

In the Court of Sessions Judge, Nagapattinam.
Present: Thiru. A. Kanthakumar, M.L.,
Sessions Judge.

Tuesday, the 30th day of January 2024

CNR NO.TNNG010043792022
CRIMINAL REVISION PETITION No. 5/2023

VeeraselvamRevision Petitioner/accused

-Versus-

1. Mohandas
2. The Sub-Inspector of Police
Thittachery P.S.

.....Respondents/Petitioner &
Respondent

This Crl.R.P. is filed to set aside the order in Cr.M.P. No.354/2022 in STC.No.356/2021, dated 25.05.2022 of the Judicial Magistrate, No.II., Nagapattinam.

Before the lower court

Mohandas ... Petitioner/defacto complainant

-Versus-

State Rep. by
The Sub-Inspector of Police
Thittachery P.S.

... Respondent/Complainant

1. Babuji
2. Selvakumari

..... Accused

This Criminal Revision Petition came on 03.01.2024 before me for final hearing in the presence of Thiru. G. Pandian, Advocate for the Revision Petitioner and of Thiru. D. Thirunavukkarasu, Advocate for the 1st Respondent and Thiru.R. Selvaraj, Public Prosecutor for the 2nd respondent,

upon hearing the arguments on both sides and upon perusing the order of the lower court and the grounds for revision and other records and having stood over till this day for consideration, this court delivered the following,

ORDER

This Criminal Revision Petition is filed by the Petitioner under section 397 of Cr.P.C., to set aside the order in Cr.M.P. No. 354/2022 in STC.No.356/2021, dated 25.05.2022 of the Judicial Magistrate, No.II., Nagapattinam.

2. The brief averments in the petition filed by the petitioner/Defacto complainant are as follows:-

(i) The house of the defacto complainant and the accused are situated side by side and there is a case pending before the Civil Court regarding land dispute. On 03.07.2020 at about 10.00 A.M, when the defacto complainant was digging a pit to erect saram(சாரம்) in order to renovate his house, the accused Babuji abused the defacto Complainant in filthy language and assaulted him in his chest and pushed him down and the accused Selvakumari slapped him on his cheek and the said act of the accused was questioned by one Naveen, at that time Veeraselvam who is the son of the accused Babuji abused Naveen in filthy language, assaulted and threatened him with dire consequences and for which a case has been registered on the basis of the statement of the defacto complainant. A counter case has been registered in Cr.No.697/2020, U/s 294(b), 352, 324, 354, 506(ii) IPC against the defacto complainant and the above said Naveen as per the complaint lodged by the accused Selvakumari and the same was taken on file as CC.27/2021 by the Fast Track Mahila Court, Nagapattinam, which is pending.

(ii) The name of the said Veeraselvam who was impleaded as 3rd accused in the FIR has been removed suomoto by the Respondent Police at

the time of filing charge sheet. The said Veeraselvam is the prime accused and he had committed the offence of criminal intimidation and therefore the said Veeraselvam, S/o Babuji has to be impleaded as 3rd accused and to proceed further with the case.

3. The brief averments in the objection filed by the respondent are as follows:-

The petition is not maintainable under law or on facts. It came to know on thorough enquiry with the witnesses in the scene of crime and based on reliable information received about the fact that the 3rd Accused arrayed in the F.I.R. is in no way connected to the incident and he has not committed any offence as alleged by the defacto Complainant. Accordingly, the respondent police has submitted a requisition before the court and removed his name from the charge sheet as no charges were made out against the 3rd Accused and as the prima facie case is made out against the other accused persons, the Investigation Officer has filed a Final Report before the Court. Hence this petition is liable to be dismissed.

4. After perusing the records and hearing both side arguments, the learned Judicial Magistrate, No.II Nagapattinam allowed the petition in Cr.M.P. No. 354/2022 in STC. No.356/2021, dated 25.05.2022.

5. Aggrieved over the order so passed by the Judicial Magistrate No.II Nagapattinam, the Petitioner/impleaded accused has preferred this revision petition.

6. The material grounds for this revision petition are as follows:-

(i) The order passed by the lower court is not maintainable either in law or on facts.

(ii) On the basis of the complaint given by the 1st respondent, FIR was registered by the 2nd respondent and the accused 1 & 2 were released on bail. In the complaint, it is stated that Veeraselvam, S/o Babuji/A1 threatened the

1st respondent (defacto complainant) with dire consequences stating that “ நீதாண்டா இடப் பிரச்சனைக்கெல்லாம் காரணம் உன்னை கொல்லாமல் விடமாட்டேன்.” Without considering the statement U/s 161(3) of Cr.P.C. of the witnesses that the occurrence was prevented by Veeraselvam and neighbours and Veeraselvam had taken away his parents A1 & A2 to their home and the same was corroborated by the observation mahazar witnesses and the eye witness, the lower court has allowed the petition filed for impleading the said Veeraselvam as accused in this case.

