

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.29905 of 2019
and
Crl.M.P.Nos.16132 & 16133 of 2019

1.Mrs. Narmadha Tillay
2.Mr.Tirounavalane

... Petitioners

Vs.

1. The State rep. by
The Inspector of Police,
Muthialpet Police Station,
Puducherry District.
(Crime No.210 of 2012)

2. Mr.V.Ilangovan

....Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the order dated 05.09.2019 passed in C.C.No. 31 of 2017 by the Judicial Magistrate Court- II, Puducherry, and drop all the consequential proceedings as against the petitioners.

For Petitioners :Mr.K.Doraisamy
(Senior Counsel) for Mr.A.Muthumani
Doraisamy

For Respondents :Mr.V.Balamurugane (For R1)
Additional Public Prosecutor
(Pondicherry)
: Mr. R.Sreedhar (For R2)

O R D E R

This petition has been filed by the Accused Nos. 4 and 5 to set aside the order passed by the learned Judicial Magistrate No.II, Puducherry in C.C.No.31 of 2017 dated 05.09.2019.

2. Heard Mr.K.Doraisamy, learned Senior Counsel appearing

for the petitioners, Mr.V.Balamurugane, learned Additional Public Prosecutor (Pondicherry) appearing for the first respondent and Mr.R.Sreedhar, learned counsel appearing for the second respondent.

3. The learned Senior Counsel for the petitioners has submitted that based on the complaint lodged by the second respondent, the first respondent has registered an FIR in Crime No.210 of 2012 against some unknown persons and after investigation, he filed a charge sheet against three accused persons namely A1. Premkumar, A2. Solamon and A3. Jerold for the offences punishable under Sections 384 and 109 IPC r/w 34 IPC. He further submitted that during trial on the side of the prosecution, 9 witnesses were examined and out of them, except the P.W.8 (defacto complainant/second respondent herein) all other witnesses did not support the case of the prosecution and they turned hostile. He further submitted that the defacto complainant/second respondent herein was examined before the Trial Court on 07.07.2018 as P.W.8. The said witness has stated in his evidence as he is strongly suspecting that the petitioners and their family members engaged the rowdy elements to threaten him and except the said statement, he has not made any other allegations against the petitioners.

4. The learned Senior Counsel has further submitted that the second respondent herein has filed a petition on 25.07.2018 before the Trial Court seeking for further investigation and the learned Magistrate has returned the said petition. As against the same, the second respondent has approached this Court by filing CrI.O.P.No.22660 of 2018 to direct the Trial Court to entertain the said petition and dispose of the same in accordance with law and this Court has allowed the said petition by the order dated 24.09.2018 and directed the second respondent to represent the said petition before the Trial Court and on such representation, the Trial Court has to dispose of the said petition in accordance with law before proceeding further in C.C.No.31 of 2017. He further submitted that in pursuance of the said order, the second respondent represented the said petition before the Trial Court and subsequently he withdrew the said petition. He further submitted that the learned Judicial Magistrate after dismissing the said petition as withdrawn, has passed the impugned order on 05.09.2019, impleading the petitioners herein as Accused Nos.3 and 5 and issued summons to the petitioners herein under Section 319 of Cr.P.C.,

5. The learned Senior Counsel has further submitted that the learned Judicial Magistrate has passed the impugned order without applying her mind. He further submitted that it is well settled that before a court exercises its power under Section 319 of Cr.P.C., it must arrive at the satisfaction that there

exists a possibility that the accused so summoned is in all likelihood would be convicted, but in this case no such finding is recorded. Further, based on the evidence of P.W.8, the petitioners herein cannot be convicted. Because he has not categorically stated in the evidence that the petitioners also involved in the above case. On the contrary, he has stated that he strongly suspected that these petitioners and their family members induced the rowdy elements to threaten him and except the aforesaid vague allegations, no other materials available before the Trial Court for summoning these petitioners and therefore he prayed to set aside the order passed by the Judicial Magistrate No.II, Puducherry dated 05.09.2019.

6. The learned Senior Counsel for the petitioners in support of his contentions, relied upon the following decisions:-

- 1) Mohd.Shafi Vs- Mohd.Rafiq and another (2007) 14 SCC 544.
- 2) Hardeep Singh Vs- State of Punjab and others (2014) 3 SCC 92.
- 3) Rajesh and others Vs. State of Haryana (2019) 6 SCC 368.

7. The learned Additional Public Prosecutor has submitted that even though the second respondent has not mentioned the name of any of the accused persons in the complaint, after registering the FIR, the first respondent has taken the matter for investigation and conducted investigation in a fair manner and secured accused Nos. 1 to 3 and they were identified by the second respondent and with regard to that the statement under Section 161 (3) of Cr.P.C also recorded. He further submitted that the investigation did not reveal that any other accused persons involved in the above case, except accused Nos.1 to 3 and hence the first respondent has filed charge sheet, against accused Nos. 1 to 3 only. However, he has submitted that he is leaving it to the court to pass an appropriate order in this matter.

