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Crl.R.C.(MD)1043 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	08 / 01 / 2025
Delivered on	25 / 04 / 2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.(MD)No.1043 of 2023 &
Crl.M.P.(MD)No.13451 of 2023

Y.Ramar

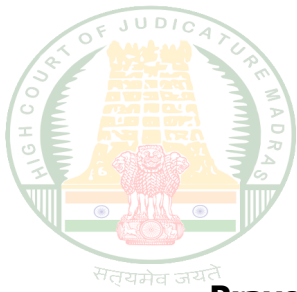
... Petitioner

Vs.

1.State through
The Inspector of Police,
Usilampatty Town Police Station,
Madurai District.

2.O.Durairaj
3.O.Ramachandran
4.K.Thavasi
5.V.Amsukodi
6.M.Irulandi
7.V.P.Ramasamy
8.AMN Rajaram
9.V.K.C.N.Ganesh
10.Dr.O.Chandran
11.D.Pandi
12.V.Pandi
13.U.Pandi Thevar
14.T.Ponraj
15.C.Masanam
16.S.P.Nedunjezhian
17.M.Jeyaprakash
18.Chinnan
19.Poongudi
20.D.S.Velmurugan
21.D.S.Senthilvel

... Respondents



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Prayer: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C. to call for the records on the file of the learned District Munsif cum Judicial Magistrate-I, Usilmpatty, Madurai District against in Crl.M.P.(MD)No.1910 of 2013 in C.C.No.209 of 2011, dated 03.07.2023 and set aside the same.

For Petitioner : Mr.K.Surendran

For Respondents : Mr.S.Vinoth Kumar
Government Advocate (Criminal Side)
for R1

Mr.J.Karthikeyan for R10
Mr.T.Padmanabhan for R20
Mr.M.Venkadeshnan for R21
R-2 (Unserved) (Insufficient Address)
R-3 (Unserved) (Deceased)
R-5 (Unserved) (Deceased)
R-7 (Unserved) (Deceased)
R-11 (Unserved) (Deceased)
R-12 (Unserved) (Insufficient Address)
R-14 (Unserved) (Insufficient Address)
R-13 (Unserved) (Deceased)
R-16 (Unserved) (Deceased)
No appearance for R4, R8, R9 R15, R17,
R18 and R19

ORDER

This Criminal Revision Case is filed to set aside the order dated 03.07.2023 passed in Crl.M.P.(MD) No.1910 of 2023 in C.C.No.209 of 2011 on the file of the learned District Munsif cum Judicial Magistrate-I, Usilampatti, Madurai District, in and by which the application filed under Section 319 Cr.P.C. by the defacto complainant/petitioner herein to array the proposed respondents / respondents 20 and 21 as additional accused was dismissed.



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2. The brief facts of the case are as follows:

The petitioner is a member of Kallar Kalvi Kazhagam, a society registered under the Tamil Nadu Societies Registration Act, 1975, with its origin from the Kallar Common Fund, established in 1924. The society has been instrumental in educational upliftment and is credited with establishing Pasumpon Muthuramalingam Thevar College at Usilampatti in 1968. Over time, and especially after the demise of the early custodians of the society and the implementation of the Tamil Nadu Societies Registration Act, 1975, the management of the society fell into the hands of certain individuals who are alleged to have misused the funds and properties of the society.

3. In the year 2002, owing to complaints, the Government intervened and appointed a Special Officer. However, the same group soon regained control and illegally alienated a property of the society in violation of an existing injunction from this Court. It is alleged that the alienation was effected by forging signatures of absentee and even deceased members, thereby causing wrongful loss to the society.

4. Following the exposure of this fraudulent transaction, an FIR came to be registered in Crime No.381 of 2007, pursuant to the directions of this Court. A final report was filed in the year 2011. During investigation, the



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proposed respondents were included as accused Nos.19 and 20. They subsequently filed a petition to quash the charges before this Court on 13.07.2016. Although the petitioner was cited as a party in the said quash petition, no notice was served upon him until 05.10.2020. It later came to light that the notice issued by this Court in 2016 had been lying unserved in the file of the learned Judicial Magistrate cum District Munsif, Usilampatti, for reasons unknown.

