



CrI.R.C.No.939 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.03.2024
PRONOUNCED ON : .04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.939 of 2023 and
CrI.M.P.Nos.7616 & 7617 of 2023

M.K.Manivannan

... Petitioner

Vs.

1.The State, represented by
Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District.
(Crime No.355 of 2012).

2.Sivasakthivel

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the summons issued on 23.2.2023 in C.C.No.15 of 2015 pending on the file of Judicial Magistrate, Vaniyambadi, Vellore District, pending trial to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For R1 : Mr.S.Raja Kumar,
Additional Public Prosecutor

For R2 : Mr.N.Baskaran



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ORDER

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Challenging the summon, dated 23.02.2023 issued by the learned Judicial Magistrate, Vaniyambadi/Trial Court in C.C.No.15 of 2015, this criminal revision case filed.

2.The learned counsel for the petitioner submitted that a case in Crime No.355 of 2012, dated 30.03.2012 registered against Sivakumar as A1 and Vijay as A2 for offence under Sections 409, 419, 420 & 506(ii) r/w 34 IPC. On conclusion of investigation, the 1st respondent Police filed charge sheet against eight persons listing nineteen witnesses and documents which was taken on file as C.C.No.15 of 2015. The case against A2 was quashed on a strange procedure of conclusiveness between the 2nd respondent and A2. The trial Court not followed any procedure under Section 319 Cr.P.C. He further submitted that A2 examined as witness and based on his previous statement under Section 164 Cr.P.C., the trial Court invoked Section 319 Cr.P.C., arrayed petitioner as accused and issued summons which is against the Rule laid down by the Hon'ble Apex Court in ***Naveen v. State of Haryana and Others*** reported in ***(2023) 1 SCC (Cri)***



393. He further placed reliance on the judgment of the Hon'ble Apex Court in the case of ***Ramesh Chandra Srivastava v. State of Uttar Pradesh and another*** reported in (2021) 12 SCC 608 and ***Deepak Gaba and others v. State of Uttar Pradesh and another*** reported in (2023) 3 SCC 423 for the point that the test laid down by the Constitution Bench of Apex Court in ***Hardeep Singh v. State of Punjab and others*** reported in (2014) 3 SCC 92 while invoking power under Section 319 Cr.P.C., *inter alia* includes the principle that only when strong and cogent evidence occurs against the person from the evidence the power under Section 319 Cr.P.C should be invoked. Further for the point there should be adequate evidence on records to set the criminal proceedings into motion and it is to be seen from the evidence recorded during the course of prosecution, if remains unrebutted it will not be sufficient to lead conviction so far the petitioner is concerned, hence, the trial Court ought not to have invoked Section 319 Cr.P.C and issued summons to the petitioner. Hence, he prays for setting aside the summon issued on 23.02.2023.



3.The learned counsel for the 2nd respondent submitted that earlier three persons viz., Ganesan, Selvaraj and M.K.Manivannan/petitioner arrayed as accused invoking Section 319 Cr.P.C., by order, dated 22.12.2016. Against which, revision petition filed before this Court and this Court by order, dated 30.01.2017 following the decision of this Court (*P.Raju and another v. State* reported in (2014) 2 Law Weekly (CrI) 473) held that Section 319 Cr.P.C., can be invoked by the trial Court only during course of trial on the basis of evidence let-in by the prosecution not on the basis of the materials placed along with the final report. Further it observed that it will be open to the Court below to exercise the power under Section 319 Cr.P.C at an appropriate stage if considered appropriate in arraying the petitioners therein as accused. In this case, A2 filed quash application and this Court by order, dated 30.03.2021 recorded the sequence of events and role played by each of the accused including the bank manager and how in a deceitful manner A2's signature obtained in documents to project as though he is a Proprietor of the Company and use this company name and account siphoned out amounts by A1, his associates in connivance with the bank officials. Right from the inception fraud played by the accused. The



