

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No. 7847 and 7848 of 2017
and Crl.MP.Nos.5661 and 5662 of 2017

Anbuselvam

..Petitioner
in all Crl.OPs

Vs.

State rep. by
The Inspector of Police,
District Crime Branch,
Namakkal.
(Crime No.27/2005
& 28/2005 respectively)

..Respondent
in all Crl.OPs

Prayer in Crl.OP.No.7847 of 2017 : Criminal Original Petition
filed under Section 482 Cr.P.C. to call for the records
relating to C.C.No.114 of 2012 on the file of the Judicial
Magistrate No.I, Namakkal and quash the same.

Prayer in Crl.OP.No.7848 of 2017 : Criminal Original Petition
filed under Section 482 Cr.P.C. to call for the records relating
to C.C.No.115 of 2012 on the file of the Judicial Magistrate
No.I, Namakkal and quash the same.

For Petitioner : Mr.S.Shanmugavelayutham,
(for two Crl.OPs) Senior Counsel
for Mr.T.Vijayaraghavan

For Respondent : Mr.C.Iyyappa Raj, APP
(for two Crl.OPs)

COMMON ORDER

The prayer sought for in these petitions is to call for the
records relating to C.C.No.114 of 2012 and 115 of 2012 on the
file of the Judicial Magistrate No.I, Namakkal and quash the
same.

2. The case of the prosecution is that A1 Sengodan was
running a travel agency in the name and style of United Travel

Agency at Namakkal Town. While A2 is the wife of the first accused, A3 and A4 are their son and daughter. The petitioner before this Court is A3. All the accused, with an intention of cheating the de-facto complainant, by promising a job at London, have obtained a sum of Rs.6 lakhs on various dates. Since they were unable to fulfil the promise, they are now being prosecuted for the offence under Section 420 r/w 34 IPC.

3. Heard Mr.S.Shanmugavelayutham, learned Senior Counsel appearing for the petitioner as well as Mr.C.Iyyappa Raj, Additional Public Prosecutor appearing for the respondent.

4. It is seen that A1,A2 and A4 alone were appearing before the trial court. Since the petitioner/A3 and A5 were absconding, their case has been split up and a separate case in C.C. No.144 of 2009 has been filed against A1,A2 & A4 before the learned Judicial Magistrate No.I, Namakkal. The prosecution has produced six witnesses and marked Ex P.1 to Ex.P.8 as prosecution documents. PW.1, PW.2, PW4 and PW5 did not support the prosecution's case and hence were treated hostile and the investigating officer's evidence alone supported the case of the prosecution. Even PW3 did not speak about the contents of the confession statement. The learned trial Judge, after assessing the evidence produced by the prosecution, acquitted A1, A2 and A4 on 21.11.2014.

5. On a perusal of the said Judgment, it is seen that the learned trial Judge, had taken into consideration the evidence of the witnesses and came to the conclusion that the prosecution has failed to establish the case beyond doubt. All the materials produced before the trial Court were examined and it was held that no incriminating materials were available to connect the accused with the crime.

6. Insofar as the petitioner/A3 is concerned, the overt acts attributed in the complaint and the statement of witnesses which culminated in filing of the charge sheet, stand on the same footings as that of all the other accused. When the trial court had come to the conclusion that the evidence of the witnesses were not reliable and acquitted all the co-accused namely A1, A2 and A4, the same analogy would be applicable to the petitioner also. I am unable to comprehend as to how the trial Court can come to a different conclusion in the petitioner's case, in view of its earlier judgement, acquitting A1,A2 and A4. When it is manifestly clear that the trial Court cannot come to a different conclusion while dealing with the petitioner's case, the proceedings needs to be truncated at this stage itself.

7. The learned Senior Counsel relied upon two judgemnts of this Court reported in 2007 -1-L.W (Cr1.) 514 Tamilmaran Vs. The State rep. By Inspector of Police, Paravakottai Police Station,

Mannargudi Taluk, Thiruvarur District and 2008 (2) CTC 153
Thamilendi Vs. State rep. by The Inspector of Police, Orathanadu
Police Station, Thanjavur District and submitted that in view of
the acquittal of three other co-accused, no useful purpose would
be served to subject the petitioner to undergo the ordeal of the
trial.

The relevant portion of the judgments read as follows:
Tamilmaran Vs. The State rep. By Inspector of Police,
Paravakottai Police Station, Mannargudi Taluk, Thiruvarur
District, reported in 2007 -1-L.W (Cri.) 514

"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 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
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 differently on the basis of the same
evidence.

4. On perusal of the Judgment of
acquittal dated 19.01.1998 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 (PW2) 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 if the Code itself."

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."