5. The quash petition was ultimately allowed on 14.12.2020 without hearing the petitioner. A Review Application filed thereafter could not be effectively prosecuted due to the COVID-19 restrictions. The petitioner awaited completion of witness depositions in the trial and thereafter filed an application in Crl.M.P.No.1910 of 2023 in C.C. No.209 of 2011 under Section 319 Cr.P.C. seeking to summon the proposed respondents / respondents 20 and 21. The learned District Munsif cum Judicial Magistrate-I, Usilampatti, by order dated 03.07.2023, dismissed the petitioner's application under Section 319 Cr.P.C., holding that no sufficient ground was made out to summon the respondents as additional accused.

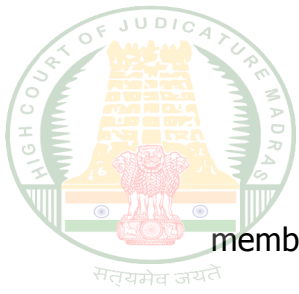
6 Aggrieved by the said order, the petitioner has filed the present Criminal Revision Petition.



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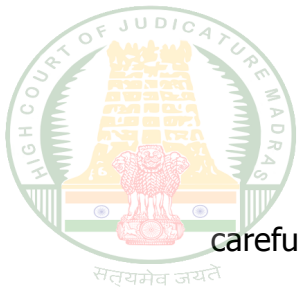
7. The learned counsel for the petitioner would submit that the trial court failed to appreciate that P.Ws.1 to 4 have clearly deposed that the property belonging to the society was sold for a grossly undervalued consideration, far below the guideline value and market rate, resulting in clear loss to the society and corresponding unlawful gain to the accused including the proposed respondents. He would further submit that P.W.1, the petitioner, had not even attended the meeting in question, and has deposed that his signature was forged. This version is supported by P.Ws.2 to 4. P.W.5, a practicing advocate, has deposed that the notice convening the meeting on 22.12.2002 did not contain any agenda regarding alienation of property and that the General Body never resolved to sell the property. He also testified that the signatures of even deceased members were fabricated, and this is supported by production of death certificates. It is his submission that the deed of conveyance contains false recitals. The document refers to an alleged lease with D.Mayandi Thevar, elder brother of Santhana Thevar (father of the proposed respondents), and that the proposed respondents are now in possession under a pre-planned design. The certified copy of the lease document has been marked. The very fact that the proposed respondents are the sons of the person with whom the purported lease was entered strengthens the petitioner's case of collusion. He would submit that even the defence, in cross-examination, suggested that a quarter of the



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members opposed the resolution. However, no such resolution is on record, nor is there any document with the District Registrar reflecting the same. This omission is material. It is also submitted that the defence admitted during trial that properties were divided between D.Mayandi and D.Santhana Thevar and their respective sons now hold possession, thereby disclosing the intention to swallow society property under fabricated authority. There is no provision under the bye-laws of the society empowering the Executive Committee or Secretary to alienate immovable property of the society. The mandatory approval of the General Body has not been obtained, which makes the entire transaction void and indicative of dishonest intention. The learned counsel would further submit that at the stage of Section 319 Cr.P.C., the Court is not required to reach a conclusion of guilt, but only to assess whether there is more than prima facie evidence against the proposed accused. In the present case, the testimonies of the witnesses, taken together, disclose clear and substantial evidence implicating the proposed respondents. Hence, he would pray that the impugned order of the learned Judicial Magistrate be set aside and the application under Section 319 Cr.P.C. be allowed, and that the proposed respondents be summoned to face trial in C.C. No.209 of 2011.

8. The learned Government Advocate (Criminal side) would submit that the trial court had exercised its discretion under Section 319 Cr.P.C. upon a



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careful consideration of the available materials, and found that no sufficient ground existed to summon the proposed respondents as additional accused.

He would further submit that the FIR did not name the proposed respondents originally and that their names were only included during investigation. He would contend that this Court had already quashed the proceedings against them in Crl.O.P., and any attempt to now reintroduce them as accused would run contrary to the finality of those proceedings. Therefore, he would submit that the trial court's order does not call for interference.

9. The learned counsel appearing for respondents 10, 20, and 21 would adopt the submissions advanced by the learned Government Advocate (Criminal Side) and submit that the impugned order has been passed by the trial court after a proper appreciation of the available evidence. He would contend that there is no legal infirmity in the order and that the materials relied upon by the petitioner do not disclose any direct or compelling evidence against the proposed respondents so as to warrant their summoning under Section 319 Cr.P.C. He would further submit that the petitioner is attempting to re-agitate matters which have already attained finality by way of the order passed in the earlier quash proceedings. Therefore, he prays that the Criminal Revision Petition be dismissed.



