

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2017

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

CRL. R.C. NOS.1425 to 1427, 1453, 1454 & 1529 of 2017

Crl.R.C.Nos.1425 to 1427 of 2017

Vinoth ...Petitioner in Crl.R.C.1425 to 1427/2017

-vs-

The State, rep. By
The Dy.Superintendent of Police
Villupuram. ... Respondent in Crl.R.C.1425 to 1427/2017

Crl.R.C.No.1453 of 2017

Viswanathan ...Petitioner

-vs-

The State, rep. By
The Inspector of Police
Thirupathirupuliyur Police Station,
Cuddalore District. ... Respondent

Crl.R.C.No.1454 of 2017

A.Suntharamoorthy ...Petitioner

-vs-

The State, rep. By
The Inspector of Police
Pakandai Koot Road Police Station,
Cuddalore District. ... Respondent

Crl.R.C.No.1529 of 2017 सत्यमेव जयते

B.Prabhakaran ...Petitioner

-vs-

The State, rep. By
The Inspector of Police
Chidambaram Town Police Station,
Chidambaram, Cuddalore District. ... Respondent

Crl.R.C.No.1425 of 2017 preferred under Section 397 and 401 of the Code of Criminal Procedure against the judgment dated 15.04.2016, passed by the Chief Judicial Magistrate / Assistant Sessions Judge, Villupuram, made in S.C.No.288/2015.

Crl.R.C.No.1426 of 2017 preferred under Section 397 and 401 of the Code of Criminal Procedure against the judgment dated 11.04.2016, passed by the Addl. Assistant Sessions Judge-11, Villupuram, made in S.C.No.122/2015.

Crl.R.C.No.1427 of 2017 preferred under Section 397 and 401 of the Code of Criminal Procedure against the judgment dated 11.04.2016, passed by the Addl. Assistant Sessions Judge-II, Villupuram, made in S.C.No.123/2015.

Crl.R.C.No.1453 of 2017 preferred under Section 397 and 401 of the Code of Criminal Procedure against the judgment dated 26.05.2014, passed by the Judicial Magistrate-III, Cuddalore District made in C.C.No.97 of 2012.

Crl.R.C.No.1454 of 2017 preferred under Section 397 and 401 of the Code of Criminal Procedure against the judgment dated 19.10.2012, passed by the Judicial Magistrate, Tirukkuviloor, made in S.T.C.No.359/2012.

Crl.R.C.No.1529 of 2017 preferred under Section 397 and 401 of the Code of Criminal Procedure against the judgment dated 23.08.2013, passed by the Addl. Sessions Judge, Chidambaram, Cuddalore District, made in S.C.No.83/2013.

For Petitioners: Mr.Prakash Adiapadam for
Mr.E.Anbarasan in Crl.R.C.1425 to 1427/2017
Mr.R.Thirumoorthy in Crl.R.C.1453/2017
Mr.S.Rajinikanth in Crl.R.C.1454/2017
Mr.B.Ramprabhu in Crl.R.C.1529/2017

For Respondent :Mr.V.Arul, APP in all the revisions

Reserved on	:	11.12.2017
Pronounced on	:	22.12.2017

C O M M O N O R D E R

"No freeman shall be taken, imprisoned, outlawed, banished or in anyway destroyed, nor will we go upon him except by legal judgments of his peer by law of the land." - Article 39 of Magna Carta of 1215.

2. Contending that the life and liberty guaranteed under Article 21 of the Constitution of India would remain destroyed, if the judgment of the Trial Court is not declared as legal, these revision petitions have been filed. The judgment under challenge has given acquittal to the accused persons granting benefit of doubt and that they should have been honourably acquitted.

3. There may be cases where there is no involvement of the accused at all in the crime alleged, may be cases where the involvement and participation is doubtful and there may be cases where the involvement and participation is confirmed. Alleging that there is no evidence at all to connect the accused with the crime and therefore, it is a case where there is no scope for invoking benefit of doubt, these revision petitions have been filed.

