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Crl.R.C.No.424 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.04.2023

PRONOUNCED ON : 26.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.424 of 2023

S.Senthilkumar

... Petitioner

Vs.

1. K.Saravanan
2. N.Sekar
3. N.Krishnan
4. K.Subramaniam
5. P.Venugopal
6. State by Inspector,
CBCID Namakka,
Namakkal District.

... Respondents

PRAYER: Criminal Revision filed under Section 397 & 401 of Cr.P.C. to set aside the Order dated 10.02.2023 passed by the learned Judicial Magistrate No.1, Salem in C.M.P.No.5245 of 2022 in C.C.No.540 of 2022 and allow this Revision Petition.



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For petitioner : Mr.P.R.Balasubramanian
For Respondents : Mr.K.Sukumaran – R1
Mr.S.Senthil – R2 & R3
Mr.R.Shase – R4 & R5
Mr.R.Vinothraja,
Government Advocate[Crl.Side]–R6

ORDER

Challenging the Order of dismissal of the petition filed by the sixth respondent in Crl.M.P.No.5245 of 2022 in C.C.No.540 of 2022 under section 319 of Cr.P.C. to add the fifth respondent as additional accused in C.C.No.540 of 2022, the present Criminal Revision case has been filed.

2. The fact of the case is that the petitioner is the defacto complainant in Namakkal DCB Crime No.39 of 2012 for offences under sections 120[B], 467, 471, 420, 511 IPC and then the case has been transferred to Namakkal CBCID and the same has been taken on file in Crime No.1 of 2015 for the offences under sections 120B, 467, 471, 420 and 511 IPC. After



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investigation, final report has been filed before the Chief Judicial Magistrate Court, Namakkal, which was taken on file in C.C.No.16 of 2016 for the offences under sections 120B, 467, 471, 420 and 511 of IPC. Thereafter, the case has been transferred to the Judicial Magistrate No.1, Salem and taken on file in C.C.No.540 of 2022, where the case is now pending. Originally, the respondent police prosecuted four accused persons namely N.Sekar, N.Kumar, K.S.Subramaniam and P.Venugopal for having forged an unregistered sale agreement dated 05.06.2011 as if the complainant, his brother and his father have agreed to sell their whole property for a sum of Rs.6 lakhs and paid an advance amount of Rs.5 lakhs on the date of sale agreement. They had also also filed a suit in O.S.No.65 of 2012 for specific performance before the Sub Court Namakkal. On receiving summon from the Sub Court, Namakkal, the defacto complainant came to know about the unregistered sale agreement. Hence, he has preferred the present complaint. After investigation, the respondent prosecuted the accused persons for the above said offence. Before the trial Court, 5 prosecution witnesses were examined. At this stage, the prosecution has filed a petition in



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Crl.M.P.No.5245 of 2022 under section 319 Cr.P.C. to implead the petitioner as the fifth accused in C.C.No.540 fo2022, which was dismissed by the trial Court by passing the impugned Order on the ground that the proposed accused Saravanan, S/o.Kandasamy was not cited in the First Information Report and also not cited as an accused in the charge sheet and the oral evidence of P.W.1 to P.W.5 are not against the proposed accused Saravanan to implicate him for the offences under sections 120B, 467, 471, 420 and 511 IPC to try along with other accused. In the impugned Order, it is further stated that there is no evidence against the proposed accused for conspiracy and forgery of documents and cheating the defacto complainant. Challenging the impugned Order, the present revision case has been filed. The prosecution has not challenged the impugned Order passed against the respondent police.

3. The learned counsel for the petitioner would submit that the learned Judicial Magistrate after receiving the petition under section 319 of Cr.P.C. filed by the prosecution was pleased to issue summon to the



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proposed accused Saravanan and after appearance of the proposed accused and after hearing the arguments, has dismissed the petition without considering issuing of summons to the proposed accused and without considering the written arguments filed by the prosecution in this regard. Once, the Magistrate has taken cognizance of the offence against the accused, he should be treated as an accused person and the Court cannot dismiss the petition filed under section 319 Cr.P.C. The procedure adopted by the trial Court is against law. Hence, the impugned Order has to be set aside and the revision has to be allowed.

4. The learned counsel appearing for the proposed accused would submit that the learned Magistrate has not taken cognizance of the offence against the proposed accused and the learned Magistrate has only issued notice to the proposed accused and on receiving the petition from the prosecution under section 319 Cr.P.C., after appearance of the proposed accused person and after hearing the arguments, as the Magistrate found that no evidence or material to include the proposed accused as an accused,



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has dismissed the petition filed by the prosecution. The learned counsel further contended that the petitioner/proposed accused is not an accused cited in the First Information Report as well as in the final report filed by the investigating officer. Further, in this case, 5 prosecution witnesses have been examined. The proposed accused Saravanan was also examined by the trial Court as P.W.5. Since, P.W.5 had not supported the case of the prosecution, the prosecution has filed the petition under section 319 Cr.P.C. to implicate P.W.5 Saravanan as an accused along with other accused, which is unsustainable. Therefore, the trial Court rightly dismissed the petition filed under section 319 Cr.P.C. filed by the prosecution and there is no ground to interfere with the Order passed by the trial Court. The learned counsel for the proposed accused further contended that the Order passed by the trial Court is in accordance with the principles laid by the Honourable Supreme Court in **Hardeep Singh Vs. State of Punjab** reported in **[2014] 3 SCC 92** and prayed for dismissal of the revision.



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5. The learned Government Advocate [Criminal Side] supported the arguments of the revision petitioner.

6. I have considered the matter in the light of the submissions of the leaned counsel for the parties. I have perused the materials available on record carefully.

