Devarasu Vs. State

Devarasu Vs. State

SooperKanoon Citation : sooperkanoon.com/1169653

Court : Chennai

Decided On : Oct-21-2013

Judge : The Honourable Ms. Justice K.B.K.Vasuki

Appellant : Devarasu

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Dated: 21.10.2013 Coram THE HONOURABLE Ms.JUSTICE K.B.K.VASUKI Crl.R.C.No.226 of 2013 and M.P.No.1 of 2013 1.Devarasu 2.Rajendran 3.Velusamy 4.Prakash 5.Vijaya 6.Mallika .Petitioners versus 1.State rep.

by The Inspector of Police, Mangalampettai Police Station, Cuddalore District.

2.Arumugam .Respondents Prayer:- Criminal Revision filed under Section 397 r/w 401 Cr.P.C.to set aside the order dated 14.12.2012 made in Crl.M.P.No.415 of 2012 in S.C.No.24/2012 on the file of the Sessions Judge, Mahila Court, Cuddalore.

For Petitioner : Mr.T.Muruganantham For Respondent : Mr.C.Iyyapparaj, GA(Crl.Side) (R1) Mr.B.B.Senthilkumar (R2)

ORDER

The petitioners herein are the proposed accused, who are all at the instance of the second respondent/PW1 directed to be arrayed as additional accused 6 to 11 in SC.No.24/2012 pending on the file of the Sessions Court, Cuddalore.

2.The Sessions Case in SC.No.24/2012 arises from the fiRs.information preferred by the second respondent/defacto complainant.

The complaint was preferred by the second respondent against the original accused and newly added accused 6 to 11 and the same was registered in Mangalampettai Police Station Cr.No.157/2009 on 24.9.2009 for the offences under Sections 147, 294(b) and 306 IPC for the suicide committed by his daughter by name Manimala.

3.The allegations raised in the complaint are that on 22.7.2009 one Premkumar, who is arrayed as proposed accused 7 in the FIR wrongly restrained Manimala, while she was returning back from her school and tied thali around her neck and the same was intimated to the police by way of complaint by the daughter and the accused family started wordy quarrel with the complainant family and in continuation of the same occurrence, all the 11 accused jointly came and assembled in front of the house of the complainant and started at shouting in filthy language and Manimala out of frustration and humiliation, consumed poison at 10.30am and she died at 1.15pm.

4.On registration of the complaint, investigation was commenced and in the couRs.of investigation, statement was obtained from the defacto complainant and others and after completion of the investigation, final report was filed against (i)Prem Kumar (ii)Dhanapal (iii)Kolanjinathan (iv)Jayaraman and (v)Devaki, who are the proposed accused 7, 1, 2, 8 and 11 in the FIR.

The Final report proceeds as if all the five accused joined together and used filthy language against the defacto complainant by name Arumugam and his daughter Manimala and other family membeRs.due to which, Manimala was driven to commit suicide by consuming poison.

The Final report was filed against 5 accused for the offences under sections 147, 341, 496, 294(b) and 306 IPC in respect of A1 and under Sections 147, 294(b) and 306 in respect of A2,A3,A4 and A5 and also under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 1998.

5.The final report was taken on file by the trial court and summons was issued to the accused and trial was commenced.

The defacto complainant was examined as PW1 and after his examination, the State represented by S.H.O, Mangalampettai Police Station has come forward with the petition under section 319 Cr.P.C for adding the proposed accused 6 to 11 to be arrayed as additional accused in S.C.24/2012.

It was contended in the petition that they were arrayed as accused in FIR and PW1, in the couRs.of his examination, named all the 11 persons as the offenders involved in the occurrence, as such, they ought to have been arrayed as accused.

The trial court allowed the petition as prayed for on the ground that the names of the proposed accused were already mentioned in the FIR and in the deposition of PW1 and to prove prima facie case against them.

Aggrieved against the same, the proposed accused 6 to 11 have preferred the present revision before this court.

6.Heard both sides and perused the records.

