



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2021
Pronounced on : 10.02.2021

CORAM

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC (MD) .No. 265 of 2017 and
CRL.MP (MD) .Nos.2354 and 2355 of 2017

1. M.Siva
2. Rajalakshmi : Petitioners / Respondent/
Accused Nos.3 and 4

Vs.

State rep. by
The Inspector of Police,
Vickramasingapuram Police Station,
Tirunelveli District.
Crime No. 30 of 2014.

: Respondent / Petitioner/
Complainant

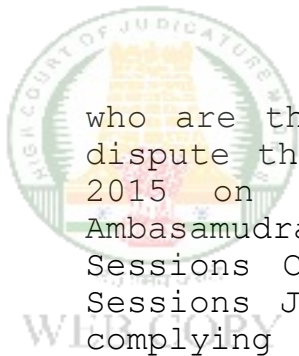
PRAYER:- Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., to set aside the order dated 20.08.2016 passed in Cr.M.P.No. 153 of 2016 in S.C.No. 602 of 2015 on the file of Sub Court, Ambasamudram.

For petitioners : Mr.V.Kathirvelu,
for Mr. K. Prabhu
For respondent : Ms. S.E. Veronica Vincent
Government Advocate (Crl. Side)

ORDER

This Criminal Revision case is directed against the order passed in Cr.M.P.No. 153 of 2016, in S.C.No.602 of 2015, dated 20.08.2016 allowing the application filed under Section 319 Cr.Pc., for addition of the petitioners as accused Nos. 3 and 4 to the above case.

2. One Sankarasubramanian lodged a complaint before the respondent Police against one Muthaiah, his wife Maheswari and their son and daughter and on the basis of the said complaint, First Information Report came to be registered in Crime No. 30 of 2014 U/S. 294(b), 341, 324 and 307 IPC. The respondent police after investigation filed a final report only against Muthaiah and his wife and thereby, deleting the names of the present petitioners,

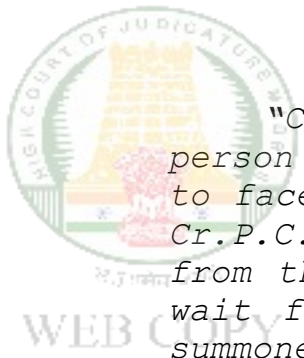


who are the son and daughter of the said Muthaiya. It is not in dispute that the charge sheet was taken on file in PRC.No.76 of 2015 on the file of the Court of the Judicial Magistrate, Ambasamudram and the same was committed to the District and Sessions Court and that the same was made over to the Assistant Sessions Judge Court, Ambasamudram in S.C.No.602 of 2015. After complying with the necessary legal formalities, the trial was commenced and when the defacto complainant was in the witness box, the learned Additional Public Prosecutor requested the Court to defer the examination of the said witness, as he has to file an application U/S. 319 Cr.P.C., Accordingly, the respondent has filed a petition under Section 319 Cr.P.C., for impleading the petitioners as accused Nos.3 and 4. The learned Assistant Sessions Judge, after enquiry passed the impugned order allowing the application and ordered issuance of the summons to the petitioners. Aggrieved by the said order, the petitioners have come forward with the present revision.

3. Whether the impugned order of the learned Assistant Sessions Judge passed in Cr.M.P.No. 153 of 2016 in S.C.No.602 of 2015 is liable to be revised? is the point for consideration.

4. Admittedly, the First Information Report was registered against four persons including the petitioners herein. As rightly pointed out by the learned Government Advocate (Crl. Side), the complainant lodged a complaint that the said Muthaiah and his wife had attacked him and their son and daughter had abused in filthy language and also threatened him. It is not in dispute that after registering of the First Information Report and arrest of the first accused Muthaiah, the other three accused 2 to 4 including the petitioners have filed an application seeking anticipatory bail before this Court in Crl.O.P(MD).No. 2949 of 2014 and this Court has granted anticipatory bail vide order dated 20.02.2014 and that the said accused Nos. 2 to 4 have filed another application seeking extension of time and the same was also ordered on 25.03.2014. According to the learned Government Advocate (Crl. Side), the accused Nos. 2 to 4 including the petitioners have not complied with the above orders of this Court. It is also not in dispute that the defacto complainant who is a practising advocate has approached this Court twice seeking orders to expedite the investigation. As per the order of this Court in Crl.O.P(MD).No.926 of 2015, directing the investigating Officer to file a final report within a period of two weeks, final report was filed against two accused and by deleting the name of the present petitioners as accused.