(iii) Further, the lower court has failed to accept the statement of the Assistant Public prosecutor that the said Veeraselvam has not committed any offence.

(iv) The order of the lower court is not acceptable in law because the court has accepted the request of the respondent police to remove the accused Veeraselvam from the charge sheet and at the same time allowed the petition filed by the defacto complainant to include the said Veeraselvam as accused also, which is contra to each other.

(v) Particularly, the case registered in Cr.No. 696/2020 as STC No.356/2021 against Babuji and his wife Selvakumari were not enquired till date. But at the same time, the case registered in Cr.No. 697/2020 which was given by Selvakumari against the 1st respondent Mohandas and one Naveen is under investigation. With the intention that if the revision petitioner is impleaded as accused along with his parents, the case registered against him may easily compromise only this petition has been filed by the 1st respondent and therefore the said petition is not maintainable.

(vi) The final report filing by the 2nd respondent accepted by the lower court, accepted the petition filed by the defacto complainant and passed an order is contrary to the principles of Sec.319 of Cr.P.C. it can be used only at the time of examination of witnesses which is not maintainable as per law.

7. The point for consideration is :-

Whether this Revision Petition is allowed or not?

8. Point :-

Both side heard. The learned counsel for the revision petitioner argued that the revision petitioner was impleaded as accused without summoning or hearing him, which is unsustainable in law. As per the submission of the respondent police, as there was no charges made out against the 3rd accused, his name was removed from the charge sheet and as the prima facie case is made out against A1 & A2, the final Report has been laid against them.

9. In Brijendra Singh, after referring to Hardeep Singh, the Hon'ble Apex court considered the question as to the degree of satisfaction that is required for invoking the powers under section 319 Cr.P.C. and the related question, namely, as to, in what situations, this power should be exercised in respect of a person named in the FIR but not charge-sheeted. This court held that once the trial court finds that there is some "evidence" against such a person on the basis of which it can be gathered that he appears to be guilty of the offence, there can be exercise of power under section 319 Cr.P.C. It was observed that the evidence in this context means the material that is brought before the court during trial. In so far as the material or evidence collected by the Investigating Officer at the stage of inquiry is concerned, it can be utilized for corroboration and to support the evidence recorded by court to invoke the power under section 319 Cr.P.C.

Whenever a person is sought to be summoned as an additional accused in terms of section 319 Cr.P.C. not only prior notice calling upon him to show cause is to be issued, but also

the judge dealing with the case has to take extra caution to satisfy himself/herself that stronger evidence exists as the basis for taking such action.

It is further held that it is always incumbent upon criminal courts to issue prior notice to a person calling upon him or her to show cause as to why he/she should not be made an additional accused. Only on giving an opportunity of being heard a suitable order should be passed. If the order is passed summoning a particular person in terms of Section 319 Cr.P.C. without giving prior notice, such an order would not withstand the legal scrutiny. Hence all criminal courts are expected to keep in mind this aspect of matter as explained by the Hon'ble apex court in the case of Jogendra Yadav (supra). (Asha Vs. state of Karnataka 30.03.2016).

Summoning of additional accused U/s 319 Cr.P.C. without evidence held to be improper. (Periyasamy and others Vs. Nallasamy AIR 2019 SC 1426).

10. The trial court without evidence added the revision petitioner as accused U/s 319 Cr.P.C. On perusal of records, it is seen that the FIR was registered on the basis of complaint given by the 1st respondent/defacto complainant against 3 named accused and the revision petitioner is arrayed as 3rd Accused. But the 2nd respondent has not arrayed him as accused in the final report. The learned Magistrate has not considered the principles of evidence and has considered the statement given to police during investigation under Section 161 Crpc only, it cannot be read as an "evidence". Without any evidence, chief examination of any witness, the revision petitioner cannot be added as an accused. In view of the above discussions, this court concludes that it is necessary to interfere with the

order of the lower court by setting aside the order of the lower court.

In fine, this Criminal Revision Petition is allowed and the Order passed by the learned Judicial Magistrate Court No.II, Nagapattinam in Cr.M.P. No.354/2022 in STC.No.356/2021, dated 25.05.2022 is hereby set aside. The petition in Cr.M.P. No.354/2022 in STC.No.356/2021 is hereby dismissed.

This order is dictated to the Steno Typist by me, typed by her directly in Computer, corrected and pronounced by me in open court on this the 30th day of January 2024.

SESSIONS JUDGE,
NAGAPATTINAM.

Copy to
The Judicial Magistrate, No II,
Nagapattinam.