

Crl.A(MD)No.670 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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DATED :11.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.A(MD)No.670 of 2024 and

Crl.MP(MD) No.8271 of 2024

Barathi

... Appellant

Vs

1.The Deputy Superintendent of Police,
Andipatty Sub Division,
Mayiladumparai Police Station,
Theni District.
Crime No.151/2021.

2.Nataraj

... Respondents

PRAYER: Appeal filed under Section 14A of the SC/ST(POA) Act, to call for the records pertaining to the order passed in Crl.MP.No. 1034 of 2022 in Spl.S.C.No.33 of 2021, dated 28.06.2024 by the Special Court for trial of cases under SC/ST (POA) Act, Theni and set aside the same.

For Appellant	: Mr.A.Jayaramachandran
For R1	: Mr.P.Kottaichamy Government Advocate (Crl.side)
For R2	: Mr.R.L.Dhillipan Pandian



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J U D G M E N T

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This Criminal Appeal is directed as against the order passed by the Special Court for trial of cases under SC/ST Act, Theni in Crl.MP No.1034 of 2022, dated 28.06.2024. This appellant is the second accused in Crime No.151 of 2021 on the file of the first respondent police. The second respondent/defacto complainant has lodged a complaint as against this appellant and her husband on 17.08.2021 with an allegation that on 16.08.2021 at about 3.30 pm, this appellant along with her husband abused the defacto complainant, by calling his caste name and assaulted him with a wooden log and knife, based on which, a case in Crime No.151 of 2021 has been registered as against this appellant and her husband for the offence under Sections 324, 294b and under Sections 3(1)(r), 3(1)(s), 3(2)(Va) of SC/ST (Prevention of Atrocities) Act, 1989 and under Section 4 of Tamil Nadu Prohibition of Women Harassment of Act. The first respondent, who conducted the investigation found that there is no material as against this appellant and filed the final report before the Special Court for trial of cases under SC/ST(POA) Act, Theni, as



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against A1 Thavam alone and the same was taken on file by the trial Court in Spl.S.C.No.33 of 2021 on 22.12.2021. The trial Court has framed charges on 07.04.2022 and posted the case for trial on 09.05.2022. In this circumstances, the trial Court took cognizance of the deletion report filed by the first respondent police on 07.10.2022 assigned Number in Cr.MP No:1034 of 2022, wherein notice was ordered to the defacto complainant. After hearing the defacto complainant, the trial Court *suo motu* included this appellant as an accused in the case, by its order dated 28.06.2024. This order passed by the trial Court in deletion petition is challenged in this Criminal Appeal.

2.The learned counsel appearing for the appellant has made his submissions as under:-

- i. The trial Court has not even mentioned the provision of law, under which, the impugned order has been passed.
- ii. If at all the trial Court has invoked its power bestowed under Section 319 of Cr.P.C, it is well settled by the Apex Court in



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the case of ***Kishun Singh and others Vs.State of Bihar***, reported in ***(1993) 2 SCC 319***, that it must appear from the evidence tendered in the course of any enquiry or trial that any person not being the accused has committed any offence, for which, he could be tried together with the accused. This power can be exercised only if it so appears from the evidence at the trial and not otherwise.

- iii. The Honourable Apex Court has held that when the police submitted a final report, the Magistrate cannot direct the police to submit the charge sheet, by including some other accused. However, on the basis of the materials in the charge sheet, the trial Court can direct for further investigation. Here, in this case, after taking cognizance of the case and also after framing of charges, passing an order to include a person in the list of accused is barred by law.
- iv. The trial has not been commenced in this case and therefore, the trial Court lacks jurisdiction in passing the impugned order.



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- v. As per Section 193 of Cr.P.C., the Court of Sessions can invoke its original jurisdiction to take cognizance of the committal cases. The trial Court is a Special Court, which takes cognizance, without committal proceedings and therefore, the trial Court is devoid of jurisdiction, under Section 193 of Cr.P.C in passing the impugned order.
- vi. The trial Court has committed an error by passing the impugned order, based on the protest petition, when the protest petition does not reveal any specific allegation attributed as against this appellant.
- vii. The order impugned has been passed by the trial Court, even without issuing a notice to the appellant, which is in violation of principles of natural justice.

