

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.01.2017

Coram

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.7832 of 2013

and

M.P.No.1 of 2013

N.Sri Rangarajulu

.. Petitioner/A3

Vs.

The State rep. by
the Inspector of Police,
Bramma Desam Police Station
Villupuram District.

.. Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C to call for the records relating to SC No.96 of 2013 on the file of the Principal Sessions Judge, Villupuram and quash the same.

(prayer amended as per the orders of this Court dated 12.04.2013 and 29.04.2013 made in MP.Nos.3 and 6 of 2013 respectively)

For Petitioner : Mr.I.Abrar Md Abdullah

For Respondent : Mr.C.Emalias, APP

ORDER

This petition is filed by the third accused in SC No.96 of 2013 on the file of the learned Principal District Sessions Judge, Villupuram to quash the said criminal proceedings.

2.Facts giving rise to this petition, are as under:

One Sankar lodged a complaint alleging that he has taken an agricultural land on lease from one Rajaram, who is the cousin of the petitioner herein. On 30.04.2011, when the complainant along with one Venugopal, was going to his lease land, carrying paddy seeds to seedbed, the paddy seed bags fell down on the field belonging to one Narayanasamy. On seeing the same, the said Narayanasamy and his two sons by names, Sri Rangarajulu/petitioner herein and Selvamuthukumar abused the complainant with filthy language and by using the name of his community. They further assaulted the complainant with deadly

weapons and threatened him with dire consequences. On the basis of the same, a case in Crime No.149 of 2011 was registered against the petitioner and two others for the alleged offences punishable under sections 147, 148, 294(b), 323, 506(ii) IPC r/w Section 3(i)(x) SC/ST Act. After completion of investigation, charge sheet was filed only against A1 and A2 for the offences under Sections 294(b), 506(ii) r/w 34 IPC and Section 3(i)(x) SC/ST Act. Subsequently, the name of the petitioner was included as A3 and the charge sheet was taken on file as PRC No.4 of 2013 by the learned Judicial Magistrate No.II, Tindivanam. Thereafter, the case was committed to the learned Principal District Sessions Judge, Villupuram and taken on file as SC No.96 of 2013. Later, it was transferred to the file of the learned Special Sessions Judge, SC & ST Act cases, Villupuram and renumbered as Special SC No.123 of 2015. During the course of trial, due to non-appearance of the petitioner/A3, the case against him was split up and was assigned as Special SC No.2/2016 and is pending, quashment of which, the present petition came to be filed.

3.Learned counsel for the petitioner sought to quash the criminal proceedings pending against the petitioner on the following grounds: (i)The petitioner is working as Assistant Professor in Anna University. On the date of occurrence i.e., on 30.04.2011, he was a member of the flying squad for the examination conducted by the Anna University. As such, he was not present at the scene of occurrence and the case has been falsely registered against him.

(ii)Though the name of the petitioner was found place in the FIR, after examining the witnesses and also based on the letter dated 30.04.2011 given by the Zonal Coordinator, Zonal Office, Zone -IV-A (MIT), Anna University, the Investigating Officer/Deputy Superintendent of Police, Tindivanam has deleted the name of the petitioner from the accused list and filed the charge sheet only against A1 and A2. The Investigating Officer has also stated so in his statement under Section 161(3) Cr.P.C as well as in his evidence as PW9 in Spl.SC No.123/2015. Hence, he was not involved in the alleged commission of the offence.

(iii)After split up the case against the petitioner/A3 and after due trial in Special SC No.123/2015 (SC No.96/2013), A1 and A2 were acquitted from the charges framed against them, by judgment dated 22.01.2016 passed by the learned Special Sessions Judge, Villupuram. Hence, the same benefit ought to have been extended to the petitioner herein and he should have been acquitted on the same reasoning. Suppose the criminal case pending against the petitioner being allowed to go on, no useful purpose will be served and it will be a waste of judicial time and abuse of process of court.

4.Learned Additional Public Prosecutor for the respondent reiterated the averments made in the counter affidavit filed by

the Investigating Officer, wherein, it has been stated that after investigation, the name of the petitioner was deleted from the accused list and charge sheet was filed only against A1 and A2 before the learned Judicial Magistrate No.II, Tindivanam, who, in turn, added the petitioner's name as third accused in P.R.C.No.4/2013. However, learned Additional Public Prosecutor contended that the co-accused were acquitted after trial, is not a ground for quashing the case against the petitioner herein. So, he prayed for dismissal of this petition.

5.I have considered the submissions made on either side and perused the materials placed before this Court.

6.Admittedly, on the basis of the statement given by the defacto complainant, criminal case was registered against three persons for the alleged offences under sections 147, 148, 294 (b), 323, 506(ii) IPC r/w Section 3(i)(x) SC/ST Act. After investigation, charge sheet was filed only against two persons for the offences under sections 294(b), 506(ii) r/w 34 IPC and Section 3(1)(x) SC/ST Act. Thereafter, the name of the petitioner was included as A3 and the charge sheet was taken on file as PRC No.4/2013 by the learned Judicial Magistrate No.II, Tindivanam. Subsequently, it was committed to the learned Principal District Sessions Judge, Villupuram and renumbered as SC No.96/2013. Later, it was transferred to the Special Sessions Judge, Villupuram and taken on file as Special SC No.123/2015. A1 and A2 appeared and faced trial and after full fledged trial in Spl.SC No.123/2015, they were acquitted by judgment dated 22.01.2016. Due to non-appearance of the petitioner herein/A3, the case in Spl.SC No.123/2015 against him was split up and assigned as Spl.SC.No.2/2016, against which, the present petition has been filed.

