

Crl.R.C.(MD).No.364 of 2021

'BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 17.02.2025

PRONOUNCED ON : 21.02.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.364 of 2021

and

Crl.M.P.(MD)Nos.3642 and 12702 of 2021

V.Megavarnam(died)

Subramanian

... Revision Petitioner / Petitioner/
P.W.No.3

(Substituted as per order of the Court
dated 17.02.2025 in Crl.M.P.(MD)
No.6240 of 2021)

Vs.

1.The State represented by
the Inspector of Police,
C.B.C.I.D, (OCU),
Tiruchirappalli.
(In Cr.No.66/2006, on the file of
the Ponnamaravathi Police Station)

... 1st Revision Respondent/
Respondent/Complainant

2.Chinnaiah @ Chinnakkalai

.... 2nd Revision Respondent/
Respondent/Accused



Crl.R.C.(MD).No.364 of 2021

WEB COPY

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records in Cr.M.P.No.25 of 2020, dated 07.08.2020, on the file of the Principal District and Sessions Court, Pudukkottai and set aside the same.

For Petitioner : Mr.K.Prabhu

For Respondents : Mr.S.Ravi
Additional Public Prosecutor
for R.1

:Mr.S.Chinnaiah
Legal Aid Counsel
for R.2

ORDER

This Criminal Revision is directed against the order passed in Cr.M.P.No. 25 of 2020 in S.C.No.96 of 2007, dated 07.08.2020, on the file of the Additional District cum Sessions Court, Pudukkottai dismissing the petition filed under Section 319 Cr.P.C.

2. The revision petitioner is the defacto complainant, who lodged the complaint and on the basis of which, a murder case came to be registered against the second respondent/accused.

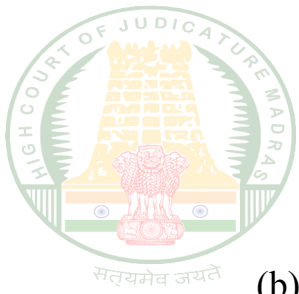


Crl.R.C.(MD).No.364 of 2021

WEB COPY

3. The factual aspects not in dispute are;

(a) On 19.03.2006 midnight, one Vellaichamy aged about 74 years at Keeranur Village, Pudukkottai District, who was sleeping at the courtyard of his house, was murdered by severing the head with aruval. The defacto complainant Megavarnam, son of the deceased lodged a complaint before the Ponnamaravathi police station and on that basis, F.I.R., came to be registered in Cr.No.66 of 2006, under Section 302 I.P.C., at 09.00 hours on 20.03.2006. The police seized the severed head of the deceased from the nearby well in an agricultural land. The second respondent/accused was arrested by the Ponnamaravathi Police in connection with Cr.No.74 of 2006 for murdering his elder brother's seven years old daughter Banumathy at 05.00p.m., on 05.04.2006. The second respondent/accused while interrogation, confessed that he committed the murder of Vellaichamy on 19.03.2006. The Investigating Officer, after completing the investigation, had filed the charge sheet on 02.06.2006 before the jurisdictional Magistrate Court and after committal, the case was made over to the Fast Track Sessions Court, Pudukkottai in S.C.No.96 of 2007.

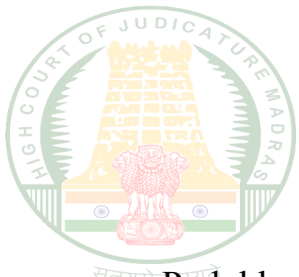


Crl.R.C.(MD).No.364 of 2021

WEB COPY

(b) The revision petitioner/defacto complainant filed a petition before this Court in Crl.O.P.(MD)No.1772 of 2007 seeking transfer of the investigation to C.B.C.I.D., Pudukkottai and this Court passed an order directing the Investigating Officer to consider the prayer of the petitioner. The complainant had then filed a petition in Crl.M.P.No.218 of 2007 under Section 173(3) Cr.P.C., before the trial Court for transferring the investigation to C.B.C.I.D., Pudukkottai and the same was dismissed vide order dated 04.03.2008, on the ground that the trial Court has no power to transfer the case and directed the petitioner to seek remedy from the High Court.

