



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

Reserved on :04.11.2019

Delivered on : 15.11.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL. R.C. (MD) NO. 74 OF 2017

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Annal

..Revision Petitioner/ Petitioner/Victim

- Vs -

1.Ebanesar

2.Kannan

3.Mahendran

.. Respondent/Respondent/Accused

4.Kannan @ Mahalingam

.. Respondent/Respondent/Proposed Accused

5.State rep. by

The Inspector of Police,

Kalakkad Police Station,

Tirunelveli District.

Crime No.114/2004 u/s 174 CRPC

.. Respondent/Respondent/Complainant

Criminal Revision Case filed u/s 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to Crl.M.P.No.463 of 2016 in S.C.No.206 of 2004 on the file of learned III Additional District and Sessions Judge, Tirunelveli and set aside the order passed by the learned III Additional District and Sessions Judge, Tirunelveli dated 23.12.2016.

For Petitioner : Mr.Lr.N.Roby

For Respondents : Mr.B.Dhanapandian

(for R1 to R3)

Mr.K.Selvakumarsamy (for R4)

Mr.V.Neelakandan

Additional Public Prosecutor (for R5)

ORDER

The present criminal revision petition has been filed against the order passed in Crl.M.P.No.463 of 2016 in S.C.No.206 of 2004 by the III Additional District and Sessions Judge, Tirunelveli dated 23.12.2016, dismissing the petition filed by the petitioner herein under Section 319 of Cr.P.C.

2.The brief facts and circumstances necessitating filing of the present revision petition, are stated hereunder :-

The petitioner's husband was murdered at about 11.45 p.m on 22.03.2004. An FIR was registered by the fifth respondent police on

<https://hcservices.ecourts.gov.in/hcservices/>



23.03.2004 and after investigation, a final report was filed on 01.06.2004 by arraying respondents 1 to 3 herein as accused. Crl.O.P(MD)No.608 of 2004 had been filed by one Shanmugasundaram, brother of the deceased before this Court to investigate the involvement of the fourth respondent herein under the supervision of the Superintendent of Police. This Court on 13.08.2004 disposed of the criminal original petition directing the police to re-investigate the matter and thereafter, after re-investigation, the role of the fourth respondent was ruled out in the murder.

3. Thereafter, another Crl.O.P(MD)No.1191 of 2005 was filed by the same Shanmugasundaram, which was dismissed by this Court on 10.02.2005. The said criminal original petition was filed for further investigation. Not satisfied with the dismissal of the above criminal original petition, the petitioner herein filed a private complaint before the Judicial Magistrate, Nanguneri on 10.06.2005 seeking to implicate the fourth respondent herein. The private complaint filed by the petitioner herein was referred to under Section 156(3) Cr.P.C and another FIR was registered in Crime No.448 of 2005. Thereafter, final report was filed in Crime No.448 of 2005, whereby the fourth respondent's role was ruled out on 04.10.2005. Once again, Crl.M.P(MD)No.6214 of 2005 was filed by the same Shanmugasundaram before this Court, which came to be dismissed on 24.10.2005. Further, second private complaint was filed by the petitioner herein before the Judicial Magistrate, Nanguneri in Crl.M.P.No.6683 of 2005 implicating the fourth respondent, which was taken cognizance as PRC No.14 of 2006.

4. At this, the fourth respondent herein filed Crl.O.P(MD) No.13287 of 2007 and this Court allowed the criminal original petition by quashing the proceedings before the learned Judicial Magistrate, Nanguneri vide order dated 11.06.2015. Thereafter, on 25.04.2016, Crl.M.P.No.127 of 2016 was filed under Section 311 of Cr.P.C seeking to introduce one Selvaraj as P.W.18. The petition was allowed and thereafter, the said P.W.18 deposed in S.C.No.206 of 2004 on 06.09.2016 implicating the fourth respondent after a period of 12 years from the date of alleged occurrence of murder. Thereafter, on 12.09.2016, Crl.M.P.No.463 of 2016 was filed by the petitioner herein seeking to array the fourth respondent as accused in the on going trial. The trial Court, after consideration of various materials and also scope of Section 319 Cr.P.C, dismissed the criminal miscellaneous petition filed by the petitioner seeking to array the fourth respondent as an accused vide its order dated 23.12.2016 and the said order is the subject matter of the present criminal revision petition.