3. The learned Government Advocate appearing for the first respondent submits that the investigation was conducted in a proper manner and the first respondent has found that the appellant has not



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involved in any offence and therefore, he has filed the final report as against A1 alone and the same was also taken on file by the trial Court. According to the learned Government Advocate, having taken the case on file, it is not proper on the part of the trial Court in ordering for adding the appellant as an accused.

4.The learned counsel for the second respondent submits that the appellant along with her husband assaulted the second respondent/ defacto complainant on 16.08.2021. The appellant's name was mentioned in the complaint lodged by him on 17.08.2021. However, the first respondent, without conducting an investigation in a proper manner, has filed the final report as against A1 alone, omitting this appellant. The first respondent has also failed to issue a notice on the report filed deleting the second accused. The trial Court has rightly found the same, ordered notice to the second respondent, heard him and satisfied with the reasons, has added the appellant as A2 and therefore, there is no reasons to interfere with the order of the trial Court, dated 28.06.2024.

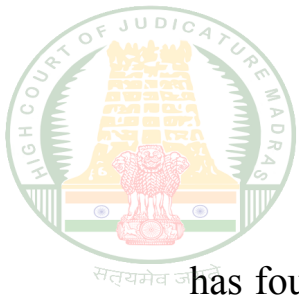


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5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The issue before this Court is the manner, in which, the trial Court has added this appellant as an accused in Crime No.151 of 2021. The respondent police has registered the case as against this appellant and her husband in Crime No.151 of 2021 on 17.08.2021. They have also filed the final report on 22.12.2021 and the same was taken on file by the trial Court in Spl.S.C.No.33 of 2021. The trial Court has also framed charges as against the accused No:1. The second respondent has filed applications before the trial Court in Crl.MP No. 999 of 2022, to permit him to assist the prosecution and Crl.MP No. 956 of 2022, to cancel the bail granted to A1. The application filed by the second respondent in Crl.MP 956 of 2022 was dismissed by the trial Court on 17.10.2022 and the application filed to assist the prosecution in Crl.MP.No.999 of 2022 was allowed on 28.09.2022. During the course of arguments in Crl.MP 956 of 2022, the trial Court



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has found that the defacto complainant was not issued with any notice for deletion of one of the accused. Therefore, the trial Court has numbered the deletion report, which was taken on file in the year 2022 in Crl.MP No.1034 of 2022 on 07.10.2022, ordered notice to the defacto complainant/the second respondent and added this appellant as an accused in Spl.S.C.No.33 of 2021. The procedure adopted by the trial Court in adding this appellant is not proper. If any final report is filed by deleting any offence or by deleting the accused, it is the duty of the trial Court to issue a notice to the defacto complainant, hear him and in the event, if any protest petition has been filed, if satisfied with the reasons assigned in the protest petition, can order for further investigation. The trial Court is not supposed to add the deleted accused as an accused, treating the trial Court as an investigating agency, when the trial has not been commenced.

7.In view of the above, this Court is of the view that the impugned order is liable to be set aside. Accordingly, the order passed by the trial Court in Crl.MP.No.1034 of 2022 in Spl.S.C.No.33 of



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2021, dated 28.06.2024 is hereby set aside. This Criminal Appeal is allowed. It is open to the second respondent to file a protest petition as against the deletion report and the same shall be considered by the trial Court and if it is satisfied with the reasons, further investigation may be ordered, by assigning the reasons for further investigation. If any protest petition is filed, the trial court shall pass an order afresh as to whether it requires for further investigation as to the role played by this appellant. Consequently, connected Miscellaneous Petition is closed.

11.03.2025

NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.
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To

- 1.The Special Court for trial of cases under SC/ST (POA) Act, Theni.
- 2.The Deputy Superintendent of Police,
Andipatty Sub Division,
Mayiladumparai Police Station,
Theni District.

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B.PUGALENDHI, J.,

vrn

Judgment made in
Crl.A(MD)No.670 of 2024

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