

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Orders Reserved on : 27.02.2017****Orders Pronounced on : 28.03.2017**

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CORAM:**THE HON'BLE MR.JUSTICE R.SUBBIAH****CrI.O.P. (MD) .No.1484 of 2011**

Kandasamy

... Petitioner/Accused No.14

Vs.

1.State, rep. by the Deputy Superintendent of Police,
Pattukkottai Sub-Division,
Thanjavur District.

2.Sate, rep. by Inspector of Police,
Madukkur Police Station,
Thanjavur District,
(Crime No.70/2002)

...Respondents/Complainants

3.Peramaiyan

... Respondent/Defacto Complainant

Prayer: Petition filed under Section 482 of Cr.P.C., praying to call for the records relating to S.S.C.No.71 of 2010 pending on the file of the learned I Additional District and Sessions Judge (PCR Court), Thanjavur and to quash the same.

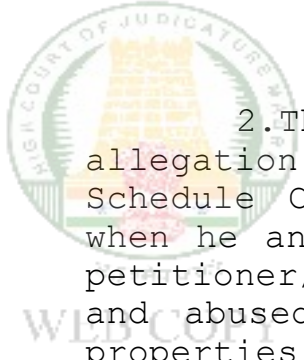
For Petitioner : Mr.M.Karunanithi

For Respondents : Mr.C.Mayilvahana Rajendran, APP (For R1 & R2)

* * * * *

ORDER

This Criminal Original Petition has been filed by the petitioner seeking to quash the criminal proceedings in S.S.C.No.71 of 2010 pending against the petitioner, on the file of the learned I Additional District and Sessions Judge (PCR Court), Thanjavur. The petitioner herein has been arrayed as 14th accused, along with the other accused, for the alleged offences under Section 147, 148, 452, 294(b), 506(ii) IPC, Section 3(1)(x) of SC/ST Act and Section 3(1) of PPD Act.



2.The 3rd respondent herein is the defacto-complainant. The allegation of the defacto-complainant is that he belongs to Schedule Caste community and on 05.09.2001 at about 12.30 p.m, when he and the witnesses were taking in front of his house, the petitioner/A14 and other accused persons came there and assaulted and abused him by mentioning his caste name, and damaged the properties. Hence, he lodged a complaint on the same day and the same was registered in Crime No.70 of 2002 on the file of the 2nd respondent-police. After completion of the investigation, charge-sheet was filed as against the accused persons in P.R.C.No.15 of 2003. On committal, the case was assigned as S.S.C.No.65 of 2004. Since the petitioner/A14, 2nd accused Elango and 8th accused Prabakaran were absconding, the case was split up in respect of them and assigned P.R.C.No.121 of 2003; on committal before the learned I Additional District and Sessions Judge, Thanjavur, it was taken on file as S.S.C.No.71 of 2010. Now, the petitioner/A14 has come forward with the present petition seeking to quash the criminal proceedings pending against him in S.S.C.No.71 of 2010.

3.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor and perused the materials available on record.

4.It is submitted by the learned counsel for the petitioner that after trial, the other accused viz., A1, A3 to A7, A9 to 13, A15 to 18, who were tried separately, were acquitted by the Trial Court in S.S.C.No.65 of 2004 by the judgment dated 23.12.2004; that there is no evidence as against the accused persons. Since the case against the petitioner/A14 was split up in S.S.C.No.71 of 2010, the said case is still pending against the petitioner/A14 and no purpose will be served by putting the petitioner to undergo the ordeal of trial when all the other accused were acquitted. In this regard, the learned counsel for the petitioner has also invited the attention of this Court to the judgment dated 23.12.2004 in S.S.C.No.65 of 2004 passed by the learned I Additional District and Sessions Judge, Thanjavur.

5.From a perusal of the said judgment, it is seen that all the other accused persons, who were tried separately, were acquitted in S.S.C.No.65 of 2004 by the learned Trial Judge on the ground that the prosecution has failed to prove the case beyond any reasonable doubt. Therefore, I am of the opinion that since all the other accused were acquitted by the Trial Court, the petitioner/A14 is also entitled for the benefit of acquittal, because no useful purpose is going to be served by putting the petitioner to undergo the ordeal of trial. In this regard, a reference could be placed in the judgment reported in **2008(1) MWN** (Cr.) 380 [Thamilendi Vs. State], wherein it has been observed as follows_



"6. The learned counsel for the petitioner placed reliance on a decision of this Court in **Tamilmaran v. State [2007(1) LW (Cr1.) 514]**, to the proposition that in the event of acquittal of the other accused disbelieving the entire prosecution case, no useful purpose would be served for putting the petitioner to undergo the ordeal of trial. In that decision this Court placed reliance on a decision of Delhi High Court in **Sunil kumar v. State [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 a 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 accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness must be acquitted. (See also *Har prasad v. State of Madhya Pradesh, AIR 1971 SC 1450*; *Ma-kan Jivan v. State of Gujarat, AIR 1971 SC 1797*; *Mohd. Moin Uddin v. State of Maharashtra, 1971 SCC (Cri.) 617*. But where the evidence against all the accused persons is inseparable and indivisible and if some of the accused person 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. 1. 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 eyewitnesses, namely, Karan singh (PW2) and Smt. Asha Rani (PW5) (Wife of the deceased Balwan Singh) besides the dying declaration (Ex. PW13/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 eyewitnesses, there remains the dying declaration. (Ex. PW13/A) of the deceased



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Balwan Singh, which has been disbelieved by the learned additional 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. ";

7....

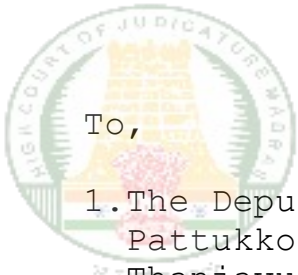
8. Therefore, this Court is of the considered view that the above settled principle of law laid down in the decisions cited supra is squarely applicable to the facts of the instant case as in this case also except the petitioner herein all the other accused viz., A1 to A6, A8 and A9 who have been tried 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 allege to have attacked the deceased."

The dictum laid down in the above said decision is squarely applicable to the present facts of the case also. Hence, following the same, I am of the opinion that the impugned criminal proceedings against the petitioner/A14 could be quashed.

6. Accordingly, the criminal original petition is allowed and the criminal proceedings in S.S.C.No.71 of 2010 pending on the file of the learned I Additional District and Sessions Judge (PCR Court), Thanjavur, is quashed as against the petitioner/A14.

Sd/-

Assistant Registrar (CS-I)



To,

1.The Deputy Superintendent of Police,
Pattukkottai Sub-Division,
Thanjavur District.

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

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

+1cc to Mr.M.Karunanithi, Advocate in Sr.No:12890

SSV

AE/KP/SAR2/25.04.2017/5P/5C

Pre-delivery order
in

Cr1.O.P. (MD) .No.1484 of 2011
28.03.2017