



IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON
21.06.2021

ORDERS PRONOUNCED ON
25.08.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.848 OF 2015
AND
M.P.NO.1 OF 2015

H.Arunmozhi Devan

.. Petitioner/A.3

.. Vs ..

State : Represented by
The Inspector of Police,
Bargur Police Station,
Crime No.379 of 2009
Krishnagiri District.

.. Respondent/Complainant

PRAYER : Petition filed under Sections 397 and 401 of the Criminal Procedure Code, against the order passed under Section 319 of Cr.P.C. taking cognizance against the petitioner in a case of offence under Section 302 of the Indian Penal Code in CrI.M.P.No.86 of 2015 in S.C.No.61 of 2010 by the learned Additional District Judge, Krishnagiri.

For Petitioner : Mr.R.John Sathyan

For Respondent : Mr.R.Vinoth Raja,
Government Advocate



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ORDER

The matter is heard through "Video Conference".

The newly added third accused is the revision petitioner herein. This Criminal Revision Case has been preferred by the petitioner against the order passed under Section 319 of the Code of Criminal Procedure taking cognizance against the petitioner in a case of offence under Section 302 of the Indian Penal Code in CrI.M.P.No.86 of 2015 in S.C.No.61 of 2010 by the learned Additional District Judge, Krishnagiri.

2. The respondent/Inspector of Police, Bargur police station, Krishnagiri District, has registered a case against the first accused namely Ansar and the second accused namely Balan in Crime No.370 of 2009 for the offence under Section 302 IPC. After investigation, the Investigating Officer, has filed a final report against those two accused.

3. The case of the prosecution, in brief, is as follows:-

[i] On 24.07.2009 at about 9.30 p.m., the first accused Ansar and the second accused Balan and the deceased Periyadurai went to a Liquor shop near S.K.Dhaba on the By-pass road in Bargur in the Autorickshaw of one Annamalai (L.W.14). After consuming liquor, as they were returning home in the same auto, the first accused took a sum of Rs.2,000/- from the pocket of the deceased and as a result of which, there was a quarrel amongst them.

[ii] After sometime, the said Periyadurai was found dead on the rocks on the foothills of Balamurugan temple on the Eastern side of Jagadevi. The complaint was lodged by P.W.1-Deverajan, Village Administrative Officer of Bargur.

[iii] After following the formalities, the case was numbered as S.C.No.61 of 2010 by the learned Additional District Judge, Krishnagiri and made over to the learned First Additional District Judge, Krishnagiri and the matter was posted for examination of the prosecution witnesses.



[iv] On 22.07.2015, P.Ws.1 to 5 were examined and the petitioner was examined as P.W.2. After completion, a petition in CrI.M.P.No.86 of 2015 was filed by the learned Public Prosecutor under Section 319 of the Code of Criminal Procedure seeking to add P.W.2 as accused and on 23.07.2015, the trial Court summoned the petitioner, who was detained on passing the impugned order arraigning the petitioner as an accused scrapping his evidence.

[v] The petition filed by the learned Public Prosecutor was allowed and P.W.2 was re-arrayed as third accused, based upon the chief examination of P.Ws.4 and 5. On perusing the order, I find that neither any summons have been issued nor any explanation or counter has been obtained from him before arraying the revision petitioner/P.W.2 as A.3. It appears from the records that he was remanded on the same day.

4. Learned counsel for the revision petitioner/A.3 would submit that the revision petitioner/Arulmozhi Devan was originally examined as P.W.2 in the Sessions Case No. 61 of 2010 and he was arrayed as accused No.3 and thereafter, P.W.3 and P.W.4 were examined. Based upon the mere assertion of P.W.4/Nirmala Preethi, who claims that she is the step daughter of the deceased, on the next day, learned Sessions Judge appears to have called P.W.2/Arulmozhi Devan and remanded him, without even issuing summons or notice to him.

5. Learned counsel for the revision petitioner would further contend that the provision of Section 319 of Cr.P.C was not properly followed by the learned Sessions Judge. The learned counsel also draw my attention to the evidence of P.W.4 & P.W.5, who are listed witnesses Nos.13 & 18. Further, the learned counsel would also draw my attention to the statement under Section 161 of Cr.P.C given by P.W.4 and P.W.5 as L.W.13 & L.W.18 before the Investigating Officer to say that the said allegation is nothing but an improvement.

6. Learned Government Advocate (CrI.Side) appearing for the respondent would submit that it is a case of murder for gain and placed his reliance upon the circumstantial evidence.



P.Ws.2 to 5 were examined on the same day. Based upon the evidence of P.W.4, P.W.2 was arrayed as accused No.3 and remanded and thereafter, released on personal bond.

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7. As to the powers of the Sessions Court to implead or to add an accused under Section 319 of the Criminal Procedure Code, the law is well settled by the Constitution Bench of the Supreme Court in the case of Hardeep Singh Vs. State of Punjab, reported in 2014 (1) Scale 241. Further, in the case of Babubhai Bhimabhai Bokhiria & Another Vs. State of Gujarat & Ors. reported in 2014 (2) SCC (Cr1.) 644, the Hon'ble Supreme Court has held that Section 319 of the Criminal Procedure Code confers power on the trial Court to find out whether a person, who ought to have been added as an accused, has erroneously been omitted or has deliberately been excluded by the investigating agency and that satisfaction has to be arrived at on the basis of the evidence so led during the trial. On the degree of satisfaction for invoking the power under Section 319 of Cr.P.C., the Court observed that though the test of prima facie case being made out is same as that when the cognizance of the offence is taken and process issued, the degree of satisfaction under Section 319 of the Criminal Procedure Code is much higher.

