

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN
Criminal Revision Case No.1476 of 2019
and Crl.M.P.No.18795 of 2019

Karthi ... Petitioner/ Petitioner / Accused

..vs..

1.The Inspector of Police,
Railway Police Station,
Salem. ...1st Respondent/ Respondent/Complainant

2.K.Venkatachalam Respondents/Proposed Party
(R2 impleaded as per order of this Court
dated 24.02.2020 in Crl.M.P.No.2226 of 2020
in Crl.R.C.No.1476 of 2019)

Criminal Revision Case filed under Section 397 read with
401 Cr.P.C, to set aside the order of dismissal passed in
Crl.M.P.No.80 of 2019 in S.C.No.268 of 2018 dated 07.11.2019
on the file of the 1st Additional District and Sessions Court,
Salem by allowing the present Criminal Revision Case.

For Petitioner : Mr.M.Subash

For Respondents : Mr.K.Madhan
Government Advocate (Crl.Side) for R1

O R D E R

This Criminal Revision Case has been filed against the
order dated 07.11.2019 passed in Crl.M.P.No.80 of 2019 in
S.C.No.268 of 2018 on the file of the learned I Additional
District and Sessions Court, Salem.

2. The respondent/police registered a case against the
petitioner and others. After investigation, the
respondent/police filed a charge sheet before the learned
Judicial Magistrate No.III, Salem. The learned Magistrate
after taking charge sheet on the file and after completing
formalities committed the case to the learned Principal
District and Sessions Judge, Salem and the same was taken on
file in S.C.No.268 of 2018 and made over to the learned I
Additional District and Sessions Judge, Salem for disposal.
During the trial, one of the listed witnesses shown in the
charge sheet was examined as P.W.8. After completion of the
examination, the petitioner/A1 filed a petition under Section
319 Cr.P.C before the trial Court to implead P.W.8 as an

accused in the said case. Since the petitioner stated that P.W.8 also involved in the offence, he has invoked Section 319 Cr.P.C. However, the learned Sessions Judge failed to consider the materials and also the deposition made by the witnesses before the Court, which shows that P.W.8 also involved in the said offence, failed to implead him as one of the accused in the Sessions case. Aggrieved over the said order, the petitioner/A1 is before this Court by way of this revision.

3. The learned counsel for the petitioner would submit that P.W.8 has clearly deposed before the Court that he helped the other accused to throw the body in the railway track, which shows that P.W.8 also committed the offence under Section 201 IPC. Since the evidence of P.W.8 clearly falls under Section 201 IPC, the learned Sessions Judge, failed to consider the same and simply rejected the petition, which warrants interference of this Court.

4. The learned Government Advocate (Crl.Side) appearing for the first respondent would submit that P.W.8 was examined and his statement was recorded under Section 161(3) Cr.P.C, in which, he has clearly stated that due to threat and fear, he helped the other accused to throw the body in the railway track, during the trial also he reiterated the same. Therefore, the trial Judge found that there is no incriminating materials against P.W.8 to implead him as one of the accused and dismissed the petition.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the first respondent and also perused the materials available on record.

6. Admittedly, the case was registered against the petitioner and others. The petitioner was arrayed as A1. During the trial, one of the listed witnesses shown in the charge sheet was examined as P.W.8 and after his deposition, the petitioner filed a petition under Section 319 Cr.P.C stating that the evidence of P.W.8 clearly shown that he was also involved in the case. However, the learned Sessions Judge failed to consider the same and dismissed the petition.

7. On a careful perusal of evidence of P.W.8 and also the statement recorded under Section 161 Cr.P.C., both show that no criminal intent on P.W.8. Further, P.W.8 has clearly stated that since the accused threatened to help them to dispose the body, he helped the other accused to throw the body in the railway track. There is no incriminating materials against him to show that he has actively participated in the crime with guilty mind. It is a fundamental principles of law that to implead the accused, there must be mens rea and in the absence of the same, he cannot be included. The learned Sessions Judge has not discussed the locus standi of the petitioner. When the Court was vested with the power under Section 319 Cr.P.C, during the enquiry and trial, if the

learned Sessions Judge come to the conclusion that any other person other than the accused also involved in the case on hand, then they can be impleaded as accused in the said case. Whereas, in this case one of the accused has filed this petition. However, the evidence of P.W.8 would clearly show that there is no involvement in the offence. Therefore, in the absence of mens rea or intention, the person cannot be arrayed as accused.

8. Under these circumstances, this Court finds that there is no incriminating materials to show that P.W.8 can be impleaded as one of the accused in the said case. This Court does not find any illegality or irregularity in the order passed by the learned Sessions Judge. Hence, this Criminal Revision Case is devoid of merits and the same is liable to be dismissed. Accordingly, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The I Additional District and Sessions Court,
Salem.
2. The Inspector of Police,
Railway Police Station,
Salem.
3. The Public Prosecutor,
High Court, Madras.

CrI.R.C.No.1476 of 2019
and CrI.M.P.No.18795 of 2019

vbm(CO)
A.SK(07.07.2021)

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