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Crl.R.C.(MD)No.733 of



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON :20.06.2023

PRONOUNCED ON: 27.06.2023

CORAM

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

Crl.R.C.(MD)No.733 of 2022
and
Crl.M.P.(MD)No.9008 of 2022

1.M.Kaliyammal

2.Valangathai

: Petitioners/Additional Accused

Vs.

1.The Inspector of Police,
Cheranmahadevi Police Station,
Tirunelveli District.

: 1stRespondent No.1/Respondent/
Complainant

2.Chellammal

: Respondent/Respondent/
Defacto complainant

PRAYER : Criminal Revision Case has been filed under Section 397(1) r/w 401 Cr.P.C., to call for the records in Cr.M.P.No.1894 of 2021 in C.C.No.182 of 2016, on the file of the District Munsif cum Judicial Magistrate, Cheranmahadevi, dated 12.07.2022 and set aside the same.



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For Petitioners : Mr.G.Karuppasamy Pandian

For Respondents : Mr.S.S.Madhavan
Government Advocate (Crl.Side)
for R.1

: No Appearance for R.2

ORDER

This Criminal Revision Case is directed against the order passed in Crl.M.P.No.1894 of 2021 in C.C.No.182 of 2016, dated 12.07.2022, on the file of the Court of District Munsif cum Judicial Magistrate, Cheranmahadevi.

2. On the basis of the complaint given by the second respondent/defacto complainant, F.I.R., came to be registered in Cr.No.163 of 2015, against three persons for the alleged offences under Sections 294(b), 406, 417 and 506(i) I.P.C., and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act. The first respondent, after completing the investigation, has filed a final report against one person for the alleged offences under Sections 294(b) and 506(i) I.P.C., and thereby deleting the two persons and the offences under Sections 406 and 417 I.P.C., and Section 4 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act and that the charge sheet was taken on file in C.C.No.182 of 2016 and the same is pending on the file of the Court of District Munsif cum Judicial Magistrate, Cheranmahadevi. After commencement of the



trial and the examination of the defacto complainant as P.W.1, the defacto complainant filed a petition under Section 319 Cr.P.C., for addition of the revision petitioners as additional accused in the above case and the same was taken on file in Crl.M.P.No.1894 of 2021. The learned Judicial Magistrate, after hearing the defacto complainant's side and the existing accused / sole accused in C.C.No.182 of 2016 and upon considering the materials available on record, has passed the impugned order dated 12.07.2022, allowing the petition and ordered to add the revision petitioners as additional accused and further ordered for the issuance of the summons to them. Aggrieved by their addition as accused, they have preferred the present revision.

3. The learned Counsel for the petitioner would submit that as per the Constitution Bench judgment of the Hon'ble Supreme Court in ***Hardeep Singh Vs State of Punjab and others*** reported in ***2014(3) SCC 92***, for invoking Section 319 Cr.P.C., there must be a strong and cogent evidence against the persons available from the evidence and there must be more than prima facie case is required and that the power under Section 319 Cr.P.C., should be exercised sparingly and circumspectly, but the learned Judicial Magistrate, in the case on hand, exercised the power under Section 319 Cr.P.C., in a very casual and mechanical manner by placing reliance upon the solitary chief examination of P.W.1 alone, that a careful perusal of the evidence of P.W.1 does not make out a



minimum level of prima facie case against the accused and that therefore, the impugned order is liable to be set aside on the ground that there is no strong and cogent evidence to add the petitioners to face the trial.

4. When the matter was taken up for hearing, the learned Counsel for the petitioner has taken another stand that the learned Magistrate ought to have issued notice to the petitioners and given an opportunity of hearing before ever passing the impugned order under Section 319 Cr.P.C., that the learned Magistrate, after hearing the defacto complainant and the existing accused and without hearing the petitioners, has passed the impugned order which is in total violation of the principles of natural justice and that the impugned order is also liable to be set aside on the ground of want of notice to the revision petitioners. Admittedly, in the case on hand, the learned Judicial Magistrate has not issued any prior notice to the revision petitioners with regard to the application filed under Section 319 Cr.P.C., for adding them as additional accused.

5. The learned Judicial Magistrate has given much importance for not issuing any notice to the defacto complainant with regard to the deletion of some of the accused and the deletion of some of the offences, on the part of the first respondent police and subsequently on the part of the Court. No doubt, it is settled law that when a negative report is filed or a final report deleting some of



the accused shown in the F.I.R., or by deleting some of the of the offences shown in the F.I.R., the concerned police is duty bound to issue a notice to the defacto complainant and that after filing of the report, the jurisdictional Magistrate is also duty bound to issue a notice to the defacto complainant so as to enable him to raise objections or to file a protest petition. In the present case, the learned Magistrate has specifically observed that the said mandatory notice was not sent to the defacto complainant by the police as well as by the Court. No doubt, the procedure adopted is not proper, but that by itself is not a ground sufficient enough to add those persons who were deleted in the charge sheet.

6. In a similar case, this Court, in ***Santha Soruban and another Vs. State through the Deputy Superintendent of Police, Periyakulam Sub Division, Devadanapatti Police Station, Theni District***, in CrI.R.C.(MD)Nos.24 and 26 of 2023, dated 26.06.2023, has held that the order passed under Section 319 Cr.P.C., for addition of accused, without hearing the proposed accused, is legally unsustainable and the relevant passages are extracted hereunder:

*“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 (Crl) 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 in person 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 2000 **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.

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



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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 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.



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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.

(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 afresh, 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.”*

7. Applying the above legal position, in the case on hand, this Court has to necessarily conclude that the impugned order adding the revision petitioner as accused, is legally invalid.

8. 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:



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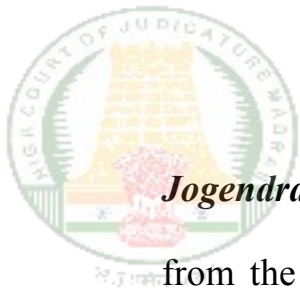
“98. Power under [Section 319](#) Cr.P.C. is a discretionary and an extra- ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person 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 unrebutted, 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.”



9. 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 Revision 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 the Criminal Revision Case is liable to be allowed and the matter is to be remitted back to the trial Court for deciding the application afresh.

10. In the result, the Criminal Revision Case is allowed and the impugned order dated 12.07.2022 in Crl.M.P.No.1894 of 2021 in C.C.No.182 of 2016, on the file of the Court of District Munsif cum Judicial Magistrate, Cheranmahadevi is set aside. The learned trial Judge is directed to restore the petition in Crl.M.P.No.1894 of 2021 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 Petition is closed.

27.06.2023

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

- 1.The Court of District Munsif cum Judicial Magistrate,
Cheranmahadevi.
- 2.The Inspector of Police,
Cheranmahadevi Police Station,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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PRE-DELIVERY ORDER MADE IN

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