



*Crl.R.C.(MD)No.694 of 2024*

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 03.03.2025

Pronounced on : 03.06.2025

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

Crl.R.C.(MD)No.694 of 2024

and

Crl.M.P.(MD)No.7188 of 2024

1.M.Raghu

2.C.Azhakesan

... Petitioners

Vs.

1.M.Jegatha

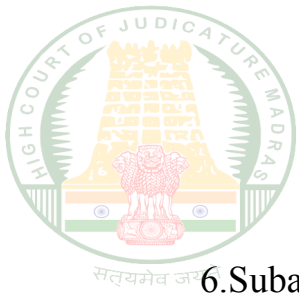
2.The State of Tamil Nadu represented by its  
The Inspector of Police,  
All Women Police Station,  
Kanyakumari Police Station,  
Kanyakumari District.

3.Mathivanan

4.Thevapazham

5.Akila

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6.Subash

7.Velappan

... Respondents

**Prayer :** This Criminal Revision Case filed under Sections 397 and 401 Cr.P.C., to call for the records of the impugned order passed in Crl.M.P.No.767 of 2021 in C.C.No.228 of 2021, on the file of the learned Judicial Magistrate cum Additional Mahila Court, Tirunelveli dated 21.03.2022 and set aside the same as illegal and by allowing the revision petition.

For Petitioners : Mr.D.Srinivasa Raghavan

For R1 : Mr.KA.Raamakrishnan

For R2 : Mrs.M.Aasha  
Government Advocate (Crl. Side)

For R3 to R7 : Mr.C.Kishore

### **ORDER**

The Criminal Revision is directed against the order passed in Crl.M.P.No.767 of 2021 in C.C.No.228 of 2021 dated 21.03.2022 on the file of the Additional Mahila Court, Tirunelveli, adding the petitioners as accused 6 and 7 in the above case.

2. On the basis of the complaint lodged by the first respondent, FIR came to be registered in Crime No.1 of 2018 on the file of the second

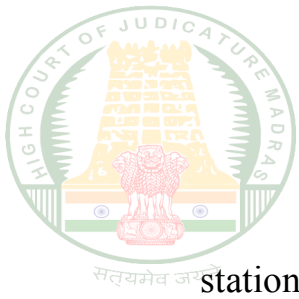


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respondent police against 7 persons including the petitioners for the alleged offences under Sections 498(A), 406, 294(b), 323 and 506(2) IPC, Section 4 of Dowry Prohibition Act, 1961 and Section 4 of TN Prohibition of Harassment of Woman Act, 2002.

3. The case of the petitioners is that the first respondent preferred a complaint before the second respondent police on 30.12.2017 as against the respondents 3 to 7, who are her husband and in-laws for the major offences under Sections 498(A) IPC and other IPC sections, that the second respondent police fixed the date of enquiry on 31.12.2017, that the first petitioner being the advocate for the respondents 3 to 7 along with the third respondent went to the second respondent police station on 31.12.2017 to attend the enquiry, that there was a wordy altercation between the first petitioner and the then Inspector of Police Shanmugavadivu and in consequence of the same, the first petitioner was brutally manhandled by the said Inspector of Police and two other constables, that the second petitioner, who is also an advocate, on coming to know about the issue, came to the police station and at his request, the first petitioner and the third respondent were allowed to go out of the



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station, that they were subsequently admitted in Asaripallam Medical College Hospital and the first petitioner lodged a complaint with the second respondent police, who refused to receive the same, that the first petitioner then sent his complaint to the second respondent police through online and also to the District Superintendent of Police, Nagercoil, that since there was no action, the first petitioner was forced to file a private complaint under Section 200 Cr.P.C. and that after necessary enquiry, the case was taken on file in C.C.No.81 of 2018 against the police officials and the same is pending on the file of the Court of Judicial Magistrate No. 1, Nagercoil.