(c) The complainant had filed a petition before this Court in Crl.O.P. (MD)No.8365 of 2008 to transfer the investigation to some other Agency and this Court passed an order dated 03.12.2009 giving liberty to the petitioner to move the concerned Court where the final report was filed and he can file a petition under Section 173(8) Cr.P.C., if he so desires. Accordingly, the complainant filed a petition in Crl.M.P.No.29 of 2010 before the trial Court to transfer the investigation and the trial Court allowed the petition and directed the Inspector of Police, C.B.C.I.D., Pudukkottai to conduct investigation and submit a final report. As per the orders of the Additional District and Sessions Court,

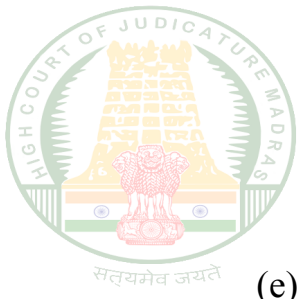


Crl.R.C.(MD).No.364 of 2021

WEB COPY

Pudukkottai and orders of the Additional Director General of Police, C.B.C.I.D., Chennai, the above case was transferred to C.B.C.I.D., OCU, Trichirappalli City for further investigation. Accordingly, the Inspector of Police, C.B.C.I.D., Trichirappalli City took up the further investigation on 23.03.2011. After completing the investigation, he filed a final report concluding that no other person was involved in the occurrence.

(d) Thereafter the complainant filed a writ petition in W.P.(MD)No.14111 of 2011 to transfer the investigation to CBI and this Court, vide order dated 02.07.2018, dismissed the writ petition by holding that the complainant is guilty of suppression of material facts. The complainant has then filed a review petition in W.M.P.(MD)No.17243 of 2018 to expunge the observations made in the order passed in W.P.(MD)No.14111 of 2011 and this Court by holding that there is no need or necessity to expunge any of the observations, dismissed the petition. After the dismissal of the writ petition, the trial came to be commenced. After examination of 7 witnesses including the complainant as P.W.1 to P.W.7, the petitioner filed a petition in CrI.M.P.No.25 of 2020 under Section 319 Cr.P.C., to include one Chinnaiah and his son Thiagarajan as accused in the above case.



Crl.R.C.(MD).No.364 of 2021

WEB COPY

(e) The Inspector of Police, C.B.C.I.D (OCU) and the second respondent/accused have filed their counter statements raising objections. The learned Sessions Judge, after enquiry, has passed the impugned order dismissing the petition filed under Section 319 Cr.P.C. vide order dated 07.08.2020. Challenging the said order the present Criminal Revision came to be filed.

4. The main reasons / grounds for impleading the proposed accused canvassed by the defacto complainant are that P.W.1 to P.W.7 have given evidence in one voice about the involvement of the proposed accused Chinnaiah and his son Thiagarajan, that the second respondent/accused appeared before the learned Judicial Magistrate, Keeranur and gave confession statement under Section 164 Cr.P.C., stating that only on the instigation of Thiagarajan, son of Chinnaiah, he murdered the father of the petitioner and the said Thiagarajan agreed to pay a consideration of Rs.12 Lakhs for the same, that there existed some disputes between the deceased and the proposed accused Chinnaiah with regard to fencing stones and when the matter was referred to panchayat, the proposed accused by making a promise that fencing stones were belonging to him, had taken the custody of the same and at that time, he threatened that he would sever the head of the petitioner's father, that the proposed accused have

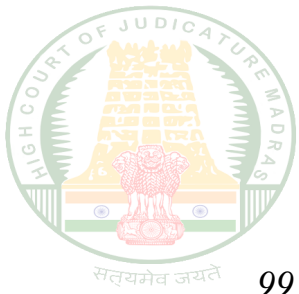


Crl.R.C.(MD).No.364 of 2021

keenly watched the movements of the deceased and his sleeping places and that P.W.4 in his evidence would say that 3 years back, the proposed accused Chinnaiah in a drunken mood, had threatened his paternal uncle, that he would snatch his head as that of his father.

