in the offence. Hence, the learned Special Public Prosecutor prayed for dismissal of the Criminal Revision.

8. The learned counsel for the second respondent submitted that the Court has power under Section 319 Cr.P.C. to proceed against any person, who is not named in the F.I.R. or in the charge sheet, but it does not mean that whenever in a statement recorded before the Court, name of any person is taken, the Court has to mechanically issue process under Section 319 Cr.P.C.

9. The learned counsel for the second respondent further submitted that the second respondent/P.W.2 is working as Senior Manager along with the petitioner/A1, Assistant General Manager and she is not an authority for sanctioning loan amount in favour of A5 Company. That apart, the learned counsel referred to the documents viz., Exs.P.47, P.62, P.63, P.60 and other letters related to A1, who sanctioned the loan and processed the D.Ds. in favour of the Company and none of the second line Officers have any participation in the preparation of the notes, without the instructions of the Senior Level Officer. Hence, the learned counsel prayed for dismissal of the Criminal Revision.

10. In support of his submissions, the learned counsel for the second respondent has relied upon the following decisions of the Hon'ble Apex Court.

(i) Labhuji Amratji Thakor vs. State of Gujarat reported in 2018 SCC OnLine SC 2547, wherein at Paragraph Nos.6 to 9, it has been held as follows:

"6. Section 319 Cr.P.C. provides that where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. The Court, thus, during the trial on the basis of any evidence is fully empowered to proceed against any person, whose name was not even included in the F.I.R. or the Charge Sheet. The parameters of exercise of power under Section 319 Cr.P.C has been explained by this Court time and again. It is sufficient to refer to Constitution Bench judgment in Hardeep Singh (supra), where this Court had considered the following issue amongst others:-

"6.4. (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?"

7. The Constitution Bench judgment in the above judgment has held that under Section 319 Cr.P.C. Court can proceed against any person, who is not an accused in a case before it. The Constitution Bench, however, has held that the person against whom the Court decides to proceed, "has to be a person whose complicity may be indicated and connected with the commission of the offence".

8. Answering the Issue No. (iv) as noticed above, in Paragraph Nos. 105 and 106 of the judgment, following was laid down by the Constitution Bench:-

"105. Power under Section 319 Cr.P.C. 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 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."

9. The Constitution Bench has given a caution that power under Section 319 Cr.P.C. is a discretionary and extraordinary power, which should be exercised sparingly and only in those cases where the circumstances of the case so warrant. The crucial test, which has been laid down as noted above is "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." The present is a case, where the trial court had rejected the application filed by the prosecution under Section 319 Cr.P.C. Further, in the present case, the complainant in the F.I.R. has not taken the names of the appellants and after investigation in which the statement of victim was also recorded, the names of the appellants did not figure. After carrying investigation, the Charge Sheet was submitted in which the appellants names were also not mentioned as accused. In the statement recorded before the Police, the victim has named only Natuji with whom she admitted having physical relations and who took her and with whom she went out of the house in the night and lived with him on several places. The mother of victim in her statement before the Court herself has stated that victim girl returned to the house after one and a half months. In the statement, before the Court, victim has narrated the entire sequence of events. She has stated in her statement that accused Natuji used to visit her Uncle's house Vishnuji, where she met Natuji. She, however, stated that it was Natuji, who had given her mobile phone. Her parents came to know about she having been given mobile phone by Natuji, then they went to the house of Natuji and threatened Natuji. After one month, Natuji gave another mobile phone to the victim, who had taken it. She stated that in the night at 12 'o' clock, Natuji along with his three friends had taken her to Morbi in a jeep. She further stated that she and Natuji stayed for three days at the said place and Natuji had intercourse with her at the said place. When Natuji came to know about lodging of complaint, he took her to Modasa in the jeep. The jeep was given by Labhuji and other two appellants were also in the jeep. She further stated that Labhuji, Shashikant and

Jituji came in the jeep and took her and Natuji to the Police Station, where the police interrogated her and she recorded her statement. Natuji was charged with Sections 363 and 366 I.P.C. and Sections 3 and 4 of the POCSO Act.'

(ii) S.Mohammed Ispahani vs Yougendra Chandak and Others reported in 2017 (16) SCC 226, wherein at Paragraph 29, it has been held as follows:

"29. Trial is distinct from an inquiry and must necessarily succeed it. The purpose of the trial is to fasten the responsibility upon a person on the basis of facts presented and evidence led in this behalf. In Moly v. State of Kerala, this Court observed that though the word "trial" is not defined in the Code, it is clearly distinguishable from inquiry. Inquiry must always be a forerunner to the trial."

