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Crl.R.C.No.1452 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.R.C.No.1452 of 2019

Ramasamy

...Revision Petitioner/PW1/
De facto Complainant

-Vs-

1.State represented by
The Sub Inspector of Police,
Irumbulikulurichi Police Station,
Ariyalur District.

2.Balakrishnan

3.Vinoth

4.Megala

5.Kavinilavan

6.Mugilnilavan

...Respondents/Respondents/
Complainants

*[R5 and R6 are impleaded as per order dated 12.03.2020 in
Crl.M.P.No.3308 of 2020]*

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C, to set aside the order passed in Crl.M.P.No.798 of 2019 in C.C.No.118 of 2019 dated 25.10.2019 and direct the learned District Munsif-cum-Judicial Magistrate, Sendurai, to include the above said Kavinilavan and Mugilnilavan as Co-Accused in C.C.No.118 of 2019.



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For Petitioner : Mr.S.Kamadevan
For R1 : Mr.V.Meganathan
Government Advocate (Crl.Side)
For R2 to R6 : Mr.K.Gandhi Kumar

ORDER

This Criminal Revision Case is filed to set aside the order passed in Crl.M.P.No.798 of 2019 in C.C.No.118 of 2019 dated 25.10.2019 and direct the learned District Munsif-cum-Judicial Magistrate, Sendurai, to include the above-mentioned Kaviniavan and Mugilnilavan as Assistant Accused in C.C.No.118 of 2019.

2. As per the remarks offered by the learned District Munsif-cum-Judicial Magistrate, Sendurai, the prosecution had not obtained any opinion from the Juvenile Justice Board.

3. When the case came up for hearing on 21.08.2023, the learned Single Judge of this Court observed as follows:

“The learned Counsel for the Revision Petitioner submits that in C.C.No.118 of 2019 on the file of the learned District Munsif cum Judicial Magistrate, Sendurai, the De-facto Complainant as P.W.1 was in the witness box and he had narrated the incidents leading to the registration of the complaint and FIR. In due course of the



examination in chief of P.W.1, he had mentioned the names of the sons of Balakrishnan viz., Kaviniavan and Muhilnilavan who are also said to have attacked him in the alleged occurrence. At that point of time, the prosecution requested the Court to adjourn the case so that the persons who are not before the Court, sons of A1. A1 is Balakrishnan. The sons of Balakrishnan mentioned by the P.W.1 in the witness box had to be impleaded as co-accused. Therefore, the prosecution filed Crl.M.P.No.798 of 2019 to implead the sons of A1-Balakrishnan, namely Kaviniavan, Mugilnilavan as co-accused. This was resisted by the learned Counsel for the Accused. After due enquiry, the learned District Munsif cum Judicial Magistrate, Sendurai, by order dated 25.10.2019 dismissed Crl.M.P.No.798 of 2019 in C.C.No.118 of 2019. The prosecution which had filed Crl.M.P.No.798 of 2019 did not come up either in appeal or revision.

2.P.W.1 himself approached this Court by filing Crl.R.C.1452 of 2019 seeking to set aside the order passed by the learned District Munsif cum Judicial Magistrate, Sendurai, in Crl.M.P.No.798 of 2019 in C.C.No.118 of 2019 dated 25.10.2019.

3.When the case came up for hearing earlier, the learned Counsel for the De-facto Complainant/Revision Petitioner submitted his arguments. The learned Counsel for the accused/impleaded proposed parties also submitted their arguments. The learned Counsel for the State submitted that before impleading the proposed parties as co-accused, as per the instructions they were juveniles at the time of the alleged occurrence. Therefore, opinion has to be obtained from the Juvenile Justice Board, Ariyalur District. The learned Single Judge of this Court, after hearing all the parties, allowed the petition in Crl.R.C.No.1452 of 2019 by setting aside the order dated 25.10.2019 passed by the learned District Munsif Cum Judicial Magistrate, Sendurai, in Crl.M.P.No.798 of 2019. Aggrieved by the same, the proposed accused moved the Hon'ble Supreme court and relied upon the following observations which are extracted here under:



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"7. This fact is not disputed by learned Senior Counsel for Respondent No.1 – Complainant.

8.Since the very foundation of the order summoning the appellants to face trial is based on an erroneous factual premise, we are satisfied that the impugned order cannot sustain.

9.The appeal is, accordingly, allowed; the impugned order dated 27.09.2021 passed by the High court is set aside. Let the Criminal Revision Case No.1452/2019 filed by Respondent No.1-complainant be decided by the learned High Court afresh.

10.The parties are directed to appear before the High Court on 10.07.2023. The question of further staying the trial proceedings shall be decided by the High Court.

11.Since we have not expressed any views on the merits of the case, the parties shall be at liberty to raise their respective pleas before the High Court."

4.The Hon'ble Supreme Court, after hearing the arguments of the learned Counsel for the proposed parties as well as the learned Counsel for the De-facto complainant, had set aside the order passed by this Court in Crl.R.C.No.1452 of 2019 dated 27.09.2021 and remitted back the case to this Court for fresh disposal after hearing both parties.