4. The criminal revisions juxtapose a common grievance expressed by the petitioners and common relief is sought. Therefore, all these petitions are taken up together for final disposal by this common order.

5. The petitioner in each of the revision petition was tried for various offences of the Indian Penal Code before the trial court and they were acquitted of the charges framed against them. However, while recording the acquittal, though the trial court had found that there was no evidence against the accused, however, instead of passing an order of acquittal simpliciter, had given a finding that it is extending the benefit of doubt in the prosecution's evidence to the accused and is acquitting them. In essence, instead of honourably acquitting the accused as there was no evidence against the accused, the trial court having acquitted them by giving the benefit of doubt, a stigma has been cast upon them which has put their right to livelihood in jeopardy as their application for appointment in the police department was rejected on the ground that they have not been honourably acquitted and were acquitted only on the ground of benefit of doubt. Aggrieved by the order of the trial court in not acquitting them honourably or without stigma, the accused persons are before this Court by filing these revision petitions.

6. A close scrutiny of all the impugned orders against which the petitioners are before this Court reveals that the petitioners have been acquitted of all the charges on the ground that there being no evidence let in to substantiate their part in the commission of the offence and the same has not been proved by the prosecution. The trial court, in such circumstances, extending the benefit of doubt, in the version postulated by the prosecution, acquitted the accused. Whiles, when the petitioners applied for the post of constables in the police department, a disciplined force, got themselves selected in the written test and oral interview, however, their candidatures were rejected on the sole ground that they have been acquitted only by giving the benefit of doubt and accordingly applying Rule 14 (b) of the Tamil Nadu Special Police (Subordinate Service) Rules, on the basis of the report submitted regarding their antecedents, the petitioners were found unfit for the post and their cases for appointment were rejected. The stigmatic order which has severed the basic livelihood, the petitioners are before this Court praying to have the acquittal declared as honourable acquittal.

7. It is the submission of the respective learned counsel appearing for the petitioners that when the trial court has recorded a finding that there is no evidence against the accused to find them guilty of the commission of the offence, they should have been acquitted honourably, rather, they have been acquitted by giving the benefit of doubt in the

prosecution version, which has been wrongly construed as an acquittal on benefit of doubt and, thereby, deprived of their getting themselves appointed in the police department, though they have got themselves meritoriously selected. Therefore, it is submitted by the learned counsel for the petitioners that the acquittal recorded as an acquittal on benefit of doubt should be modified to one as honourable acquittal.

8. Heard the learned Additional Public Prosecution appearing for the respondents on the above contentions and materials were also perused.

9. The learned Additional Public Prosecutor would submit that when the accused has been acquitted, neither appeal nor revision is maintainable and in support of the same, the Division Bench judgment of this Court in M.Krishnan & Ors. - Vs - The State (2014 (5) LW 798), is relied upon, wherein on a reference from the learned single Judge as to whether the criminal court can employ the expression "Honourable Acquittal" while acquitting the accused, the Division Bench had held that proof beyond reasonable doubt and benefit of doubt are actually tools that guide the subjective mind in arriving at a finding whether the accused is guilty or not. It further went on to hold that acquittal is an acquittal and there are not different forms of acquittal and the adjectives used merely indicate the process of reasoning rather than going to the weight of the finding. The Division Bench, further analysing whether a revision petition at the instance of a person who was accused and had been acquitted by the trial court/appellate court is maintainable, held that they are not maintainable.

10. On the other hand, the learned counsel appearing for the accused persons would submit that the Division Bench judgment was beyond the scope of reference and also that the Division Bench judgment did not take into account the judgment of the Supreme Court on the same point.

