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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.08.2021

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THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

Crl.RC(MD)No.359 of 2021

and

Crl.MP(MD)Nos.3605 and 3607 of 2021

Muthaiah : Petitioner/10th Accused
Vs.

The State by
The Inspector of Police,
Sempatti Police Station,
Dindigul District. : Respondent/Complainant

Prayer: Criminal Revision filed under sections 397 and 401 of the Code of the Criminal Procedure, against the docket order, dated 23.12.2020 in SC No.131 of 2018 on the file of the Additional District Court, Dindigul, arraying the petitioner as 10th accused under section 319 of the Criminal Procedure Code.

For Petitioner : Mr.D.Venkatesh
For Respondent : Mr.RMS.Sethuraman
Standing for State (Crl. Side)

O R D E R

This Criminal Revision is filed against the docket order, dated 23.12.2020 in SC No.131 of 2018 on the file of the Additional District Court, Dindigul, arraying the petitioner as 10th accused under section 319 of the Criminal Procedure Code.

2.It is seen from the records that on the complaint given by one Athiveera Pandiyan, on 07.09.2015, the respondent police registered a case in Crime No.294 of 2015 for the offence punishable under sections 147, 148, 341, 324 and 307 IPC and filed a final report as against 9 persons for the offence under sections 147, 148, 341 and 302 r/w 149 IPC before the Judicial Magistrate No.II, Dindigul. After committal proceedings, the case was taken on file in SC No.131 of 2018 on the file of the Additional District Court, Dindigul. On 23.12.2020, when the case stood posted for framing of charges, the learned Judge based on FIR and the statement of witnesses, arrayed the petitioner as 10th accused by invoking section 319 of Criminal Procedure Code. Challenging the same, the petitioner is before this court.

3.Heard the learned counsel appearing on either side and perused the materials available on record.

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4.The main contention raised on the side of the



petitioner/A10 is that it is settled principle of law that before arraying a person as an accused in the proceedings under section 319 of Cr.P.C, notice has to be issued and an opportunity of hearing has to be provided to the proposed person before passing any adverse order and in this case, the petitioner cannot be added as an accused before commencement of the trial and the trial court ordered to implead this petitioner as A10, at the stage of framing charges and prays that the Criminal Revision has to be allowed. In support of his contention, the learned counsel appearing for the petitioner/A10 submitted the following decisions:-

(1) 2006 CRI.L.J 2366(1) (Lok Ram Vs. Nihal Singh and another;

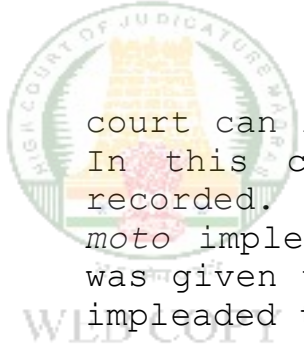
(2) 2014 (1) MWN (Cr.) 242 (P.Raju and another Vs. State rep. by its Deputy Superintendent of Police CBI, Economic Offences Wing, Chennai).

5. On the other hand, the learned Standing Counsel appearing for the respondent/State submitted that the trial court after considering the relevant documents, has added the petitioner as A10 and posted the case for framing charges and prays for dismissal of the Criminal Revision.

6. In this case, at the time of FIR, the name of the petitioner/A10 was stated. But at the time of filing final report, the name of the petitioner/A10 was not mentioned in the final report.

7. At this juncture, it is pertinent to refer the decision reported in 2006 CRI.L.J 2366(1) (Lok Ram Vs. Nihal Singh and another), wherein it has been held in para 11 to 13 as follows:-

"11. On a careful reading of Sec. 319 of the Code as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceeding on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge sheet or the case diary do not



court can implead the person, who was added as accused in the FIR. In this case, it is an admitted fact that no evidence was recorded. The trial court, at the time of framing charges, suo moto impleaded the petitioner as 10th Accused. Further, no notice was given to the petitioner/A10 to implead him and the trial court impleaded the petitioner/A10 not on the basis of the evidence.

9. Patently, the impugned order passed by the trial court is erroneous. The impugned order under section 319 of Cr.P.C has been passed not on the evidence available on record. This is against the mandate contained in Section 319 of Cr.P.C. In such view of the matter, the impugned order passed by the trial court cannot be allowed to sustain.

10. In the result, this Criminal Revision is allowed. The docket order, dated 23.12.2020 passed in SC No.131 of 2018 by the Additional District Court, Dindigul, arraying the petitioner as A10 is set aside. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS II)

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Sub Assistant Registrar (CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The Additional District Judge,
Dindigul.

2. The Inspector of Police,
Sempatti Police Station,
Dindigul District.

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