



Crl.R.C.(MD) No.248 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2025

CORAM

**THE HON'BLE MR.JUSTICE N.ANAND VENKATESH**

**Crl.R.C.(MD) No.248 of 2021**

Vijitha

... Petitioner/Proposed  
Accused

Vs.

1.The State of Tamil Nadu  
rep. by Sub Inspector of Police,  
Bazzar Police Station,  
Ramanathapuram,  
Ramanathapuram District.

... 1<sup>st</sup> Respondent/  
Complainant

2.Ragupathi

... 2<sup>nd</sup> Respondent/Accused

Prayer: Criminal Revision Petition filed under Section 397 r/w. Section 401 of Cr.P.C. seeking to call for the records in Crl.M.P.No.305 of 2021 in C.C.No.54 of 2011, on the file of the Judicial Magistrate Court No.I, Ramanthapuram, dated 12.02.2021 and set aside the same.

For Petitioner

: Mr.Mahaboob Athiff  
for Mr.D.Balamurugapandi

For R1

: Mr.A.Albert James  
Government Advocate (Crl. Side)



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For R2

: No appearance

WEB COPY For Defacto complainant: Mr.R.Navaneetha Raja

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### **ORDER**

This Criminal Revision Petition has been filed challenging the order passed in Crl.M.P.No.305 of 2021 in C.C.No.54 of 2011 on the file of the Judicial Magistrate Court No.1. Ramanathapuram, dated 12.02.2021.

2. The de facto complainant is the brother-in-law of the petitioner. There was a property dispute between the second respondent, who is the husband of the petitioner, and his brother. It is alleged that A1, who is the husband of this petitioner, and this petitioner entered the property belonging to the de facto complainant on 08.08.2010 at about 07:45 p.m. and started attacking the de facto complainant with a spade. It is also alleged that each of the accused persons attacked the de facto complainant, as a result of which the de facto complainant sustained serious injuries in his forehead and nose and all over the body. That apart, the accused persons criminally intimidated the de facto complainant. Based on the complaint given by the de facto complainant, an FIR came



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to be registered in Crime No.318 of 2010. For the very same incident, another complaint was given by A1, and an FIR was registered in Crime No.319 of 2010, wherein the de facto complainant and another person were made as accused.

3. Both the FIRs. came to be investigated by the first respondent police, and police reports were filed in both the FIRs. While filing the police report in Crime No.318 of 2010, the Investigation Officer found that the de facto complainant had given an exaggerated version regarding the allegation that was made against the petitioner, and on the basis of materials collected, the Investigation Officer came to a conclusion that the petitioner has not committed any offence in this case. Accordingly, the name of the petitioner was deleted, and the police report was filed only against A1, the second respondent herein. The same was taken on file in C.C.No.54 of 2011.

4. Insofar as the FIR that was registered in Crime No.319 of 2010, the police report was taken on file in C.C.No.156 of 2011, in which the de facto complainant and another person were shown as accused.



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5. The police reports filed in both cases were taken on file, and charges were framed. The case was at the stage of examination of witnesses. The de facto complainant was examined as P.W.1. The de facto complainant, while being examined in chief, reiterated the same allegations that were made while the statement of the de facto complainant was recorded by the police under Section 161(3) of Cr.P.C. Even before P.W.1 was examined, the prosecution had chosen to file Crl.M.P.No.305 of 2021 in C.C.No.54 of 2011 under Section 319(1) of Cr.P.C. to add the petitioner as an accused. The court below passed an order dated 12.02.2021 by allowing the said Crl.M.P. and adding the petitioner as A2 in the pending case. Aggrieved by this order passed by the court below dated 12.02.2021, the present Criminal Revision Petition has been filed before this Court.