5.The learned Counsel for the Revision Petitioner submits that the case can be remitted back to the learned District Munsif Cum Judicial Magistrate, Sendurai, to pass appropriate orders, in the light of the submission of the learned Government Advocate (Crl. Side) that proposed parties were juvenile on the date of the alleged occurrence. Therefore, opinion of the Juvenile Board had to be obtained and nothing more to add. The learned Counsel for the Revision Petitioner submits that before arraying the proposed accused, the Court ought to have followed the due procedures by issuing summons to the proposed parties and after hearing them only, ought to have passed orders.



6. Registry is directed to call for remarks from the learned District Munsif Cum Judicial Magistrate, Sendurai, regarding Crl.M.P.No.798 of 2019 and whether, the opinion of the learned Public Prosecutor was obtained before hearing C.M.P.No.798 of 2019 and passing orders dated 25.10.2019 also. The learned Juvenile Justice Board, Ariyalur District, shall offer remarks regarding the petition moved by the prosecution in Crl.M.P.No.798 of 2019 in C.C.No.118 of 2019 in Crime No.216 of 2016 of Irumbulikulurichi Police Station, Ariyalur District. Whether the opinion of the Juvenile Justice Board was obtained in seeking to implead proposed persons as Accused in C.C.No.118 of 2019. The remarks shall be sent to this Court by return of email on or before 04.09.2023. Till then the trial in C.C.No.118 of 2019 on the file of the learned District Munsif-cum-Judicial Magistrate, Sendurai is to be stayed.

7.Call on 05.09.2023.”

4. Subsequently, the case was adjourned to 05.09.2023, seeking remarks from the learned District Munsif-cum-Judicial Magistrate, Sendurai.

5. As per the remarks offered by the learned District Munsif-cum-Judicial Magistrate, Sendurai, in D.No.2541 of 2023 dated 04.09.2023, it is stated that the Petition filed by the learned Assistant Public Prosecutor did not mention the age of the Accused persons. In the counter filed by the proposed parties, the Accused persons had not mentioned their age, and the prosecution had not obtained any opinion from the Juvenile Justice Board



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before passing order in Crl.M.P.No.798 of 2019.

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6. In the light of the arguments advanced by the Revision Petitioner in Crl.R.C.No.1452 of 2019, the De facto Complainant before the learned District Munsif-cum-Judicial Magistrate, Sendurai, the subject matter is remitted back to the learned District Munsif-cum-Judicial Magistrate, Sendurai, to pass a fresh order in Crl.M.P.No.798 of 2019.

7. The learned Assistant Public Prosecutor shall file additional affidavit or whatever is permitted in law in the light of the order passed by the Hon'ble Supreme Court and in the light of the submission of the learned Counsel for the Revision Petitioner as recorded by this Court.

8. The learned District Munsif-cum-Judicial Magistrate, Sendurai, shall direct the parties concerned, the prosecution, the defence, and the proposed parties to file additional counter or whatever as per the law and afford them opportunity, to hear the parties and pass fresh orders as per the order passed by this Court.



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9. The order of the learned District Munsif-cum-Judicial Magistrate, Sendurai, in Crl.M.P.No.798 of 2019 had been set aside. The learned District Munsif-cum-Judicial Magistrate, Sendurai shall afford fresh opportunity to the parties concerned and seek the prosecution to obtain opinion from the Juvenile Justice Board regarding the question raised by the defence that the proposed parties/Accused persons were juveniles on the alleged date of occurrence. Only after obtaining appropriate permission or opinion from the Juvenile Justice Board, the learned District Munsif-cum-Judicial Magistrate, Sendurai, shall conduct fresh enquiry in Crl.M.P.No.798 of 2019 and pass appropriate orders as early as possible. The learned Juvenile Justice Board also is directed to consider the opinion regarding proposed parties to be arraigned as Accused on application if any needed by the Prosecution in the case in C.C.No.118 of 2019 on the file of the learned District Munsif-cum-Judicial Magistrate, Sendurai, to enable the learned District Munsif-cum-Judicial Magistrate, Sendurai, to dispose off the case in Crl.M.P.No.798 of 2019 and also to dispose C.C.No.118 of 2019 early. This case to be given top priority for disposal by the learned District Munsif-cum-Judicial Magistrate, Sendurai, and learned Juvenile Justice Board, Ariyalur.



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10.The Registry is directed to furnish copies of the order passed by this Court as well as the Hon'ble Supreme Court to the learned Judicial Magistrate and the Juvenile Justice Board, Ariyalur for perusal and consideration.

11. With the above, the Criminal Revision Case stands **disposed of**.

05.09.2023

cda

Index : Yes/No

Speaking/Non-speaking order



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To

- 1.The District Munsif-cum-Judicial Magistrate,
Sendurai.
- 2.The Sub Inspector of Police,
Irumbulikulurichi Police Station,
Ariyalur District.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Section Officer, VR Records,
High Court, Chennai.



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SATHI KUMAR SUKUMARA KURUP, J.,

cda

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03.08.2023