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Crl.R.C.No.305 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2022

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Crl.R.C.No.305 of 2022

and

Crl.M.P.No.3150 of 2022

1. D.Ramkumar

2. K.Balu

3. A.Sellakannu @ Mani

... Petitioners

Vs.

1. The Sub Inspector of Police,
Thammampatti Police Station,
Attur Taluk,
Salem District.

2. Dhandapani

3. Angamuthu Tailor,
S/o, Saravana Padayachi

4. Angamuthu
S/o, Periyasamy

5. Angamuthu
S/o, Kandamuthu

[R5 impleaded as per order dated 14.07.2022
made in Crl.M.P.No.8747 of 2022]

... Respondents



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Prayer:Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C, to call for the records relating to the order dated 16.08.2021 in C.M.P.No.1908 of 2017 in C.C.No.33 of 2010 on the file of the Judicial Magistrate No.2, Attur and set aside the same.

For Petitioner : Mr.V.R.Rajasekaran

For R1 : Mr.S.Sugendran
Additional Public Prosecutor

For R2 : Mr.V.Sivalingam

ORDER

This Criminal Revision Petition has been filed against the order dated 16.08.2021 passed in C.M.P.No.1908 of 2017 in C.C.No.33 of 2010 on the file of the Judicial Magistrate No.II, Attur.

2. The first respondent police initially registered a case in Crime No.632 of 2008, against and the petitioners herein and other respondents, for the offence under Sections 447, 147, 148, 323, 324, 379 and 506(ii) IPC., After investigation, by leaving the revision petitioners, laid a charge sheet as against the respondents 2 to 4 herein alone. The learned Magistrate



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taken the charge sheet on file in C.C.No.33 of 2010. Subsequently, based on the request made by the defacto complainant to implead the present petitioners also as accused in the said case, the first respondent police filed a petition in Crl.M.P.No.1908 of 2017 under Section 319 Cr.P.C., before the Judicial Magistrate No.II, Attur, during the pendency of the Criminal Case. The Trial Court, vide order dated 16.08.2021, impleaded the revision petitioners as accused. Challenging the said order, all the proposed accused/petitioners herein, filed the present Criminal Revision Petition.

3. Learned counsel for the petitioners would submit that since the first respondent police after investigation found that there was no prima facie material against the petitioners, they were not added as accused in the charge sheet. However, the Trial Court without issuing notice to the revision petitioners, passed an order to implead the proposed accused in the case, which is against law. Hence the order of the learned Magistrate is liable to be set aside.



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4. Learned counsel for the 5th respondent who is the defacto complainant would submit that initially he made a complaint against the petitioners and also the respondents 2 to 4. Though prima facie materials found as against these revision petitioners, after investigation, the first respondent left the revision petitioners, filed the charge sheet against the respondents 2 to 4 alone. On a careful perusal of the entire materials, the Trial Court found that there are allegations as against these petitioners also. Though the existing accused /R2 to R4 filed their counter, after considering all the materials, the Trial Court impleaded the petitioners also in the case. Hence there is no perversity in the order passed by the learned Magistrate.

5. Learned Additional Public Prosecutor would submit that after investigation, the petitioners name were not included in the charge sheet. Subsequently, the respondent police filed a petition before the Trial Court under Section 319 Cr.P.C., and after considering the materials filed by the first respondent police, the Trial Court ordered to implead the petitioners also as accused. Hence, there is no merit in the Revision and the same is liable to be dismissed.



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

7. Admittedly, the first respondent police registered a case against the respondents 2 to 4 and the petitioners herein in Crime No.632 of 2018. However, after investigation, while filing the charge sheet, the petitioners names were not shown as accused. The charge sheet was also taken on file in C.C.No.33 of 2010 on the file of the Judicial Magistrate No.II, Attur. During the pendency of the case, petition under Section 319 Cr.P.C was filed before the Trial Court to implead the revision petitioners as accused. Though the existing accused namely respondents 2 to 4 were served and filed their counter, the learned Judicial Magistrate, impleaded the petitioners as accused. It is found that before impleading the petitioners as accused in the case in C.C.No.33 of 2010, neither the petitioners were summoned by the Trial Court nor heard the petitioners.



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8. It is a well settled proposition of law, that if the Court finds from evidence that, other than the accused, any other persons are involved in the commission of offence, at any stage of the case, they can be added as accused under Section 319 Cr.P.C. If the Court finds incriminating materials from the evidence against those persons and their objections are not convinced, then they can be impleaded as accused by issuing summon under Section 319 Cr.P.C.,

9. In this case, simply the Trial Court without giving an opportunity or notice to the proposed accused, they have been impleaded as accused. Hence, the order dated 16.08.2021 passed in C.M.P.No.1908 of 2017 in C.C.No.33 of 2010 on the file of the Judicial Magistrate No.2, Attur is set aside and the C.M.P.No.1908 of 2017 in C.C.No.33 of 2010 is remitted back to the Judicial Magistrate No.2, Attur for fresh consideration. The petitioners are directed to appear before the learned Magistrate on 27.11.2022 and directed them to file the counter. After filing of the counter, the learned Magistrate is directed to give an opportunity to both the parties and pass orders in accordance with law.



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WEB COPY 10. With the abovesaid directions, the Criminal Revision Petition is disposed of. Consequently, connected miscellaneous petition is closed.

27.09.2022

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Index:yes/No

Internet:yes/No

Note: Issue Order Copy on 13.10.2022

To

1. The Judicial Magistrate No.2, Attur
2. The Sub Inspector of Police,
Thammampatti Police Station,
Attur Taluk, Salem District.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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P.VELMURUGAN, J.

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