

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No. 5053 of 2017

and Crl.MP. Nos. 3756 & 3757 of 2017

Senthil @ Senthilkumar

..Petitioner

Vs

1. The State rep.by
The Deputy Superintendent of Police,
Perambalur Sub-Division,
Perambalur

2. The State by
The Inspector of Police,
Kunnam Police Station,
Perambalur District.

3. Karuppai

..Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to Call for the records and quash the proceedings in PRC. No. 08/2016 pending on the file of the learned Judicial Magistrate at Perambalur and pass orders.

For Petitioner

: M/s.G.Padmanapan

For Respondents

For R1 & R2

: Mr.P.Govindarajan,
Additional Public Prosecutor

For R3 & R4

: Served. No appearance

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ORDER

The prayer sought for in the present petition is to Call for the records and quash the proceedings in PRC. No. 08/2016 pending on the file of the learned Judicial Magistrate at Perambalur.

2. Heard both sides.

3. The case of the prosecution is that on 19.01.1994 at 6.00pm when the Ambedkar Youth Welfare Association conducted a public meeting near Veppur bus stand, the accused 1 to 64 found in the charge sheet had unlawfully assembled armed with aruval and stick, restrained the prosecution witnesses and their party men and assaulted them with sticks and aruval and degraded them with their caste name in public place and caused damage to the public property. Hence the charges are framed. Totally 64 persons were arrayed as accused, in which the petitioner is the 41st accused. The present petition is filed to quash the charged sheet against him.

4. The learned counsel for the petitioner submitted that the petitioner was a juvenile at the time of occurrence, since he was born on 20.06.1980 and as on date of occurrence, he was only 13 years old

and hence the learned counsel submitted his case has to be tried before the Juvenile Court, for which purpose he filed a Memo before the Trial Court and the same was rejected by the Trial Court, on the ground that it was not supported by appropriate documents. The other ground raised by the learned counsel for the petitioner is that there was a wrong identification of the petitioner by the respondent police. The petitioner's father's name is Natarajan. Whereas in the charge sheet it has been wrongly mentioned as Senthil, S/o. Duraikannu and in view of the wrong identification, the charges against the petitioner deserves to be quashed.

5. The learned counsel for the petitioner also pointed out that as of now, 33 co-accused were acquitted by the learned Principal District and Sessions Judge, Perambalur in Special Sessions Case No. 8/2011, dated 01.11.2012. Further, 7 accused were also acquitted by the learned Principal District and Sessions Judge, Perambalur in Special Sessions Case No. 5/20116 dated 09.12.2016 and 6 of the accused had died. Since the cause of action in respect of all the accused is one and the same and the overt act against the other co-accused as well as the petitioner is identical, the learned counsel for the petitioner submitted that the petitioner is also entitled for the same relief. It is also submitted by the learned counsel for the petitioner that the

alleged occurrence was said to have taken place on 19.01.1994 and the final report came to be filed after nine years i.e. on 19.03.2003. Hence, it is the case of the petitioner that the fair and speedy trial has been denied and sought for quashing the proceedings.

6. The learned Additional Public Prosecutor submitted that the charges have been laid against the petitioner on the basis of the available materials found at the place of the occurrence and therefore the petitioner has been properly implicated in the present case.

7. I have carefully considered the submissions of the learned counsel for the petitioner as well as the learned Additional Public Prosecutor.

8. Before going into the grounds raised by the learned counsel for the petitioner, it is seen that the prosecution has tried to establish the case through various eye witnesses. On a perusal of the statements made by these eyewitnesses, it is manifestly clear that none of the eyewitnesses have attributed specific overt act to the petitioner. Further, the weapons alleged to be used for the commission of crime have not been seized and produced as Material Objects in the present case. Above all, all the witnesses have made

ambiguous statements, implicating all the 64 accused without specifically alleging the crime and in the absence of the same, it can only be concluded that the charge sheet filed is improper. I have taken into consideration of the fact that out of the 64 accused, 40 accused have already been acquitted on merits and on the basis of the acquittal orders placed before me, it is seen that the judgments were pronounced after due consideration of the various materials placed before the trial court. Since, the petitioner's case is also similar to that of the other co-accused, the benefit of acquittal can be extended to the petitioner also.

9. As pointed out by the learned counsel for the petitioner, the charge sheet reveals that the accused no. 41 is shown as Senthil, S/o. Duraikannu. In the Aadhar card of the petitioner, his name is shown as Senthil S/o. Natarajan. In normal circumstances, this submission of the learned counsel may be taken to be technical. But in a case, where 64 accused were involved and none of the witnesses attributed specific overt acts to each of the accused, there is a possibility that there could have been misidentification of persons. Therefore, I find force in the submissions of the learned counsel for the petitioner that though the name of the petitioner is found in the charge sheet, the same could refer to some other person and not the petitioner.

10. The other ground raised by the petitioner that he was only 13 years at the time of occurrence also has some force. From the Transfer Certificate produced before this Court, it is seen that the date of birth of the petitioner is 20.06.1980. When this aspect was brought to the notice of the learned Magistrate, the same was rejected on the ground that there is no material to prove that the petitioner was a juvenile at the time of occurrence and the petitioner ought to have been proceeded before the Juvenile Court. Nevertheless, since I have rendered findings on the merits of the case on the basis of the evidences by the witnesses as well as other materials available on record, I am of the view that the petitioner is entitled for acquittal in the present petition.

In the result, the criminal original petition stands allowed. The proceedings in PRC. No. 8 of 2016 on the file of the Judicial Magistrate, Perambalur, pending against the petitioner is quashed. Consequently, the Connected Miscellaneous Petitions are also closed.

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08.09.2017

Index:Yes

ak/arr

To

1. The Deputy Superintendent of Police,
Perambalur Sub-Division,
Perambalur
2. The Inspector of Police,
Kunnam Police Station,
Perambalur District.
3. The Public Prosecutor,
High Court, Madras.



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M.S.RAMESH.J,

arr/ak



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