6. The learned counsel for the petitioner primarily raised two grounds: (a) no notice was served on the petitioner before the order was passed in the application filed by the prosecution under Section 319(1) of Cr.P.C. To substantiate this submission, the learned counsel relied upon the Judgment of the Hon'ble Apex Court in ***Jogendra Yadav and others Vs. State of Bihar and another***, reported in (2015) 9 SCC 244; and (b)

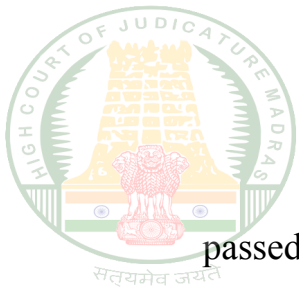


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the court below had mechanically added the petitioner as an accused merely based on the *ipsi dixit* of the de facto complainant, who had repeated the same statement that was given to the police while recording the statement under Section 161(3) of Cr.P.C. and the court below had not properly followed the guidelines given by the Hon'ble Apex Court, wherein it was held that power under Section 319(1) has to be sparingly used where the circumstance so warrants.

7. The learned Government Advocate (Criminal Side) appearing for the first respondent police submitted that the court below has properly applied its mind to all materials that were available and came to a *prima facie* conclusion that the de facto complainant had specifically made allegations against the petitioner, and therefore, there is no ground to interfere with the order passed by the court below in this case.

8. Mr.R.Navaneetha Raja, the learned counsel appearing for the de facto complainant, submitted that no notice is required before adding the petitioner as an accused. To substantiate this submission, the learned counsel relied upon the Judgment of the Hon'ble Apex Court in ***Omi @ Omkar Rathore and another Vs. State of Madhya Pradesh and another,***



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passed in ***S.L.P.(Criminal) No.17781 of 2024***, dated ***03.01.2025***. The

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learned counsel appearing for the de facto complainant specifically relied upon paragraph 21 of the said Judgment, which provided for principles of law regarding Section 319 of Cr.P.C.

9. This Court has carefully considered the submission made on either side and the materials available on record.

10. Insofar as the first ground that was raised by the learned counsel for the petitioner, stating that no notice was served on the petitioner before adding the petitioner as an accused, it will be beneficial to take note of the Judgment of the Hon'ble Apex Court in ***Yashodhan Singh and others Vs. State of Uttar Pradesh and another***, reported in ***2023 (4) MLJ (Criminal) 415 : (2023) 9 SCC 108***. The relevant portion in the judgment is extracted hereunder:

32. The sheet anchor of the arguments advanced on behalf of the appellants is what has been observed by this Court in the said judgment in para 9, which reads as under:

“9. It was, however, urged by learned counsel for the appellants that in order to avail of the remedies of discharge under Section 227 CrPC, the only qualification necessary is that the person should be



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accused. The learned counsel submitted that there is no difference between an accused since inception and accused who has been added as such under Section 319 CrPC. 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 CrPC, 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 CrPC, can be exercised only if very strong and cogent evidence occurs against a person from the evidence led before the Court.” (emphasis supplied)

Much emphasis has been laid on the expression “a person who is added as an accused under Section 319 CrPC is necessarily heard before being so added” as extracted supra. Therefore, it was contended on behalf of appellants that in the instant case, there being no opportunity to the appellants herein of being heard, the summoning order itself was vitiated and, therefore, the impugned order of the High Court may be set aside as also the order passed by the Sessions Court summoning the accused.

**33.** It is necessary to consider the contentions of the learned counsel for the appellants in the light of what has been observed in paragraph 9 extracted above and in light of what has been observed by this Court in the subsequent paragraphs and having regard to the earlier



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judgments of this Court referred to above in detail.

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34. In paragraph 13 of *Jogendra Yadav*, it has been observed that the exercise of power under Section 319 CrPC must be placed on a higher pedestal. Needless to say, the accused summoned under Section 319 CrPC are entitled to invoke the remedy under law against an illegal or improper exercise of power under Section 319 CrPC but that cannot have the effect of the order being undone by seeking a discharge under Section 227 CrPC. Therefore, this Court categorically held that a person, who is summoned under Section 319 CrPC cannot avail the remedy of discharge under Section 227 CrPC. In that context, this Court, as already noted, discussed the difference between Sections 227 and 319 CrPC , as extracted above.

11. It is quite clear from the above Judgment that there is no requirement for issuing notice and hearing the person who is summoned under Section 319 of Cr.P.C. and such a procedure is not contemplated, and the order passed by the court adding a person as an accused cannot be interfered on this ground. The Hon'ble Apex Court has made it clear that the opportunity to the accused persons is contemplated only during the trial. While dealing with the above case, the Hon'ble Apex Court also dealt with the Judgment in *Jogendra Yadav* case, which was relied upon by the learned counsel for the petitioner, and the position of law was clarified.



