



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 13.11.2017
CORAM

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

Crl.O.P. (MD) No. 15420 of 2017
and
Crl.M.P. (MD) No.10252 of 2017

Thangappan

... Petitioner/Accused No.1

-Vs-

1.The State through
The Inspector of Police,
Thiruchitrambalam Police Station,
(Crime No.12 of 2010)

... 1st Respondent/Complainant

2.Lekshmi

... 2nd Respondent/PW No.2

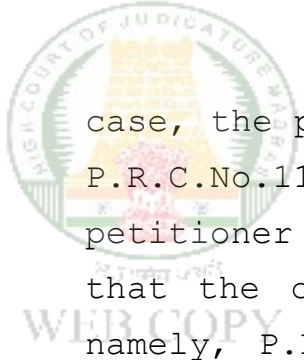
Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in P.R.C.No.59 of 2014 on the file of the Judicial Magistrate Court, Pattukottai and quash the same against the petitioner is concerned.

For Petitioner : Mr.B.Tamilnithi
For R1 : Mr.A.Ramar
Additional Public Prosecutor

ORDER

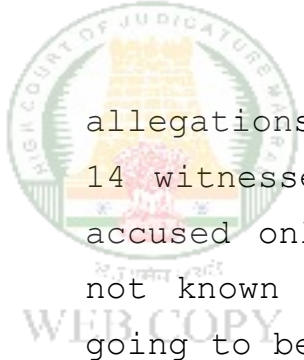
The Criminal Original Petition has been filed to call for the records in P.R.C.No.59 of 2014 on the file of the Judicial Magistrate Court, Pattukottai and to quash the same.

2.The petitioner is the first accused in the criminal proceedings in P.R.C.No.59 of 2014 pending on the file of the Judicial Magistrate Court, Pattukottai. Based on the complaint lodged by one Kanagaraj, a case was registered in Cr.No.12 of 2010 by the first respondent police for the alleged offences under Sections 324 and 307 I.P.C as against the petitioner and his wife namely, the second accused. It appears that the petitioner did not appear and therefore, the case was split up. After splitting the



case, the proceedings as against the second accused was proceeded in P.R.C.No.11 of 2014 and the case which was split up as against the petitioner was given a number as P.R.C.No.59 of 2014. It is stated that the case which was proceeded as against the second accused, namely, P.R.C.No.11 of 2014 ended in acquittal by judgment of the Assistant Sessions Court, Pattukottai in S.C.No.48 of 2015. It appears that the case which was pending in P.R.C.No.11 of 2014 was later committed to the Sessions Court in S.C.No.48 of 2015 before the Assistant Sessions Court, Pattukottai. After recording the fact that the witnesses P.W.1 and P.W.2 turned hostile and as no other eye witness was examined on the prosecution side, the second accused was acquitted giving the benefit of doubt.

3.The learned counsel for the petitioner relied upon the judgment of this Court in the case of Tamilmaran Vs. State Represented by Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Tiruvarur District reported in (2007) 1 MLJ (Cr1) 1334 wherein, the learned single judge of this Court held that evidence as against all the accused persons is inseparable and indivisible, the petitioner, who is the co-accused, cannot be treated differently. It is the case where the co-accused therein was acquitted as no evidence was adduced and available against the co-accused. Since the case has not been split up as against the absconding accused, the petition was later filed by the absconding accused for quashing the charge sheet based on the acquittal given by the Court as against the co-accused. This judgment is factually distinguishable. In this case, the offences alleged as against the first and second accused are distinct. The second accused in this case is the wife of the petitioner who was not seen in the place of occurrence by any of the witnesses. The case as against the second accused was not made out. It is to be noted that the case as against the first accused is different and the charge sheet cannot be quashed on the probability of convicting the petitioner in this case. The de-facto complainant should be given a fair opportunity to prove his case as against the first accused against whom specific



allegations are made. It is to be noted that in the charge sheet, 14 witnesses were cited. In the proceedings as against the first accused only two witnesses were examined as eye witnesses. It is not known as to the other facts and details of witnesses who are going to be examined to prove the case as against the first accused. In these circumstances, this Court is not in a position to accept the case of petitioner, relying upon the Judgment of single judge of this Court in the judgment cited by the learned counsel for the petitioner. As a result, this criminal original petition is dismissed.

4. The learned counsel for the petitioner seeks indulgence of this Court to issue a direction to the learned Assistant Sessions Court, Pattukottai to commit the case. It is to be noted that the case against the first accused is pending in P.R.C.No.59 of 2014 on the file of the Judicial Magistrate Court, Pattukottai. Hence, liberty is given to the petitioner to file a petition before this Court with a prayer to direct the Judicial Magistrate Court, Pattukottai for committing the case to the Sessions Court. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Thiruchitrambalam Police Station,
Pattukottai.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.B.TAMILNIDHI, Advocate SR.No.87096.

CrI.O.P.(MD) No. 15420 of 2017
and

CrI.M.P.(MD) No.10252 of 2017