



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2020

CORAM:

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL.R.C. (MD)No.478 of 2015

and

M.P. (MD) No.1 of 2015

1) B.Soorya Prabha

2) B.Prabhu ... Petitioners / Petitioners/
Accused No.3 & 6

Vs.

1) State rep. by
The Deputy Superintendent of Police,
Economic Offences Wing-II,
Trichy. ... R-1/ R-1/ Complainant

2) K.Sundarajan

3) C.Parthiban ... RR 2 & 3/ RR 2 & 3/
Proposed Accused

PRAYER: Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records pertaining to impugned order dated 21.08.2015 passed in Cr.M.P.No.1343 of 2015 in C.C.No.2 of 2012 on the file of the Special Judge for TANPID Act Cases, Madurai, set aside the same and direct the trial Court to arraign the respondent No.2 K.Sundarrajan formerly the Manager - Investments and the respondent No.3 C.Parthiban formerly the Head of Equity Section in the said Financial Establishment 'Money Cube Investment' as additional accused and proceed against them in accordance with law.

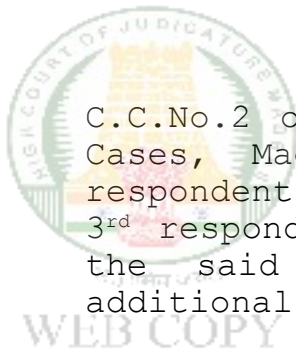
For Petitioner: Mr.M.Saravannan

For R1 : Mrs.S.Bharathi,
Government Advocate (criminal side)

For RR 2 & 3 : Mr.P.Subbaraj

O R D E R

This Criminal Revision Petition is filed to set aside the impugned order dated 21.08.2015, passed in Cr.M.P.No.1343 of 2015 in



C.C.No.2 of 2012 on the file of the Special Judge for TANPID Act Cases, Madurai, and direct the trial Court to array the 2nd respondent K.Sundarrajan, formerly the Manager - Investments and the 3rd respondent C.Parthiban, formerly the Head of Equity Section in the said Financial Establishment 'Money Cube Investment' as additional accused and proceed against them in accordance with law.

2. The petitioners herein are A3 and A6 in C.C.No.2/2012. They filed a petition under section 319 of Cr.P.C. before the trial Court in Crl.M.P.No.1343 of 2015 for impleading one K.Sundarajan and C.Parthiban, who were the former Manager and Head of Equity Clearance Section, as accused, wherein the said petition was dismissed. Challenging the same, the present revision petition is filed. For the sake of convenience, the petitioners are hereinafter referred as A3 and A6 and the 2nd and 3rd respondents are referred as proposed accused.

3. The learned counsel appearing for A3 and A6 would submit that A1 is a Proprietorship Company and A2 to A6 are the Proprietors of the Company. During the pendency of the revision petition, A2 passed away and thereafter A3 and A6 filed a petition before the trial Court under Section 319 of Cr.P.C.

4.The crux of the prosecution case as well as the petitioner's case is that A3 and A6 collected huge deposits from 25 number of persons amounting to Rs.34,95,000/- (Rupees Thirty Four Lakhs Ninety Five Thousand only). The said amount was not repaid to the depositors, for which, one of the depositor, viz., one C.Ramachandran lodged a complaint before the Law Enforcing Agency and thereafter, the Law Enforcing Agency registered a case and investigated the matter and filed the final report. At the time of trial, some of the documents were marked on the side of the accused through P.W.7. However, some of the documents reveal that the proposed accused person K.Sundarajan and C.Parthiban issued receipts to the *de facto* complainant and the receipts were marked as Ex.D1. Hence, the said K.Sundarajan and C.Parthiban have involved in the day-to-day affairs of the Company and managed the accused Company in the capacity of Manager as well as Head of Equity Clearance Section and they also actively participated along with the petitioners. Hence, they must be implicated as accused for which a petition was filed before the trial Court.