8. In the decision reported in 2009 Sureme Court 2792 (1) [Sarabjit Singh and another Vs. State of Punjab and another], the Hon'ble Supreme Court has held as follows:-

"Before an additional accused can be summoned for standing trial, the nature of the evidence should be such which would make out grounds for exercise of extraordinary power. The materials brought before the Court must also be such which would satisfy the Court that it is one of those cases where its jurisdiction should be exercised sparingly.

An order under Section 319, therefore, should not be passed only because the first information or one of the witnesses seeks to implicate other persons(s). Sufficient and cogent reasons are required to be assigned by the Court so as to satisfy the ingredients of the provisions. Mere ipse dixit would not serve the purpose. Such an evidence must be convincing one at least for the purpose of exercise of



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the extraordinary jurisdiction. For the aforementioned purpose, the Courts are required to apply stringent tests; one of the tests being whether evidence on records is such which would reasonably lead to conviction of the person sought to be summoned.

A higher standard is to be set up for the purpose of invoking the jurisdiction under Section 319. 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 exercise of jurisdiction, would not be satisfied."

9 (a). The trial of the above Sessions Case was commenced on 27.02.2015. The records reveal that L.W.2 was examined as P.W.2 and P.Ws.4 and 5, who are L.W.13/Nirmala Preethi and L.W.18/Anthoni Ammal. P.W.2, who is now re-arrayed as third accused is the younger brother of the deceased. This Court perused the 161 statement of Nirmala Preethi and Anthoni Ammal [L.W.18]. After perusing the 161 statement of those two persons, who were examined as P.W.4 and P.W.5 and after verifying the deposition given by them in the witness box as P.W.4 and P.W.5, I find that the learned Sessions Judge has committed an error in allowing the petition filed by the learned Public Prosecutor and remanding P.W.2 on the same day by re-arraying as third accused and it is a gross violation of the procedure contemplated by the Criminal Procedure Code.

9 (b). On perusal of the respective 161 statement recorded by the Investigating Agency as L.W.13 and L.W.18, who were examined as P.W.4 and P.W.5, I find that it is nothing but an embellishment amounting to material contradiction. As per 161 statement, P.W.4 claims that the deceased is related to her "like father" and P.W.5 claims that she was "married to some other person" and the deceased used "to visit their house", while in the deposition, they claimed that P.W.4 is the step daughter of the deceased and P.W.5 is the legally wedded wife of the deceased and also claims that P.W.2 has given a paper publication that the deceased is not having any wife or children or any other legal heirs assumes significance.



10. As per the allegation made by P.W.4 (Alleged Step Daughter of the deceased), it is clear that there was enmity between P.W.2-Arunmozhi Devan (Petitioner herein) and the deceased. Further, she had alleged that it was Arunmozhi Devan, who had engaged a men to assault the deceased and there is involvement of Arunmozhi Devan in this case. It is pertinent to see that this allegation is not even corroborated by P.W.5, who is none other than the mother of P.W.4, whereas P.W.5 has stated that no share in the property was given and apart from that, there is not even a whisper about the alleged motive as spoken to by P.W.4.

11. As per the admission made by P.W.5, she was married to one Francis Xavier @ Thomas and both P.W.4 and another one was born to them and P.W.5 deserted the said Francis Xavier @ Thomas and allegedly married the deceased Periyadurai in a temple and "lived like" husband and wife and had a girl child, who died. The evidence of P.W.4 is that P.W.2 gave a paper publication that the deceased is not having any wife or children or any other legal heirs. This would go to show that P.W.4 had a reason to falsely implicate the revision petitioner herein.

12. The case in hand is a classical example of the abuse of Section 319 of the Code of Criminal Procedure in a casual and cavalier manner and thus, I find that the trial Court has erred in invoking Section 319 of the Code of Criminal Procedure on a flimsy uncorroborated and ill motivated testimonies of P.W.4 (Nirmala Preethi) and P.W.5 (Anthoniammal) and hence, in this view of the matter, I find that the learned Sessions Judge has committed an error in allowing the petition and asking witness P.W.2 to stand as an accused for the trial as A.3 is culpably wrong, without any material and hence, the order passed by the trial Court is liable to be set aside.

13. In the result, this Criminal Revision Case is allowed and the order passed by the learned Additional District Judge, Krishnagiri, in CrI.M.P.No.86 of 2015 in S.C.No.61 of 2010 is hereby set aside.

14. The learned Additional District Judge, Krishnagiri, is hereby required to proceed with the case with the original accused A.1 and A.2 in the manner known to law, however afresh,



since the evidence recorded by P.Ws.1 to 5 is already been scraped by the earlier order. Accordingly, the learned Additional District Judge, Krishnagiri, is directed to conduct a trial afresh and dispose the case at the earliest point of time. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VI)

// True Copy //

Sub Assistant Registrar

Jr1

To

1. The Additional District Judge,
Krishnagiri.
2. The Inspector of Police,
Bargur Police Station,
Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.

Copy To

The Section Officer,
Criminal Section,
High Court, Madras.

Cr1.R.C.No.848 of 2015

JPL(CO)
RLP(20/09/2021)