

(2012) 11 MAD CK 0176

In the Madras High Court

Case No : Criminal Revision Case No. 10 of 2012

Rudramurthy

APPELLANT

Vs

The Inspector of Police, Rubesh Kumar and Mrs. Banu

RESPONDENT

Date of Decision : 20-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 319
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2013) 1 LW(Cri) 154 : (2013) MLJ(Cri) 25

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : S. Parthasarathy, for the Appellant; R. Prathap Kumar Government Advocate (Crl. side) for R1, Mr. M. Balaji for R2 and Mr. A. Michael Jacob for R3, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice B. Rajendran

1. The petitioner, who is the defacto complainant in C.C. No. 74 of 2011 on the file of the learned Judicial Magistrate No. II, Kancheepuram, has come forward with this Criminal Revision Case aggrieved by the order dated 02.11.2011 passed in C.M.P. No. 3067 of 2011 in C.C. No. 74 of 2011, by which, his application filed u/s 319 Cr. P.C. to implead the third respondent herein as one of the accused in the calander case was dismissed by the Court below. The case of the prosecution is that on 11.10.2010 at about 11.30 am, in the national highway leading to Chennai from Vellore, the father of the petitioner herein namely Deivasigamani was riding the TVS 50 motor cycle bearing Registration No. MYK 8782. When the motor cycle was nearing Rajakulam bus stop, the Car bearing Registration No. TN 01 AL 4447 was driven by its driver in a rash and negligent manner and hit the two wheeler from behind. In the impact, the deceased sustained grievous injuries on his head and died on the spot. In this context, the petitioner had given a complaint to the first respondent police based on which the case in Crime No.

763 of 2010 came to be registered for the offences punishable under Sections 279 and 304(A) of IPC against the driver of the Car.

2. It is the contention of the petitioner that the Car was driven by the third respondent herein and she was also called upon to the police station for enquiry, but at a later point of time, the petitioner came to know that the case was registered only against the second respondent, who is said to have driven the car. According to the petitioner, in order to safeguard the third respondent, the case was registered against the second respondent, who according to the petitioner, was not the driver of the car at the relevant point of time and it is the third respondent who had driven the car. Earlier, the petitioner has approached this Court by filing Crl. O.P. No. 1004 of 2011 seeking for a direction to direct the first respondent herein to investigate the case in Crime No. 763 of 2010 by altering the name of the accused. This Court, after hearing the counsel for both sides, by order dated 18.01.2011, directed the first respondent herein to conduct appropriate investigation in Crime No. 763 of 2010 in a fair manner in accordance with law and file the charge sheet as expeditiously as possible. Even thereafter, the first respondent laid the charge sheet only as against the second respondent leaving the third respondent scot-free.

3. During the course of trial, on behalf of the prosecution, PWs 1 to 5 were examined of them P.W. 1 turned hostile. The petitioner examined himself as P.W. 2. P.W. 3 and 4 are projected as eye witnesses besides that they have also signed the mahazar prepared by the first respondent police. P.W. 5 was the Doctor who performed the postmortem of the deceased. According to the petitioner, P.W. 4 has categorically deposed in his statement u/s 161 of Cr. P.C. as well as during the course of his chief-examination before the trial court that at the time of accident, the car was driven by the third respondent. Therefore, by relying on the deposition of P.W. 4 and other material evidences, the petitioner filed C.M.P. No. 3067 of 2011 u/s 319 of Cr. P.C. to implead the third respondent herein also as an accused in C.C. No. 74 of 2011 and she should also be tried as an accused before the trial court to ascertain as to whether the car was driven by the third respondent or by the second respondent. The trial court dismissed the said petition against which the present Criminal Revision Case is filed.