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10. A perusal of the Affidavit of Service reveals that respondents 2, 12, and 14 were not served due to insufficient addresses, and in the case of respondents 3, 5, 7, 11, 13, and 16, the postal endorsements clearly record that the addressees are deceased.

11. Heard the learned counsel on either side and perused the materials available on record.

12. The facts giving rise to the present revision reveal that the petitioner, a member of the Kallar Kalvi Kazhagam, has alleged large-scale fraud in the alienation of Trust property situated at Arapalayam. It is his specific case that the said property, having a guideline value of Rs.66 lakhs, was sold for a meagre consideration of Rs.26 lakhs to the owner of Velmurugan Bus Company. The sale is stated to have been authorised by a resolution of the General Body, which the petitioner contends was never passed. In his chief examination, the petitioner (P.W.1) has categorically deposed that he did not attend any such meeting and that his signature, as well as that of another member, one Mr.Pandi, had been forged and used without authority. He also claimed that some of the members shown as present in the meeting were, in fact, deceased at the relevant time. A complaint was initially lodged with the police but was not acted upon,



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compelling the petitioner to approach the Court with a private complaint, which was taken on file and marked as Ex.P1. During the course of trial, P.Ws.2 to 5 have also deposed in support of the petitioner's version and alleged that the sale had been effected without lawful authority and in violation of the bye-laws of the Trust. These testimonies, along with the documents placed on record, form the basis of the petitioner's grievance and merit serious judicial consideration, especially in light of the application under Section 319 Cr.P.C.

13. The consistent testimony of P.Ws.1 to 4 supports the assertion that no resolution was passed by the General Body authorising the sale. P.W.5, an advocate and a member of the society, has further added that the agenda of the alleged meeting dated 22.12.2002 did not include any item regarding alienation of property. He stated that no such decision was ever taken, and even more significantly, that the signatures of some deceased members were forged in the records to lend a false appearance of quorum and consensus.

14. It has also come to light that the sale transaction is linked to an earlier lease arrangement involving one D.Mayandi Thevar, the elder brother of Santhana Thevar, who is the father of the proposed respondents. The proposed respondents are now in possession of the property and claim rights under the very transaction impugned in these proceedings. The overlap of

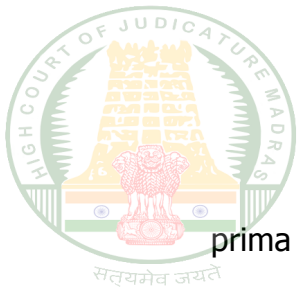


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interests, familial nexus, and direct benefit accruing to the proposed respondents strongly support the petitioner's allegation that they were not innocent purchasers or remote beneficiaries, but active participants in the fraudulent alienation of Trust property.

15. It is also pointed out by the petitioner that the Trust's bye-laws do not contain any provision authorising the Secretary or the Executive Committee to alienate immovable property independently. The power to do so vests solely with the General Body through a valid resolution. Any sale carried out without such authority is not only void in law but also indicative of mala fides. The further evidence that the property was sold at a price far below the market value confirms that the transaction was not conducted in the interest of the society but to confer unlawful gain on private individuals, to the detriment of public trust.

16. It is pertinent to mention that Section 319 Cr.P.C. empowers the trial court to summon additional accused if, during the trial, evidence emerges indicating their involvement in the crime. This provision is invoked when, during the course of the trial or inquiry, it becomes apparent that someone, not previously named as an accused, has committed an offence related to the case at hand. It is not necessary at this point to establish the guilt of the individual, but only to satisfy the judicial conscience that there is sufficient



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prima facie evidence to warrant their prosecution. Section 319 Cr.P.C. reads as follows:

"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. "

This provision empowers the trial court to summon additional accused if, during the trial, evidence emerges indicating their involvement in the crime. Such power must be exercised with caution, but not with reluctance, especially when cogent evidence is placed before the Court, as in the present case. In the present case, the evidence, particularly the testimonies of P.Ws.1 to 5, clearly implicates the proposed respondents/respondents 20 and 21 , who were not initially charged as accused. These testimonies, combined



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with documentary evidence, demonstrate that these respondents played a significant role in the fraudulent alienation of the Trust's property. The trial court, however, failed to properly exercise its discretion under Section 319 Cr.P.C., declining to summon these individuals as accused despite the emergence of such compelling evidence.

