



WEB COPY

CrI.R.C.(MD)Nos.24 and 26 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :19.04.2023

PRONOUNCED ON: 26.06.2023

CORAM

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

CrI.R.C.(MD)Nos.24 and 26 of 2023
and
CrI.M.P.(MD)Nos.327, 328, 413 and 414 of 2023

CrI.R.C.(MD)No.24 of 2023:

1.Santha Soruban

2.Selvi

: Petitioners/Respondent Nos.14 & 15/
Proposed Accused Nos.18 & 19

Vs.

1. The State through
the Deputy Superintendent of Police,
Periyakulam Sub Division,
Devadanapatti Police Station,
Theni District.

(Crime No.384 of 2014) : Respondent No.1/Petitioner/
Complainant

2.Jayapandi

3.Rajapandi

4.Kudal Pandi @ Pandi

5.Sadaiyandi @ Sadaiyan : Respondents 2 to 5/Respondents/
Accused Nos.1 to 4

6.Ganesan : Respondent
(R.6 is suo motu impleaded as per
order of this Court dated 09.01.2023)



CrI.R.C.(MD)No.26 of 2023:

- 1.Kundumani
- 2.Pandi
- 3.Eeppilipandi
- 4.Selvam
- 5.Madasamy
- 6.Sridhar
- 7.Arokkiyam
- 8.Jeyaraj

: Petitioners/Respondent Nos.2, 5, 6, 7, 9, 10,11,13/
Proposed Accused Nos.6,9,10,11,13,14,15,17

Vs.

1. The State through
the Deputy Superintendent of Police,
Periyakulam Sub Division,
Devadanapatti Police Station,
Theni District.

(Crime No.384 of 2014) : Respondent No.1/Petitioner/
Complainant

- 2.Jayapandi
- 3.Rajapandi
- 4.Kudal Pandi @ Pandi
- 5.Sadaiyandi @ Sadaiyan

: Respondents 2 to 5/Respondents/
Accused Nos.1 to 4

- 6.Ganesan : Respondent
(R.6 is suo motu impleaded as per
order of this Court dated 09.01.2023)

COMMON PRAYER : Criminal Revision Cases have been filed under Section 397(1) r/w 401 Cr.P.C., to call for the records relating to the order dated 06.12.2022 made in Cr.M.P.No.42 of 2020 in Spl.S.C.No.9 of 2020, on the file of the Special Court for trial of cases under SC/ST(POA) Act, Theni and set aside the same as illegal.



WEB COPY

Crl.R.C.(MD)Nos.24 and 26 of



For Petitioners
in both cases : Mr.R.Gandhi
Senior Counsel
for Mr.J.Karthikeyan

For Respondents
in both cases : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
for R.1
: Mr.Rajesh Kanna
for R.2 to R.4
: Mr.G.Thiruvart Selvan
for R.6

COMMON ORDER

These two Criminal Revision Cases are directed against the order passed in Crl.M.P.No.42 of 2020 in Spl.S.C.No.9 of 2020, dated 06.12.2022, on the file of the Special Court for trial cases under SC/ST (POA) Act, Theni.

2. On the basis of the complaint lodged by the sixth respondent herein, F.I.R., came to be registered in Cr.No.384 of 2014 against 5 named persons and 15 persons for the alleged offences under Sections 147, 323, 109 r/w 3(1)(r), 3(1)(s) and 3(2)(va) of SC/ST (POA) Act. The first respondent, after completing the investigation, has laid a final report for the alleged offences under Sections 294(b) and 323 I.P.C., and 3(1)(r) and 3(2)(va) of SC/ST (POA) Act and the same was taken on file as P.R.C.No.13 of 2015, on the file of the Judicial Magistrate Court, Periyakulam. After committal, the case was taken on file in Spl.S.C.No.9 of 2020 and the same is pending on the file of the Special Court for



trial of cases under SC/ST (POA)Act, Theni. After the examination of two witnesses, the prosecution, by alleging that both the witnesses have deposed about the involvement of 15 other persons in the occurrence, has filed an application under Section 319 Cr.P.C., for adding them as additional accused in Spl.S.C.No.9 of 2020 and that the petition was taken on file in CrI.M.P.No.42 of 2020. In the said petition filed under Section 319 Cr.P.C., the original accused A.1 to A.4 were made as respondents / accused and 15 others as respondents/proposed accused. The learned Sessions Judge, after hearing the prosecution and the learned Counsel appearing for the accused 1 to 4, has passed the impugned order dated 06.12.2022, allowing that petition and thereby ordered to add the proposed accused as accused 5 to 19. Aggrieved by their addition as accused, the proposed accused 18 and 19 have filed the Criminal Revision Case in CrI.R.C.(MD)No.24 of 2023 and the proposed accused 6, 9, 10, 11, 13, 14, 15 and 17 have filed the Criminal Revision Case in CrI.R.C.(MD)No.26 of 2023.