(iii) Hardeep Singh vs. State of Punjab and others reported in 2014 (3) SCC 92, wherein it has been held as follows:-

"93. Section 319(1) Cr.P.C. empowers the court to proceed against other persons who appear to be guilty of offence, though not an accused before the court. The word "appear" means "clear to the comprehension", or a phrase near to, if not synonymous with "proved". It imparts a lesser degree of probability than proof. para Nos.93 to 99

94. In Pyare Lal Bhargava v. State of Rajasthan [AIR 1963 SC 1094 : (1963) 2 Cri LJ 178] , a four-Judge Bench of this Court was concerned with the meaning of the word "appear". The Court held that the appropriate meaning of the word "appears" is "seems". It imports a lesser degree of probability than proof. In Ram Singh v. Ram Niwas [(2009) 14 SCC 25 : (2010) 1 SCC (Cri) 1278] , a two-Judge Bench of this Court was again required to examine the importance of the word "appear" as appearing in the section. The Court held that for the fulfilment of the condition that it appears to the court that a person had committed an offence, the court must satisfy itself about the existence of an exceptional circumstance enabling it to exercise an extraordinary jurisdiction. What is, therefore, necessary for the court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to conviction of the persons sought to be added as the accused in the case.

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 : (2013) 11 Scale 23], 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.

96. In *Rajendra Singh* [*Rajendra Singh v. State of U.P.*, (2007) 7 SCC 378 : (2007) 3 SCC (Cri) 375 : AIR 2007 SC 2786], the Court observed: (SCC p. 388, para 16)

"16. Be it noted, the court need not be satisfied that he has committed an offence. It need only appear to it that he has committed an offence. In other words, from the evidence it need only appear to it that someone else has committed an offence, to exercise jurisdiction under Section 319 of the Code. Even then, it has a discretion not to proceed, since the expression used is 'may' and not 'shall'. The legislature apparently wanted to leave that discretion to the trial court so as to enable it to exercise its jurisdiction under this section. The expression 'appears' indicates an application of mind by the court to the evidence that has come before it and then taking a decision to proceed under Section 319 of the Code or not."

97. In *Mohd. Shafi* [*Mohd. Shafi v. Mohd. Rafiq*, (2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : AIR 2007 SC 1899], this Court held that it is evident that before a court exercises its discretionary jurisdiction in terms of Section 319 Cr.P.C, it must arrive at a satisfaction that there exists a possibility that the accused so summoned in all likelihood would be convicted.

98. In *Sarabjit Singh v. State of Punjab* [(2009) 16 SCC 46 : (2010) 2 SCC (Cri) 141 : AIR 2009 SC 2792] , while explaining the scope of Section 319 CrPC, a two-Judge Bench of this Court observed: (SCC pp. 54-55, paras 21-23)

"21. ... For the aforementioned purpose, the courts are required to apply stringent tests; one of the tests being whether evidence on record is such which would reasonably lead to conviction of the person sought to be summoned.

22. ... Whereas the test of prima facie case may be sufficient for taking cognizance of an offence at the stage of framing of charge, the court must be satisfied that there exists a strong suspicion. While framing charge in terms of Section 227 of the Code, the court must consider the entire materials on record to form an opinion that the evidence if unrebutted would lead to a judgment of conviction.

23. Whether a higher standard be set up for the purpose of invoking the jurisdiction under Section 319 of the Code is the question. The answer to these questions should be rendered in the affirmative. Unless a higher standard for the purpose of forming an opinion to summon a person as an additional accused is laid down, the ingredients thereof viz. (i) an extraordinary case, and (ii) a case for sparingly (sic sparing) exercise of jurisdiction, would not be satisfied."

99. In *Brindaban Das v. State of W.B.* [(2009) 3 SCC 329 : (2009) 2 SCC (Cri) 79] , a two-Judge Bench of this Court took a similar view observing that: (SCC p. 335, para 25)

"25. ... the court is also required to consider whether such evidence would be sufficient to convict the person being summoned. Since issuance of summons under Section 319 CrPC entails a de novo trial and a large number of witnesses may have been examined and their re-examination could prejudice the prosecution and delay the trial, the trial court has to exercise such discretion with great care and perspicacity."

(iv) *Anil Singh and another vs. State of Bihar and Ors.* reported in CDJ 2006 SC 887, wherein it has been held as follows:-

" 9. In a nutshell, it means that for exercise of discretion under Section 319 Cr.P.C. all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused."

