



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

Crl.O.P.(MD)No.8812 of 2015

and

M.P.(MD).Nos. 1& 2 of 2015

1.Palpandi
2.Rajmohan
3.Fathima
4.Nalini

... Petitioners/Accused Nos.1 to 3 & 5

Vs.

State represented by

1. The Inspector of Police,
Anna Nagar Police Station,
Madurai District.
(In Crime No. 1051 of 1995)

...1st Respondent/Complainant

2. Ravi

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the charge sheet in S.C.No.163 of 2006 on the file of the learned first Additional Assistant Sessions Judge, Madurai, Madurai District and quash the same.

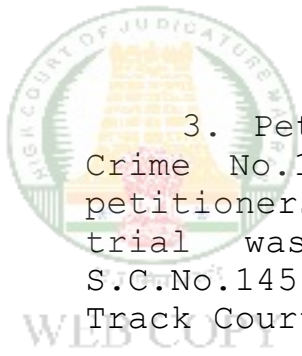
For Petitioner : Mr.A.Prasanna Rajadurai
For M/s.S.Muthalraj

For Respondent-1 : Ms.S.Prabha
Government Advocate (Crl. Side)

O R D E R

Seeking to quash S.C.No.163 of 2006 on the file of the learned first Additional Assistant Sessions Judge, Madurai, Madurai District, the present petition has been filed.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the first respondent and perused the records.



3. Petitioners are A-9, A-14, A-20 and A-21 respectively in Crime No.1051 of 1995. Totally there are 23 accused, as the petitioners were found absconding, the case was put up. After the trial was conducted, other 17 accused were acquitted in S.C.No.145/98 by the I-Additional District and Sessions Judge/Fast Track Court No.III, Madurai, Madurai District on 09.11.2006.

4. It is not in dispute that the judgment rendered in S.C.No.145/98 dated 09.11.2006 has become final. The learned counsel has also made reliance upon the decision of this court in *Tamilmaran -vs- State rep. by Inspector of Police, Paravakkottai Police Station, Mannargudi Taluk, Thiruvarur District (2007 (1)LW Crl 514)* wherein this court after taking note of the judgment of the Delhi and Karnataka High Courts was pleased to held as follows:

"7. This Court is of the considered view that there is much force on the contention put forward by the learned senior counsel to the effect that the learned trial Judge having disbelieved the prosecution case in toto no useful purpose would be served by putting the petitioner to undergo the ordeal of trial on the basis of the very same set of evidence. It is also pointed out by the learned senior counsel that even the defacto complainant himself turned hostile giving a total go-by to his earlier version and there is no other material available on record to implicate the petitioner. The learned senior counsel has rightly placed reliance on the decision of the Delhi High Court in a case in Sunil Kumar v. State reported in 2000 (1) Crimes 73 wherein it is held as follows :

"3. The question thus is as to whether in the face of the judgement of acquittal the petitioner should still be permitted to undergo the ordeal of a trial. In Sat Kumar v. State of Haryana (AIR 1974 SC 294), it was held that there is no rule of law that if the Court acquits some of the accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness must be acquitted. (See also Har Prasad v. State of Madhya Pradesh (AIR 1971 SC 1450), Makan Jivan v. State of Gujarat (AIR 1971 SC 1797), Mohd. Moin Uddin V. State of Maharashtra (1971 S.C.C. (Cri.) 617)). But where the evidence against all the accused persons is inseparable and indivisible and if some of the accused persons have been acquitted, the remaining accused persons cannot be treated



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differently on the basis of the same evidence.

4. On perusal of the judgment of acquittal dated 19-1-1998, it appears that the deceased Balwan Singh met with a homicidal death owing to burn injuries sustained by him has not been disputed by the accused persons. The evidence against the accused persons mainly consists of the evidence of the eye-witnesses, namely, Karan Singh (PW 2) and Smt.Asha Rani (PW-5) (Wife of the deceased Balwan Singh) besides the dying declaration (Ex.PW-13/A) of the deceased Balwan Singh. Both the said witnesses have not supported the prosecution case and so they have been declared hostile by the prosecution. Eliminating the evidence of the said eye-witnesses, there remains the dying declaration (Ex.PW.13/A) of the deceased Balwan Singh, which has been disbelieved by the learned Addl. Sessions Judge. It would, therefore, appear that the accused persons, namely, Jangli Tyagi, Balbir Singh, Anil Kumar Tyagi and Sushil Kumar Tyagi were acquitted on the ground of insufficiency of evidence. Thus, the evidence adduced in the case against all the accused persons is inseparable and indivisible and that being so the petitioner cannot be treated differently on the basis of the said evidence. In this view of the matter, there is no prospect of the case ending in conviction against the petitioner and the valuable time of the Court would be wasted for holding trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. If the Court is almost certain that the trial only would be an exercise in futility or sheer wastage of time, it is advisable to truncate or ship the proceedings at the stage of [Section 227](#) of the Code itself."

8. In yet another decision, placing reliance by the learned senior counsel, in [Mohammed Ilias v. State of Karnataka](#) reported in 2001 (4) Crimes 417, the Karnataka High Court taken a similar view following the decision of Delhi High Court, cited supra.

9. Therefore, the above well settled principle of law laid down in the decisions cited supra, is squarely applicable to the facts of the instant case. In this case also admittedly the other accused, viz., A-1 to A-4 have been acquitted by the learned trial Judge after disbelieving the entire



prosecution case and as such this Court is of the considered view that no useful purpose would be served for putting the petitioner to undergo the ordeal of trial and therefore, the proceedings pending against the petitioner in C.C.No.1146 of 1997 on the file of the learned Judicial Magistrate, Mannargudi, is hereby quashed."

5. In such of the matter, the proceedings which is pending against the petitioners in S.C.No.163/06 on the file of the learned First Additional Assistant Sessions Judge, Madurai, Madurai District is quashed.

6. Hence, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AE)

/True copy/

Sub Assistant Registrar

PJL

To

1. The I-Additional Assistant Sessions Judge,
Madurai,
Madurai District.

2. The Inspector of Police,
Anna Nagar Police Station,
Madurai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to MR.Na.Palaniyandi, Advocate in sr NO.33855

Cr1.O.P. (MD) No.8812 of 2015
and

M.P. (MD) .Nos. 1 & 2 of 2015
25.06.2015

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