accused had no intention to supply the machineries as projected on the other hand on deception received huge sums of money and misappropriate the same, not only from the defacto complainant even from others on the false promise to supply materials. A2 a Driver in M/s.Sree Sakthi Packaging Industries, Vaniyambadi. One Murugesan, Saravanan and Manivannan used A2's name to siphon out the amount. He further submitted that during investigation, 164 Cr.P.C., statement of A2 recorded, in which, details of how the offence committed by the accused clearly stated. This Court on considering all these aspects quashed the proceedings against A2 giving liberty to the 1st respondent Police to examine Vijay as additional witness. During trial, quashed accused A2 Vijay examined as witness PW10 on 09.12.2022 through him documents marked. The evidence of PW10 is a detailed one, in conformity with his earlier statement. Thus, the trial Court following **Hardeep Singh** case, issued summons to the petitioner herein. He further submitted that recently the Hon'ble Apex Court in the case of **Yoshodhan Singh & Ors., Versus The State of Uttar Pradesh & Anr.**, reported in **2023 LiveLaw (SC) 576** in para 32 & 33 held as follows:



“32. Merely because in certain proceedings the persons summoned had been provided an opportunity of being heard cannot be the same thing as stating that it is a mandatory requirement or a precondition that at the time of summoning a person under Section 319 of the Cr.P.C., he should be given an opportunity of being heard. That is not the mandate of law inasmuch as Section 319 clearly uses the expression “to proceed” which means to proceed with the trial and not to jeopardise the trial at the instance of the person(s) summoned by conducting a mini trial or a trial within a trial thereby derailing the main trial of the case and particularly against the accused who are already facing trial and who may be in custody. A person who is summoned in exercise of the power under Section 319 Cr.P.C. cannot hijack the trial so to say and deviate from its focus and take it to a tangent in order to bolster his own case in a bid to escape trial. All that is contemplated when a person is summoned to appear is to ascertain that he is the very person who was summoned and if any summoned person fails to appear on the given date. On the appearance of the summoned person, no procedure of an inquiry or opportunity of being heard is envisaged before being added as an accused to the list of accused already facing trial unless such a summoned person had already been discharged, in which event, an inquiry is contemplated as discussed above.



Thus, the contention that a summoned person must be given an opportunity of being heard before being added as an accused to face the trial is clearly not contemplated under Section 319 Cr.P.C. It is also observed by this Court in Hardeep Singh that such a summoned person can assail a summoning order before a superior Court and will also have the right of cross examining the witnesses as well as can let in his defence evidence, if any.

33. Thus, the lateral entry of a person summoned in exercise of power under Section 319 Cr.P.C. is only to face the trial along with other accused. This, being a salutary provision in order to meet the ends of justice, the same cannot be diluted by importing within the scope of Section 319 Cr.P.C. principles of natural justice which in any case would be followed during the trial. It is well settled that principles of natural justice cannot be applied in strait-jacket formula and they would depend upon the facts of each case and the object and purpose to be achieved under a provision of law.”

4. Thus, the petitioner's contention that his name does not find place in FIR, no evidence let-in by the prosecution, without evidence, the petitioner arrayed as accused, summons issued without any supporting materials, no tender pardon under Section 306 Cr.P.C., followed will not arise on the



facts and circumstances of the case. In view of the above, the revision filed by the petitioner is liable to be dismissed to complete the trial within a stipulated period since the trial is pending from the year 2015.

5.The learned Additional Public Prosecutor appearing for the 1st respondent Police filed counter submitting that in this case, on the complaint of the 2nd respondent, an FIR in Crime No.355 of 2012, dated 30.03.2012 registered against Sivakumar as A1 and Vijay as A2 for offence under Sections 409, 419, 420 & 506(ii) r/w 34 IPC. A1 on the false promise of supplying machineries with financial support and loan from banks, executed agreement and using 2nd respondent's name and bank account received cash. In collusion with the bank officials, a loan was arranged for the machineries and loan amount transferred to the accused. The bank officials took signature of A2 in the account opening form and all bank documents. They also handed over the cheque book and some blank cheques signed by A2 since he was employed as Driver to the accused. The bank officials knowing the same allowed the namesake accounts to be operated and thereby misappropriation and cheating committed by the