7.It may be true that the accused, who are already arrayed as accused and the petitioners herein, who are newly added as accused 6 to 11, are named accused in the FIR.

The defacto complainant both in the complaint and Section 161 statement and also in his deposition as PW1 in the witness box referred to the names of the present petitioners as accused involved in the occurrence.

However, neither in the FIR nor in Section 161 statement they attributed any specific overt act against the accused.

The specific overt act attributed against the present accused is only in the chief examination of PW1 during trial.

8.The learned counsel for the petitioneRs.in support of his contention regarding scope and exercise of jurisdiction under Section 319 of the Code of Criminal Procedure, relied on the following decisions of the Hon'ble Supreme Court and our High court: 1.CDJ 2000 SC122(Micheal Machado & another v.

CBI and another) 2.CDJ 2006 SC887(Anil Singh & another v.

State of Bihar and otheRs.3.CDJ 2008 SC2143(Lal Suraj @ Suraj Singh and another v.

State of Jharkhand) 4.CDJ 2009 SC1022(Ram Sing and others v.

Ram Niwas and another) 5.CDJ 2008 MHC2444(Kanniappan v.

State represented by Sub Inspector of Police and otheRs.(Madurai Bench of Madras High Court) (SNJ.and 6.Unreported judgment of our High Court dated 9.9.2011 made in Crl.RC.No.524 of 2011 (Nagabalan and another v.

State represented by the Inspector of Police, Ambur Taluk Police Station, Vellore District) (CTSJ).9.Per contra, the learned Government Advocate (Crl.Side) representing the State/fiRs.respondent and the learned counsel for the second respondent/defacto complainant would, by citing the following decisions of the Hon'ble Supreme Court and our High court, defend the impugned order of the trial court on the ground that the names of all the accused were mentioned in the FIR, but the final report was filed excluding their names and enough evidence is available to corroborate the petitioners herein with the accused in the commission of the alleged offence.

It is also sought to be argued that when the names of certain persons have been mentioned in the series of occurrence, they were rightly added as accused in the case.

1.(2001) 6 SCC248(Rakesh and another v.

State of Haryana) 2.(2002) 10 SCC661(Rukhsana Khatoon v.

Sakhawat Hussain and otheRs.3.2007-2-LW (Crl) 1190 (Nallakannu @ Muthu v.

State rep.

by Inspector of Police, Palayamkottai Police Station, Palayamkottai) 4.2010-1-LW (Crl) 531 (K.S.Dhandapani v.

State represented by the Inspector of Police, Chennimalai Police Station, Chennimalai).and 5.2011-2-LW (crl) 335 (Veeralakshmi V.

Kannapiran and another.

10.Neither of the parties nor this Court have quarrel over the principles laid down by the Hon'ble Supreme Court, regarding the exercise of jurisdiction of this Court under Section 319 Cr.P.C.In both the set of authorities, the Hon'ble Supreme Court and our High Court made a detailed analysis on the law laid down by the Hon'ble Apex Court on this subject.

The Hon'ble Supreme Court in para 11 of the decision reported in CDJ 2000 SC122(Michael Machado and another v.

CBI and another) (cited supra) observed as follows: ".11.

The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during 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.

In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects.

FiRs.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.".

It is further observed in para 14 that ".unless the court is hopeful that there is reasonable prospect of the case as against the newly brought accused ending in conviction of the offence concerned, we would say that the court should refrain from adopting such a couRs.of action".11.The Hon'ble Supreme Court in Krishnappa v.

State of Karnataka ((2004) 7 SCC792 was pleased to observe that ".an order under section 319 Cr.PC 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".Further, the Hon'ble Apex Court in Kailash v.

State of Rajasthan (2008 (3) Scale 338 held that ".a glance of the provision would suggest that during the trial, it has to appear from the evidence that a person not being an accused has committed any offence for which such person could be tried together with the accused, who are also being tried.

The key words in this Section are 'it appears from the evidence'..'any person'..'has committed any offence'.

