



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2017

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.2930 of 2017 and

Crl.M.P.(MD) Nos.2245 & 2246 of 2017

WEB COPY

Fazurul Haq

... Petitioner/Sole Accused

-vs-

1. The State represented by
The Inspector of Police,
Sethubavachatram Police Station,
Peravurani Taluk,
Thanjavur District.
(in Crime No.398/1993)

... Respondent/Complainant

2.Jamal Mohamed

... Respondent/Defacto Complainant

3.

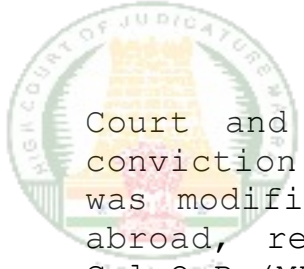
Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records in S.C.No.151 of 2006 pending on the file of the learned Principal District and Sessions Judge, Thanjavur and quash the same and pass such further or other orders as this Hon'ble Court deem fit and proper in the facts and circumstances of the case.

For Petitioner	: Mr.C.Arul Vadivel Alias Sekar
For R1	: Mr.K.Anbarasan
	Govt. Advocate (Crl.Side)

O R D E R

This petition has been filed seeking to call for the records in S.C.No.151 of 2006 pending on the file of the learned Principal District and Sessions Judge, Thanjavur and quash the same

2. On the complaint lodged by the 2nd respondent, the 1st respondent registered a case in Crime No.398 of 1993 and after completing the investigation, filed a charge sheet for offences under Sections 302 r/w 34 IPC against four accused, namely, Rukoon (A1), Abdul Kareem (A2), Katchi Mohideen (A3) and Fazurul Haq (A4). Since Fazurul Haq (A4) was not available, the case against him was split up and assigned S.C.No.151 of 2006 and the trial proceeded before the learned Principal District and Sessions Judge, Thanjavur against A1 to A3 in S.C.No.22 of 1995. Final judgment was passed in S.C.No.22 of 1995 on 23.08.1995, in which, A2 & A3 were acquitted of all the charges and A1 was convicted for the offence under Section 323 IPC alone and sentenced to undergo Rigorous Imprisonment for one year. It may be relevant to state here that all the accused were acquitted of the charge under Section 302 IPC. A1 filed appeal in C.A.No.671 of 1995 before this



Court and the same was dismissed on 01.08.2001, in which, the conviction under Section 323 IPC was confirmed and the sentence was modified to a fine of Rs.1,000/-. Fazurul Haq (A4), who was abroad, returned to India and was granted anticipatory bail in CrI.O.P.(MD)4814 of 2006 on 15.12.2006 and since then, he has been regularly appearing before the learned Sessions Court, Thanjavur. It is reported that the records in the case are in the High Court and have not been sent to the Sessions Court, despite several directions and communications. Under such circumstances, Fazurul Haq (A4) is before this Court for quashing the prosecution against him in S.C.No.151 of 2006.

3. On the direction of this Court, Jamal Mohamed / defacto complainant is present before this Court and he has been identified by the respondent police. He has filed an affidavit before this Court stating that he has no objection in the prosecution against Fazurul Haq (A4) being quashed.

4. This Court gave its anxious consideration to the rival submissions.

5. It is the case of the prosecution that on account of previous enmity, the father of R2 Mohideen Pitchai was attacked by A1 with palm sticks and A2 to A4 assaulted him by hand, on account of which, Mohideen Pitchai is said to have died and the Trial Court has given a clear finding that the accused had not committed the offence of murder and therefore, acquitted all the accused under Section 302 IPC. Against the acquittal of all the accused, the State did not prefer any appeal and only A1 was convicted for the offence under Section 323 IPC for causing simple injuries to Mohideen Pitchai and was sentenced to undergo one year Rigorous Imprisonment by the Trial Court, which was modified by this Court in C.A.No.671 of 1995.

6. In the considered opinion of this Court, further prosecution of Fazurul Haq on the same evidence would indeed be an abuse of process of law, as the fact remains that Fazurul Haq has been appearing before the Sessions Court, Thanjavur from 2006 onwards.

7. In the result, this petition is allowed and the prosecution in S.C.No.151 of 2006 pending on the file of the learned Principal District and Sessions Judge, Thanjavur against Fazurul Haq is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/



To:

1. The Principal District and Sessions Judge, Thanjavur
2. The Inspector of Police,
Sethubavachatram Police Station,
Peravurani Taluk, Thanjavur District.
3. The Additional Public Prosecution,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.C.ARUL VADIVEL @ SEKAR Advocate in SR. No.53186
ar
JS/RSK/SAR.3/16.05.2017/3P-5C

Cr1.O.P. (MD) No.2930 of 2017
20.04.2017