11. Heard both sides.

12. The facts leading to the filing of this Criminal Revision are that the petitioner/ A1 was the Assistant General Manager of Union Bank of India, Industrial Finance Branch [IFB], Chennai and A4 was the General Manager of the Bank at Chennai. They were charged for the offences punishable under Section 120-B r/w. 409, 420, 468 and 471 IPC and Section 13(2) r/w. 13(1)(c) and (d) of the Prevention of Corruption Act, 1988, that they entered into a criminal conspiracy with A2 and A3 Chairman and Managing Director of M/s.India Household and Health Care Limited [IHHL] and said to have cheated Union Bank of India, by according sanction and release of credit facilities to the Company and in furtherance of the same, A1 and A4 abusing their official position, allowed the release of the sanctioned loan amount to the associate of M/s.India Household and Health Care Ltd./A5 knowing fully well that the agreement between A5 and M/s.L.G. Household and Health Care Limited, Korea, was terminated on 04.02.2005 itself.

13. The specific allegation against the petitioner/A1 is that he released the sanctioned credit facilities to the associate of A5 Company knowing fully well that the agreement between A5 and M/s.L.G. Household and Health Care Limited was terminated on 04.02.2005 itself and hence, the said sanction is in violation of sanction conditions and therefore, vigilance enquiry was conducted and the Vigilance Cell has filed a report dated 17.02.2006, wherein they specifically recommended for taking action against the erring officials, who released the amount in favour of A5 Company and made specific allegations against A1 and P.W.2, as if they have failed to make proper enquiries about A5 Company before entertaining the proposal and they have also made allegations against the officials of the Field General Manager's Office [F.G.M.O.] at Chennai. Finally, the Vigilance Cell concluded that the amount involved was on the higher side and the party has cheated their Bank, by suppressing the key facts about the termination of the contracts before the credit facilities were sanctioned and disbursed to them and requested the competent authority to hand over the case to outside Agency for probing further in the matter. Therefore, the matter was handed over to the CBI for investigation and the CBI completed investigation in the year 2008 and thereafter, the CBI decided to launch prosecution against the accused persons.

14. In the present case, P.W.1 was examined on 03.12.2012 and P.W.2 was examined on 27.03.2013 and on 17.12.2015, almost 19 witnesses were examined on the side of the prosecution. It is relevant to mention that P.W.2, who was the second line officer, worked along with the petitioner/A1 during the year 2004-2005 was recalled and she was examined further on 13.05.2013, 14.06.2013 and 22.07.2013 and the counsel for A2, A3 and A5 cross-examined P.W.2 on 22.06.2017. However, the counsel for A1 and A4 did not cross-examine P.W.2. In the chief-examination as well as the cross-examination, P.W.2 made allegations against the petitioner/A1. In her chief-examination, the second respondent/P.W.2 deposed that the regular proposal regarding sanction of Fund Base Booking of Rs.20 Crores and Non-fund basis limit of Rs.20 Crores dated 28.02.2005, signed by the petitioner/A1 were addressed to the Field General Manager's Office, which was marked as Ex.P.23 (6 sheets). Ex.P.23 also bears her signature as Senior Manager [Credit]. As per the approval of the petitioner/A1, two Demand Drafts dated 14.02.2005 were released in favour of A5 Company, based on the note prepared by her/P.W.2. P.W.2 further deposed that on 07.04.2005 she made an endorsement that the matter was referred to F.G.M.O., since the Branch has not received any sanction from the competent authority. However, on the same day, the petitioner/A1 has made an endorsement to the effect that he had spoken to G.M., F.G.M.O. and he was permitted to issue the Pay Order as referred in Ex.P.60. Immediately after her deposition, the petitioner/A1 filed CrI.M.P.No.5108 of 2016 in C.C.No.32 of 2008 under Section 319 Cr.P.C., before the Court below and the same was dismissed on 29.06.2018. Against which, the petitioner has filed the present Criminal Revision.

15. In the above background, now, this Court has to decide whether the petitioner/A1 has a genuine reason to file a petition under Section 319 Cr.P.C. in the interest of justice or not?

16. For better appreciation, it is relevant to extract below Section 319 Cr.P.C.

''319. Power to proceed against other persons appearing to be guilty of offence. - (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the

purpose aforesaid.

(3) Any person attending the Court although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1) then—

(a) the proceedings in respect of such person shall be commenced afresh, and witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.''

17. A perusal of the above said provision makes it clear that in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence, which he appears to have committed. Further, as per sub-section (4) of the aforesaid provision makes it clear that where the Court proceeds against any person under sub-section (1), the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard and subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. Further, the aforesaid provision makes it clear that it 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 is available against a person from the evidence led before the Court, then, such power should be exercised and not in a casual and cavalier manner.