8. The learned counsel for the second respondent has submitted that after lodging a complaint, the second respondent went to China and he returned back to India only for giving evidence and he did not know what was happened in the meantime. He further submitted that in the complaint itself, the second respondent has categorically stated that the petitioners have engaged rowdy elements by giving money to criminally intimidate the second respondent. In spite of the said fact, the first respondent has filed a charge sheet omitting the name of the petitioners herein. He further submitted that before filing the charge sheet, no opportunity was given to the petitioner for dropping the case against the petitioners herein. He further submitted that the second respondent, while examining himself as

P.W.8, has categorically stated that these two petitioners also involved in the above crime. He further submitted that since the first respondent has not properly investigated the matter and willfully omitted to implicate these petitioners in the charge sheet, the petitioner has filed a petition under Section 173 (8) of Cr.P.C seeking direction for further investigation before the Trial Court and the said Court has returned the said petition and hence he approached this court by filing Crl.OP.No.22660 of 2018 wherein this court has directed the trial court to receive the said petition and dispose of the same in accordance with law. Hence, the second respondent has represented the said petition before the trial court. When the matter came up for hearing, the learned Judicial Magistrate No.II has expressed her view that how a private person can seek for further investigation and also suggested to withdraw the said petition. Accordingly the petitioner has withdrawn the said petition. He further submitted that the learned Judicial Magistrate, after going through the complaint and also evidence of P.W.8, has come to the conclusion that the petitioners also involved in the above crime and hence she passed an order to issue summons to these petitioners by invoking the powers under Section 319 of Cr.P.C and in the said order, this Court need not interfere. He further submitted that now the first respondent also has filed a petition under Section 173 (8) Cr.P.C seeking further investigation before the Trial Court and since this Court has granted stay in this matter, the Trial Court is not able to proceed in the said petition and therefore he prayed to dismiss this petition.

9. The learned counsel for the second respondent also relied upon the decision in *Rajesh and others Vs. State of Haryana* (2019) 6 SCC 368

10. In *Mohd. Shafi vs- Mohd.Rafiq and another* (cited supra), the Hon'ble Supreme Court in Paragraph Nos.11 and 12, has observed as follows:-

'11. The trial Judge, as noticed by us, in terms of Section 319 of the Code of Criminal Procedure was required to arrive at his satisfaction. If he thought that the matter should receive his due consideration only after the cross-examination of the witnesses is over, no exception thereto could be taken far less at the instance of a witness and when the State was not aggrieved by the same.

12. From the decisions of this Court, as noticed above, it is evident that before a court exercises its discretionary jurisdiction in terms

of Section 319 of the Code of Criminal Procedure, it must arrive at the satisfaction that there exists a possibility that the accused so summoned is in all likelihood would be convicted. Such satisfaction can be arrived at inter alia upon completion of the cross-examination of the said witness. For the said purpose, the court concerned may also like to consider other evidence. We are, therefore, of the view that the High Court has committed an error in passing the impugned judgment. It is accordingly set aside. The appeal is allowed".

11. In Hardeep Singh Vs- State of Punjab and others (2014) 3 SCC 92 (cited supra), the Hon'ble Supreme Court in paragraph Nos.105, 106 and 117.5 has observed as follows:-

'105. In Sohan Lal & Ors. v. State of Rajasthan, (1990) 4 SCC 580, a two-Judge Bench of this Court held that once an accused has been discharged, the procedure for enquiry envisaged under Section 398 Cr.P.C. cannot be circumvented by prescribing to procedure under Section 319 Cr.P.C.

106. In Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors., AIR 1983 SC 67, this Court held that if the prosecution can at any stage produce evidence which satisfies the court that those who have not been arraigned as accused or against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them under Section 319 Cr.P.C. and try them along with the other accused. ''

117.5. Though under Section 319 (4)(b) Crpc the accused subsequently impleaded is to be treated as if he had been an accused when the court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 CrPC would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial therefore the degree of satisfaction for summoning the accused

(original and subsequent) has to be different."

12. In *Rajesh and others Vs. State of Haryana* (2019 (6) SCC 368 (cited supra), the Hon'ble Supreme Court has held in Paragraph No. 6.10 as follows:-

"6.10. Thus, even in a case where the stage of giving opportunity to the complainant to file a protest petition urging upon the trial court to summon other persons as well who were named in the FIR but not implicated in the charge-sheet has gone, in that case also, the Court is still not powerless by virtue of Section 319 CrPC and even those persons named in the FIR but not implicated in the charge-sheet can be summoned to face the trial provided during the trial some evidence surfaces against the proposed accused".

13. From the aforesaid decisions, it is clear that the power under Section 319 Cr.PC 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. It is also clear that 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.

