



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2016

CORAM:

WEB COPY

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

Crl.O.P.(MD)No.17481 of 2016

and

Crl.M.P(MD)No.8672 and 8673 of 2016

Suresh @ Sureshkumar

: Petitioner/A1

Vs.

The State through rep. by
The Inspector of Police,
Aranthangi Police Station,
Pudukkottai District
(Crime No.832/10)

: Respondent/Complainant

Prayer: This petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the proceedings in S.C.No.47 of 2016 on the file of the Additional District Judge/Presiding Officer, Special Court for E.C and NDPS Act Cases, Pudukkottai and quash the same as arbitrary and illegal.

For Petitioner : Mr.K.Baalasundharam

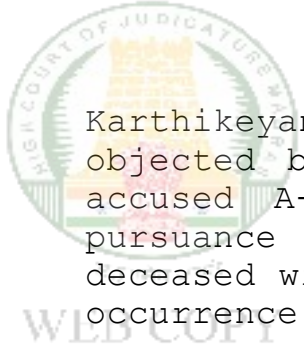
For respondent : Mr.K.Anbarasan
Government Advocate (Crl. Side)

O R D E R

The petition has been filed to call for the records pertaining to the proceedings in S.C.No.47 of 2016 on the file of the Additional District Judge/Presiding Officer, Special Court for E.C and NDPS Act Cases, Pudukkottai and quash the same as arbitrary and illegal.

2. The respondent filed a case against the petitioner as well as 3 other accused in Crime No.832 of 2010 under sections 120(b), 294(b), 302 r/w 34 of IPC. After completing the investigation, the respondent filed a final report, which was taken on file in S.C.No.111 of 2014 on the file of the Additional District Judge/Presiding Officer, Special Court for E.C and NDPS Act cases, Pudukkottai.

<https://hcservices.ecourts.gov.in/hcservices> The case of the prosecution is that the accused 1 and 2 are brothers and their sister Balamani was married to one Veerapandi. After his death in an accident, the deceased



Karthikeyan developed illicit intimacy with her, which was objected by the accused 1 and 2. Since it continued, all the accused A-1 to A-4 conspired together and on 18.12.2010, in pursuance of the conspiracy, the accused A-1 to A-3 attacked the deceased with Aruval. Subsequently, they escaped from the scene of occurrence with the help of the fourth accused.

4. The prosecution in order prove their case, examined 14 witnesses and marked Exs.A-1 to A-20 and Mos.1 to 15.

5. Due to absence of the petitioner, the Sessions case was split up the case against him. After analysing the evidence, the trial Court acquitted the other accused by a judgment, dated 18.06.2015.

6. Mr.K.Baalasundharam, learned counsel appearing for the petitioner would submit that the petitioner is similarly placed to the 2nd accused; that neither the prosecution, nor PW1 has preferred any appeal against the judgment of acquittal, so it has become final and that since the similarly placed accused have been already acquitted, the petitioner need not undergo the ordeal of trial. In support of his contention, the learned counsel has relied upon the following decisions:-

1. In *Sunil Kumar vs. State* [2000(1)Crimes 73];
2. In *Tamilmaran vs State* [2007(1) LW (Cr1.) 514]; and
3. In *Thamilendu vs. State* [2008(2) CTC 153]

7. Heard Mr.K.Anbarasan, learned Government Advocate (Criminal Side) and perused the materials available on record.

8. The only question that arises for consideration in this case is as to whether after the criminal case ended in acquittal, the proceedings against the other accused is to be quashed.

9. In the decision 1st cited, the Delhi High court in *Sunil Kumar vs State*, [2000(1) Crimes, 73], held as follows:-

"3.The question thus is as to whether in the face of the judgment 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 SCC (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 differently on the basis of the same evidence."

10. This Court in the 2nd cited decision has 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 :

.....

8. In yet another decision, placed 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 as 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."



11. In the 3rd decision cited above, in that case, originally 9 accused have been charged for the offences under sections 341, 323 and 149 read with 302 IPC. Except the 7th accused, the other accused have been tried in the Sessions Court in S.C.No.86 of 1991, the trial court disbelieved entire prosecution case holding that prosecution has failed to prove charges and acquitted the accused. Against the 7th accused the case was split up. Subsequently, he filed a petition to quash the charge sheet. This Court, following the decisions referred to supra, quashed the criminal case by observing that no useful purpose would be served by putting the accused to undergo an ordeal of trial.

12. In the case on hand, the prosecution in order to prove their case examined P.Ws' 1 to 3 as eyewitnesses to the occurrence. P.W.12 is the doctor, who conducted the post-mortem on the deceased. The learned Sessions Judge, after analysing the evidence of P.Ws' 1 to 3 and P.W.12, discarded their version by observing that they are not eyewitness to the occurrence. The trial Court, after disbelieving the entire prosecution case, acquitted the accused A-2 to A-4. The prosecution relies on the same evidence to prove the charges against the petitioner. Therefore, in my considered view, the judgments referred above squarely apply to this case.

13. In such view of the matter, this petition is allowed and the entire proceedings in S.C.No.47 of 2016 on the file of the Additional District Judge/Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukkottai, against the petitioner is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Additional District Judge/Presiding Officer,
Special Court for EC and NDPS Act Cases,Pudukkottai
 - 2.The Inspector of Police, Aranthangi Police Station,
Pudukkottai District
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai
- +One cc to Mr.K.Baalasundharam, Advocate, SR.No.72960
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25.11.2016