5. Before entering into further discussion, it is necessary to refer the legal position with regard to Section 319 Cr.P.C. Section 319 Cr.P.C., allows a Court to take action against some one who is not an accused in a case. A Constitutional Bench of the Hon'ble Supreme Court in ***Hardeep Singh Vs. the 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 an accused under Section 319 Cr.P.C., is higher than the standard of proof employed for framing a charge against the accused and the relevant passages are extracted hereunder:

*“98. Power under **Section 319** Cr.P.C. is a discretionary and an extraordinary 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.*



Crl.R.C.(MD).No.364 of 2021

WEB COPY

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.

Q.(v) In what situations can the power under this section be exercised: Not named in FIR; Named in the FIR but not charge-sheeted or has been discharged?"

6. The Hon'ble Supreme Court in ***Sankar Vs. State of U.P., and others*** reported in **2024 Live Law SC 345** referring to the Constitutional Bench judgment in ***Hardeep Singh***, above referred, has held that to summon a person as an additional accused invoking powers under Section 319 Cr.P.C., the degree of satisfaction is much stricter and the evidence should be such that, it should lead



Crl.R.C.(MD).No.364 of 2021

WEB COPY

to the conviction of the accused if it is rebutted. It is settled law that the powers under Section 319 Cr.P.C., cannot be used just because the complainant believes that someone else might also be guilty of the evidence, rather it should be based on strong and cogent evidence presented before the Court.

7. It is pertinent to mention that while the probability of strong suspicion might guide the framing of charges summoning a person as an additional accused under Section 319 Cr.P.C., requires a distinct legal approach; entities valuation of newly presented evidence in Court rather than, merely passing a decision on the existing suspicion of the complainant. Moreover, it is also settled law that power under Section 319 should be exercised only where strong and cogent evidence occurs against the person from the evidence let before the Court, that such power should be exercised and not in a casual or caviller manner. Bearing the above legal position on mind, let us consider the case on hand.

8. It is not in dispute that the complainant gave a petition before the Superintendent of Police, Pudukkottai on 16.07.2007 to investigate the case properly as per the orders of the High Court in Crl.O.P.(MD)No.1772 of 2007



Crl.R.C.(MD).No.364 of 2021

WEB COPY

and as per the directions of the Superintendent of Police, Pudukkottai District, the Investigating Officer requested the concerned Court to record the statement of the accused under Section 164 Cr.P.C., and the said statement under Section 164 Cr.P.C., was recorded by the Judicial Magistrate, Keeranur on 06.09.2007. It is not in dispute that in the confession given before the learned Magistrate, the accused has stated that at the instigation of Thiagarajan, son of Chinnaiah, the proposed accused, he murdered the complainant's father and Thiagarajan, the said proposed accused had agreed to pay the consideration of Rs.12 Lakhs for the same. As rightly contended by the learned Additional Public Prosecutor, it is pertinent to note that the defacto complainant met the second respondent/accused at District Jail, Pudukkottai on 14.05.2007 and in the confession statement given subsequently on 06.09.2007, the accused has implicated the proposed accused.

9. As already pointed out, the complainant has filed the writ petition in W.P.(MD)No.14111 of 2011 seeking transfer of investigation from C.B.C.I.D., to C.B.I., and the learned Judge of this Court, has observed “when the matter was taken up for final hearing, the prosecution produced the said material which shows that the complainant met the accused in prison. When confronted with the position, the petitioner who is present in person along with the Counsel sought



Crl.R.C.(MD).No.364 of 2021

WEB COPY

leave to withdraw the writ petition.” The learned Judge, by observing that the petitioner is guilty of suppression of very material facts, dismissed the petition as withdrawn and levied a cost of Rs.1,000/- payable to the Chief Justice Relief fund. It is pertinent to note that the complainant has subsequently filed a petition in W.M.P.(MD)No.17243 of 2018 to expunge the observations made in the order dated 02.07.2018. The learned Judge of this Court, by observing that there is no need or necessity to expunge any of the observations made, dismissed the petition.

