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SLP(Crl.)No. 377 OF 2003

ITEM No.202

Court No. 3

SECTION IIA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No. 377/2003

(From the judgement and order dated 13/12/2002 in CRLRC 2136/02
of The HIGH COURT OF MADRAS)

PALANISAMY GOUNDER & ANR.

Petitioner (s)

VERSUS

STATE REP. BY INSPECTOR OF POLICE

Respondent (s)

[With Appln(s). for stay and Office Report]
(For Final Disposal)

Date : 11/02/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE Y.K. SABHARWAL
HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Petitioner (s)Mr. K.K. Mani,Adv.

For Respondent (s)Mr. S. Balakrishnan, Sr. Adv.
Mr. Subramonium Prasad.,Adv.

Mr. P.N. Ramalingam, Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The Criminal Appeal is allowed in terms of the Signed Order.

(Subhash Chander) (V.P. Tyagi)
Court Master Court Master

[Signed Order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.288 OF 2005

[Arising out of S.L.P.(Crl.)No.377 of 2003]

Palanisamy Gounder & Anr.....Appellants

Versus

State rep. By Inspector of Police.....Respondent

O R D E R

Leave granted.

The challenge in this appeal is to a judgment and order passed by the High Court confirming the order of Court of Session passed in exercise of power under Section 319 of Code of Criminal Procedure (for short 'the Code') adding the two appellants as accused nos.4 and 5 in the session trial in a case under Section 302 and other provisions of the Indian Penal Code. The incident, subject-matter of the case, took place on 8th March 2000. Initially charge sheet was filed on 21st June 2000 against five accused including the present two appellants. Later, on the application of the public prosecutor, the appellants were dropped as accused in terms of the order of Court of Session dated 10th September 2001 which was as a result of further investigation. It appears that on 24th January 2002 prosecution examined various witnesses including PWs 1,2 and 3 said to be the witnesses of the incident. It was on the basis of their testimony that an application under Section 319 of the Code was filed by the prosecutor seeking summoning of the appellants as accused along with the three accused who were facing trial. Later, similar

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application was also filed by one of the prosecution witnesses. The Court of Session, by order dated 22nd November 2002, allowed both the applications and directed the appellants to be summoned as accused nos.4 and 5 in the case. The learned Additional Session Judge has, inter alia, observed in the order that though the case against the persons proposed to be added is not on solid foundation but they have to be impleaded as accused in order to find out the real truth. It was observed that in order to find out the real truth the appellants deserved to be added as accused. We may only note that pending the decision of this appeal the trial has concluded resulting in the conviction of the three accused since this Court had granted an order of stay of the trial as against the present appellants.

The power under Section 319 of the Code cannot be exercised so as to conduct a fishing inquiry. We have already noticed the observations of the learned Trial Judge that though the case against the appellants is not on solid foundation but to find out the real truth they deserved to be added as accused. The manner in which the power under Section 319 deserves to be exercised has been laid down in Michael Machado & Anr. v. Central Bureau of Investigation & Anr. 2000 (3) SCC 262 holding that unless the Court is hopeful that there is a reasonable prospect of the case against the newly added accused ending in their conviction of the offence concerned, the Court shall refrain from adding them as accused. In Krishnappa v. State of Karnataka 2004(7) SCC 792 a Bench of which one of us (Hon'ble Mr. Justice Y.K. Sabharwal) was a member, following Michael Machado (supra) it was said that:

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"In Michael Machado v. Central Bureau of Investigation construing the words "the court may proceed against such person" in Section 319 CrPC, this Court held that the power is discretionary and should be exercised only to achieve criminal justice and that the court should not turn against another person whenever it comes across evidence connecting that other person also with the offence. This Court further held that a judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has already proceeded and the quantum of evidence collected till then, and also the amount of time which the court had spent for collecting such evidence. The court, while examining an application under Section 319 CrPC, has also to bear in mind that there is no compelling duty on the court to proceed against other persons. In a nutshell, it means that for exercise of discretion under Section 319 CrPC, all relevant factors, including the one noticed above, have to be kept in view and an order is not required to be made mechanically merely on the ground that some evidence had come on record implicating the person sought to be added as an accused."

In view of the aforesaid, the impugned judgment and order deserves to be set aside. Accordingly, setting aside the order of the Court of Session and the impugned judgment and order of the High Court, we allow the appeal.

.....J.
[Y.K. SABHARWAL]

New Delhi.....J.
February 11, 2005.[P.P. NAOLEKAR]