5. Further, the learned counsel appearing for the petitioners/A3 and A6 would submit that P.W.7 in his evidence has clearly deposed that he presented a cheque bearing No.328055 for a sum of Rs.40,000/- issued by the Manager viz. Sundararajan, representing the capacity of Manager of the first accused Company. However, he was not implicated though the said documents were recovered by the Law Enforcing Agency/P.W.29. However, he was not implicated as co-accused along with the petitioners. Hence, it is necessary to implicate the proposed accused Sundararajan & Parthiban



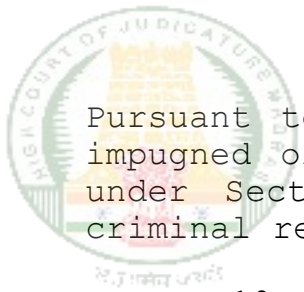
as accused. Accordingly, he prayed for allowing this criminal revision petition.

6. Mrs.S.Bharathi, learned Government Advocate (criminal side) appearing for the first respondent and Mr.P.Subbaraj, learned counsel appearing for the proposed accused /private respondents 2 & 3 submitted that admittedly, the private respondents worked as Manager and Head of Department, Equity Clearance Section and they were only employees of the accused Company and they do not have active participation in the day-to-day affairs of the Company. In fact, the main accused person collected huge amount from the depositors and A3 and A6 innocently acted as employees of the accused Company and they issued receipts in the course of their employment and they did not involve in any day-to-day affairs of the accused Company and it is further stated that all the amount that has been collected, was done only by the accused Company and they have to properly explain before the trial court for implicating the proposed accused, as it is only a process to drag on the proceedings and divert the prosecution case. Accordingly, he prayed for the dismissal of the petition.

7. Considering the facts and circumstances of the case, it is seen that the first respondent after investigating the F.I.R. in Crime No.2 of 2011, has filed charge sheet against two unregistered firms namely 'Money Cube Investments' and 'Spirits Tech' citing them as A1 and five other accused for the offences under Sections 409 & 420 of I.P.C. and Section 5 of Tamil Nadu Protection of Interest of Depositors (In Financial Establishments) Act 1997 (TANPID Act) before the learned TANPID Court, Madurai.

8. Admittedly, the evidence on record would prove that the proposed 2nd and 3rd respondents viz., K.Sundarajan and C.Parthiban served as Manager and Head of Equity Section in Money Cube Investments and they were workers. Though the prosecution initiated the case in the year 2012, after three years, the petitioners A3 and A6 have filed a petition under Section 319 of Cr.P.C. to implead the proposed respondents 2 and 3 as accused, only on the ground that the private respondents issued the deposit receipts to the investors and further issued a cheque of Rs.48,000/- to P.W.7 for which, the petitioners wanted the private respondents 2 and 3 to be implicated as accused.

9. On an earlier occasion, it appears that the petitioners filed a petition under Section 319 of Cr.P.C and the said petition was not numbered and the same was returned on 22.04.2015. Challenging the said order dated 22.04.2014 and 17.06.2014, the petitioners filed Crl.O.P.(MD) No.7027 of 2015 before this Court. This Court by order dated 20.04.2015, set aside the impugned order therein and directed the trial Court to take the application on file and proceed the matter in accordance with law, keeping in mind the proceedings initiated by the Courts while examining under Section 319 of Cr.P.C.



Pursuant to the orders of this Court, the trial Court passed the impugned order, wherein, it has refused to entertain the petition under Section 319 of Cr.P.C. Challenging the same, the present criminal revision petition has been filed.

10. This Court perused the impugned order dated 21.08.2015 passed in Cr.M.P.No.1343 of 2015 in C.C.No.2 of 2012 on the file of the Special Judge for TANPID Act Cases, Madurai. On perusal of the same, it reveals that A1 is a financial establishment functioning under the name and style of 'Money Cube Investments' which was owned by the petitioner and the proposed accused K.Sundarajan and C.Parthiban, private respondents 2 & 3 herein, who are the employees. During the course of investigation, it was found that the proposed 2nd respondent worked as Manager and the proposed third respondent worked as Head of Equity Clearance Section of A-1's financial establishment.

