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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.R.C.No.1808 of 2011
and M.P.Nos.1 & 2 of 2011

1. A.Prabhu

2. A.Revathi

..Petitioners/Accused No.3 & 4

Vs.

State represented by
The Station House Officer,
The Office of the Deputy
Superintendent of Police,
Virudhachalam,
Cuddalore District.

.. Respondent/Complainant

Criminal Revision filed under Section 397 r/w 401 Cr.P.C.,
to set aside the order dated 22.11.2011 passed in
Crl.M.P.No.4310 of 2011 in S.C.No.216 of 2008 on the file of the
Principal District and Sessions Court, Cuddalore.

For Petitioners : Mr.Nu.Pressanna
for M/s.Sai Bharath and Ilan

For Respondent : Mr.R.Surya Prakash
Government Advocate
(Crl.Side)

O R D E R

This criminal revision has been filed seeking to set aside
the order dated 22.11.2011 passed in Crl.M.P.No.4310 of 2011 in
S.C.No.216 of 2008 on the file of the Principal District and
Sessions Court, Cuddalore.

2. For the sake of convenience, the petitioners and the
respondent will be referred to as accused and complainant,
respectively.

3. On the complaint lodged by Kavitha (PW1), the
respondent/police registered a case in Crime No.184 of 2007 on



23.06.2007 under Sections 294-B and 506 (II) IPC and Section 3 (1) (x) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 2015, (for brevity "the SC/ST Act") against Anbazhagan (A1), Rajeswari (A2), Prabhu (A3) and Revathi (A4) and took up the investigation of the case.

4. In the complaint, Kavitha (PW1) has alleged that after she completed the construction of a compound wall around her house, the accused, who are her neighbours, abused her frequently by referring to her caste name and on 21.06.2007, around 4.00 p.m., while she was standing in front of her house with her mother Jothi and sister Vanitha, all the four accused abused them by referring to their caste name.

5. The investigation of the case was taken over by Rajan (PW15), Deputy Superintendent of Police. During investigation, it came to light that Prabhu (A3) and Revathi (A4), children of Anbazhagan (A1) and Rajeswari (A2), were merely bystanders and was not involved in the offence and therefore, a special report was filed for deleting the names of Prabhu (A3) and Revathi (A4) from the array of the accused in the FIR. A final report was filed in S.C.No.216 of 2008 against Anbazhagan (A1) and Rajeswari (A2) for the offence under Sections 294-B and 506 (II) IPC and Section 3 (1) (x) of the SC/ST Act and the charges were framed by the District and Sessions Court (Special Court for SC/ST Act cases), Cuddalore, against them. When questioned Anbazhagan (A1) and Rajeswari (A2) pleaded "not guilty".

6. The prosecution examined fifteen witnesses including the Investigating Officer (PW15) and all the fifteen witnesses were thoroughly cross-examined by the accused. Thereafter, the prosecution filed a petition in Cr1.M.P.No.4310 of 2011 in S.C.No.216 of 2008 under Section 319 Cr.P.C. for including Prabhu (A3) and Revathi (A4) as accused in the case, on the ground that their names have been referred to by the witnesses in their evidence.

7. On notice, the proposed accused viz., Prabhu (A3) and Revathi (A4) entered appearance and contested the case.

8. After hearing either side, the trial Court allowed the petition on 22.11.2011, aggrieved by which, Prabhu (A3) and Revathi (A4) have preferred the present criminal revision invoking Section 397 r/w 401 Cr.P.C.

9. Heard Mr.Nu.Pressanna, learned counsel representing M/s.Sai Bharath and Ilan, learned counsel on record for the accused and Mr.R.Surya Prakash, learned Government Advocate (Cr1.Side) for the respondent/State.



10. This Court carefully perused the entire records, including the FIR and the deposition of all the witnesses.

11. In the FIR, Kavitha (PW1) has made a general allegation that after she completed the construction of the compound wall around her house, her neighbours viz., the accused herein, abused her by referring to her caste name. She did not say which accused said what. However, in the statements recorded by the police, only Anbazhagan (A1) and Rajeswari (A2) were implicated by the witnesses and Prabhu (A3) and Revathi (A4) were not implicated. Therefore, the police filed a special report deleting the names of Prabhu (A3) and Revathi (A4) from the array of accused in the FIR.

12. It may be necessary to state here that, this is not a case where there was any act of physical violence, but, a case of alleged verbal abuse. Prabhu (A3) and Revathi (A4) are the children of Anbazhagan (A1) and Rajeswari (A2).

13. In the evidence of Kavitha (PW1), she has improved her version drastically. She has implicated Prabhu (A3) and Revathi (A4) in her chief-examination. At that time also, the prosecution did not file any petition under Section 319 Cr.P.C. for including Prabhu (A3) and Revathi (A4) as accused. The contradictions in the statements under Section 161 Cr.P.C. were confronted with the prosecution witnesses and when the Investigating Officer was cross-examined, the improvements that were made by the prosecution witnesses qua Prabhu (A3) and Revathi (A4) were elicited from him. As alluded to above, the Investigating Officer was examined as PW15 on 21.09.2011 and much thereafter, the present petition under Section 319 Cr.P.C. has been filed by the prosecution.

14. On a reading of the entire evidence on record, this Court is satisfied that there are no sufficient materials to justify the inclusion of Prabhu (A3) and Revathi (A4) as co-accused in S.C.No.216 of 2008.

15. Very recently, in Periyasamy and others Vs. Nallasamy¹, the Supreme Court has held that, additional accused cannot be summoned in a casual and cavalier manner in the absence of strong and cogent evidence. It can be done under Section 319 Cr.P.C., only if there is more than prima facie case as is required at the time of framing of charge, but less than the satisfaction required at the time of conclusion of the trial. This ruling squarely applies to the facts and circumstances of this case.



As a result, this criminal revision is allowed by setting aside the order dated 22.11.2011 passed in Crl.M.P.No.4310 of 2011 in S.C.No.216 of 2008 on the file of the Principal District and Sessions Court, Cuddalore. Connected Crl.M.Ps. are closed. The trial Court is directed to proceed with the trial in S.C.No.216 of 2008 as against Anbazhagan (A1) and Rajeswari (A2) and complete the same expeditiously.

Sd/-
Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

nsd

To

1. The Principal District and
Sessions Judge,
Cuddalore.
2. The Station House Officer,
The Office of the Deputy
Superintendent of Police,
Virudhachalam,
Cuddalore District.

3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

} with a direction to return the
original records to the Court
below concerned

+1cc to Mr.Sai Bharath, Advocate, SR.No.4131.

Crl.R.C.No.1808 of 2011

RSV(CO)
CSR: 24.02.2020