



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.03.2021

Pronounced on : 16.04.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C. (MD) .No.383 of 2017

Kumar @ Karuppasamy : Petitioner/ Petitioner/ Accused No.13

Vs.

1.The State represented by
The Inspector of Police,
Gandarvakottai Police Station,
Pudukkottai District.
(Crime No.17 of 2009)

2.Muthusamy : Respondents

(R2 impleaded as per order of this Court in Crl.M.P.(MD)No.5428 of 2017 in Crl.RC(MD)No.383 of 2017, dated 02.04.2018)

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records of the learned Additional District and Sessions Judge, Pudukkottai in Cr.M.P.No.60 of 2017 in S.C.No.145 of 2010 by which, dismissing the discharge petition by an order dated 22.03.2107 and set aside the dismissal order of the Court below.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel,
for Mr.D.Ramesh Kumar.

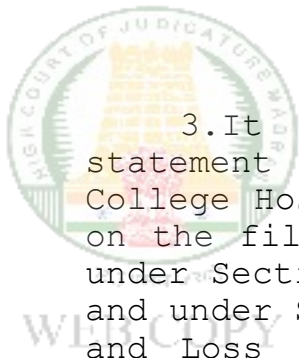
For Respondent : Mrs.S.E.Veronica Vincent,
Government Advocate (Criminal Side) for R1.

: Mr. P.Ganapathi Subramanian, for R2.

ORDER

The Criminal Revision Case is directed against the order passed in Cr.M.P.No.60 of 2017 in S.C.No.145 of 2010 dated 22.03.217 on the file of the Additional District and Sessions Judge, Pudukkottai.

2.The revision petitioner is the 13th accused in S.C.No.145 of 2010 on the file of the Additional District and Sessions Judge, Pudukkottai. The defacto complainant, Muthusamy has got himself impleaded as second respondent in this revision.



3.It is not in dispute that on the basis of the complaint statement recorded from the second respondent at Thanjavur Medical College Hospital, FIR came to be registered in Crime No.17 of 2009, on the file of the Kantharva Kottai Police Station for the offence under Sections 147, 148, 324, 306, 109 r/w 149, 307, 302 r/w 34 IPC and under Section 3 (1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, against 13 persons and after completion of the investigation, the first respondent police has laid the final report against 12 persons and thereby deleting the revision petitioner herein. After receipt of the charge sheet, the same was taken on file in S.C.No.145 of 2010 on the file of the learned Principal Sessions Judge of Pudukkottai, and subsequently the same was made over to the I Additional District and Sessions Court, Pudukkottai.

4.It is not in dispute that the second respondent/defacto complainant has filed a petition, by invoking the power of this Court under Section 482 of Cr.P.C in Crl.O.P.(MD)No.14664 of 2011, to call for the records in S.C.No.145 of 2010 on the file of the Principal Sessions Court, Pudukkottai and quash the committal proceedings of the learned Magistrate and to direct the committal Court to provide an opportunity to file a protest petition for final report submitted by the concerned police and dispose the same in accordance with law.

5.This Court, without going into the merits of the matter, has directed the defacto complainant to go before the Magistrate and file necessary application for the inclusion of any accused, provided, if there is sufficient reliable evidence available and also directed the trial Court to look into the same, if there is any evidence available for the inclusion of any other accused.

6. It is not in dispute that subsequently, the trial was commenced and the second respondent / defacto complainant was examined as P.W.1. Since the defacto complainant P.W.1 has deposed about the alleged overt act of the revision petitioner, the learned Additional Public Prosecutor filed a petition under Section 319 of Cr.P.C to include the petitioner as accused No.13 in the above case and the learned Sessions Judge has allowed the application and ordered to add the revision petitioner as an accused. Thereafter, the newly impleaded accused /revision petitioner herein has filed a petition under Section 227 Cr.P.C, (wrongly quoted Section 289 Cr.PC.,) seeking orders to discharge him from the proceedings of S.C.No.145 of 2010 in Cr.M.P.No.60 of 2017 and the learned Additional Sessions Court, after conducting enquiry, has passed the impugned order on 22.03.2017, dismissing the said petition. Aggrieved by the said order of dismissal, the 13th accused has come forward with the present revision.

7.Whether the impugned order made in Cr.M.P.No.60 of 2017 in S.C.No.145 of 2010 dated 22.03.217 on the file of the Additional



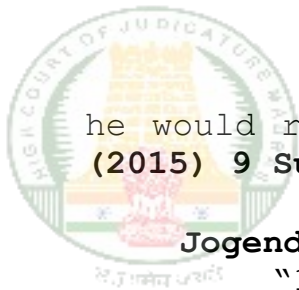
District and Sessions Judge, Pudukkottai, is liable to be set aside ? is the point for consideration.

8.The learned Senior Counsel for the revision petitioner would contend that after full fledged investigation, the respondent police has filed the final report by deleting the petitioner's name, as it was revealed from the investigation that the petitioner did not involve in the occurrence, that the trial Court has failed to appreciate the fact that merely because implication of name, a person cannot be arrayed as an accused, as there should be some material as against the petitioner to prove his presence in the occurrence, that the trial Court has also failed to prove the fact that there is no averments implicating the petitioner even in initially recorded 161(3) Cr.P.C statements, that the petitioner was not present at the time of occurrence in the place of occurrence even as per the case of the prosecution and that the trial Court has also failed to appreciate that the respondent police assigned valid reason for deletion of the petitioner's name.