10. Considering the above, the confession statement made by the accused to the learned Magistrate particularly, after his meeting with the defacto complainant in prison, has lost its probative value and cannot be relied upon to implicate the proposed accused.

11. The learned Counsel for the revision petitioner would then rely on the evidence of P.W.1 to P.W.7 before the trial Court. As rightly contended by the learned Additional Public Prosecutor, it is pertinent to mention that P.W.2 is the wife; P.W.3 and P.W.5 are the brothers and P.W.6 is the sister of P.W.1; P.W.7 is the brother's wife of P.W.1 and P.W.4 is the brother's son of P.W.1. Admittedly



Crl.R.C.(MD).No.364 of 2021

WEB COPY

P.W.1 to P.W.7 are close related and are not the occurrence witnesses. It is evident from the materials that there existed dispute between the deceased and the proposed accused Chinnaiah with regard to fencing stones and a panchayat came to be convened and in that panchayat, the proposed accused by promising that the fencing stones were belonging to him, had taken the same. Now according to the revision petitioner, in that incident, the proposed accused has threatened the deceased that he would behead him. As rightly contended by the learned Additional Public Prosecutor, such a version does not find place in the complaint nor in the earlier statements given under Section 161 Cr.P.C.

12. As rightly observed by the learned trial Judge, the evidence of P.W.1 to P.W.7 would only reveal that they are suspecting the involvement of the proposed accused in the alleged occurrence, but none of them have given any material or evidence to connect the proposed accused with the crime. As already pointed out, simply because P.W.1 to P.W.7 believe that the proposed accused might also be guilty of the offence, they cannot be added mechanically. It is necessary that the evidence about the involvement of the proposed accused is stronger and more reliable than the mere probability of their involvement in the



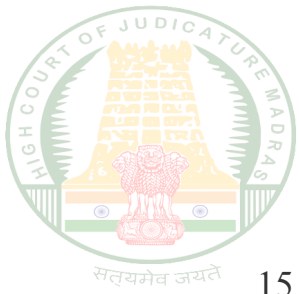
Crl.R.C.(MD).No.364 of 2021

WEB COPY

occurrence. As rightly observed by the learned trial Judge, the evidence of P.W.1 to P.W.7 are neither stronger nor reliable so as to implicate the proposed accused.

13. The learned Counsel for the petitioner would submit that P.W.4, in his evidence would say that 3 years back, the proposed accused Chinnaiah in a drunken stage, had threatened his paternal uncle Rajendran that he would behead him, as he had done to his father.

14. As rightly contended by the learned Additional Public Prosecutor, neither P.W.4 nor the said Rajendran has preferred any complaint against the proposed accused for the alleged criminal intimidaton nor it was stated in their statements recorded during the investigation. It is not in dispute that the above case is now pending for pronouncement of judgment. On a perusal of the entire records, as rightly contended by the learned Additional Public Prosecutor, the action of the defacto complainant in filing petition after petition including the petition filed under Section 319 Cr.P.C., is only to drag on the proceedings as much as possible.



Crl.R.C.(MD).No.364 of 2021

WEB COPY

15. Considering the above, this Court has no hesitation to hold that there are no material or evidence to implicate the proposed accused in the crime in question and as such, the impugned order dismissing the petition filed under Section 319 Cr.P.C., cannot be found fault with. Consequently this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.

16. In the result, the Criminal Revision Case is dismissed. Consequently, the connected Miscellaneous Petitions are also dismissed. The learned trial Judge is directed to pronounce the judgment uninfluenced by any of the observations and findings made in this order.

21.02.2025

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
SSL

To

1. The Principal District and Sessions Court, Pudukkottai.
2. The Inspector of Police,
C.B.C.I.D, (OCU), Tiruchirappalli.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



Crl.R.C.(MD).No.364 of 2021

K.MURALI SHANKAR, J.

SSL

Pre-Delivery order made in

Crl.R.C.(MD)No.364 of 2021

21.02.2025