

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.1024 of 2020
and Crl.M.P.No.7095 of 2020

Abdul Jamel Sahib

... Petitioner

Vs.

1.State represented by its,
Inspector of Police,
Perambalur Police Station

2.Hasinna Beevi
3.Nazeer Ahamed
4.Alsashek Shahip

... Respondents

Prayer: Criminal Revision Petition filed under Section 397 read with 401 Criminal Procedure Code against the order in Crl.M.P.No.722 of 2019 in C.C.No.113 of 2010 on the file of the learned Judicial Magistrate by order dated 07.03.2020.

For Petitioner : Mr.V.Ramamurthy

For Respondents : Mr.R.Murthi for R1
Government Advocate (crl.side)

ORDER

This Revision has been filed by the petitioner as against the order in Crl.M.P.No.722 of 2019 in C.C.No.113 of 2010 on the file of the learned Judicial Magistrate-I, Perambalur by order dated 07.03.2020.

2.The petitioner is the *de facto* complainant in Crime No.33 of 2010 on the file of the 1st respondent police and based on his complaint that initially neglected to register the case. Subsequently, after agitation and the complaint was taken on file and registered the case in Crime No.33 of 2010 for the offences under Sections 464(2), 465, 468 I.P.C. and after investigation, 1st respondent police also laid a charge sheet for the offences under Sections 465, 468, 478, 474 r/w 34 I.P.C. against the respondents 2 to 4 and the Judicial Magistrate-I, Perambalur also taken the charge sheet on file in C.C.No.113 of 2011 and after framing of charges, commenced the trial. During the trial, after examining 3 witnesses as PW1 to PW3, the *de facto* complainant filed a petition under Section 319 Cr.P.C. and the same was taken on the file in Crl.M.P.No.722 of 2019 and subsequently, 4 witnesses were examined. The Judicial Magistrate dismissed the said

petition on the ground that neither the name of the proposed accused was mentioned in the F.I.R. or in the 161 statement. Therefore, the proposed accused cannot be impleaded as an accused by invoking Section 319 Cr.P.C. Aggrieved over the said order of dismissal, the *de facto* complainant has filed the present Revision before this Court.

3.The learned counsel for the petitioner would submit that though the petitioner is the *de facto* complainant and from the beginning, he was struggling even to get the C.S.R. number or even registration of a F.I.R. But, however, after approaching this Court and after much struggle, the case was registered against the respondents 2 to 4 in Crime No.33 of 2010 and the 1st respondent police, after investigation laid the charge sheet before the Jurisdictional Magistrate namely the Judicial Magistrate-I, Perambalur. Later the *de facto* complainant came to know the about the fact that the proposed accused who was working as a Tahsildar was also involved in this case. Though in the F.I.R. The petitioner has not mentioned the name of the proposed accused, however, in his deposition as PW1, he has clearly stated that after the enquiry and suspect the same after obtaining information from the R.T.I Subsequently, came to know that the proposed accused is also

involved in this case and therefore, he filed a petition under Section 319 Cr.P.C.to implead the proposed accused in this case as accused and proceed further in accordance with the law.

4.Though the learned Government Advocate (Crl. Side) submitted that already earlier application filed for reinvestigation, the said petition was dismissed and the petitioner has not revealed about the proposed accused was and there was no incriminating material as against the proposed accused was by the petitioner in earlier occasion. Therefore, the trial Court has rightly dismissed the said application and prayed for dismissal of the Revision.

5.Heard, the learned counsel for the petitioner and the learned Government Advocate (Crl. Side) appearing for the respondents and perused the materials available on record.

6.The petitioner is the *de facto* complainant in Crime No.33 of 2010 and subsequently, after charge sheet, the case was taken on file. At any stage, during the enquiry or during the pendency of the trial, if any material shows that any other persons other than the accused is also involved in the

case and who can also be impleaded as accused and proceed with the case. Therefore, from the reading of the deposition of PW1/ *de facto* complainant, he has categorically stated how he came to know the active participation of the proposed accused and what is the role of the proposed accused and therefore, there is materials against the proposed accused who is also alleged to have been involved in the present case along with the other accused 1 to 3 and therefore, at the time of impleading any accused under Section 319 Cr.P.C., the Court need not look for material for conviction if the incriminating materials are available against the proposed accused and the Court can implead those persons as accused at any stage of the case and the Magistrate failed to consider the materials placed by the *de facto* complainant under the provision of 319 Cr.P.C. and erroneously dismissed.

7. Therefore, this Court finds that there is perversity in the order passed by the Judicial Magistrate and is liable to be set aside and accordingly, set aside. The Judicial Magistrate is directed to implead the proposed accused and issue summons to him and proceed further in accordance with law.

8.With the above directions, this Revision is allowed. Consequently, connected miscellaneous petition is closed.

20.12.2022

Index: Yes/ No
Speaking Order : Yes/ No
gba

P.VELMURUGAN,J.

gba

To

The Judicial Magistrate-II,
Walajapet, Vellore District

Crl.R.C.No.1024 of 2020
amd Crl.M.P.No.7095 of 2020

20.12.2022