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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2021
PRONOUNCED ON : 29.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CrI.R.C.No.703 of 2018
and
CrI.M.P.Nos.8150 & 8151 of 2018

1.S.Chandrasekaran
2.Pappathi

...Petitioners / Respondents 4 & 5 /
Proposed Accused

Vs.

1.The Deputy Superintendent of Police,
Tiruchengode Sub Division,
Namakkal District.

2.The State by the Inspector of Police
Mallasamuthiram Police Station,
Crime No.38 of 2010,
Namakkal District.
Correct Crime No. 168 of 2012

... Respondents 1 & 2 / Petitioners /
Complainants

3.Raja @ Chinnusamy
4.Kandasamy
5.Duraisamy

...Respondents 3 to 5 / Respondents /
Accused Nos.1 to 3

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., against against an order dated 04.06.2018 made in CrI.M.P.No.1357 of 2017 in S.C.No.3 of 2013, on the file of the learned Principal Sessions Judge, Namakkal.

For Petitioner	:	Mr.Manokaran
For R1 & R2	:	Mr.R.Surya Prakash Government Advocate
For R3 & R5	:	No appearance
For R4	:	Died



JUDGMENT

(The case has been heard through Video Conference)

The revision petitioners herein are the proposed accused in S.C.No.3 of 2013.

2. Brief facts leading to the above Criminal Revision Case are as under:

The respondents 1 and 2 herein/complainants have filed a petition in CrI.M.P.No.1357 of 2017, under Section 319 of Cr.P.C., before the learned Principal District and Sessions Judge, Namakkal, for the offence under Section 147, 148, 341, 294(b) & 506(ii) of IPC read with Section 3(i)(x) SC/ST Act, 1989, to implead the petitioners herein as accused in S.C.No.3 of 2013 and the same was allowed and hence, the Criminal Revision Case.

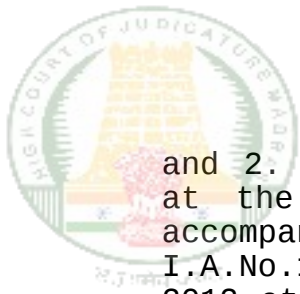
3. After hearing the rival submissions, this Court finds that the defacto complainant viz., Sellammal has given a complaint and the same was registered in Crime No.168 of 2012, for the alleged offence under Sections 147, 148, 341, 294(b) & 506(ii) of IPC read with Section 3(i)(x) SC/ST Act, 1989.

4. The nutshell of allegations in the complaint are as under:

(a). On 06.06.2012, the second respondent police has registered a case in Crime No.168 of 2012 against the revision petitioners herein (A2 & A3) and the respondents 3 to 5 (A1, A4 and A5) for the alleged offence under Sections 147, 148, 341, 294(b) & 506(ii) of IPC read with Section 3(i)(x) SC/ST Prevention of Atrocities Act, 1989, on the basis of a complaint given by one K.Sellammal alleging that the accused persons had committed the alleged crime on 13.05.2021.

(b). Thus, the prosecution case is that the accused persons had obstructed the right of entry in and over the cart track which was allegedly enjoyed by the defacto complainant for years together. Whiles, on 13.05.2012 at 08.00 a.m., when the complainant was driving her bullock cart loaded with agricultural produces, she was intercepted by the accused persons and they have abused her by using her caste name, and they have also criminally intimidated with dire consequences.

5. The first petitioner is a practising Lawyer/A2 and the second petitioner/A3 is his mother, aged about 70 years (at the time of the alleged offence in the year 2012). The petitioners herein who arrayed as A2 & A3 in FIR were deleted from the case pursuant to the investigation conducted by the respondents 1



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and 2. The reason being, the first petitioner was not present at the place alleged occurrence on 13.05.2012, whereas, he accompanied with the Advocate Commissioner, who was appointed in I.A.No.180 of 2012 to inspect the suit property in O.S.No.86 of 2012 at T.Goundampalayam, Tiruchengode Taluk whereas the alleged occurrence took place at Adhi Muthan Pallam.

6(a).It is seen from the connected records that the complainant PW1 had already filed a petition in CrI.O.P.No.27852 of 2013 to conduct further investigation in Crime No.168 of 2012 to include the petitioners as the accused and it was closed on 31.01.2014 and thereafter, the complainant had also filed CrI.O.P.No.16997 of 2012, W.P.No.23170 of 2012 and W.P.No.13363 of 2013 before this Court and suffered a line of orders dated 20.07.2012, 28.08.2012 and 25.11.2013 respectively.

6(b).Thus, this Court finds that initially these petitioners were arrayed as A2 and A3 in FIR in Crime No.168 of 2012 and after investigation, the respondent police have dropped the present reversion petitioners from the charge sheet on obtaining necessary approval from the District Public Prosecutor, charge sheet has been filed and PRC was taken on file and case was committed to the Sessions and re-numbered as SC.No.3 of 2013, on the file of the learned Principal Sessions Judge, Namakkal. When the trial is in progress PW1/defacto complainant viz., Sellammal deposed in support of her FIR as mentioned and referred the names of the petitioners herein along with the respondent 3 to 5 herein.

7.On the subsequent hearing, it appears that the respondents 1 and 2, (investigation agency), based upon the evidence of PW1, had filed the petition in CrI.M.P.No.1357 of 2017, filed under Section 319 of Cr.P.C to array the petitioners as accused in S.C.No.3 of 2013, summons were issued and counter was filed. After counter and enquiry, the learned Principal Sessions Judge, Namakkal, has allowed the above said CrI.M.P.No.1357 of 2017, filed by the prosecution and directed the revision petitioners herein to face the trial.