11. The following two judgments are relied upon to support the above proposition:

i) Kerala State Science & Technology vs. Rambal Co others, reported in (2006) 6 SCC 258,

"It is fairly well settled that when reference is made on a specific issue either by a learned Single Judge or Division Bench to a larger Bench i.e. Division Bench or Full Bench or Constitution Bench, as the case may be, the Larger Bench cannot adjudicate upon an issue which is not the question referred."

ii) Amit Kapoor vs. Ramesh Chander, (2012) 9 SCC 460:

The jurisdiction of the Court under Section 397 can be exercised so as to examine the correctness, legality or propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression 'prevent abuse of process of any court or otherwise to secure the ends of justice', the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.

12. The learned counsel for the accused also relied upon the decision of this Court rendered in Crl.R.C.No.684 of 2014 (E.Kalivarathan vs. State) dated 23.12.2014, while distinguishing Krishnan's case has held that a right of a person, who is aggrieved by a verdict stands preserved under Section 397 and 401 of Cr.P.C., and the relevant observation reads as under:

"46. But, if there are findings in the order or judgment of acquittal, which are adverse to the interest of the accused, as an aggrieved person, he should have the remedy to get the adverse findings set aside. For illustration, though in a criminal trial, the bad character of an accused is not relevant [vide S.132 of the Evidence Act], in a given case under Section 304-A of IPC relating to motor vehicle accident, suppose, despite the objection raised by the accused, evidence relating to bad character of the accused that he is a fraud is let in by the prosecution and the same is also recorded by the trial court, then at the time of argument, quite naturally, the accused would request the court to eschew the said evidence relating to his bad character from consideration. But, the court either inadvertently or illegally goes into the said evidence and gives finding about the bad character of the accused holding him as a fraud, though the accused is acquitted as there is no evidence against him, it cannot be said that the accused has no remedy and that he should carry the stigma for ever. If the accused does not get this finding expunged, he may have to carry the stigma about his character throughout his life. This would certainly result in civil consequence as it relates to his moral character. Similarly, let

us assume that in a case of rape, the accused pleads that he never had sexual intercourse with the victim, who is pregnant. The trial court, however, gives a finding that he had sexual intercourse with the victim and he is the cause for her pregnancy. The trial court, eventually, acquits him on the ground that the said sexual intercourse was with the free consent of the victim and thus, it is not an offence of rape. True, that he can not challenge the acquittal either by way of appeal or revision. But, if he does not challenge the finding that he is the father of the child in the womb, it will be a stigma in his life resulting in civil, moral and social consequences. Therefore, it is incumbent for him to get such adverse findings expunged.

47. In my considered view, in such a situation, the remedy available for the accused is in the form of revision under Ss.397 and 401 of the Code, for S.397 of the Code, states that any finding could also be challenged by the aggrieved. The Division Bench has not adverted to this aspect of Ss.397 and 401 of the Code. The Division Bench simply has held that like "any other order", an acquittal cannot be challenged by an acquitted person. But, the grounds upon which he was acquitted; the adverse remarks made against him; and the adverse findings made against him; are all matters, which fall under the term "findings" as employed in Section 397 of the Code and therefore they are all revisable.

48. Next, assuming for a moment without conceding, that the finding of the trial court that the acquittal on giving benefit of doubt is not a finding in terms of S.397 of the Code, even then, the accused cannot be shown the door to go without remedy. Such power, in my considered opinion, lies at least under section 482 of the Code inasmuch as the opening words of S.482 of the Code "nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court" would go to show that the non availability of Appeal or Revision is not a bar for the High Court to exercise the inherent power."

13. Therefore, the relevant question to be considered is whether after acquittal the petitioners can be construed as aggrieved persons? The learned counsel for the accused would

explain how the accused persons would be aggrieved persons even after getting an order of acquittal.

14. Right to livelihood is enshrined in the Constitution and guaranteed by the State. In such a backdrop, the petitioners have come before this Court stating that the stigma cast upon them on account of the judgment of the trial court has put them on the back foot and prevented them from securing an appointment in the police department. Are the petitioners entitled to challenge the said finding that their acquittal should have been an honourable acquittal, when there is no evidence to connect them with the offence. The answer to this query lies in the judgment of the learned single Judge in Kalivarathan's case (supra), wherein the learned single Judge, while adverting to the Sections 397 and 401 of Cr.P.C., held that "where an accused has been acquitted, but adverse remarks have been made against him in the order or the trial court by recording adverse findings, but there being no evidence, such of those matters which fall under the term "findings" as employed in Section 397 of the Code and therefore they are all revisable."