5. Before entering into further discussion, it is necessary to refer the decision of the Hon'ble Supreme Court passed in **Criminal Appeal.No.1750 of 2008**, dated **10.01.2014 (Hardeep Singh Vs. State of Punjab and others)** :

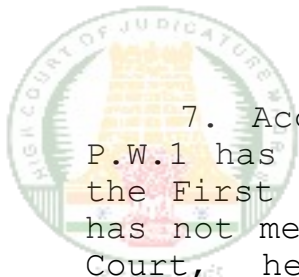


"Considering the fact that under Section 319 Cr.P.C., a person against whom material is disclosed is only summoned to face the trial and in such an event under Section 319(4) Cr.P.C., the proceeding against such person is to commence from the stage of taking of cognizance, the Court need not wait for the evidence against the accused proposed to be summoned to be tested by cross - examination.

Though under Section 319(4) (b) Cr.P.C., the accused subsequently impleaded is to be treated as if he had been an accused when the Court initially took cognizance of the offence, the degree of satisfaction that will be required for summoning a person under Section 319 Cr.P.C., would be the same as for framing a charge. The difference in the degree of satisfaction for summoning the original accused and a subsequent accused is on account of the fact that the trial may have already commenced against the original accused and it is in the course of such trial that materials are disclosed against the newly summoned accused. Fresh summoning of an accused will result in delay of the trial - therefore the degree of satisfaction for summoning the accused (original and subsequent) has to be different.

A person not named in the FIR or a person though named in the FIR but has not been chargesheeted or a person who has been discharged can be summoned under Section 319 Cr.P.C., provided from the evidence it appears that such person can be tried along with the accused already facing trial. However, in so far as an accused who has been discharged is concerned the requirement of Sections 300 and 398 Cr.P.C., has to be complied with before he can be summoned afresh."

6. No doubt, the names of the petitioners does not find place in the First Information Report specifically, but, they have been referred as son and daughter of the first and second accused. The learned trial Judge has observed that complainant has specifically alleged that the son and daughter of accused Nos. 1 and 2 took part in the incident and issued death threat against the complainant during the incident and that in the statements recorded under Section 161 Cr.P.C., the defacto complainant and other witnesses had given similar statements mentioning about the accused Nos. 3 and 4. The trial Court has further observed that the defacto complainant as P.W.1 in his chief examination would say that the 1st accused's son M. Siva and daughter M. Rajalakshmi were also involved in the offence, that Muthaiah's son Siva abused him with obscene language and Muthaiah's daughter instigated the other accused to do away with the complainant.



7. According to the learned Assistant Sessions Judge, though P.W.1 has given specific overt act against the proposed accused in the First Information Report and in his 161 Cr.P.C., statement, he has not mentioned their names and that in his evidence before the Court, he has mentioned their names. It is settled law that the power conferred under Section 319 Cr.P.C., is a discretionary and an extraordinary power and that the same is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is also settled law 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, 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 and that such person even though had initially been named in the First Information Report as an accused, but not charge-sheeted, can also be added to face the trial. As already pointed out, First Information Report came to be registered against the petitioners initially and only after investigation, their names have been deleted.

8. The contention of the petitioners is that the second petitioner was married and she was residing along with her husband at Chennai, that on the alleged date of occurrence, she was four months' pregnant and was taking treatment at Chennai, that the first petitioner was with second petitioner at Chennai on the alleged date of occurrence and that therefore, the previous investigating officer had rightly discharged the petitioners.

9. It is not the case of both the parties that the prosecution while filing the final report, has produced the materials to show that the petitioners were at Chennai on the date of alleged occurrence. It is settled law that a person who takes the plea of *alibi* is duty bound to prove the same and it is only a matter of trial. The learned Trial Judge after perusing the materials available before him, has recorded a finding to the effect that the petitioners are to be impleaded as accused to face the trial along with the other accused and that the said finding cannot be found fault with.

10. Moreover, it is brought to the notice of this Court that the trial of the case in S.C.No. 602 of 2015 is almost over and the case is now pending for defence evidence.

11. Since the case is in defence stage, interfering with the order of the trial Court at this stage is not proper and the same would not be in the interest of justice. Hence, this Court decides that the learned Assistant Sessions Judge is to be directed to proceed further uninfluenced by the order of this Court. It is clarified that the petitioners are at liberty to canvass the pleas, now taken in the revision, before the trial Court. Considering the



merits is liable to be dismissed and the above point is answered accordingly.

12. In the result, Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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 Subordinate Judge, Ambasamudram.
2. The Inspector of Police,
Vickramasingapuram Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

order made in
CRL.RC (MD) .No.265 of 2017 and
CRL.MP (MD) .Nos.2354 and 2355 of 2017
10.02.2021

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