18. In the present case, the learned counsel appearing for the petitioner mainly argued that the second respondent/P.W.2 had also committed an offence as per the Vigilance Enquiry Report dated 17.02.2006. In the said report, certain allegations were made against the petitioner/A1, the second respondent/P.W.2 and the other General Manager. Further, the Zonal Vigilance Cell, Chennai, requested to hand over the matter to the outside Agency and accordingly, the CBI took up the investigation and after perusal of the entire materials, they filed a final report before the Court below against the accused persons. Merely, because the second respondent/P.W.2 deposed against the petitioner/A1 during her chief and cross-examination, it does

not mean that the second respondent/P.W.2 committed the guilt, unless the Court or the prosecuting agency arrived at a categorical finding in respect of the offence committed by the second respondent/P.W.2. In the present case, neither the prosecuting agency nor the Court came to the conclusion that the second respondent/P.W.2 committed the offence. However, the petitioner/A1, after cross-examination of the second respondent/P.W.2 by A2, A3 and A5, filed the present petition with the above said prayer, which is absolutely not permissible.

19. In Hardeep Singh's case [supra], the Hon'ble Apex Court has held that 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 Cr.P.C., though the test of prima facie case is the same, the degree of satisfaction that is required is much stricter. By virtue of the above said provision, the Court is empowered to proceed against any person, who is not shown as an accused. If it appears from the evidence that such person has committed any offence, for which, he could be tried together with other accused persons, there must be a strong material on record and cogent evidence against the person from the evidence led before the Court and not in a casual manner. Merely, because the second respondent/P.W.2 deposed against the petitioner/A1 during her chief and cross-examination, it will not give rise to the petitioner/A1 to file a petition under Section 319 Cr.P.C. and there is no justifiable reason to direct the second respondent/P.W.2 to appear before the Court below as an accused and this Court cannot force the trial Court to commence the trial afresh, which will cause further delay in the disposal of the case.

20. In view of the above facts and circumstances of the case and the decisions cited supra, I do not find any error or valid reason or material to force the second respondent/P.W.2 to face the trial at the instance of the petitioner/A1. Accordingly, this Criminal Revision is dismissed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kkd

To

1.The XI Additional Special Judge for CBI Cases
(Banks and Financial Institutions), Chennai.

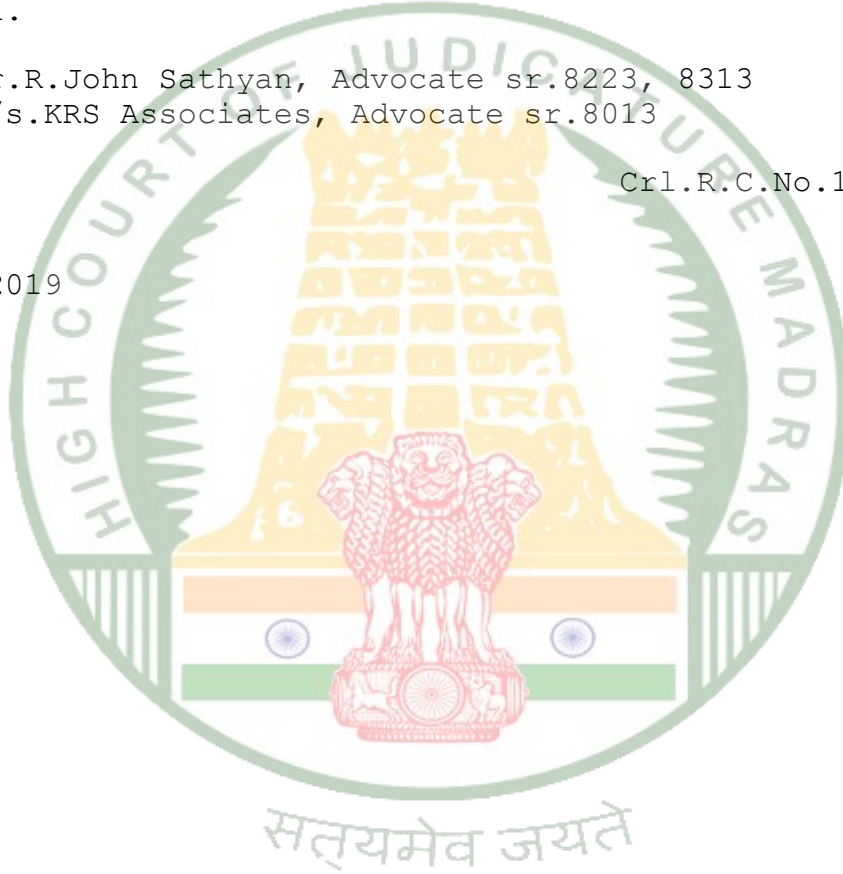
2.The Inspector of Police,
[BS & FC-BLR RC 1 (E)/07]
Bangalore.

3.The Special Public Prosecutor(CBI Cases)
High Court,
Chennai.

+2cc to Mr.R.John Sathyan, Advocate sr.8223, 8313
+1cc to M/s.KRS Associates, Advocate sr.8013

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