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12. This Court will now come into the second ground that was raised by the learned counsel for the petitioner to the effect that the Court below had mechanically added the petitioner as an accused without there being any material and without considering the report filed by the first respondent police deleting the name of the petitioner.

13. In the case on hand, the petitioner was initially added as an accused in the FIR. In the course of the investigation, the Investigation Officer found that the petitioner is not involved in the alleged offence and accordingly, the name deletion report dated 23.03.2018 was filed.

14. On carefully going through the report, it is seen that during the investigation, it came to light that the de facto complainant had given an exaggerated version as if the petitioner also attacked with spade. However, the version given by the de facto complainant has not been supported by any of the other eyewitnesses. Therefore, the police report was filed only as against A1.

15. This Court also carefully went through the statements recorded from the eyewitnesses under Section 161(3) of Cr.P.C. L.W.2 to L.W.5



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are eyewitnesses, who speak about the incident. All of them have consistently given statements that it is only A1 who attacked the de facto complainant with spade. They did not speak about the attack by the petitioner. The Court below believed the evidence that was tendered by the de facto complainant when the de facto complainant was examined in chief. On going through the evidence of P.W.1, i.e., the de facto complainant's evidence, it is seen that it is reiteration of whatever was stated by the de facto complainant before the first respondent police when the statement was recorded under Section 161(3) of Cr.P.C. and such statement was found to be exaggerated by the Investigation Officer.

16. The Hon'ble Apex Court has repeatedly held that while adding a person as an accused, the test to be applied is that there must be more than a prima facie case, as exercised at the time of framing charges but short of evidence that if left unrebutted would lead to conviction. The Hon'ble Apex Court held that the power under Section 319(1) of Cr.P.C. must be sparingly used when only the circumstances so warrant. This Court can make useful reference to the Judgment of the Hon'ble Apex Court in ***N.Manogar and another Vs. Inspector of Police and others***, reported in ***(2024) 2 MLJ (Crl) 192 (SC)***.

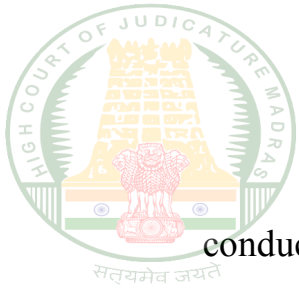


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17. In the considered view of this Court, the court below did not properly apply the test and has added the petitioner as an accused merely based on the evidence of P.W.1, who was examined in chief and had merely reiterated whatever was stated to the police while registering the FIR and while recording the statement under Section 161(3) of Cr.P.C. The court below ought to have taken into consideration the fact that the parties are closely related and there is already a property dispute. Hence, there is always a proclivity to rope in the other family members while giving the criminal case.

18. In the light of the above discussions, this Court finds that the order passed by the court below in Crl.M.P.No.305 of 2021 in C.C.No.54 of 2011 dated 12.02.2021 suffers from illegality, and the same is liable to be interfered with by this Court. Accordingly, the impugned order is set aside.

19. In the light of the above, this Criminal Revision Petition is allowed. There shall be a direction to the learned Judicial Magistrate No. 1. Ramanathapuram, to proceed further with the case as against A1 in C.C.No.54 of 2011, which pertains to the Crime No.318 of 2010, and



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conduct the case in line with the guidelines issued by the Full Bench in

**T.Balaji and another Vs. The State of Tamil Nadu**, reported in **2024-2-**

**L.W.(Crl.) 175**. The proceedings shall be completed within a period of 4 months from the date of receipt of a copy of this order.

20. In the result, this Criminal Revision Petition stands allowed.

28.01.2025  
(1/2)

Index: Yes  
Neutral Citation: Yes  
Speaking Order

JEN

To:

- 1.The Judicial Magistrate No.I,  
Ramanthapuram,  
Ramanathapuram District.
- 2.The Sub-Inspector of Police,  
Bazzar Police Station,  
Ramanathapuram,  
Ramanathapuram District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**N.ANAND VENKATESH, J.**

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