



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.09.2019

CORAM

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Cr1.RC(MD)No.21 of 2014

and

M.P. (MD)No.2 of 2014

C.Tholkappian

.. Petitioner/Accused No.2

Vs.

1.The Inspector of Police,
Manapparai Police Station,
Crime No.377 of 2011,
Trichy District.

.. Respondent/Complainant

2.Vengatesan

.. Respondent/Accused No.1

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records pertaining to the order passed by the learned Judicial Magistrate, Manapparai, in C.C.No.106 of 2012, dated 12.09.2013 and set aside the same.

For Petitioner : Mr.M.Subash Babu

For Respondents: Mr.K.K.Ramakrishnan,
Additional Public Prosecutor
for R.1
Mr.T.J.Ebenezer Charles
for M/s.P.Kalaiyarasi Bharathi
for R.2

O R D E R

The matter in issue pertains to a road accident caused by a Police Jeep, bearing Registration No.TN-45-AG-1111, on 10.08.2011, in which, two persons died and several persons got injured. A case was registered in this regard by the Manapparai Police Station in Crime No.377 of 2011, as against the Driver and final report was filed before the learned Judicial Magistrate, Manapparai, in C.C.No.106 of 2012. During the course of evidence, the learned Judicial Magistrate, Manapparai, vide order dated 12.09.2013, by invoking Section 319 Cr.P.C., has impleaded the petitioner herein, being the Deputy Superintendent of Police, as 2nd accused in the case and ordered summons. Aggrieved, the petitioner has preferred the instant Criminal Revision Case.



2. The learned Counsel for the revision petitioner has raised the following points for the consideration of this Court:

2.1. This petitioner has been roped-in falsely and the learned Magistrate, without applying his mind properly and without analysing the available evidence, has mechanically added the petitioner as one of the accused and ordered summons.

2.2. Neither in the First Information Report nor in the statements of the witnesses recorded by the Police under Section 161 (3) Cr.P.C., the name of the petitioner finds place and there is no iota of material to show that the petitioner has drove the vehicle on the date of occurrence.

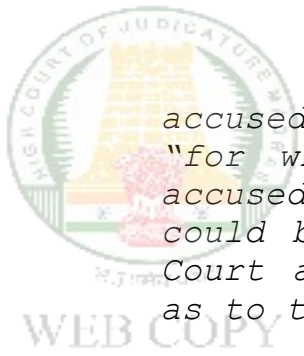
2.3. The evidences of PWs 6, 7, 8 and 12 would categorically disclose that this petitioner is not the person who drove the vehicle on the date of occurrence.

2.4. That apart, without there being any application filed under Section 319 Cr.P.C., by the prosecution, the learned Magistrate has *suo motu* invoked Section 319 Cr.P.C. and has implicated the petitioner as an accused, based on the evidences of PWs 1, 3 and 4, while their 161(3) statements are otherwise. Therefore, the learned Counsel for the petitioner prays for allowing the present revision case.

3. In support of his contention, the learned Counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court, reported in ***CDJ 2014 SC 035***, in the case of ***Hardeep Singh & Ors. v. State of Punjab & Ors.***, wherein the Hon'ble Supreme Court has held as follows:

"98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary 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.

99. 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."

4. The learned Counsel has also relied upon a latest decision of the Hon'ble Supreme Court reported in **2019 (4) SCC 342**, in the case of **Periyasami & Ors. v. S.Nallasamy**, wherein, the Hon'ble Supreme Court has held as follows:

"14. In the First Information Report or in the statements recorded under Section 161 of the Code, the names of the appellants or any other description have not been given so as to identify them. The allegations in the FIR are vague and can be used any time to include any person in the absence of description in the First Information Report to identify such person. There is no assertion in respect of the villages to which the additional accused belong. Therefore, there is no strong or cogent evidence to make the appellants stand the trial for the offences under Sections 147, 448, 294(b) and 506 of IPC in view of the judgment in Hardeep Singh case (supra). The additional accused cannot be summoned under Section 319 of the Code in casual and cavalier manner in the absence of strong and cogent evidence. Under Section 319 of the Code additional accused can be summoned only if there is more than prima facie case as is required at the time of framing of charge but which is less than the satisfaction required at the time of conclusion of the trial convicting the accused.

