
(2009) 08 MAD CK 0096

In the Madras High Court

Case No : Criminal O.P. (MD) No. 6290 of 2008 and M.P. (MD) No. 1 of 2008

S. Balakrishnan

APPELLANT

Vs

The Inspector of Police and Sankar

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 319, 319(1), 482

Citation : (2009) 2 LW(Cri) 1409

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Advocate : A. Rajini, for the Appellant; L. Murugan, G.A., for the Respondent

Final Decision : Allowed

Judgement

G.M. Akbar Ali, J.—The petition is filed u/s 482 Cr.P.C. to set aside the order passed in CrI.M.P. No. 2863(a) of 2007 in C.C. No. 89 of

2006 on the file of the learned Judicial Magistrate No. 1, Sivagangai dated 14.12.2007.

2. The petitioner is belonging to Scheduled Caste community has married a backward community women. Citing this, the petitioner family was not

allowed to celebrate Pongal festival in the Marakathoor Village, which was override by him and his sister's husband Arumugam and due to some

dispute between the said Arumugam and the 2nd respondent, a case was registered in Crime No. 89 of 2006. The 2nd respondent was the de

facto complainant who falsely implicated the petitioner's name in the said case.

3. However, after investigation, the first respondent removed the petitioner's name and the case was taken on file by the learned Judicial

Magistrate No. 1, Sivagangai in C.C. No. 89 of 2006. The 2nd respondent with an intention to victimize the petitioner and his wife, has deposed

before the learned Judicial Magistrate, attributing certain allegations and on that basis, the learned Judicial Magistrate had passed an order including

the name of the petitioner by his order dated 14.12.2007. The said order of the learned Judicial Magistrate is not legal. Without applying his mind

the learned Judicial Magistrate has issued summons to the petitioner. Therefore, the petitioner has come forward with this application for the relief

as stated supra.

4. The learned Counsel for the petitioner would submit that originally a case was registered against one Arumugam and Malaichamy in Crime No.

29 of 2006, however, a petition in CrI.M.P. No. 2863(a) of 2007 was filed by the de facto complainant, as P.W1 in his chief examination would

implicate the petitioner and his wife and that they are arrayed as accused in the criminal case and the learned Judicial Magistrate, without applying

his mind had included the petitioner as accused in the said criminal case and issued summons. The learned Counsel further pointed out that there is

no materials available against the petitioner in the investigation and simply because of the deposition of the P.W1, the petitioner has been

implicated, which has to be set aside.

5. Heard the learned Counsel for the petitioner and the learned Government Advocate (CrI.side) for the 1st respondent.

6. The case has been registered in Crime No. 29 of 2006 by the Sub Inspector of Police, Kalayar Kovil, Sivagangai District on a complaint given

by the 2nd respondent and on that basis a case has been registered against one Arumugam and Malaichamy and after investigation charge-sheet

has been filed and the same has been taken on file in C.C. No. 89 of 2006 by the learned Judicial Magistrate No. 1, Sivagangai. A petition u/s

319(1) Cr.P.C. has been filed by the 2nd respondent to include two more persons viz., Balakrishnan and Banumathy as co-accused in the case

based on the chief examination of P.W1, who implicated the petitioner and his wife as accused. After a brief enquiry in that application, the learned

Judicial Magistrate found that the de facto complainant has already mentioned the name of the petitioner in his complaint and in the chief

examination also P.W.1 would state that the said Balakrishnan and his wife have criminally intimidated the de facto complainant and therefore, the

learned Judicial Magistrate has allowed that application and issued summon to

the petitioner. However, the prayer to include Banumathi has been negatived. The said Balakrishnan is before us seeking the above relief.

7. The point for consideration is whether the learned Judicial Magistrate is right in allowing the petition filed u/s 319(1) Cr.P.C. Based on the subsequent statement in the chief examination of P.W1?.

8. Section 319(1) Cr.P.C. reads as follows:

319. Power to proceed against other persons appearing to be guilty of offence:

(1) Where, in the course of any inquiry into, or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

9. In a decision of the Supreme Court reported in Michael Machado and Another Vs. Central Bureau of Investigation and Another, , the Supreme

Court has held as follows:

The Court must have reasonable satisfaction from the evidence already collected regarding two aspects while invoking power u/s 319 to proceed

against other persons appearing to be guilty of offence. First is that the other person has committed an offence. Second is that for such offence that

other person could as well be tried along with the already arraigned accused. But even then, what is conferred on the Court is only a discretion as

could be discerned from the words ""the Court may proceed against such person"". The discretionary power so conferred should be exercised only

to achieve criminal justice. It is not that the Court should turn against another person whenever it comes across evidence connecting that another

person also with the offence. Judicial exercise is called for keeping a conspectus of the case, including the stage at which the trial has proceeded

already and the quantum of evidence collected till then, and also the amount of time which the Court had spent for collecting such evidence. It must

be remembered that there is no compelling duty on the court to proceed against other person.

10. In yet another decision of the Punjab and Haryana High Court reported in Jarnail Kaur Vs. State of Punjab, it has held as follows:

7. ...The legal position summoning an additional accused to face the trial u/s

319, Cr.P.C. is well settled. The basic requirement for invoking this section, as held by the Hon"ble Supreme Court in Michael Machado and Another Vs. Central Bureau of Investigation and Another, is that it should appear to the court from the evidence collected during the trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt from the evidence about the involvement of another person in the offence....

11. In the instant case, P.W1 has spoken about the involvement of the present petitioner and his wife in his chief examination. In fact, he had already implicated him in his complaint. The petitioner's name was dropped only after the investigation and the charge-sheet was not filed against him. P.W1 had once again dragged the name of the petitioner and his wife. The learned Judicial Magistrate ought to have satisfied himself that the petitioner had committed offence and for such offence the petitioner could as well tried along with already arraigned accused. Simply because P.W.1 has spoken about the petitioner, will not necessitate the court to include the name of the petitioner with the said offences and the court ought to have satisfied itself with the other available evidences before summoning the petitioner.

12. Therefore, the order passed by the lower court is erroneous and the petitioner cannot be summoned to face the trial for the offence and the impugned order passed by the learned Judicial Magistrate No. I, Sivagangai is without application of mind and the same is liable to be quashed and accordingly, quashed. Hence, the petition is allowed. Consequently, connected M.P. is closed.