3. The learned Counsel appearing for the revision petitioners/proposed accused would submit that the learned Special Judge ought to have issued notice to the petitioners and given an opportunity of hearing before passing an order under Section 319 Cr.P.C., that since there is no provision for discharge available to the accused, the trial Court must put on notice to the proposed accused and after providing sufficient opportunity, the petition has to be decided on merits



and that the impugned order passed in total violation of the principles of natural justice, is legally unsustainable and as such, the same is liable to be set aside.

The learned Counsel would further contend that the trial Court before deciding to invoke the power under Section 319 Cr.P.C., it must satisfy more than *prima facie* case is made out against the proposed accused, that the degree of satisfaction for summoning the original accused and the proposed accused is entirely different, that the Court must be fast in the case of summoning the original accused, but the Court must be slow in summoning the proposed accused and that the learned trial Judge has failed to follow the dictum laid down by the Hon'ble Apex court in ***Hardeep Singh Vs State of Punjab and others*** reported in ***2014(3) SCC 92***.

4. It is the main contention of the petitioners/proposed accused that in an application filed under Section 319 Cr.P.C., for addition of the accused, prior notice is to be issued calling upon them to show cause as to why they should not be made as accused and only after hearing them, an order can be passed for arraying them as accused.

5. The learned Additional Public Prosecutor would submit that notice to the accused is not necessary in pre-cognizance stages and the learned Additional Public Prosecutor has relied on the judgment of the Allahabad High Court in



Ramakant Tripathi and Others Vs. State of U.P., reported in 2009 CrI.L.J.459

and the relevant passage is extracted hereunder:

WEB COPY

“6. From the aforesaid Section it is crystal clear that under Section 319 Cr.P.c., there is no provision for hearing the accused who has been proposed to be summoned at any stage of inquiry and trial. If there is evidence against a third person against whom no charge sheet has been filed and prima facie commission of offence is disclosed from the evidence and there is possibility and likelihood of the conviction then that person can be summoned under Section 319 Cr.P.C., to face the trial.”

6. At this juncture, it is necessary to refer the judgment of this Court in ***M.V.Arunachalam, Chairman, EID, Parry India Ltd., Vs. R.Palaniappan*** reported in ***(1995)2 MWN (CrI) 260***, wherein it has been held that if any person is sought to be added as additional accused under Section 319 Cr.P.C., under the guided judicial principle of policy and the principle of natural justice, that person must be heard and the Court should exercise judicial function as provided under the Code by serving notice upon the new person to be added as accused.

7. Following the above judgment, this Court in ***Baskar Vs. State represented by the Inspector of Police*** reported in ***2001 CrI.L.J.3426***, has held that the trial Court has committed an error in not sending any notice to the



proposed person and passing an order without application of mind and as such the order is liable to be set aside.

WEB COPY

8. The Hon'ble Apex Court in *Jogendra Yadav and Others Vs. State of Bihar and Others* reported in *AIR 2015 SC 2951*, has settled the legal position that a person who is added as an accused under Section 319 Cr.P.C., is necessarily heard before being so added and the relevant passage is extracted hereunder:

“It was, however, urged by learned counsel for the appellants that in order to avail of the remedies of discharge under [Section 227](#) of the Cr.P.C., the only qualification necessary is that the person should be accused. Learned counsel submitted that there is no difference between an accused since inception and accused who has been added as such under [Section 319](#) of the Cr.P.C. It is, however, not possible to accept this submission since there is a material difference between the two. An accused since inception is not necessarily heard before he is added as an accused. However, a person who is added as an accused under [Section 319](#) of the Cr.P.C., is necessarily heard before being so added. Often he gets a further hearing if he challenges the summoning order before the High Court and further. It seems incongruous and indeed anomalous if the two sections are construed to mean that a person who is added as an accused by the court after considering the evidence against him can avail remedy of discharge on the ground that there is no sufficient material against him. Moreover, it is settled that the extraordinary power under [Section 319](#) of the Cr.P.C., can be exercised only if very strong and cogent evidence occurs against a



WEB COPY



person from the evidence led before the Court. It is now settled vide the Constitution Bench decision in *Hardeep Singh v. State of Punjab and Others* [(2014) 3 SCC 92] that the standard of proof employed for summoning a person as an accused under *Section 319* of the Cr.P.C., is higher than the standard of proof employed for framing a charge against an accused. The Court observed for the purpose of *Section 319* of the Cr.P.C., that “what is, therefore, necessary for the Court is to arrive at a satisfaction that the evidence adduced on behalf of the prosecution, if unrebutted, may lead to the conviction of a person sought to be added as the accused in the case.”