15. The High Court has set aside the order passed by the learned Magistrate only on the basis of the statements of some of the witnesses examined by the Complainant. Mere disclosing the names of the appellants cannot be said to be strong and cogent evidence to make them to stand trial for the offence under Section 319 of the Code, especially when the Complainant is a husband and has initiated criminal proceedings against family of his in-laws and when their names or other identity were not disclosed at the first opportunity."

5. Per contra, the learned Additional Public Prosecutor appearing for the first respondent would contend that it is this petitioner, who drove the vehicle on that particular date and caused the accident, wherein two persons died and two persons have suffered serious injuries. PW1 is an injured eye witness and he has specifically stated about the role of this petitioner, as driver, on the date of occurrence. PWs 1, 3 & 4 have categorically stated that though they informed the name of the petitioner to the Police while



recording the statements under Section 161(3) Cr.P.C, the petitioner, happens to be the Deputy Superintendent of Police, his name was not noted down. Therefore, the learned Additional Public Prosecutor contended that the absence of the petitioner's name in the First Information Report as well as in the statements recorded under Section 161(3) Cr.P.C cannot be given much weightage, as they were recorded by the Officers, who are subordinates to this petitioner.

6. The learned Additional Public Prosecutor has also referred to the evidences of PWs 6, 7 & 8 and submitted that they are not eye witnesses, but are only hearsay and therefore, their witness that this petitioner is not the Driver cannot be taken into account to disbelieve the evidence of PWs 1, 3 & 4. He further submitted that the evidence of PW12 inasmuch as appointing the first accused / second respondent as the Driver of the vehicle will in no way help the case of the petitioner, since the subject for trial is that the petitioner has drove the vehicle on that particular date and caused the accident. Therefore, the learned Additional Public Prosecutor prays for dismissal of this revision case.

7. The learned Counsel for the second respondent / first accused would submit that this petitioner has drove the vehicle on the date of occurrence and caused the accident and since he is a subordinate, he was made as a scapegoat.

8. Heard the learned Counsel appearing for the respective parties and perused the documents placed on record.

9. Section 319 of the Criminal Procedure Code enables the Magistrate to add any person as an accused during the trial, based on the available evidence. For better appreciation, Section 319 Cr.P.C is extracted hereunder:

"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 trader arrest or upon a summon, 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 subsection (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."*

10. In this case, PWs 1, 3 & 4 have categorically stated before the Court below that on the date of occurrence, this petitioner has drove the vehicle and caused the accident. They have also stated that though they have stated about this fact before the investigation officer, the investigation officer failed to note down the same in the statements recorded under 161(3) Cr.P.C. in order to help his Superior Officer, namely, the Deputy Superintendent of Police.

11. In the decisions referred to by the learned Counsel for the petitioner, the Hon'ble Supreme Court has categorically held that a person cannot be roped-in as an accused in a mechanical manner and only when *prima facie* materials are available against a person, he can be impleaded.

12. Since the evidence of the injured eye witness, namely, PW1 and the evidence of other eye witnesses specifically implicate the petitioner that he has driven the vehicle on the date of occurrence and caused the accident, this Court is of the view that the learned Magistrate, though no application was moved by the prosecution, is right in invoking Section 319 Cr.P.C. to implead the petitioner as one of the accused. Therefore, this Court does not find any reason to interfere with the impugned order dated 12.09.2013, passed by the learned Magistrate in C.C.No.106 of 2012 and the same is accordingly, confirmed.

13. In fine, this Criminal Revision Case is dismissed. However, considering the fact that though the occurrence took place on 10.08.2011; evidences were recorded on 06.06.2012; and the impugned order came to be passed on 12.09.2013, in view of the pendency of this petition, the trial has been stalled, this Court directs the learned Judicial Magistrate, Manapparai to complete the proceedings as per Section 319 Cr.P.C. and to conclude the trial, as expeditiously as possible, in any event, within a period of three month from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar



To

1.The Judicial Magistrate,
Manapparai.

2.The Inspector of Police,
Manapparai Police Station,
Trichy District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

4.The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.P.KALAIYARASI BHARATHI, Advocate (SR-86314[F] dated
12/09/2019)

+1 CC to M/s.M.SUBASH BABU, Advocate (SR-86850[F] dated
16/09/2019)

CrI.RC(MD)No.21 of 2014
and
M.P. (MD)No.2 of 2014
12.09.2019

GK

JM/26.09.2019/2P/8C