4. The first respondent, by alleging that there was no further action after registration of the FIR in Crime No.1 of 2018, filed a petition in Crl.O.P.(MD)No.16703 of 2018 seeking for transfer of the investigation and a learned Judge of this Court vide order dated 19.09.2018 by holding that there was no valid ground to transfer the investigation, directed the second respondent herein to complete the investigation effectively and file a final report within a period of three months from the date of receipt of a copy of that order. In pursuance of the said directions, the second



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respondent police, after completing the investigation, filed a final report as against the respondents 3 to 7 and thereby deleting the petitioners. The learned Judicial Magistrate, Additional Mahila Court, Nagercoil, upon receipt of the charge sheet and the deletion report, sent a notice to the first respondent calling for her objections. Despite the service of notice, the first respondent has not turned up and the learned Magistrate, by holding that there are no materials found against the petitioners and by observing that the first respondent is at liberty to invoke Section 319 Cr.P.C., if any materials found against the petitioners during the course of trial, passed an order dated 22.01.2019 accepting the final report and directed for taking the case on file. After examination of three witnesses at the trial, the learned Magistrate has passed an order dated 13.10.2020 holding that the Court was not inclined to invoke Section 319 Cr.P.C. and the order of the learned Magistrate is extracted hereunder for better appreciation;

*“As per the circumstances of this case and on perusal of records, it is seem that case was U/s 498(A), 406, 294(b), 506(ii) IPC and 4 of DP Act and 4 of TNPWH Act as a continuing offence against her husband and in law. As the occurrence stated by PW1, PW2, PW3 is not the continuously of this offence and cannot be tried along with this case, Hence this court is not inclined to invoke*



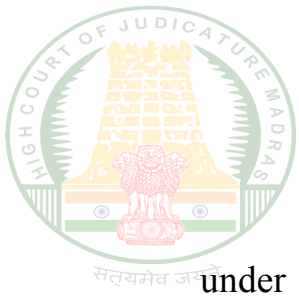
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*sec 319 CrPc as against Reghu and Alagesan in this case.*

*The investigation agency has miserably failed to distinguish both and should have filed separate FIR, hence Issue F/S to LW4, LW6, LW7, LW8 call on 16.10.2020.”*

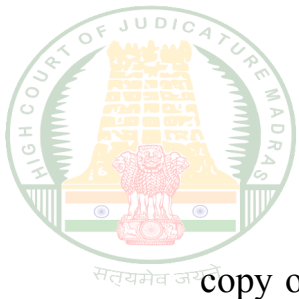
5. Meanwhile, the first respondent, by alleging that though FIR came to be registered against all the accused including the petitioners, the investigating officer has filed the charge sheet deleting the petitioners, that the learned Magistrate has failed to issue any notice with regard to the deletion of the petitioners from the charge sheet and that when the first respondent was compelled to give evidence, she came to know about the deletion of the petitioners, has filed a petition in Crl.O.P.(MD)No.2863 of 2021 seeking transfer of the case in C.C.No.13 of 2019 from the Additional Mahila Court, Nagercoil to the Additional Mahila Court, Tirunelveli and this Court, accepting the contentions of the first respondent, passed an order dated 24.02.2021 transferring the case from the file of the Additional Mahila Court, Nagercoil to the file of the Judicial Magistrate (Additional Mahila Court), Tirunelveli and further directed the Judicial Magistrate (Additional Mahila Court), Tirunelveli to issue notice to the first respondent under Section 173 Cr.P.C. and to decide the issue



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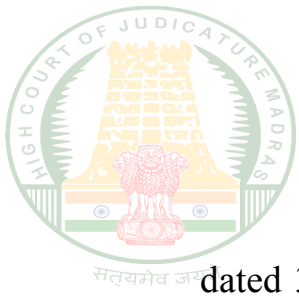
under Section 319 Cr.P.C. as a preliminary issue and then to proceed with the case in accordance with law. In pursuance of the directions of this Court, the case was transferred and the same was taken on file in C.C.No. 228 of 2021 on the file of the Judicial Magistrate (Additional Mahila Court), Tirunelveli. Thereafter, the first respondent has filed a protest petition raising objections for deletion of the petitioners from the charge sheet in Crl.M.P.No.767 of 2021, for which, the respondents 3 to 7 have submitted their reply. Meanwhile, the third respondent, alleging that the first respondent has suppressed the material facts and obtained orders in Crl.O.P.(MD)No.2863 of 2021 behind their back, filed a petition in Crl.M.P.(MD)No.9179 of 2021 to recall the order dated 24.02.2021 made in Crl.O.P.(MD)No.2863 of 2021 and this Court, by observing that the first respondent suppressed the orders in Crl.M.P.No.1236 of 2021 and approached this Court and obtained transfer order and that therefore the contentions raised by the third respondent is sustainable, but taking note of the fact that transfer of the case again to the previous Court will cause further delay and to avoid multiple transfers, passed an order dated 16.02.2022 directing the Additional Mahila Court, Tirunelveli to dispose of the case within a period of five months from the date of receipt of a