4. The learned counsel for the petitioner would mainly contend that the petitioner is the son of the deceased. Immediately after the accident, the complaint was given to the first respondent based on which the third respondent was summoned to the police station for an enquiry. Thereafter, the petitioner went to attend the funeral ceremony of his father and after a period of 18 days, when he approached the first respondent police and went through the copy of the first information report, he was shocked to find that the name of the third respondent was not mentioned therein, instead, the name of the second respondent alone was mentioned as driver of the car. According to the petitioner, it was the third respondent who drove the car during the relevant point of time and therefore, he pleaded for altering the first information report. Since there was no action

forthcoming, the petitioner filed CrI. O.P. No. 1004 of 2011 before this Court praying for a direction to the first respondent herein to investigate the case in Crime No. 763 of 2010 by altering the name of the accused. This Court, after hearing the counsel for both sides, by order dated 18.01.2011, directed the first respondent herein to conduct appropriate investigation in Crime No. 763 of 2010 in a fair manner in accordance with law and file the charge sheet as expeditiously as possible. Even thereafter, the first respondent mentioned only the name of the second respondent in the charge sheet by excluding the third respondent. Even in the statement given by PWs 3 and 4 u/s 161 of Cr. P.C. before the first respondent, they have specifically pointed out that the driver of the car, on seeing the crowd gathered on the spot, fled from the scene of occurrence and they saw only a lady sitting in the car. Therefore, the petitioner filed C.M.P. No. 3067 of 2011 u/s 319 of Cr. P.C. to implead the third respondent herein also as an accused in C.C. No. 74 of 2011. The court below without taking note of the evidences available on record which would prima facie show the involvement of the third respondent in the offence, has erroneously dismissed the application and he prayed for setting aside the order passed by the court below.

5. In support of his contentions, the learned counsel for the petitioner relied on the decisions of the Honourable Supreme Court reported in (i) Rajendra Singh Vs. State of U.P. and Another, and Suman Vs. State of Rajasthan and Another, for the proposition that if the evidence tendered during the course of trial shows the involvement of any other person who could have committed the offence, not being the accused, he could be tried together with the other accused, even though he may not have been charge sheeted by the investigating agency.

6. On the contrary, the learned counsel appearing for the third respondent vehemently contended that the first respondent, based on the statement given by the witnesses u/s 161 of Cr. P.C. has correctly indicated the second respondent as the driver of the Vehicle. Even according to PWs 3 and 4, they have only seen the third respondent sitting in the Car at the time of accident and the mere presence of the third respondent in the Car cannot be construed that it was the third respondent who had driven the car. Moreover, PWs 3 and 4 have also stated that the driver of the car, who had driven the car, fled the scene on seeing the crowd gathered at the spot and therefore at any stretch of imagination, it cannot be said that the third respondent had driven the car. Moreover, in a case u/s 304-A of IPC, there cannot be more than one person accused of driving the car. In this case, the second respondent was impleaded as a driver of the car and therefore, impleading the third respondent as one of the accused is unnecessary. The Court below is therefore right in dismissing the application filed by the petitioner, hence, interference of this Court is not warranted.

7. I also heard the submission of the learned Government Advocate appearing for the first respondent as well as the counsel for the second respondent.

8. I had given my anxious consideration to the rival submissions made on behalf

of both sides. Admittedly, there was an accident in which the two wheeler driven by the father of the petitioner was hit by the car from behind due to which the father of the petitioner died on the spot. The presence of the third respondent in the car, at the time of accident, is also admitted. According to the petitioner, immediately after the accident, he gave a complaint to the first respondent based on which the third respondent was summoned to the police station for an enquiry. However, the first respondent arrayed only the second respondent as an accused in the case, leaving the third respondent from the purview of criminal prosecution. According to the revision petitioner, the prosecution witnesses have categorically pointed out the presence of the third respondent at the time of accident besides that they have also stated that it was the third respondent who drove the car at the time of accident, hence, he filed the present petition u/s 319 of Cr. P.C. to subject the third respondent also to criminal trial so as to ascertain the real fact in controversy as to who drove the car at the time of the accident. The Court below held that it is not the case of the prosecution that two persons were driving the vehicle and only one person could have driven the vehicle. Further, when already the second respondent is impleaded as an accused, impleading the third respondent herein also as an accused is unnecessary and dismissed the petition filed u/s 319 of Cr. P.C.