11. As per evidence of P.W.7, one cheque was issued in favour of P.W.7 by the proposed second accused, who has issued the same in the capacity of Manager in the said Company. The proposed accused have not worked as partners of the financial establishment. The prosecution witness did not depose that the proposed accused have conducted a financial establishment. Since the person has not conducted the financial establishment and has not collected money but simply acted as employee of the said Company, there is no need to implicate the 2nd and 3rd respondents as accused in the case. Hence the said petition, was dismissed and further the trial Court also recorded the evidence of P.W.1 wherein P.W.1 clearly deposed that 2nd and 3rd respondents have not issued any receipt in favour of P.W.1 and any other witnesses and as per Section 319 of Cr.P.C., *"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"*.

12. Section 319 of Cr.P.C. empowers the Court to proceed against other person who appears to be guilty of the offence, though not an accused before the Court. The Hon'ble Apex Court already dealt with the similar issue in a catena of decisions.

(i) ***Labhuji Amrathi 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 CrPC to arraign an accused? Whether the power under Section 319(1) CrPC 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 CrPC. In Section 319 CrPC 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 CrPC to form any opinion as to the guilt of the accused."

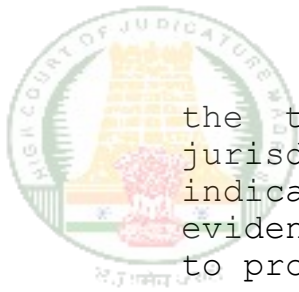
(ii) **Hardeep Singh Vs. State of Punjab** and others reported in 2014 (3) SCC 92, wherein it has been held as follows:-

"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.

94. In *Pyare Lal Bhargava v. The State of Rajasthan*, AIR 1963 SC 1094, 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 & Ors. v. Ram Niwas & Anr.*, (2009) 14 SCC 25, 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 fulfillment 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 an 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 Cr.P.C., 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*, 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 (Supra)*, the Court observed: "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.

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97. In Mohd. Shafi (Supra), 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 & Anr. v. State of Punjab & Anr., AIR 2009 SC 2792, while explaining the scope of Section 319 Cr.P.C., a two-Judge Bench of this Court observed:....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 & Ors. v. State of West Bengal, AIR 2009 SC 1248, a two-Judge Bench of this Court took a similar view observing that the court is required to consider whether such evidence would be sufficient to convict the person being summoned. Since issuance of summons under Section 319 Cr.P.C. entails a denovo 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.

(iii) **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."

13. The above decision makes it clear that the 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 casual and cavalier manner. Merely because, the 2nd and 3rd respondents are working as employees in A1 Company under A2 to A6, that does not mean that, they must be arrayed as accused and even issuing of receipts on behalf of A1 and other accused person is only a course of employment, which will not implicate the private respondents unless the Court is satisfied through the material evidence that 2nd & 3rd respondents, the proposed accused herein appear to have committed the offence.

14. In the absence of any material evidence, this Court cannot compel the 2nd and 3rd respondents to face the trial along with the accused. Hence, I do not find any error in the order passed in Cr.M.P.No.1343 of 2015 in C.C.No.2 of 2012 on the file of the Special Judge for TANPID Act Cases, Madurai, dated 21.08.2015

15. Accordingly, the Criminal Revision Petition is dismissed. It appears that the case is pending from the year 2012 and for past eight years, there has been no progress. Therefore, the trial Court is directed to complete the process of trial as expeditiously as possible. Consequently, the interim stay granted by this Court in M.P.(MD) No.1 of 2015 is vacated and stands closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Special Judge,
TANPID Act Cases,
Madurai.

2. The Deputy Superintendent of Police,
Economic Offenses Wing-II,
Trichy.

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

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

+1 CC to M/s.M.SARAVANAN, Advocate (SR-10375[F] dated 06/03/2020)

Order made in
CRL.R.C. (MD) No.478 of 2015

Dated:
05.03.2020

NR (24.06.2020) 9P 6C