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copy of that order. The learned Magistrate, in pursuance of the directions of this Court in Crl.O.P.(MD)No.2863 of 2021 dated 24.02.2021, by summoning both the first respondent and the petitioners, conducted enquiry and passed the impugned order dated 21.03.2022 adding the petitioners as accused 6 and 7 to the above case. The third respondent, after getting the copy of the order of this Court passed in the recall petition in Crl.M.P.(MD)No.9179 of 2021, filed a memo before the Additional Mahila Court, Tirunelveli on 25.03.2022 along with the copy of the order and the learned Magistrate, upon perusing the order of this Court, has passed a *suo motu* order on 30.03.2022 recalling the earlier order dated 21.03.2022, wherein, the petitioners were added as accused 6 and 7 and closed the petition filed under Section 173(8) Cr.P.C. and ordered for issuance of summons to the remaining witnesses. The first respondent filed a petition before this Court in Crl.O.P.(MD)No.8847 of 2022 challenging the order dated 30.03.2022 passed by the Additional Mahila Court, Tirunelveli in recalling its earlier order. Since the third respondent was not made as a party in Crl.O.P.(MD)No.8847 of 2022, got himself impleaded as second respondent and after hearing both the sides and also the prosecution, passed an order dated 20.02.2024 setting aside the order



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dated 30.03.2022 as it is a non-speaking order and granted liberty to the aggrieved parties to work out their remedy in the manner known to law. Since this Court has set aside the order dated 30.03.2022, the petitioners, by putting forth a stand that the earlier order dated 21.03.2022 of the learned Magistrate came to be restored, has filed the present revision challenging the said order.

6. Heard the learned counsel appearing for the petitioners, the learned counsel appearing for the first respondent, the learned Government Advocate (Criminal Side) appearing for the second respondent and the learned counsel appearing for the respondents 3 to 7.

7. The main contention of the petitioners is that since already an order came to be passed by the learned Magistrate under Section 173(8) Cr.P.C. in Crl.M.P.No.1326 of 2018 dated 22.01.2019 and the same was not at all challenged by the first respondent, in the subsequent petition under Section 173(8) Cr.P.C. filed by the first respondent, second order came to be passed, which is nothing but a reviewing its own order, which is not permissible under law, that the first respondent has suppressed the



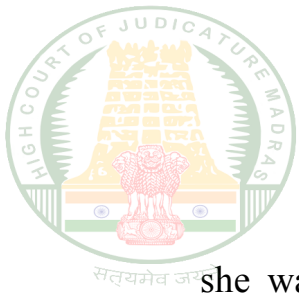
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material facts and obtained an order in Crl.O.P.(MD)No.2863 of 2021 by which not only a direction to transfer of case was obtained but further direction was obtained to the Court to issue notice under Section 173(8) Cr.P.C. and to invoke Section 319 Cr.P.C. in the very same case and that the High Court made a categorical finding that there is an order under Section 173(8) Cr.P.C. dated 22.01.2019 and another order made under Section 319 Cr.P.C. dated 13.10.2020, which was suppressed by the first respondent.

8. The learned counsel appearing for the petitioners would submit that after filing of the charge sheet deleting the petitioners, the learned Magistrate has issued notice to the first respondent calling for her objections and that the first respondent, despite receipt of notice, has not turned up and since no objections was raised, the learned Magistrate accepting the final report has taken the case on file only as against the respondents 3 to 7.

9. The learned counsel appearing for the first respondent would submit that notice was allegedly sent to the address of her husband, that



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she was not served with any notice with regard to the deletion of the accused and that only after getting the summons to give evidence, she came to know about the deletion of the accused. But as already pointed out, this Court, in the recall order, has specifically observed that the first respondent, despite receipt of notice, has failed to turn up and since no objections was raised, final report filed by the second respondent police came to be accepted.