15. This Court is constrained to agree with the view expressed by the learned single Judge, where a person is put to grave injustice, his right to have the same redressed is the touchstone on which our legal system has been developed. That being the case, leaving the person at the mercy of others for a fault, which has been perpetrated by wrong usage of some terminology in the judgments cannot be allowed to sustain. A duty is cast upon the superior Courts to correct the said error so that the same is not carried forward on and on.

16. This view is supported by the judgment of the Hon'ble Supreme Court reported in (1994) 1 SCC 541 (Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal);

49. Now comes the question as to whether the criminal court can use the expression "honourable acquittal" while acquitting an accused. This question is no more res integra in view of the judgment of the Hon'ble Supreme Court in Management of Reserve Bank of India, New Delhi v. Bhopal Singh Panchal, (1994) 1 SCC 541 wherein, the Supreme Court has held as follows:-

"The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted

after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted."

50. Thus, the expression "honourable acquittal" is relevant to service law jurisprudence or other jurisprudence and not for criminal law jurisprudence. Therefore, the criminal court while acquitting the accused, undoubtedly, cannot employ the term "that the accused is/are honourably acquitted". But at the same time, in all cases where there is no evidence at all against the accused as I have already concluded, the criminal court should simply say "acquitted". The criminal court may say that there is no evidence against the accused. But, the criminal court in such kind of cases, where there is no evidence at all against the accused, shall not employ the expressions "not proved beyond reasonable doubt" or "accused is acquitted by giving benefit of doubt".

(Emphasis Supplied)

17. In this judgment, the Hon'ble Supreme Court has pointed out that, in case where there is no evidence against the accused, the Criminal Court shall not employ the expression "not proved beyond reasonable doubt" or "accused is acquitted by giving benefit of doubt".

18. In these cases also, it is not in dispute that there is no evidence against these accused persons. The learned Additional Public Prosecutor was not in a position to point out that there was any incrimination evidence against these accused persons. Therefore, the Trial Court should not have used the expression "benefit of doubt". Therefore, those findings are liable to be set aside.

19. The Hon'ble Supreme Court has also pointed out that even in cases where there is no evidence against the accused, the Criminal Court should simply say "acquitted". In this case also, there is no evidence against these accused persons and therefore, the accused persons must be ordered to be acquitted.

20. For the reasons aforesaid, the Criminal Revisions Petitions are allowed and the findings recorded by the respective learned Judicial Magistrates to the effect that the acquittal is due to the fact that the charges have not been proved beyond reasonable doubt are set aside and instead, it is ordered that the acquittal shall be a simple order of acquittal, conveying the meaning that there is no evidence against the accused.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

GLN

To:

1. The Dy.Superintendent of Police, Villupuram.

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

3.The Inspector of Police
Pakandai Koot Road Police Station,
Cuddalore District.

4.The Inspector of Police
Chidambaram Town Police Station,
Chidambaram, Cuddalore District.

5.The Chief Judicial Magistrate,
Assistant Sessions Judge, Villupuram

6.The Additional Assistant Sessions Judge, II,
Villupuram

7.The Judicial Magistrate III, Cuddalore

8.The Judicial Magistrate, Thriukoviloor

9.The Additional Sessions Judge, Chidambaram

10.The Public Prosecutor,
High Court,
Madras.

+2cc to Mr.R.Thirumoorthy, Advocate SR.No.92223, 92224

+1cc to Mr.B.Ramprabu, Advocate SR.No.92178

+1cc to Mr.E.Anbarasan, Advocate SR.No.92227

ORDERS IN

CrI.R.C.Nos.1425 to 1427,
1453, 1454 & 1529 of 2017