accused. During investigation, A2 gave statement under Section 164 Cr.P.C and on completion of investigation charge sheet filed. Earlier even before commencement of trial, Section 319 Cr.P.C invoked, summons issued to D.Ganesan, B.Selvaraj and M.K.Manivannan. Challenging the same, CrI.R.C.No.1700 of 2016 filed before this Court. At that time, **Hardeep Singh** case not brought to the notice of this Court and this Court set aside summoning order with liberty given to the trial Court to exercise 319 Cr.P.C., at appropriate stage i.e., after recording evidence. Added to it, this Court in CrI.O.P.No.28222 of 2017 by order, dated 30.03.2021 quashed the proceedings against A2 and granted liberty to the respondent Police to examine A2 as additional evidence. Thereafter, A2 examined as PW10 in this case. Thus, the trial Court finding complicity of the petitioner and materials against him, issued summons. The petitioner can raise his defence evidence during trial. It is not mandatory that summoned person must be given opportunity of being heard before added as accused to face trial under Section 319 Cr.P.C. Hence, he prays for dismissal.

6.This Court considered the rival submissions and perused the



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materials available on record.

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7.In this case, after the evidence of PW10/Vijay invoking Section 319 Cr.P.C., summon issued to the petitioner on 23.02.2023. The petitioner's involvement in the case well founded by the trial Court from the evidence and materials. It is not mandate as per Section 319 Cr.P.C summoned person to be provided with opportunity of being heard. Neither it is required nor a pre-condition at the time of summoning a person under Section 319 Cr.P.C. A person who is summoned in exercise of power under Section 319 Cr.P.C cannot hijack the trial so to say and deviate from its focus and take it to a tangent in order to bolster his own case in a bid to escape trial. Thus, the contention of the petitioner that summoned person must be given opportunity of being heard without being added as accused is not clearly contemplated under Section 319 Cr.P.C. The summoned person have right of cross examination of witness as well as can let-in his defence evidence if any.

8.The citation referred by the learned counsel for the petitioner are



not applicable to the facts and circumstances of the case. In this case, the principles of **Hardeep Singh** case followed. The purpose of Section 319 Cr.P.C is that *'it appears from the evidence that any person not being the accused has committed any offence such person could be tried together with the other accused'*. In this case, the active role played by the petitioner had come in both oral and documentary evidence. On perusal of the same, the trial Court invoked Section 319 Cr.P.C and issued summons. This Court in Crl.O.P.No.28222 of 2017 by order, dated 30.03.2021 quashed the case against Vijay originally A2 now PW10. This order cannot be termed as collusive order. After the case against Vijay quashed, the question of tender of pardon does not arise. It is to be seen that during investigation, 164 Cr.P.C statement recorded. The statement of Vijay is consistent and the veracity of the same to be tested during cross examination.

9.In view of the above, this Court finds no merits in the petitioner's contention and no reason to interfere with the summons issued by the learned Judicial Magistrate, Vaniyambadi on 23.02.2023 in C.C.No.15 of 2015. The summoning order and summon issued to the petitioner is in order



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which needs no interference. Accordingly, this Criminal Revision Case stands dismissed.

10.It is seen that the case is pending from the year 2015 for one reason or other. Already ten witnesses examined and only few more witnesses to be examined. Hence, the trial Court to proceed with the trial without giving long adjournments and to conclude the trial at the earliest. If the accused adopt any dilatory tactics in protracting the trial, the trial Court to take coercive action to ensure the completion of trial within a time stipulated. The connected Miscellaneous Petition is closed.

.04.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

1.The Judicial Magistrate,
Vaniyambadi.

2.The Inspector of Police,



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Vaniyambadi Town Police Station,
Vellore District.

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3.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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PRE-DELIVERY ORDER IN
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