9. In this connection, the evidence of prosecution witnesses has to be looked into. P.W. 1 turned hostile. However, P.W. 1, in his statement under Sec. 161 of Cr. P.C. has stated that immediately after the accident the driver of the car fled away from the scene of occurrence and that he saw a lady alone in the car. P.W. 2 is the petitioner. P.W. 3 and 4 are independent eye witnesses and they have also attested the mahazar prepared by the first respondent police. P.W. 4 in his evidence has categorically stated that the vehicle was driven by a lady.

10. One of the important evidence to be taken note of in this case is, during the course of cross-examination on behalf of the second respondent herein, who is the only accused in the case, a question was posed stating that the accused did not drive the vehicle. If really the second respondent had driven the vehicle, such a question posed to the prosecution witnesses is unnecessary and this also gives rise to the suspicion that if the accused/second respondent did not drive the vehicle, then, the vehicle might have been driven by the third respondent herein, whose presence in the car at the time of accident is established by the prosecution witnesses and also admitted by the third respondent herself. Therefore, as contemplated u/s 319 of Cr. P.C. the third respondent can be impleaded as an accused and subjected to trial so as to ascertain her guilt, if any, in the commission of offence. During the course of trial, if the Court is prima facie satisfied that if a person other than the accused is found to have committed an offence, he or she can also be subjected to criminal proceedings as contemplated u/s 319 of Cr. P.C. and he or she can prove his or her innocence after trial. Therefore, I am of the view that in the above stated facts and circumstances, the petitioner has made out a prima facie case for impleading the third respondent also as an accused and the trial court ought to have allowed the

application u/s 319 of Cr. P.C. filed by the petitioner instead of dismissing it.

11. The next submission made on behalf of the third respondent is that there can be only one accused in a case relating to the offence u/s 304A of IPC. According to the learned counsel for the third respondent, there can be only one driver, who could have driven the car and there cannot be two drivers for a car. Therefore, when already the second respondent was roped in as an accused in the criminal trial, impleading the third respondent also as an accused is unwarranted besides it being superfluous. Such an argument of the counsel for the third respondent cannot be accepted. First of all, the trial in the case is pending and even the guilt of the second respondent/accused is not established. Even if two persons are named in the first information report, the guilt of any one of those persons can be established only during the course of trial. In other words, only after trial, the person who actually driven the vehicle can be identified and found out.

12. In the decisions cited by the learned counsel for the petitioner reported in (i) *Rajendra Singh Vs. State of U.P. and Another*, and (ii) *(Suman vs. State of Rajasthan) Suman Vs. State of Rajasthan and Another*, it was held that as per Section 319 of Cr. P.C. if a person who is named in the first information report or complaint with the allegation that he or she committed any particular crime or offence, but against whom the police does not launch prosecution or files charge sheet or drops the case, he or she can be proceeded with based on the evidence collected/produced, if the court is prima facie satisfied that such person has committed any offence for which he or she can be tried with the other accused. In the present case on hand, there are prima facie evidence available on record, which would indicate the presence of the third respondent at the accident spot and also her involvement in the offence namely driving the car. However, it is needless to say that the involvement or the role played by the third respondent has to be proved independently during the course of trial and this Court is only expressing its view that there is a prima facie material available on record to try the third respondent for the offence complained of. While so, during the course of trial, the third respondent shall be given opportunity to examine and cross-examine the prosecution witnesses or to bring forth any other material to defend her case and to prove her innocence. Therefore, by giving such liberty to the third respondent, the impugned order passed by the trial court is set aside. In the result, the Criminal Revision Case is allowed. Consequently, connected MP No. 1 of 2012 is closed.