5. The learned counsel appearing for the petitioner would strenuously contend that the evidence of P.W.18 has gone unrebutted and according to the deposition of the said witness, he overheard the fourth respondent swearing to do away with the deceased and this



was informed to the petitioner on 05.06.2005. Therefore, the fourth respondent's involvement in the murder is very clear and therefore, the petition was filed under Section 319 Cr.P.C. to array the fourth respondent as one of the murder accused along with the other three accused.

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6.The learned counsel would submit that unfortunately, without appreciating the scope of legal provision i.e., Section 319 Cr.P.C, and also the clear evidence tendered by the witness P.W.18, the trial Court on misconception, dismissed the petition filed by the petitioner herein. The order passed by the trial Court is unsustainable not only on facts but also in law. The learned counsel in this regard would also rely on a decision of the Hon'ble Supreme Court of India rendered in Crl.A.No.1750 of 2008 etc. (**Hardeep Singh vs. State of Punjab and others**). He would particularly draw reference to the passage in the decision of the Hon'ble Supreme Court of India, which reads as follows:-

"..... 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 an accused in the case."

7.According to the learned counsel, if the evidence of witness is unrebutted which may lead to the conviction of the person sought to be added, then, the proper course open to the trial Court is to array the person concerned as an accused in the trial. Unfortunately, the trial Court has completely overlooked the legal aspects and dismissed the petition. According to the learned counsel, the reasons set forth by the trial Court that name of P.W.18 was not originally found in the charge sheet and the witness had testified only after a period of 12 years from the date of alleged occurrence of the murder and also the fact that earlier several attempts were made at the instance of the petitioner to implicate the fourth respondent and having failed in all the attempts, the petitioner had resorted to Section 319 petition in order to rope in the fourth respondent. According to the learned counsel, the reason adopted by the trial Court is erroneous, since the dismissal of the earlier petitions cannot be a bar to proceed under Section 319 of Cr.P.C. In terms of Section 319 of Cr.P.C, if the Court finds that at any time during the trial, involvement of a person in the occurrence, it is well within the power to the trial Court to array such person as accused. Therefore, the trial Court has misdirected itself into dismissing the petition on the stated grounds, which calls for interference from this Court.

8.At this, the learned counsel Mr.S.Selvakumarasamy appearing for the fourth respondent would strenuously oppose the relief sought for in the revision petition. According to the learned counsel, the



by the trial Court against the petitioner herein were well founded and the same does not call for any interference by this Court.

9.The learned counsel would submit that as the above fact would unequivocally disclose that at the instance of the petitioner several criminal original petitions were filed with the sole motive of implicating the fourth respondent in the murder and when reinvestigation was conducted at the instance of the petitioner, the role of the fourth respondent was ruled out. Not satisfied with the out come of the investigation/reinvestigation, at the instance of the petitioner, repeated attempts were made before the trial Court and also before this Court to rope in the fourth respondent somehow. In this case, admittedly, P.W.18 was not shown as one of the prosecution witnesses in the charge sheet. The petitioner in order to overcome the failure earlier to implicate the fourth respondent, has ingenuously decided to introduce a new witness as P.W.18 and elicited answer from him in order to rope in the fourth respondent as murder accused. Although P.W.18 claimed to have informed about the involvement of the fourth respondent on 05.06.2005, he has never given any statement to the police concerned when the reinvestigation was conducted into the occurrence and only when he was examined in 2016, the witness deposed about the involvement of the fourth respondent. This by itself would show that the introduction of P.W.18 at the belated stage, after 12 years from the date of occurrence is intended to implicate the fourth respondent under all circumstances. Such attempts at the instance of the petitioner is clearly motivated and cannot stand the test of judicial scrutiny.