9.The learned Senior Counsel would further contend that the revision petitioner was not given notice with respect to the petition filed by the prosecution under Section 319 Cr.P.C and that the trial Court without giving any opportunity of hearing to the revision petitioner, has passed an order to add the revision petitioner as the accused. As rightly pointed out by the learned Government Advocate (Criminal Side), the learned Sessions Judge has dealt with that aspect in page No.7 of the order and whereunder, it has been observed that though separate notice was not served/issued to this petitioner regarding petition filed under Section 319 Cr.P.C on 27.06.2016, the Court has directed to issue summons to the proposed accused Kumar @ Karuppasamy as per Section 319(2) Cr.P.C and posted for 05.07.2016 and whereas on 18.08.2016, the alleged Kumar @ Karuppasamy was present but denied his presence at the the scene of occurrence and specifically stated that he was in Thanjavur by then and known all these accused arrayed in this case.

10.Considering the above, the very contention of the revision petitioner is that he was not heard while deciding the application under Section 319 Cr.P.C, is devoid of substance and is liable for instant rejection. Admittedly, the revision petitioner has not challenged the order passed under Section 319 Cr.P.C, for adding him as the 13th accused.

11.The learned counsel for the second respondent/ defacto complainant would strongly contend that the accused, who was subsequently added under Section 319 Cr.P.C has not right to seek discharge under Section 227 Cr.P.C and as such the application filed by the revision petitioner before the trial Court is legally unsustainable and that therefore, the present revision challenging the dismissal of the discharge petition is liable to be rejected and



he would rely on the decision of Hon'ble Supreme Court reported in **(2015) 9 Supreme Court Cases 244.**

Jogendra Yadav and others Vs. State of Bihar and another :

"13.We are not unmindful of the fact that the interpretation placed by us on the scheme of Sections 319 and 227 makes Section 227 unavailable to an accused who has been added under Section 319 of the Cr.P.C. We are of the view, for the reasons given above that this must necessarily be so since a view to the contrary would render the exercise undertaken by a Court under Section 319 of the Cr.P.C., for summoning an accused, on the basis of a higher standard of proof totally infructuous and futile if the same court were to subsequently discharge the same accused by exercise of the power under Section 227 of the Cr.P.C., on the basis of a mere prima facie view. The exercise of the power under Section 319 of the Cr.P.C., must be placed on a higher pedestal. Needless to say the accused summoned under Section 319 of the Cr.P.C., are entitled to invoke remedy under law against an illegal or improper exercise of the power under Section 319, but cannot have the effect of the order undone by seeking a discharge under Section 227 Cr.P.C. If allowed to, such an action of discharge would not be in accordance with the purpose of the Criminal Procedure Code in enacting Section 319 which empowers the Court to summon a person for being tried along with the other accused where it appears from the evidence that he has committed an offence."

12.The legal position laid down in the above decision is squarely applicable to the case on hand. In the case before the Hon'ble Supreme Court, FIR was registered under Section 149, 302 and 323 IPC against 8 accused and subsequently, charge sheet was filed only against four persons, that on the basis of the evidence of the widow and two sons of the deceased, the learned trial Judge, issued notice under Section 319 Cr.P.C to the appellants, asking them to show cause as to why they should not be added as accused, that after conducting enquiry, the trial Judge has passed an order summoning the appellants as accused, that after impleadment of the appellants, they preferred an application under Section 482 Cr.P.C., before the High Court and meanwhile, they have filed an application for discharge under Section 227 of Cr.P.C before the trial Court and got an order and that when the same was challenged before the High Court, the High Court by observing that the order of discharge virtually nullifies the order passed under Section 319 Cr.P.C made earlier and thereby set aside the order of the trial Court. When the said order of the High Court was challenged, the Hon'ble Supreme Court, has specifically held that it does not stand to reason that a person, who is summoned as an accused to stand trial and added as such to the proceedings on the basis of a stricter standard of proof can be allowed to be discharged from the proceedings on the basis of



a lesser standard of proof such as a prima facie connection with the offence necessary for charging the accused.

13. In the case on hand, as already pointed out, the revision petitioner was added as an accused No.13 as per order passed under Section 319 Cr.P.C. More over, the revision petitioner has not challenged the order passed under Section 319 Cr.P.C and without doing the same, after his impleadment, invoked Section 227 of Cr.P.C claiming discharge.

14. In view of the above legal dictum, this Court has no hesitation to hold that the application filed under Section 227 Cr.P.C before the trial Court is legally not maintainable and as such, the decision of the learned Sessions Judge in dismissing the application not on the maintainability, but on merits, cannot be found fault with. Consequently, this Court decides that the criminal revision is devoid of merits and the same is liable to be dismissed.

15. Considering the facts and circumstances of the case and also the facts that FIR came to be registered in the year 2009 and that Sessions case in S.C.No.145 of 2010 is pending from 2010 onwards, this Court is of the view that necessary direction for the early and expeditious disposal of the case is to be issued.

16. In the result, the Criminal Revision Case is dismissed. The trial Court is directed to conduct the trial expeditiously and dispose the case in S.C.No.145 of 2010 within a period of four months from the date of receipt of a copy of this order. The parties are hereby directed to extend their fullest co-operation in disposal of the case within time stipulated.

Sd/-

Assistant Registrar(CS-)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

das

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 and Sessions Judge,
Pudukkottai.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Inspector of Police,
Gandarvakottai Police Station,
Pudukkottai District.

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

4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai(2 copies)

Copy to

The Registrar Judicial, Madurai Bench of Madras High Court,
Madurai.

CRL.R.C. (MD) .No.383 of 2017
16.04.2021

SVN(CO)
TR(04.05.2021) 6P 7C