10. As rightly contended by the learned counsel appearing for the first respondent, just because the learned Magistrate at the initial stage accepted the final report submitted by the police, that by itself does not bar or prevent the first respondent from seeking impleadment of proposed accused under Section 319 Cr.P.C.

11. The learned counsel appearing for the petitioners would submit that the learned Magistrate, in the earlier order, has specifically observed that the occurrence alleged by P.W.1 to P.W.3 on 31.12.2017 cannot be construed as a continuous offences, that the offences alleged by the first respondent against her husband and in-laws and the offences alleged



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against the petitioners/advocates are distinct offences and as such, the petitioners cannot be added as accused 6 and 7 and that the first respondent has not challenged the said order till now and as such, the subsequent order cannot be sustained.

12. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Anju Chaudhary Vs. State of U.P. and another*** in ***SLP (Crl.) No.9475 of 2008 dated 13.12.2012***, wherein, the Hon'ble Apex Court has observed,

*“40. It is true that law recognizes common trial or a common FIR being registered for one series of acts so connected together as to form the same transaction as contemplated under Section 220 of the Code. There cannot be any straight jacket formula, but this question has to be answered on the facts of each case. This Court in the case of Mohan Baitha v. State of Bihar [(2001) 4 SCC 350], held that the expression ‘same transaction’ from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of a case, it can be held to be one transaction.*



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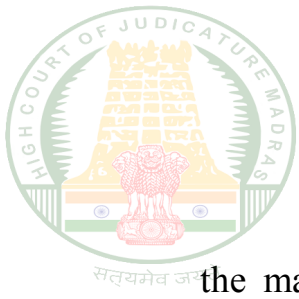


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*41. It is not possible to enunciate any formula of universal application for the purpose of determining whether two or more acts constitute the same transaction. Such things are to be gathered from the circumstances of a given case indicating proximity of time, unity or proximity of place, continuity of action, commonality of purpose or design. Where two incidents are of different times with involvement of different persons, there is no commonality and the purpose thereof different and they emerge from different circumstances, it will not be possible for the Court to take a view that they form part of the same transaction and therefore, there could be a common FIR or subsequent FIR could not be permitted to be registered or there could be common trial.*

*42. Similarly, for several offences to be part of the same transaction, the test which has to be applied is whether they are so related to one another in point of purpose or of cause and effect, or as principal and subsidiary, so as to result in one continuous action. Thus, where there is a commonality of purpose or design, where there is a continuity of action, then all those persons involved can be accused of the same or different offences “committed in the course of the same transaction”.*

13. Considering the complaint lodged by the first respondent and



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the materials available on record and taking note of the legal position above referred, the earlier finding of the learned Magistrate that the offences are distinct offences and as such, the same cannot be taken together, cannot be sustained at all.

14. As rightly contended by the learned counsel appearing for the first respondent, the first respondent in her complaint has specifically raised allegations against the petitioners, which came to be reiterated in the objections filed to the charge sheet deleting the petitioners.

15. The case of the first respondent is that after attending the enquiry at the second respondent police station, the first respondent was waiting in the bus stop along with her sister Latha and brother Suresh, that the third respondent along with two advocates came to that place and abused the first respondent in filthy language and threatened her to withdraw the case, that the second petitioner, who accompanied with her husband, had also abused the first respondent in filthy language and slapped on her face and when the same was questioned by the first respondent's brother and sister, he abused them also in filthy language and



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threatened that they would not allow the first respondent to live with the third respondent and that the third respondent, by showing the petitioners that since both the advocates are with him, nobody can do anything and started to bend her hand and caused criminal intimidation.

16. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Y.Saraba Reddy Vs. Puthur Rami Reddy and another*** reported in ***2007 (4) SCC 773***, wherein, the Hon'ble Apex Court has dealt with the scope of Section 319 Cr.P.C. and the relevant passages are extracted hereunder:-

*“12. On a careful reading of Sec. 319 of the Code 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 F.I.R. as an accused, but not charge sheeted, can also be added to face the trial. The trial court can take such a step to add such persons as accused only on the basis of evidence adduced*



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*before it and not on the basis of materials available in the charge-sheet or the case diary, because such materials contained in the charge sheet or the case diary do not constitute evidence. Of course, as evident from the decision reported in Sohan Lal and others v. State of Rajasthan, (AIR 1990 SC 2158) the position of an accused who has been discharged stands on a different footing.*