II. *Thamilendi Vs. State rep. by The Inspector of Police, Orathanadu Police Station, Thanjavur District reported in 2008*
(2) CTC 153

"4. On perusal of the Judgment of acquittal dated 19.01.1998, 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 Additional Sessions Judge. It would, therefore, appear that the accused persons, namely, Jangli Tyagi, Balbir Singh, Anilkumar 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 state of Section 227 of the Code itself.

7. This Court has also placed reliance on yet another decision of the Karnataka High Court in Mohammed Ilias v. State of Karnataka, 2001 (4) Crimes 417, taking the same view by following the decision rendered by the Delhi High Court (Tamilmaran v. State, 2007 (1) LW (Cr1.) 514).

8. Therefore, this Court is of the considered view that the above settled principle of law laid down in the decisions cited supra is squarely applicable to the facts of the instant case and in this case also except the petitioner herein all the other accused, viz., A-1 to A-6, A-8 and A-9 who have been tried separately in S.C.No.86 of 1991 have been acquitted by the learned Trial Judge disbelieving to entire prosecution case and holding that the prosecution has failed to prove the charges including the charge under section 302, I.P.C. against A-3 who is the only accused alleged to have attacked the deceased. "

8. The above proposition is self-explanatory. In view of the acquittal of other three accused, after considering the statements of the witnesses and holding their statements to be unreliable, the trial Court cannot re-assess their depositions once again and take a contrary view. Since the proceedings against the petitioner has to necessarily end in as acquittal, no useful purpose would be served to make the petitioner to under go the ordeal of the trial.

9. In the result, the Criminal Original Petitions stand allowed. The proceedings as against the petitioner in C.C. Nos.114 of 2012 and 115 of 2012 on the file of Judicial Magistrate No.I, Namakkal are quashed. Consequently, the connected Miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ak/nmm

To

1.Judicial Magistrate No.I,
Namakkal.

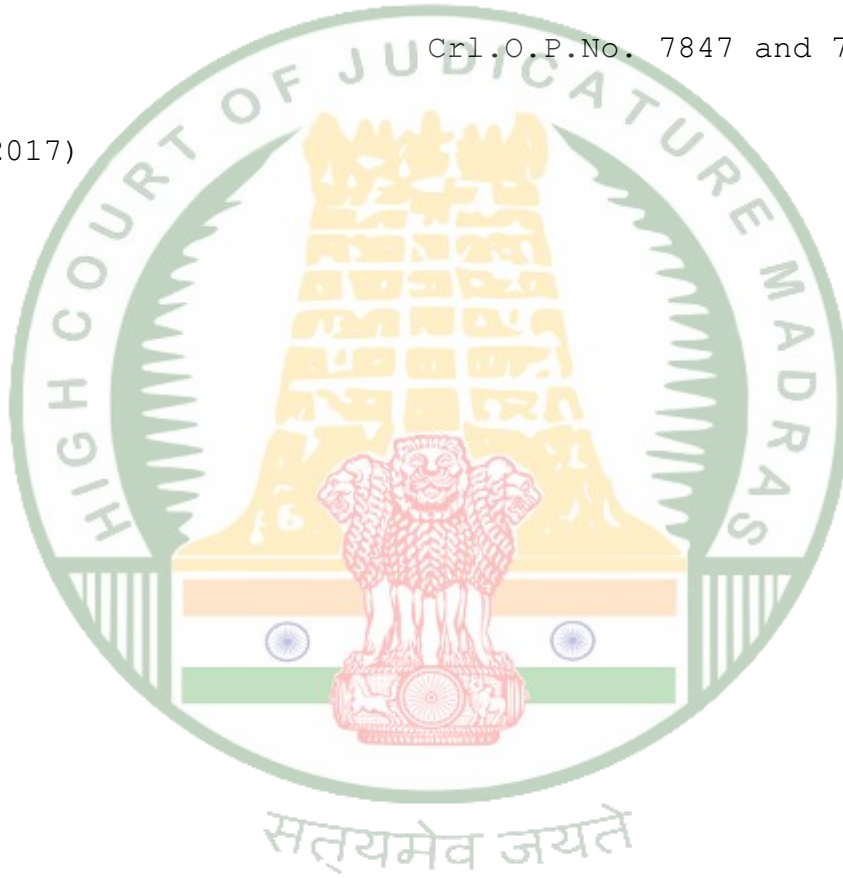
2. The Inspector of Police,
District Crime Branch,
Namakkal.

3. The Public Prosecutor
High Court, Madras.

+lcc to Mr.T.Vijayaraghavan, Advocate, S.R.No.77003

Crl.O.P.No. 7847 and 7848 of 2017

KS (CO)
GN(15/11/2017)



WEB COPY