It is not, therefore, that merely because some witnesses have mentioned the name of such person or that there is some material against that person, the discretion under Section 319 Cr.P.C would be used by the court.

This is apart from the fact that such person against whom such discretion is used, should be a person who could be tried together with the accused agaisnt whom the trial is already going on.

This court has time and again declared that the discretion under Section 319 Cr.P.C has to be exercised very sparingly and with caution and only when the concerned court is satisfied that some offence has been committed by such person.

This power has to be essentially exercised only on the basis of the evidence.

It could therefore be used only after the legal evidence comes on record and from that evidence it appears that the concerned person has committed an offence.

The words ".it appears".

are not to be read lightly.

In that the court would have to be circumspect while exercising this power and would have to apply the caution which the language of section demands".The Hon'ble Supreme Court in CDJ 2008 SC2143(Lal Suraj @ Suraj Singh and another v.

State of Jharkhand) by applying the observations of the earlier judgments stated supra, was of the view that the Sessions Judge as also the High Court committed a serious error in passing the impugned judgement and on the basis of the evidence, there was no possibility of recording a judgement of conviction against the appellants at all and accordingly allowed the appeal and set aside the impugned ordeRs.12.Applying the same view, the learned brother judges SNJ and CTSJ have set aside the orders passed against the newly arraigned accused and in one of the decisions reported in CDJ 2008 MHC2444 the learned brother Judge SNJ has, under identical situation, set aside the order on the ground that there was nothing in the evidence of PW1 to make out prima facie that the petitioner has committed any offence.

The learned brother Judge S.Nagamuthu J.

has in paras 10 and 11 of the judgment in K.S.Dhandapani v.

State (2010-1-LW (Crl) 531) referred to the observations of the Supreme Court in (2008) 1 SCC (Cri) 708 (Anil Singh and another v.

State of Bihar and otheRs.and 2009 (2) SCC (Crl) 326 (Ram Pal Singh and others v.

State of Uttar Pradesh and another).which reads as follows: ".10.Before deciding the legality and correctness of the order of the learned Magistrate, let me fiRs.analyze the law laid down by the Hon'ble Supreme Court on this subject.

The learned counsel for the petitioner placed much reliance on the judgment in Anil Singh and another versus State of Bihar and others reported in (2008) 1 Supreme Court Cases (Cri) page 708, wherein, in paragraph Nos.20 and 21, the Hon'ble Supreme Court has held as follows:- ".20.

The Court's power, as noticed hereinbefore, is not disputed.

The learned Sessions Judge, however, as has been observed by the High Court, proceeded on a wrong premise in holding that as no charge sheet was filed as against the appellants by the police the same was not sufficient to refuse to issue summons.

The question, which was necessary to be posted in view of the propositions of law as noticed supra, was as to whether any case has been made out for exercise of extraordinary jurisdiction by the Court keeping in view the fact as to whether the prosecution would be able to bring home the charge.

If the Court comes to the conclusion having regard to the materials on record, that the prosecution ultimately may not be able to bring home the charge as against the persons against whom processes were to be issued, it would decline to do so.

The Court must also take into consideration the fact as to whether an appropriate case has been made out for exercise of the extraordinary jurisdiction.

21.

It may be true that the Court at that stage may not enter into the merit of the matter.

Its opinion in the nature of things would be a prima facie one.

But, the Court must also consider that the innocent persons may not be prosecuted.

The Court is not bound by the opinion of the investigating officer.

It is required to apply the tests on the touchstone of the materials brought on record.

A balance is required to be maintained.

The Court must pose unto itself a right question.

It is required to scrutinise the materials more closely.

A power under Section 319 of the Code of Criminal Procedure is not to be exercised in a mechanical manner.

Only because some evidence has been brought on record, the same by itself may not be a ground to issue processes.".

11.

In Ram Pal Singh and others versus State of Uttar Pradesh and another reported in 2009(2) SCC (Crl.) Page 326, the Hon'ble Supreme Court in paragraph Nos.17, 18 and 19 has held as follows:- ".17.