*13. Power under Section 319 of the Code can be exercised by the Court suo motu or on an application by someone including accused already before it. If it is satisfied that any person other than accused has committed an offence he is to be tried together with the accused. The power is discretionary and such discretion must be exercised judicially having regard to the facts and circumstances of the case. Undisputedly, it is an extraordinary power which is conferred on the Court and should be used very sparingly and only if compelling reasons exist for taking action against a person against whom action had not been taken earlier. The word "evidence" in Section 319 contemplates that evidence of witnesses given in Court. Under Sub-section (4)(1)(b) of the aforesaid provision, it is specifically made clear that it will be presumed that newly added person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced. That would show that by virtue of Sub- section (4)(1)(b) a*



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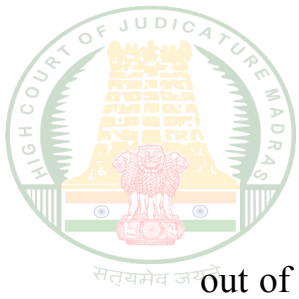
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*legal fiction is created that cognizance would be presumed to have been taken so far as newly added accused is concerned.”*

17. Considering the legal position above referred, the trial Court can add any of the accused to face the trial only on the basis of the evidence adduced before the concerned Court and not on the basis of the materials available in the charge sheet or any other materials produced earlier before the trial Court.

18. The learned counsel appearing for the first respondent would mainly rely on the deposition of P.W.1 to P.W.3 and on the basis of their evidence, filed the petition to add the petitioners as accused in the above case.

19. As rightly pointed out by the learned counsel appearing for the first respondent, the first respondent in her evidence before the trial Court would say that enquiry was conducted on 31.12.2017 at the police station, that when they were waiting outside the police station after attending enquiry at the police station, her husband and the petitioners have come



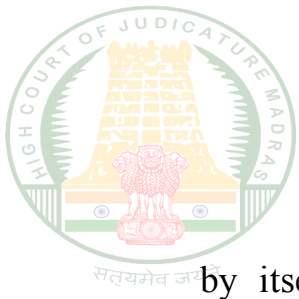
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out of the police station and they attacked the first respondent abusing her in filthy language and that therefore the first respondent was forced to lodge the complaint.

20. P.W.2 Latha-sister of the first respondent and P.W.3 Suresh-brother of the first respondent, as rightly pointed out by the learned counsel appearing for the first respondent, would depose about the occurrence held outside the police station.

21. The learned counsel appearing for the respondents 3 to 7 would submit that one Ganesan, S/o.Pazhani Nadar has been shown as occurrence witness to the incident in the charge sheet and that the said witness has been examined as prosecution witness as P.W.4 and he would say that no incident as alleged by the first respondent said to have happened outside the police station and the evidence of P.W.4 would falsify the case of the first respondent as against the petitioners. P.W.4 in his cross-examination would say that he does not know about the incident occurred subsequently outside the police station and that no occurrence was held thereafter. Just because P.W.4 would depose in different way, that



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by itself is not a ground to reject the evidence given by the other witnesses.

22. Considering the evidence adduced by P.W.1 to P.W.3, the learned Magistrate has rightly decided to implead the petitioners as accused 6 and 7 to the above case. Whether the charges alleged against the petitioners are true or not can only be decided after conclusion of the trial and since the first respondent and two other eye witnesses have deposed about the involvement of the petitioners, the earlier decision deleting the petitioners from the case cannot be given any weightage at the present stage and as such, the impugned order impleading the petitioners as accused 6 and 7 cannot be found fault with. Consequently, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

23. In the result, this Criminal Revision Case stands dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

**03.06.2025**

NCC :yes/No  
Index :yes/No  
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**K.MURALI SHANKAR,J.**

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To

1. The Judicial Magistrate,  
Additional Mahila Court,  
Tirunelveli.
- 2.The Inspector of Police,  
All Women Police Station,  
Kanyakumari Police Station,  
Kanyakumari District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**Pre-Delivery Order made in**  
Crl.R.C.(MD)No.694 of 2024  
and  
Crl.M.P.(MD)No.7188 of 2024

**Dated : 03.06.2025**

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