9. In the said decision case, during the course of trial, the evidence of the widow and two sons of the deceased was recorded, on the basis of which, the Sessions Judge issued notices to the appellants in terms of Section 319 Cr.P.C., asking the said four persons to show cause as to why they should not be added as additional accused and after giving them opportunity, the learned Judge summoned them and added them to the proceedings. In the case on hand, admittedly, as already pointed out, the learned Sessions Judge has not issued any notice to the proposed accused before deciding the application filed under Section 319 Cr.P.C.

10. At this juncture, it is necessary to refer Section 319 Cr.P.C., herein for better appreciation:



“319. Power to proceed against other persons appearing to be guilty of offence.

WEB COPY

(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub- section (1), then-

(a) the proceedings in respect of such person shall be commenced a fresh, and the witnesses re- heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

11. Sub-section 2 refers to a situation when the proposed accused is not attending the Court and sub-section 3 refers to a person attending the Court. Considering the language used in the above two sub-sections, it can easily be inferred that Section 319 Cr.P.C., itself mandates that a notice has to be issued to the proposed accused before ever passing any order under Section 319 Cr.P.C.,



for addition of the accused. In the absence of any such notice, there is no chance or occasion for that person to attend the Court, when he was not made as an accused earlier.

12. Considering the above and on applying the dictum of the Hon'ble Supreme Court in **Jogendra Yadav's case**, in the case on hand, since the impugned order was passed without giving any notice and without hearing the proposed accused, this Court has no hesitation to hold that the impugned order for addition of 15 proposed accused is legally unsustainable. Moreover, it is settled law that power under Section 319 Cr.P.C., is discretionary and extraordinary power and the same is to be exercised sparingly and only in those cases where the circumstances of the case so warrant.

13. A Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh Vs. State of Punjab and Others** reported in (2014)3 SCC 92, has settled the legal position that standard of proof employed for summoning a person as a accused under Section 319 Cr.P.C., is higher than the standard of proof employed for framing a charge against an accused and it is necessary to refer the relevant passages hereunder:

“98. Power under [Section 319](#) Cr.P.C. is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not



WEB COPY



to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes un rebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under [Section 319 Cr.P.C.](#) In [Section 319 Cr.P.C.](#) the purpose of providing if 'it appears from the evidence that any person not being the accused has committed any offence' is clear from the words "for which such person could be tried together with the accused." The words used are not 'for which such person could be convicted'. There is, therefore, no scope for the Court acting under [Section 319 Cr.P.C.](#) to form any opinion as to the guilt of the accused."

14. Whenever an application is filed under Section 319 Cr.P.C., the Courts are duty bound to follow the judgment of the Hon'ble Supreme Court in **Jogendra Yadav's case**, with regard to the hearing of the proposed accused and the dictum of the Constitution Bench of the Hon'ble Supreme Court in **Hardeep Singh's case**, in deciding the standard of proof employed for summoning a



person as a accused. Since this Court has decided the above Criminal Revisions on the preliminary and technical objection that no notice was issued to the proposed parties, this Court is not inclined to go into the merits of the case and the findings recorded by the trial Court. Hence, this Court concludes that both the Criminal Revision Cases are liable to be allowed and the matter is to be remitted back to the trial Court for deciding the application afresh.

15. In the result, the impugned order dated 06.12.2022 in Crl.M.P.No.42 of 2020 in Spl.S.C.No.9 of 2020, on the file of the Special Court for trial cases under SC/ST (POA) Act, Theni, is set aside. The learned trial Judge is directed to restore the petition in Crl.M.P.No.42 of 2020 to file and to issue notice to the proposed accused calling upon them to show cause as to why they should not be made as accused. The learned trial Judge is further directed to hear all the parties including the proposed accused and pass orders, taking note of the dictum laid down in *Jogendra Yadav's case* and *Hardeep Singh's case*, within a period of one month from the date of receipt of a copy of this order. Consequently the connected Miscellaneous Petitions are closed. Accordingly, both the Criminal Revision Cases are disposed of.

16. I have come across some similar orders and it is also brought to my notice that most of the trial courts are conducting enquiry and passing orders in



the petitions filed under Section 319 Cr.P.C., without hearing the proposed accused. Generally the petitions u/s 319 Cr.P.C., are being filed after examination of some witnesses and after addition of accused, the courts are proceeding with the trial. Invariably all such orders are liable to be set aside for want of notice to the proposed accused. In order to clarify the legal position and save the time of the trial courts as well as of this court, this order may be circulated. Hence Registry is directed to place the same before the Hon'ble Chief Justice for appropriate orders, for circulation to all the courts in the State of Tamil Nadu and Puducherry.

26.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

SSL

To

1. The Special Court for trial of cases under SC/ST(POA) Act,
Theni.
2. The Deputy Superintendent of Police,
Periyakulam Sub Division,
Devadanapatti Police Station,
Theni District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CrI.R.C.(MD)Nos.24 and 26 of

K.MURALI SHANKAR, J.

SSL

PRE-DELIVERY ORDER MADE IN

CrI.R.C.(MD)Nos.24 and 26 of 2023

26.06.2023