8.The sum and substance of the counter filed by the petitioners in impleading them as an accused or adding them as accused in S.C.No.3 of 2013 are that the revision petitioners herein were not at all present at the time of the alleged occurrence, but, they were also implicated falsely for an oblique motive.

9.Admittedly, after filing of the charges, the respondents 1 and 2 herein/ investigation agency, after investigation, had dropped the names of the revision



14. In this case, the evidence of PW1 and the averments in the petition are very vague, bald and laconic. Further, the "evidence" even the materials collected by the respondents 1 and 2 at the stage of enquiry/investigation in this case, the trial Court has exercised the power under Section 319 f Cr.P.C., in a casual manner, which is totally against the law declared by the Hon'ble Supreme Court in the judgment reported in 2017 (7) SCC 706 - (Brijendra Singh and others Vs. State of Rajasthan).

15. In the decision reported in 2019 (6) CTC 106 - (Shiv Prakash Mishra Vs. State of Uttar Pradesh and another), wherein, the Hon'ble Supreme Court has held as follows:

"Accused named in FIR was dropped in Charge-sheet - Investigation reveals that Accused named in FIR was not present at the time of occurrence - Contradictory statement of Prosecution Witnesses - Application filed by Complainant to summon dropped Accused - Standard of proof for summoning person is higher than standard of proof for framing a charge - Power under 319 Cr.P.C is to be exercised sparingly with circumspection - Material collected during investigation warrants dropping of Accused - Additional Accused cannot be summoned in absence of substantial material warranting issuance of Summon - Order of Trial Court declining to summon Additional Accused upheld."

16. In the judgment reported in 2017 (16) SCC 226 - (S.Mohammed Ispahani Vs. Yogendra Chandak and Others), the Hon'ble Supreme Court has held that the power of Court to summon persons, not named in the charge sheet, to face on going trial - nature of evidence that may be relied upon for exercise of the powers and law laid down by the Hon'ble Five Judge Bench in 2014 (3) SCC 92 - Hardeep Singh Vs. State of Punjab and Others, clarified wherein, it is been held that merely because, the name of the petitioners are mentioned in the FIR and also the statement witnesses recorded under Section 161 Cr.P.C, it is not open to the Court to relied upon the statement recorded under Section 161 Cr.P.C has independent witness, the same only be corroborating material. Further, the standard of evidence required for exercising the power under Section 319 of Cr.P.C viz, strong and cogent evidence in the absence of suggestive and co-gent evidence merely because of any assertion of statement of PW1 in the witnesses box during the Trial, the Court cannot exercise the power to add any accused in the on going trial, because the power to be exercised only where strong and cogent evidence occurs against a person and not casual and cavalier manner. In respect of the word "evidence" is required to be



brought before the Court Trial. The material evidence collected by the investigation officer at the state of enquiry may be utilized only for corroboration and to support the evidence recorded and examined from the trial by the Court to invoke the power.

17.Further, the learned counsel for the revision petitioner would rely upon the following judgments reported in:

a).2019 (9) SCC 805 - (Mani Pushpak Joshi Vs. State of Uttarakhand and another)

b).2019 (4) SCC 329 - (Dev Wati and others Vs. State of Haryana & another)

c).2019 (2) TNLR 523 (SC) - (Periyasami & others Vs. S.Nallasamy)

18.The learned Sessions Judge has observed that in FIR, the proposed accused names have been mentioned, one of the accused has spoken about statement under Section 161 Cr.P.C and also stated that the proposed accused have not proved their case and such observation made by the learned Principal Sessions Judge, Namakkal, contrary to the law laid down by the Hon'ble Apex Court in the above referred decisions.

19.Taking into consideration the law laid down by the Hon'ble Apex Court in adding parties in a Sessions Case after deleted in the charge sheet and also taking note of the fact that both the proposed accused/revision petitioners herein were accompanied with Advocate Commissioner appointed for the Civil Suit in O.S.No.86 of 2012 also assumes significance and the Civil Suit has also pending between the parties.

20.It remains to be stated that on filing of the charge sheet necessary notice has been given to the party, he has not filed any protest petition in dropping the accused who are originally named in FIR. Even after these proposed parties are dropped from the charge sheet also assumes significance.

21.Hence, this Court finds that the nature of the allegations and statements available on record does not satisfy the law laid down by the Hon'ble Apex Court for adding any person as an accused in the Sessions Case to face the trial and hence, the order passed by the learned Principal Sessions Judge, Namakkal, is liable to be set aside.

22.Accordingly, this Criminal Revision Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. The order passed by the learned Principal Sessions Judge, Namakkal, in CrI.M.P.No.1357 of 2017 in S.C.No.3 of 2013, dated 04.06.2018, is hereby set aside and the learned Principal



Sessions Judge, Namakkal, is directed to proceed Sessions Case with the available witnesses and dispose of the same within a period of twelve weeks from the date of receipt of a copy of this order.

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Sd/-
Assistant Registrar (CS-IX)

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Sub Assistant Registrar

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To:

- 1.The Principal Sessions Judge,
Namakkal.
- 2.The Deputy Superintendent of Police,
Tiruchengode Sub Division,
Namakkal District.
- 3.The Inspector of Police,
Mallasamuthiram Police Station,
Crime No.38 of 2010,
Namakkal District.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.N.Manokaran, Advocate SR.No.36606

Cr1.R.C.No.703 of 2018

NR(CO)
RVM(25/08/2021)