7. In pursuant to the complaint given by the defacto complainant, a criminal case has been registered in Namakkal DCB Crime No.39 of 2012 for offences under sections 120[B], 467, 471, 420 and 511 IPC and then the case has been transferred to Namakkal CBCID. The same has been taken on file in Crime No.1 of 2015 for the offences under sections 120B, 467, 471, 420 and 511 IPC. After investigation, final report has been filed before the Chief Judicial Magistrate Court, Namakkal, which was taken on file in C.C.No.16 of 2016 for the offences under sections 120B, 467, 471, 420 and 511 of IPC. Thereafter, the case has been transferred to the Judicial Magistrate No.1, Salem and taken on file in C.C.No.540 of 2022, where the



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case is pending. In this case, the prosecution has examined 5 witnesses including the proposed accused Saravanan as P.W.5. Since he has not supported the case of the prosecution, the prosecution has come forward with a petition under section 319 Cr.P.C. to include the petitioner/P.W.5 as an accused along with other accused. The trial Court based on materials produced by the prosecution and the evidence of P.W.1 to P.W.4, came to the conclusion that the proposed accused is not cited as an accused in the First Information Report as well as in the Final Report and infact he was cited as a prosecution witness and he was also examined as a prosecution witness, P.W.5 and there is no prima facie material to implicate the petitioner/ proposed accused in the case and no evidence is made out to implicate the petitioner for the offences under sections 120B, 467, 471, 420 and 511 IPC. Hence, dismissed the petition.

8. In the impugned Order, the learned Judge has elaborately discussed the facts of the case in its Order in paragraphs 5, 6 and 7 and discussed the scope of Section 319 Cr.P.C. in paragraphs 9 and 10 of its



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Order and dismissed the petition filed by the prosecution. What is essential for the purpose of Section 319 Cr.P.C. is that whether there appear some evidence against the proposed person to proceed against him. In the decision relied upon by the learned counsel for the petitioner in **Criminal Appeal No.885 of 2019 [Sukhpal Sing Khaira Vs. The State of Punjab]**, the Honourable Supreme Court has set out guidelines to be followed while exercising power under section 319 Cr.P.C., which runs as follows :

III. What are the guidelines that the competent court must follow while exercising power under Section 319 CrPC?”

(i) If the competent court finds evidence or if application under Section 319 of CrPC is filed regarding involvement of any other person in committing the offence based on evidence recorded at any stage in the trial before passing of the order on acquittal or sentence, it shall pause the trial at that stage.

(ii) The Court shall thereupon first decide the need or otherwise to summon the additional accused and pass orders thereon.

(iii) If the decision of the court is to exercise the power under Section 319 of CrPC and summon the accused, such



summoning order shall be passed before proceeding further with the trial in the main case.

(iv) If the summoning order of additional accused is passed, depending on the stage at which it is passed, the Court shall also apply its mind to the fact as to whether such summoned accused is to be tried along with the other accused or separately.

(v) If the decision is for joint trial, the fresh trial shall be commenced only after securing the presence of the summoned accused.

(vi) If the decision is that the summoned accused can be tried separately, on such order being made, there will be no impediment for the Court to continue and conclude the trial against the accused who were being proceeded with.

(vii) If the proceeding paused as in (i) above is in a case where the accused who were tried are to be acquitted and the decision is that the summoned accused can be tried afresh separately, there will be no impediment to pass the judgment of acquittal in the main case.

(viii) If the power is not invoked or exercised in the main trial till its conclusion and if there is a split-up (bifurcated) case, the power under Section 319 of Cr.P.C. can



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be invoked or exercised only if there is evidence to that effect, pointing to the involvement of the additional accused to be summoned in the split up (bifurcated) trial.

(ix) If, after arguments are heard and the case is reserved for judgment the occasion arises for the Court to invoke and exercise the power under Section 319 of CrPC, the appropriate course for the court is to set it down for re-hearing.

(x) On setting it down for re-hearing, the above laid down procedure to decide about summoning; holding of joint trial or otherwise shall be decided and proceeded with accordingly.

(xi) Even in such a case, at that stage, if the decision is to summon additional accused and hold a joint trial the trial shall be conducted afresh and de novo proceedings be held.

(xii) If, in that circumstance, the decision is to hold a separate trial in case of the summoned accused as indicated earlier;

(a) The main case may be decided by pronouncing the conviction and sentence and then proceed afresh against summoned accused.”



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(b) In the case of acquittal the order shall be passed to that effect in the main case and then proceed afresh against summoned accused.

The parameters laid down by the Honourable Supreme Court in the above decision is in fact in support of the impugned Order. Therefore, in the absence of any evidence pointing to the complicity of the proposed persons, Section 319 Cr.P.C. cannot be invoked. In the absence of any prima facie material, the provision of Section 319 Cr.P.C. cannot be pressed into service to implicate innocent persons.

9. With regard to issue of summons to the accused, the argument of the learned counsel for the petitioner cannot be accepted. I have perused the alleged summon issued by the trial Court to the proposed accused person, which reveals that it is only a notice issued in pursuant to the petition filed under section 319 Cr.P.C. and not a summon after taking cognizance of the case. Therefore, the arguments of the learned counsel for the petitioner in this regard has no merits. Therefore, the trial Court rightly dismissed the petition filed under section 319 Cr.P.C. filed by the prosecution as there is



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no evidence against the proposed accused. Hence, I find any error in the impugned Order and no merit in this Criminal Revision case and the same is liable to be dismissed.

10. Accordingly, this Criminal Revision Case is dismissed.

26.04.2023

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To

The Judicial Magistrate No.I,
Salem.



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V.SIVAGNANAM, J.

VTC

Pre-delivery Order in
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