17. It is crucial to note that the power under Section 319 Cr.P.C. must be exercised with caution, but it should not be withheld when there is credible and cogent material implicating individuals in the commission of a crime. In ***Omi alias Omkar Kathore v. State of Madhya Pradesh*** [(2025) 2 SCC 621], the Hon'ble Supreme Court held that the stage of Section 319 arises not at the threshold but upon the emergence of incriminating material during trial. The relevant portion of the said judgment is extracted hereunder:-

"19. The principles of law as regards Section 319CrPC may be summarised as under:

19.1. On a careful reading of Section 319CrPC as well as the aforesaid two decisions, it becomes clear that the trial court has undoubted jurisdiction to add any person not being the accused before it to face the trial along with other accused persons, if the Court is satisfied at any stage of the proceedings on the evidence adduced that the persons who have not been arrayed as accused should face the trial. It is further evident that such person even though had initially been named in the FIR as an accused, but not charge-sheeted, can also be added to face the trial.

19.2. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced before it and not on the basis of materials available in the charge-sheet or the case diary, because such



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materials contained in the charge-sheet or the case diary do not constitute evidence.

19.3. The power of the court under Section 319CrPC is not controlled or governed by naming or not naming of the person concerned in the FIR. Nor the same is dependent upon submission of the charge-sheet by the police against the person concerned. As regards the contention that the phrase "any person not being the accused" occurred in Section 319 excludes from its operation an accused who has been released by the police under Section 169 of the Code and has been shown in Column 2 of the charge-sheet, the contention has merely to be stated to be rejected. The said expression clearly covers any person who is not being tried already by the Court and the very purpose of enacting such a provision like Section 319(1) clearly shows that even persons who have been dropped by the police during investigation but against whom evidence showing their involvement in the offence comes before the criminal court are included in the said expression.

19.4. It would not be proper for the trial court to reject the application for addition of new accused by considering records of the investigating officer. When the evidence of complainant is found to be worthy of acceptance then the satisfaction of the investigating officer hardly matters. If satisfaction of investigating officer is to be treated as determinative then the purpose of Section 319 would be frustrated."

In ***Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Ors.***, [AIR 1983 SC 67] the Hon'ble Supreme court held that if the prosecution can at any stage produce evidence which satisfies the court that those who have not been arraigned as accused or against whom proceedings have been quashed, have also committed the offence, the Court can take cognizance against them under Section 319 Cr.P.C. and try them along with the other accused. In the present case, the fresh material and testimonies presented during trial are



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strong enough to warrant the summoning of the proposed respondents as accused under Section 319 Cr.P.C., even though they were previously discharged or had obtained a quash order. The quashing order, passed without the complainant's presence, does not impede the Court's ability to exercise its discretion under Section 319 Cr.P.C. when substantial evidence implicates the individuals in the commission of the crime.

18. In view of the above discussion, this Court is of the considered opinion that the impugned order passed by the learned Judicial Magistrate cum District Munsif, Usilampatti, dismissing the application under Section 319 Cr.P.C., is legally unsustainable and suffers from non-application of mind and disregard of material evidence.

19. Accordingly, the Criminal Revision Case is allowed. The order dated 03.07.2023 passed in Crl.M.P.(MD) No.1910 of 2013 in C.C.No.209 of 2011 on the file of the learned Judicial Magistrate cum District Munsif-I, Usilampatti, is hereby set aside. The trial Court shall proceed against the proposed respondents / respondents 20 and 21, on merits and in accordance with law. Consequently, connected miscellaneous petition is closed.

25/04/2025

Index : Yes/No

Neutral Citation Case : Yes/No



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Speaking Order : Yes/No

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To

- 1.The Inspector of Police,
Usilampatty Town Police Station,
Madurai District.
- 2.The District Munsif cum Judicial Magistrate-I,
Usilmpatty, Madurai District.
- 3.The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J

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Pre Delivery Order in
Crl.R.C.(MD)No.1043 of 2023 &
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25/04/2025