The ingredients of Section 319 are unambiguous and indicate that where in the couRs.of 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 he has committed.

18.

All that is required by the Court for invoking its powers under Section 319 Cr.P.C.is to be satisfied that from the evidence adduced before it, a person against whom no charge had been framed, but whose complicity appears to be clear, should be tried together with the accused.

It is also clear that the discretion is left to the Court to take a decision on the matter.

19.

In the instant case, although, the appellants were named in the FIR, they were not named as accused in the charge-sheet during the trial.

However, P.W.1 in his evidence, has named the appellants as persons who were involved in the incident causing the death of Brijesh Kumar Singh and injuries to Manvender Singh.

Despite the above, the trial Court, on two separate occasions, rejected the prayer made by respondent 2 for summoning the appellants herein under Section 319 Cr.P.C.The High Court, after considering the evidence of P.W.1, Kamlesh Singh, though it necessary for the appellants to be summoned.".

Thereafter, the learned brother Judge has also referred to the authorities reported in 1982 Crl.LJ2341(Hukamaram and others v.

State of Rajasthan, 1983 Crl.L.J page 289 (Gunaram Tanti and another v.

State of Assam and 1998 (4) Crimes page 87 (Panchadia Jaya v.

State of Orissa).and observed in paras 12 and 14 as follows: ".12.

A perusal of the above Judgments of the Hon'ble Supreme Court would make it very clear that the test to be adopted is whether any case has been made out for the Court to come to the conclusion, having regard to the materials on record, that the prosecution ultimately may be able to bring home the charge as against the persons who are sought to be impleaded as accused.".

".14.

As held by the Hon'ble Supreme Court, the lower Court ought to have looked into the evidence of P.Ws.1 and 2 to apply the above test and to have given finding as to whether there is any possibility for conviction of the petitioner at the ultimate stage of the trial of the case.

Such specific finding is missing in the impugned order though the conclusion of the learned Magistrate is based on the evidences of P.W.1 and P.W.2 also.".

13.It may be true that the petitioneRs.names were mentioned in the FIR and Section 161 Statement of the complainant.

However, neither FIR nor Section 161 statement, has stated any definite role against either of the accused/petitioners herein.

The complaint proceeds as if all the accused used filthy language against the daughter since committed suicide.

Though similar allegation is stated in Section 161 statement, here again no definite overt act is attributed against either of the accused.

Whereas, PW1/defacto complainant has in his chief examination improved his version and made definite statement regarding specific overt act of the petitioners and also made improved version regarding the words used by the accused.

Based on the same, the petitioners were sought to be arrayed as additional accused in this case.

As rightly argued by the learned counsel for the petitioneRs.the improved version as deposed in the witness box cannot be the basis for arriving at the conclusion that the present accused are likely to have committed offence along with other accused.

As a matter of fact, the trial court has in the impugned order not rendered any finding as to whether prima facie case is made out to establish the involvement of the present accused in the case and it is also not specifically stated regarding the offences for which they were arrayed as accused and whether the offences are such, they could be tried along with other accused in the same trial.

That being so, this Court is of the view that considering the present state of the proceedings and the material available herein and the nature of the evidence based on which the impugned order was passed, the same cannot be allowed to sustain and is hence set aside.

K.B.K.VASUKI, J.

rk 14.In the result, this Criminal Revision is allowed and the impugned order dated 14.12.2012 made in Crl.M.P.No.415 of 2012 in S.C.No.24/2012 on the file of the Sessions Judge, Mahila Court, Cuddalore, stands set aside.

Consequently, connected Miscellaneous Petition is closed.

rk 21.10.2013 Index:Yes/No Internet:Yes/No To 1.The Sessions Judge, Mahila Court, Cuddalore.

2.The Inspector of Police, Mangalampettai Police Station, Cuddalore District.

3.The Public Prosecutor, High court, Madras-104.

Crl.R.C.No.226 of 2013