



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.07.2017

Delivered on: 20.12.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P. (MD) No.9225 of 2017

and

Crl.M.P. (MD) Nos.6271 and 6272 of 2017

1.Baskar @ Abayam Baskar

2.Rajesh

3.Prabhu @ Mohamed Jalaludeen : Petitioners / Accused No.10,
14 & 15

-Vs-

1.The State represented by
The Inspector of Police,
Nadukaveri Police Station,
Thanjavur District.
(Crime No.202 of 2001)

: 1st Respondent / Complainant

2.Ramamoorthy

: 2nd Respondent / De-facto
Complainant

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in S.C.No.20 of 2017 on the file of the learned II Additional District & Sessions Judge, Thanjavur, Thanjavur District and quash the proceedings as against the petitioners herein.

For Petitioner : Mr.A.Thiruvadi Kumar

For Respondents : Mr.K.Anbarasan

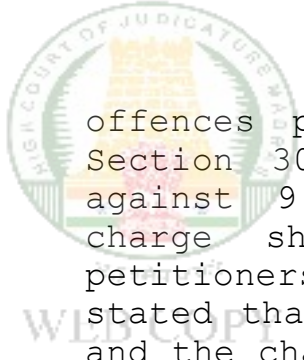
Government Advocate

O R D E R

This petition is filed to quash the proceedings in S.C.No.20 of 2017 on the file of the II Additional District and Sessions Judge, Thanjavur, Thanjavur District.

2.The petitioners are accused No.10, 14 and 15 in S.C.No.20 of 2017 on the file of the II Additional District and Sessions Judge, Thanjavur.

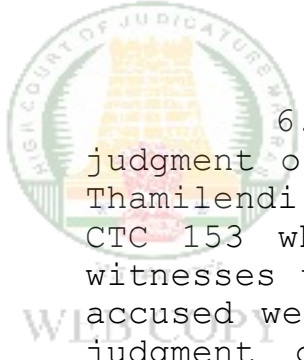
<https://hcservices.ecourts.gov.in/hcservices/> Further, the second respondent lodged a complaint against the petitioners and other accused and a case was registered in Crime No.202 of 2001 on 06.09.2001 for the alleged



offences punishable under Sections 147, 148, 341, 506(ii) and Section 302 I.P.C. Originally, the complaint was filed only against 9 named accused and thereafter, after investigation, charge sheet was filed against 15 accused including the petitioners who are accused No.10, 14 and 15 respectively. It is stated that out of fifteen accused, accused 2, 7, 8 and 11 died and the charge against them stood abated. It is admitted that the case against the petitioners namely accused 10, 14 and 15 and others had been split up because they were absconding. It is also admitted that the remaining accused alone faced trial in S.C.No.210 of 2012 and all of them were acquitted by judgment dated 31.10.2014 of learned Second Additional District Sessions Judge, Thanjavur, Thanjavur District.

4.As regards the nature of charges against the accused, it is stated that the accused persons had formed into unlawful assembly and waylaid a car bearing registration No.TN-49-B-9151 driven by the deceased by name S.V.T.Raja and occupied by other witnesses. It is stated that the accused had committed the murder of deceased S.V.T.Raja. It is to be noted that some of the crucial witnesses had turned hostile and some of the witnesses could not identify the accused to the satisfaction of the Court. Ultimately, the trial Court in the connected case held that the prosecution had miserably failed to prove charges and the accused were therefore acquitted of all the charges.

5.The petitioners herein who are only the split up / absconding accused moved the present quash petition mainly on the ground that the continuation of the prosecution would be an abuse of process of law in view of the judgment of the trial Court in the connected case in S.C.No.210 of 2012 which had attained finality. The learned counsel for the petitioners submitted that the charge sheet framed as against the accused in this case does not contain any incriminating materials as against the petitioners herein and that same set of evidence adduced by the prosecution in the connected case are held to be insufficient to convict the accused who had faced trial. It is further contended that the evidence adduced against all the accused in the earlier case is inseparable and indivisible and that the petitioners cannot be convicted and the continuation of proceedings is unnecessary. It is further pointed out by the learned counsel for the petitioners that the prosecution had failed to prove charges as against the main accused who had been named in the FIR. Since the petitioners are not named in F.I.R. and included later, it is contended that no useful purpose will be served by allowing the petitioners to face the ordeal of trial. Further, it is pointed out that the occurrence had taken place in the year 2001 and that after a lapse of more than 15 years, it is inequitable to proceed against the petitioners. It is further submitted that the prime accused in the same criminal case were acquitted after full trial.



6. Learned counsel for the petitioners relied upon a judgment of the learned Single Judge of this Court in the case of *Thamilendi v. State* by Inspector of Police reported in 2008 (2) CTC 153 wherein as against the petitioners who were absconding witnesses trial was split up. After completion of trial, the main accused were acquitted in the earlier case. On the basis of the judgment of the Sessions Court acquitting the coaccused, the petition filed by the remaining accused to quash the criminal case pending trial was allowed on the ground that no useful purpose would be served by putting the petitioners to undergo the ordeal of trial. The learned counsel for the petitioners also relied upon another judgment of a learned Single Judge of this Court in *Crl.O.P.(MD)No.8331* of 2008 in the case of *Sundaramoorthy @ A.S.Moorthy v. State* represented by the Inspector of Police, Kumbakkonam East Police Station, Thanjavur District reported in 2015 (2) MWN (Cr.) 44. On the basis of the fact that the main accused who were convicted by trial Court was later acquitted in appeal this Court held that there would be no possibility of trying the petitioners for conspiracy, in the absence of any co-accused. This judgment is not applicable to the facts of this case as in this case the petitioners are charged for specific overt acts. It is true that the earlier judgment relied upon by the learned counsel for the petitioners is relevant and it is possible for this Court to hold that no useful purpose would be served by putting the split up accused to undergo the ordeal of trial on the basis of the verdict of the Criminal Court in *S.C.No.210* of 2012 on the file of the Second Additional District and Sessions Judge, Thanjavur. However, this Court after careful analysis of the facts in the present case can observe that the nature of evidence of witnesses in this case cannot be prejudged and may be different as against the petitioners. In the previous case, though 33 witnesses were examined on the side of the prosecution several witnesses turned hostile and the prosecution case was shattered. It appears that the prosecution case in the criminal proceedings earlier was shattered due to obvious and inherent defects and other circumstances. The possibility of the accused being convicted in this case cannot be ruled out. In such circumstances, this Court is not inclined to entertain this petition as the criminal proceedings pending trial for serious offences cannot be quashed on the ground of probabilities. In the result, this Criminal Original Petition is dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/



To

1.The II Additional District & Sessions Judge,
Thanjavur, Thanjavur District.

2.The Inspector of Police,
Nadukaveri Police Station,
Thanjavur District.

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

+1CC to Mr.A.Thiruvadi Kumar, Advocate, SR.No. 93969

Order made in
CRL.O.P. (MD) No.9225 of 2017
20.12.2017

SRM

AM/KKR/SAR 2/03.01.2018/4P/5C