



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2017

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THE HON'BLE MR.JUSTICE S.S.SUNDAR

Crl.O.P.(MD) No.10506 of 2017

and

CRL.M.P(MD)No.7183 of 2017

1.Madhan

2.Alaguraj ...Petitioners/Accused No.1 and 3

-vs-

1.The State, represented by
The Inspector of Police,
East Police Station,
Kovilpatti,
Thoothukudi District.
(Crime No.659 of 2008)

... Ist Respondent/Complainant

2.Mukesh ... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying this Court to call for the records in connection with the impugned charge-sheet in J.C.No.34 of 2009, pending on the file of the learned Juvenile Justice Board, Thoothukudi insofar as the Petitioners are concerned.

For Petitioners : Mr.A.S.Vaigunth
for M/s.G.Thalaimutharasu

For Respondent-1 : Mr.K.Anbarasan
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition is to quash the proceedings in J.C.No.34 of 2009, pending on the file of the Juvenile Justice Board, Thoothukudi, insofar as the Petitioners are concerned.



2. Heard the learned counsel for the Petitioners and the learned Government Advocate (Crl. side) appearing for the first respondent and perused the materials placed before this Court.

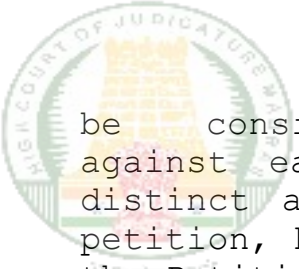
3. The Petitioners are accused in connection with a Crime No. 659 of 2008, for the alleged offence under Sections 342, 294 (b), 307 IPC. Subsequently, the case was split up, since the Petitioners are Juveniles at the time of occurrence and the Petitioners, who are accused No. 1 and 3 were tried in J.C.No.34 of 2009 which is pending before the Juvenile Justice Board, Thoothukudi. It was submitted that the case against the second accused was tried and ultimately, he was acquitted in S.C.No.61 of 2009 by judgement of the learned Additional Sessions Judge, Kovilpatti, dated 15.12.2009. It was based on the acquittal of the co-accused by judgement in S.C.No.61 of 2009. The learned counsel for the Petitioners states that the benefit of the co-accused should also be given to the Petitioners in the case in J.C.No.34 of 2009, for the same offence for which J.C.No.61 of 2009, was tried.

4. The learned counsel for the Petitioners relied upon a judgement of this Court in the case of *Thamilendi .vs. The State by Inspector of Police, Orathanadu Police Station, Thanjavur District* reported in 2008(2) CTC 153, wherein, it has been held in Paragraphs 8 and 9 as follows:

"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 as in this case also except the Petitioner herein all other accused viz A1 to A6, A8 and A9 who have been tried separately in S.C.No.86 of 1991 have been acquitted by the learned Trial Judge disbelieving the entire prosecution case and holding that the prosecution has failed to prove the charges including the charge under Section 302 IPC against A3 who is the only accused alleged to have attacked the deceased.

9. Therefore, this Court is of the considered view that no useful purpose would be served by putting the Petitioner to undergo the ordeal of trial and as such the proceedings pending against the Petitioner in S.C.No.202 of 1999 on the file of the learned Principal Sessions Judge, Thanjavur is hereby quashed. "

5. This Court has distinguished the above judgement of this Court while dealing with a similar case. Be that as it may, in this case, the charge sheet clearly discloses the offence. The probability of the offence on factual issues cannot be decided at this stage. The first accused is the main accused, who has ~~facto complainant~~ and caused serious injuries. As a matter of fact, the act committed by the first petitioner cannot be ignored and the first Petitioner being the first accused cannot



be considered along with other co-accused. The allegations against each of the accused in this case are different and distinct and actually there is no scope for entertaining this petition, based on the judgement relied by the learned counsel for the Petitioners. Thus the Criminal Original petition fails.

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6. Accordingly, the Criminal Original petition is dismissed. Consequently, connected Miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(Writs)

/True Copy/

Sub-Assistant Registrar

To

1. The Presiding Officer,
Juvenile Justice Board,
Thoothukudi.
2. The Inspector of Police,
East Police Station,
Kovilpatti,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Vsn

RL/4C/3P/MR/KKR/SAR1/28/8/2017

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and
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