14. In this case, the impugned order was passed by the learned Judicial Magistrate based on the evidence given by the second respondent/defacto complainant (PW-8). PW8 has deposed in his evidence that there is a land dispute between himself and one Thirumavalan family. He further deposed that on 27.07.2012, the siad Thirunavalan (second petitioner herein) and his daughter Thillai Narmada (first petitioner herein) and his elder son T. Elangovan entered into his house and threatened him to resell the property. He further deposed that he filed a suit before the Civil Court and get injunction and even thereafter the Thirunavalan (second petitioner) and his family members did not stop their activities. He further deposed that on 06.11.2012 when he was standing in Rainbow Nagar, 4th Cross 2nd street, wherein he was constructing some flats, a stanger came and gave a phone stating that somebody is on line, you need to talk with him. He further deposed that once he picked the phone the other

end person said that he has to go along with the stranger to the railway station with his car to discuss the property issues. If he refused to follow the stranger, they threatened as his family members will be under threat. Due to fear, he followed their instructions. He was constrained in his car for nearly four hours on that day. During that time, the stranger, over phone said that Thirunavalan family gave Rs.3 lakhs to threaten him to sell his property. Due to fear, he promised to the stranger to give Rs.3 lakhs to release him. Accordingly, his mother has paid Rs.1.25 lakhs to a complete stranger. He further deposed that he strongly suspected that Thirunavalan (second petitioner) and his family members induced the rowdy elements to threaten him.

15. Except the aforesaid allegations, PW8 has not stated any other statement to implicate the petitioners in the above crime. In the said deposition, he has not stated the name of the stranger. Further, according to PW8, the stranger has stated that it was only the petitioners and their family members gave money to him to threaten PW8. As already pointed out that the PW8 has not deposed that the petitioners involved in this case. On the contrary, he has deposed that he strongly suspected that the petitioners induced the rowdy elements to threaten them. Based on the said evidence, the petitioners cannot be impleaded as accused. Therefore, this Court is of the view that it is not proper on the part of the trial Court to issue summons to the petitioners under Section 319 of Cr.P.C.

16. The learned counsel for the second respondent has submitted that the second respondent's mother gave money to one of the accused persons and if she is examined before the Court, she will give evidence who is that person. If any further evidence is brought on record, implicating any other person, it is open to the second respondent to file a petition before the trial court to invoke the provisions under Section 319 of Cr.P.C. At this stage, there is no material to summon the petitioners under Section 319 of Cr.P.C.

17. For the aforesaid reasons, this Criminal Original Petition is allowed. The impugned order passed by the Judicial Magistrate No.II, Puducherry dated 05.09.2019 is quashed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

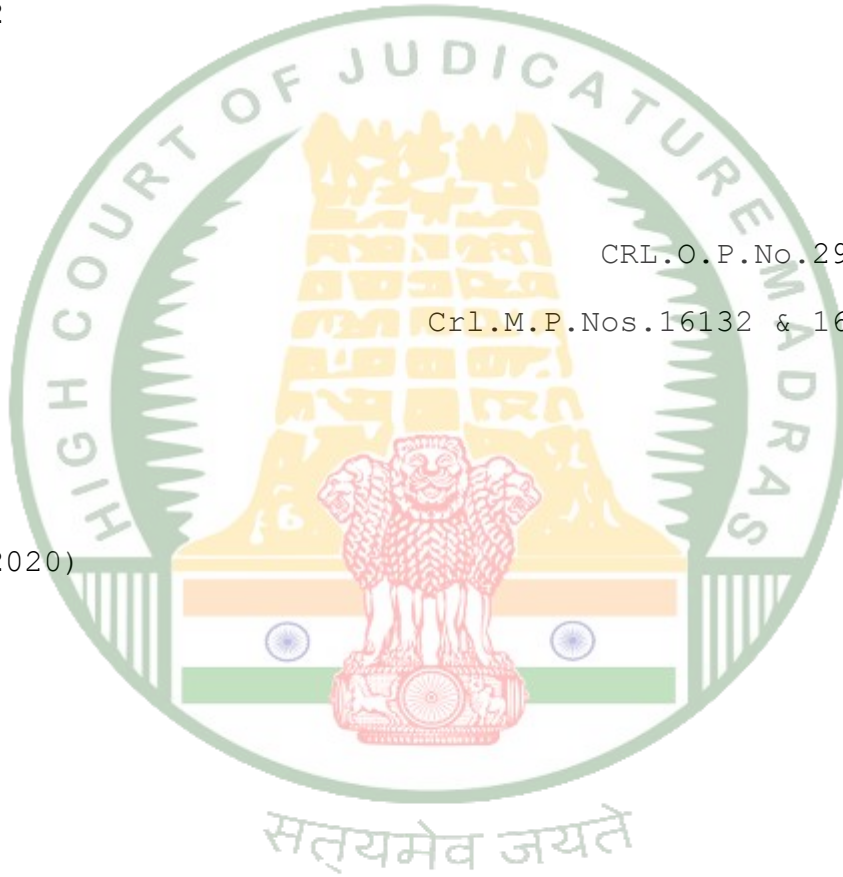
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To

1. The Inspector of Police,
Muthialpet Police Station,
Puducherry District.
2. The Judicial Magistrate No-II,
Puducherry.

+2ccs to Mr.R.Sreedhar, Advocate, Sr.No.7919

+1cc to the Public Prosecutor for Puducherry, High Court, Madras,
Sr.No.8772



CRL.O.P.No.29905 of 2019
and
Crl.M.P.Nos.16132 & 16133 of 2019

MR(CO)
GS(08/06/2020)

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