



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 09.11.2017

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

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Cr1.O.P.(MD)No.12990 of 2011 and
M.P(MD).Nos.2 and 3 of 2011

Sivasamy

... Petitioner/Accused No.6

-Vs-

1.The State rep. by
The Inspector of Police,
All Women Police Station,
Tuticorin,
(Crime No.12 of 2003)

... 1st Respondent/Complainant

2.Malarvizhi

... 2nd Respondent/Defacto
Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for records relating to the charge sheet in C.C.No.212 of 2004 on the file of the learned Judicial Magistrate No.II, Tuticorin and quash the same.

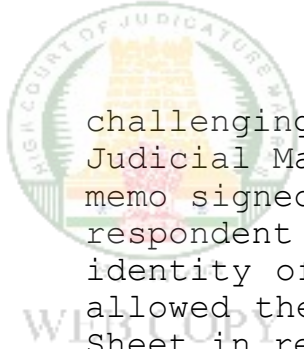
For Petitioner	: Mr.Sulthan Basha for M/s. Ajmal Associates
For Respondent No.1	: Mr.K. Anbarasan Government Advocate (Cr1. Side)
For Respondent No.2	: No appearance

O R D E R

This Criminal Original Petition has been filed to call for records relating to the charge sheet in C.C.No.212 of 2004, on the file of the learned Judicial Magistrate No.II, Tuticorin and quash the same.

2. The learned counsel appearing for the petitioner states that based on the complaint given by the second respondent / de facto complainant, a case has been registered by the first respondent / Police in Crime No.12 of 2003, for the offences under Sections 323, 498(A), 506(i) and Section 4 of Dowry Prohibition Act of IPC against the petitioner and six others. The petitioner herein is arrayed as A6. After completion of the investigation, the respondent police filed a charge sheet, which was duly taken on file in C.C.No.212 of 2004, on the file of the learned Judicial Magistrate No.II, Tuticorin.

3. The accused viz., A1, A3 to A5 and A7 filed Criminal Original Petition before this Court in Cr1.O.P(MD).No.2363 of 2016,



challenging the C.C.No.212 of 2004, on the file of the learned Judicial Magistrate No.II, Tuticorin. Based on the joint compromise memo signed by the parties viz., A1, A3 to A5 and A7 and the second respondent / de facto complainant, after verification of the identity of the parties through first respondent Police, this Court allowed the said Criminal Original Petition and quashed the Charge Sheet in respect of the accused nos.1, 3 to 5 and 7 are concerned.

4. The learned Government Advocate (Crl. Side) appearing for the first respondent, on instructions, would submit that after quashing of the charge sheet in C.C.No.212 of 2004 in respect of A1, A3 to A5 and A7, the lower Court split up the case and assigned new C.C.No.902 of 2017 on the file of the learned Judicial Magistrate No.III, Tuticorin.

5. I have heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the first respondent.

6. Since the charge sheet in C.C.No.212 of 2004 was quashed in respect of A1, A3 to A5 and A7 and there is no specific allegation against the present petitioner / A6, for extending the benefits of other co-accused, this Court has decided the issue in the Judgment reported in 2007-1-LW(Crl.) 514 (Tamilmaran vs. State rep. by Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Thiruvarur), the relevant para 7 and 8 reads as follows:-

7. This Court is of the considered view that there is much force on the contention put forward by the learned Senior counsel to the effect that the learned trial Judge having disbelieved the prosecution case in toto no useful purpose would be served by putting the petitioner to undergo the ordeal of trial on the basis of the very same set of evidence. It is also pointed by the learned Senior counsel that even the de facto complainant himself turned hostile giving a total go-by to his earlier version and there is no other material available on record to implicate the petitioner. The learned Senior counsel has rightly placed reliance on the decision of the Delhi High Court in a case in Suil Kumar Vs. State reported in 2000(1) Crimes 73 wherein it is held as follows:

"3. The question thus is as to whether in the face of the judgment of acquittal the petitioner should still be permitted to undergo the ordeal of trial. In Sat Kumar V. State of Haryana (AIR 1974 SC 294), it was held that there is no rule of law that if the Court acquits some of the doubt with regard to them the other accused against whom there is absolute certainty about his guilt in the crime based on the re witness must be acquitted. (See also Harprasad . State of Madhya Pradesh (AIR 1971 SC 1450), Makan Jivan V. State of



Gujarat (AIR 1971 Sc 1797), Mohd. Moin Uddin V. State of Maharashtra (1971 S.C.C. (Cri.), 617). But where the evidence against all the accused persons is inseparable and indivisible and if some of the accused persons have been acquitted, the remaining accused persons cannot be treated differently on the basis of the same evidence.

4. On perusal of the judgment of acquittal dated 19.01.1998, it appears that the deceased Balwan Singh met with a homicidal death owing to burn injuries sustained by him has not been disputed by the accused persons. The evidence against the accused persons mainly consists of the evidence of the eye-witnesses namely, Karan Singh (PW.2) and Smt. Asha Rani (PW.5) (Wife of the deceased Balwan Singh) besides the dying declaration (Ex.PW.13/A) of the deceased Balwan Singh. Both the said witnesses have not supported the prosecution case and so they have been declared hostile by the prosecution. Eliminating the evidence of the said eye-witnesses, there remains the dying declaration (Ex.PW.13/A) of the deceased Balwan Singh, which has been disbelieved by the learned Addl. Sessions Judge. It would, therefore, appear that the accused persons, namely, Jangli Tyagi,, Balbir Singh, Anil Kumar Tyagi and Sushil Kumar Tyagi were acquitted on the ground of insufficiency of evidence. Thus, the evidence adduced in the case against all the accused persons is inseparable and indivisible and that being so the petitioner cannot be treated differently on the basis of the said evidence. In this view of the matter, there is no prospect of the case ending in conviction against the petitioner and the valuable time of the Court would be wasted for holding trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. If the Court is almost certain that the trial only would be an exercise in futility or sheer wastage of time, it is advisable to truncate or ship the proceedings at the stage of Section 227 of the Code itself.

8. In yet another decision, placed reliance by the learned senior counsel, in Mohammed Ilias V. State of Karnataka reported in 2001 (4) Crimes 417, the Karnataka High Court taken a similar view following the decision of Delhi High Court, cited supra.

7. Therefore, in view of the above well settled principle of law laid down in the decisions cited supra, is squarely applicable to the facts of the present case, as in this case also, admittedly the charge sheet has been quashed in respect of the co-accused viz., A1, A3 to A5 and A7 and as such, this Court is of the



considered view that no useful purpose would be served putting the petitioner to undergo the ordeal of trial on the basis of the very same set of evidence and therefore, the proceedings pending as against the petitioner in C.C.No.902 of 2017, on the file of the learned Judicial Magistrate No.III, Tuticorin, is hereby quashed.

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8. Accordingly, the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate No.II, Tuticorin

2.Do Thro' The Chief Judicial Magistrate, Tuticorin.

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

4.The Inspector of Police,
All Women Police Station,
Tuticorin.

+1cc to M/s.AJMAL ASSOCIATES,Advocate,SR. 86361

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M.P(MD).Nos.2 and 3 of 2011
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TRP

KK/MR KKR/SAR 3/24.11.2017/ 4P- 6C/