7.It is well settled in law that merely because co-accused were acquitted after trial, is not a ground for quashing the case against the non-appearing accused. But at the same time, if the Court is satisfied that on the basis of evidence, the prosecution case has been shattered in the earlier case and no purpose will be served by proceeding the case against the non-appearing accused, then the Court has got power under Section 482 Cr.P.C to quash the proceedings as against the non-appearing accused, giving the benefit of acquittal of other co-accused in the case. By applying the same to the instant case, the criminal case pending against the petitioner is liable to be quashed.

8.Even otherwise, a perusal of the judgment rendered by the Special Sessions Judge, Villupuram in Special SC No.123/2015 (SC No.96/2013) would go to show that the court below had disbelieved the case of the prosecution on the ground that the names of the third accused and three other persons as mentioned

in the complaint, were not found place in the charge sheet and that, the injured and eye witnesses to the occurrence, turned hostile. Therefore, the court below had come to the conclusion that the prosecution failed to prove the guilt of A1 and A2 beyond reasonable doubt. Accordingly, the court below had acquitted A1 and A2 from the charges framed against them and released them under Section 235(1) Cr.P.C.

9.Further, it is evident from the letter dated 30.04.2011 of the Zonal Coordinator, Anna University and also from the statement under Section 161(3) Cr.P.C and the evidence of the Investigating Officer as PW9 in Special SC No.123/2015 that during the relevant point of time, the petitioner was a member of the flying squad for the examination conducted by the Anna University and he was not present at the scene of occurrence. In the absence of the petitioner on the spot at the relevant time, it cannot be said that he was involved in the commission of the offence, as alleged in the complaint. Therefore, as rightly argued by the learned counsel for the petitioner, the case registered against the petitioner is a false one and the same cannot be allowed to sustain.

10.Considering the facts and circumstances noted above, this Court is of the view that since the substratum of the prosecution case has been lost, no purpose will be served by allowing the petitioner to face the trial again on the basis of the same set of facts and nature of evidence adduced. In the event of the petitioner being allowed to face trial, it will only amount to abuse of process of court and wastage of judicial time. So, this Court feels that it is a fit case where the power under section 482 Cr.P.C can be invoked to quash the proceedings as against the petitioner, who is the third accused in the case in Spl.SC No.123/2015 (SC.No.96 of 2013), which against him, was split up and assigned as Spl.SC No.2/2016, on the file of the Special Sessions Judge, SC & ST Act cases, Villupuram.

11.Resultantly, this Criminal Original Petition is allowed and the criminal proceedings in Spl.SC No.123/2015 (SC.No.96 of 2013), which against the petitioner, was split up and assigned as Spl.SC No.2/2016, on the file of the Special Sessions Judge, SC & ST Act cases, Villupuram stands quashed, insofar as the petitioner is concerned. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CCC)

//True Copy//

Sub-Assistant Registrar

To

1. The Special Sessions Judge, SC & ST Act Cases, Villupuram.
2. Principal District Sessions Judge, Villupuram.
3. The Inspector of Police,
Bramma Desam Police Station
Villupuram District.
4. The Public Prosecutor, High Court, Madras-104.

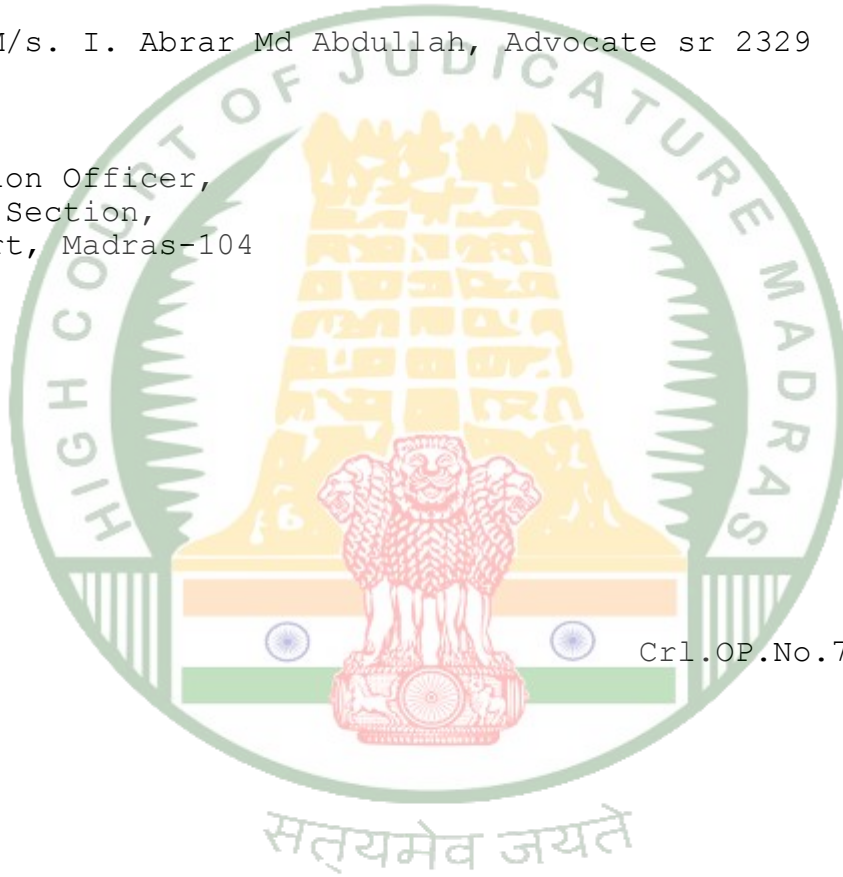
+1 CC to M/s. I. Abrar Md Abdullah, Advocate sr 2329

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras-104

SU(CO)
sp/27/1

Cr1.OP.No.7832 of 2013



WEB COPY