



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.16787 of 2021

and

Crl.M.P.(MD)No.9072 of 2021

WEB COPY

Gladson

... Petitioner/Accused No.2

vs.

State represented by
The Sub-Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
Crime No.212 of 2018

... Respondent/Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records relating to the order in C.C.No.313 of 2018 dated 31.08.2021 on the file of the Judicial Magistrate No.I, Padmanabhapuram and set aside the same.

For Petitioner : M/s.S.Mahalakshmi
For Respondent : Mr.T.Senthil Kumar,
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed challenging the impugned order passed by the Judicial Magistrate No.I, Padmanabhapuram, under Section 319 Cr.P.C.

2. The de-facto complainant in the case is one Krishnakumar. He lodged First Information Report before the Thuckalay Police Station on 08.06.2018 that he was assaulted by the petitioner herein and his employee, by name, Suresh Kumar. In this regard, Crime No.212 of 2018 was registered on the same day for the offences under Sections 294(b), 323, 324 and 506(2) IPC. Even though the petitioner has also been named in the FIR, few days later, an alteration report was filed by the respondent herein deleting the name of the petitioner and thereafter, filed the final report only against the other accused, namely, Suresh Kumar. Cognizance of the offences was taken and the case was taken on file as C.C.No.313 of 2018 by the Judicial Magistrate No.I, Padmanabhapuram. When the de-facto complainant was examined in chief, he categorically deposed that he was assaulted by two persons, including the owner of the shop. The learned trial



Magistrate specifically asked P.W.1 as to who attacked him. The de-facto complainant named the petitioner and his employee, Suresh Kumar. P.W.2, who is the son of P.W.1 also stated on the same lines. The name of the petitioner is finding place in the testimony of the P.W.2. In view of the evidence of P.W.1 and P.W.2, the learned trial Magistrate noted that another person namely the petitioner herein is also involved and he has to be tried together with the accused. Therefore, summon was issued to the petitioner under Section 319 Cr.P.C.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds. She contended that in the impugned order is cryptic. She placed reliance on the decision reported in **AIR 2019 SC 1426 (Periyasami and others vs. S.Nallasamy)**. The Honourable Supreme Court in the said decision held that under Section 319 Cr.P.C. additional accused can be summoned only if there is more than *prima facie* case as is required at the time of framing of charge, but which is less than the satisfaction required at the time of conclusion of the trial for convicting the accused. In this case, the petitioner had been specifically named by both the witnesses. The trial Court after adverting to the aforesaid testimony, had roped in the petitioner under Section 319 Cr.P.C. The application of mind of the trial Court is evident. I do not find any infirmity in the impugned order. This Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

csn

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 Judicial Magistrate No.I,
Padmanabhapuram.



2.The Sub-Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

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

**Crl.O.P. (MD)No.16787 of 2021
and
Crl.M.P. (MD)No.9072 of 2021
06.12.2021**

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