10.The learned counsel would also submit that the power under Section 319 of Cr.P.C has to be exercised sparingly and cautiously. He would refer to Section 319 Cr.P.C.. which reads as under:-

"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."

11.According to the learned counsel, the scope of the said Section is that during the course of enquiry or trial, it would appear from the evidence that any person, not being an accused, has committed any offence, such person would be tried together with the other accused. In this case, cleverly, the witness P.W.18 himself was introduced at the instance of the petitioner at the belated stage after a period of 12 years only in order to rope in the fourth respondent. Such ploy by the petitioner falls out side the scope of Section 319 of Cr.P.C. According to the learned counsel, the de-



facto complainant cannot introduce a new witness that too after a period of 12 years and seek to array a new person as an accused in the trial. Such procedure, if it is allowed to succeed, would spell danger to the impartial trial of the case.

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12.The learned counsel would finally submit that the petitioner in order to serve her own ends has invoked the provision of 319 Cr.P.C as a final attempt to rope in the fourth respondent. The learned counsel would also rely on the decision of the Hon'ble Supreme Court in C.A.No.934/2004 dated 25.08.2004. **[Krishnappa vs. State of Karnataka]** He would refer to the observation in the Judgment of the Hon'ble Supreme Court, which reads as under:-

"In Michael Machado & Anr., v. Central Bureau of Investigation & Anr [2000]3 SCC 262, construing the words "the court may proceed against such person" in Section 319 Cr.P.C., this Court held that the power is discretionary and should be exercised only to achieve criminal justice and that the court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. This Court further held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. The court, while examining an application under Section 319 Cr.P.C., has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In nut shell, it means that for exercise of discretion under Section 318 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."

13.According to the learned counsel, the above observation of the Hon'ble Supreme Court was kept in mind by the trial Court while dismissing the petition filed by the petitioner under Section 319 Cr.P.C. He would therefore, request this Court to dismiss the revision petition as one being without merits and substance.

14.The learned Additional Public Prosecutor submitted that the trial Court's decision to dismiss the petition filed by the petitioner herein under Section 319 Cr.P.C, is perfectly in order and does not call for any interference. In fact, according to the learned Additional Public Prosecutor, the trial Court has taken all cumulative facts and also enormous delay in introducing the new witness after a period of 12 years and has decided to dismiss the petition, which does not call for any interference from this Court.

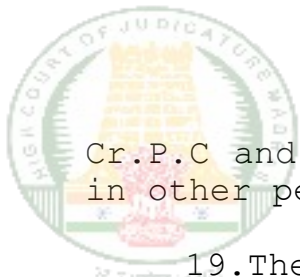


15.I have considered the submission of the learned counsel for the petitioner, the learned counsel for the fourth respondent as well as the learned Additional Public Prosecutor for the State.

16.The point for consideration before this Court is as to whether the petition filed under Section 319 of Cr.P.C before the trial Court is liable to be allowed and the fourth respondent is to be arrayed as 4th accused in the trial or not?

17.Section 319 of Cr.P.C which is extracted supra, deals with the situation where the Court finds that during the trial any evidence emerging from the witness examined about the involvement of any other person other than the accused already arrayed, such person can be added as accused and tried together. In this case, the trial Court did not on its own find any involvement of any person during the course of the trial. But on the other hand, the petitioner has sought permission of the Court under the provisions of Code of Criminal Procedure to introduce the new witness P.W.18 in the year 2016, after period of 12 years from the date of the occurrence of murder, on 22.03.2004 and through him a statement was elicited about the involvement of the fourth respondent herein. If this Court is to accept the veracity of the statement mechanically and array such person as accused and try him along with the other named accused, that would pave the way for prosecution to indulge in witch hunting and the process of trial would get vitiated. It would always be easier for the de-facto complainant to introduce witness at any time of the trial and rope in a person whom he dislikes, as an accused by obtaining statement from such witnesses introduced, whose names were not originally found in the charge sheet. Such procedure, if it is allowed to succeed, as rightly contended by the learned counsel for the fourth respondent, would not be in the interest of impartial trial and would also undermine the process of trial and it would colour the out come of the trial as well.

