



CrI.O.P.(MD).No.14099 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :30.10.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.O.P.(MD).No.14099 of 2020
and
CrI.M.P.(MD).No.6491 & 6493 of 2020

A.Gurusamy

... Petitioner

Vs.

1.The State Rep by
The Inspector of Police,
Manamadurai Police Station,
Sivagangai District.
(Crime No.589 of 2006)

2.Ilanchooriyan

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in P.R.C.No.47 of 2014, on the file of the learned Judicial Magistrate Court, Manamadurai and quash the same as illegal.

For Petitioner : Mr.N.Ananthapadmanaban
Senior Counsel for
M/s.APN Law Associates

For Respondent : Mr.M.Muthumanikkam
Government Advocate (CrI.Side) for R1



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ORDER

This Criminal Original Petition has been filed to quash the impugned Charge sheet in P.R.C.No.47 of 2014, on the file of the learned Judicial Magistrate Court, Manamadurai.

2. The accused No.8 in the FIR in Crime No.133 of 2006, on the file of the respondent police, filed this petition to quash the proceedings in P.R.C.No.47 of 2014

3. On 30.10.2006, at about 11.00 a.m., the petitioner and other 12 accused persons, entered into the Vilangulam Panchayat Union, Elementary School, wherein, the ward election was conducted and removed the camera and other equipments from the custody of the election officers and caused damages to the tune of Rs.1000/-. Therefore, the election officer made a complaint before the respondent police and the same was registered against the petitioner for the offence punishable under Sections 147, 353, 294(b) and 506(i) of IPC r/w Section 136 (B) (C) Representative of People Act and also under Section 3 of PPDL Act.



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4. The investigating agency after examining number of witnesses and collecting documents filed a final report before the learned Judicial Magistrate, Manamadurai against the 13 accused, including the petitioner. The petitioner herein is shown as an absconding accused. Except the petitioner, remaining accused faced the trial in S.C.No.113 of 2014 and they were convicted by the judgment dated 24.05.2016. As against the same, they filed the appeal in Crl.A.No.32 of 2016 and the same was allowed by judgment dated 18.06.2018. On the basis of the same, now, the petitioner has filed the present petition to quash the proceedings.

5. The learned Senior Counsel appearing for the petitioner submitted that the allegation against all the accused is inseparable and the allegation is that the accused persons unlawfully entered into the election booth and caused damages to the equipment. In the said circumstances, the learned trial Judge has categorically given a finding that there was no evidence for the overtact attributed against any one of the accused. Even the witnesses were unable to identify the accused. On the basis of the said finding, the learned trial Judge acquitted the accused. Hence, the learned



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Senior counsel by placing reliance on the order of this Court in Crl.O.P. (MD).No.17653 of 2017 and seeks quashment of the proceeding in P.R.C.No.47 of 2014 against the petitioner.

6. The learned Government Advocate (Crl.Side), on instructions, submitted that it is an admitted fact that the appeal is in favour of the remaining accused, but the same was not a ground to quash the proceeding against the petitioner. Considering his conduct of absconding, he opposed quashing of the proceedings against the petitioner. He would further submitted that there is a specific averment in 161 statement and hence, he seeks for dismissal of this case.

7. The Court considered the rival submissions made on either side and perused the materials available on record.

8. This Court perused the judgment in C.A.No.32 of 2016. Upon perusal of the judgment, none of the witnesses deposed before the Court any specific overtact against any individual accused.



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9.The accused and the other persons were said to have illegally trespassed into the polling booth and caused damages and assaulted the witnesses. In this aspect, the learned trial Judge has rendered the following findings:

21.மேலும் சம்பவ நாளில் சம்பவ நேரத்தில் அ.சா.1 பணிபுரிந்து வந்ததாக சொல்லப்படும் வாக்குச்சாவடியில் பணிபுரிந்து வந்த அ.சா.8 தனது முதல் விசாரணை சாட்சியத்தின் போது ஆஜர் எதிரிகள் அ.சா.1 அ.சா.8 பணிபுரிந்து வந்ததாக சொல்லப்படும் வாக்குச்சாவடியில் அத்துமீறி நுழைந்து அங்கிருந்த சேர் டேபிளை உடைத்து சேதப்படுத்தியதாகவோ அ.சா.10 வைத்திருந்த வீடியோ கேமிராவை உடைத்து சேதப்படுத்தியதாகவோ குறிப்பிட்டு சாட்சியம் அளித்ததாக தெரியவில்லை. சம்பவ சாட்சிபளாக அ.சா.1 அ.சா.8 அ.சா.10 அ.சா.11 சாட்சிகள் தங்களது முதல் விசாரணை சாட்சியத்தின் போது எந்த எதிரி எதைக் கொண்டு வீடியோ கேமராவை தாக்கி சேதப்படுத்தியதாகவோ எந்த எதிரி வாக்குச்சீட்டை கிழித்து எறிந்ததாகவோ எந்த எதிரி சேர் டேபிளை உடைத்து சேதப்படுத்தியதாகவோ குறிப்பிட்ட சாட்சியம் அளிக்காத நிலையில் ஆஜர் எதிரிகள் தான் சம்பவ நாளில் சம்பவ நேரத்தில் அ.சா.1 மற்றும் அ.நா. 8 சாட்சிகள் பணிபுரிந்து வந்ததாக சொல்லப்படும்



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வாக்குச் சாவடியில் அத்துமீறி நுழைந்து அ.சா.1 மற்றும் அ.சா.8 சாட்சிகளை பணி செய்ய விடாமல் தடுத்து அங்கு வைக்கப்பட்டிருந்த ஓட்டுச் சீட்டை கிழித்து சேதப்படுத்தி வாக்குப்பதிவை நடத்த விடாமல் இடையூறு செய்ததாக கூறும் குற்றச்சாட்டு ஏற்கும்படியாக இல்லை என்று தான் இம்மன்றம் கருதுகிறது.

10.In view of the above finding, the judgment relied by the learned Senior counsel appearing for the appellant is applicable to the present case. This Court in Crl.O.P.(MD).No.17653 of 2017 has held as follows:

8. It is very clear from the above judgments that, where the evidence of all the accused persons is inseparable and indivisible and some of the accused persons have been acquitted, the remaining accused persons cannot be treated differently based on the very same evidence. No useful purpose would be served by making the petitioner undergo the ordeal of trial.

11.In view of the above law laid down by this Court and also by the specific finding of the appellate Court in Crl.A.No.32 of 2016, in



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acquitting the co-accused, there is no separable evidence available against the petitioner to undergo the ordeal of trial. Hence, this Court is inclined to quash the proceedings.

12. Therefore, the ratio relied upon by the learned Senior counsel is applicable to the present case and Therefore, this Court is inclined to quash the same. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected criminal miscellaneous petitions are closed.

30.10.2023

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
sbn

To

- 1.The Inspector of Police,
Manamadurai Police Station,
Sivagangai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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