18.The scope of Section 319 Cr.P.C is not available for such a course of action as adopted by the petitioner herein. The petitioner herein, as facts would disclose, has made several attempts to bring the fourth respondent as an accused and having failed in all the attempts, the petitioner has finally invoked Section 319 Cr.P.C to array the fourth respondent as accused in the case. The facts unambiguously would disclose that the attempt made by the petitioner herein is motivated and lacks *bona fide*. When this Court has quashed the proceedings before the trial Court, when the trial Court took cognizance of the private complaint filed by the petitioner herein. In Crl.O.P(MD)No.13287 of 2007, dated 11.06.2015, the involvement of the fourth respondent was negatived. Even earlier on the ordering of re-investigation, it was found that there was no substance in the complaint filed on behalf of the petitioner. Therefore, the petitioner in order to succeed in his attempt, has to come up with the petition under Section 319



Cr.P.C and attempted to achieve what she could not achieve directly in other petitions.

19.The attempts by the petitioner to introduce altogether a new witness after a period of 12 years and through him trying to rope in the fourth respondent as accused tantamounts to perverse reading of the scope of Section 319 of Cr.P.C. The ambit of the provision of Section 319 Cr.P.C would not have envisaged as a leeway available to the affected party to array any one as an accused at any point of time. In fact, the observation of the Hon'ble Supreme Court, which has been extracted supra, has clearly held that the trial Courts have to be careful in exercising the discretionary jurisdiction under Section 319 Cr.P.C. The petitioner's attempt to invoke Section 319 Cr.P.C in order to rope in the fourth respondent as accused tantamounts to blurring the scope of the Section 319 of Cr.P.C in order to achieve her own end. This Court is of the considered view that such attempts by the petitioner cannot be allowed to succeed.

20.In these circumstances, the order of the trial Court is well within the frame of the scope of Section 319 of Cr.P.C and the petition filed under Section 319 Cr.P.C clearly lacks *bona fide* as the same is motivated. Any other conclusion as far as the case in hand is concerned could only be in violation of Section 319 Cr.P.C. Therefore, the decision taken by the trial Court in dismissing the petition does not suffer any infirmity and on the other hand, it is perfectly well within the framework and scope of Section 319 Cr.P.C.

21.For the above said reasons, this Court finds the revision petition is unsustainable and hence, the same is dismissed.

Sd/-

Assistant Registrar (co)

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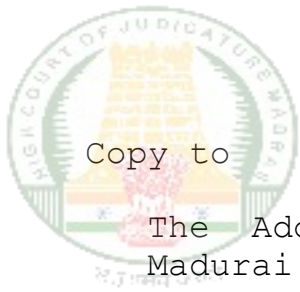
Sub Assistant Registrar(CS)

Skn

To

1. The Inspector of Police,
Kalakkad Police Station,
Tirunelveli District.

2. The III Additional District and Sessions Judge,
Tirunelveli.



Copy to

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

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+1 CC to Mr.B. DHANAPANDIAN, Advocate (SR-98523[F] dated 15/11/2019)

+1 CC to Mr.K. SELVA KUMARA SAMY, Advocate (SR-98524[F] dated 15/11/2019)

+1 CC to Mr.N.ROBY, Advocate (SR-98637[F] dated 15/11/2019)

Order made in
CRL. R.C. (MD) NO. 74 OF 2017
Dated: 15.11.2019

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