

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.03.2018

DELIVERED ON : 14.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Criminal Appeal No.686 of 2007

Pazha Nedumaran

... Appellant

Vs

State,
rep. by Inspector of Police,
'Q' Branch, CID,
Chennai.

... Respondent

Appeal under Sections 397 and 401 of the Code of Criminal Procedure against the order dated 02.03.2007 passed in CrI.M.P.No.11292 of 2006 in S.C.No.443 of 2005 on the file of the I Additional Sessions Judge, Chennai.

For Appellant : Mr.S.Shanmugasundaram
Senior Counsel
for M/s.N.Chandrasekaran

For Respondent : Mr.Vijaya Narayan
Advocate General
assisted by
Mrs.T.P.Savitha
Government Advocate (Crl.Side)

JUDGMENT

This appeal has been preferred by the appellant against the order dated 02.03.2007 passed in CrI.M.P.No.11292 of 2006 in S.C.No.443 of 2005 on the file of the learned I Additional Sessions Judge, City Civil Court, Chennai.

2. The appellant, who has been arrayed as 1st accused in S.C.No.443 of 2005, filed CrI.M.P.No.11292 of 2006 under Section 452 Cr.P.C. to return back the books seized by the respondent police alleging that the Government of Tamil Nadu issued an

order in G.O.Ms.No.972 to withdraw the case against the appellant and on the basis of the said Government Order, the case has been withdrawn by the respondent. By the judgment dated 18.10.2006, the accused were acquitted under Section 321 (b) Cr.P.C. According to the appellant, at the time of arrest, some books were seized from the appellant by the respondent police and same were kept by the respondent police in their safe custody. Since the seized books were written by the appellant and the same were kept for export for selling in foreign countries, no purpose would be served to keep those books in the custody of the respondent police. Hence, the appellant prayed for return of the books.

3. The respondent police opposed the petition filed by the appellant stating that the books which were seized from the appellant contain speeches of the appellant supporting the Liberation Tigers of Tamil Eelam (LTTE), which is a banned organisation in India, and if the books were returned to the appellant, it will be circulated to the public and also it will cause disturbance to the peace and public tranquility. Therefore, the seized books cannot be returned to the appellant.

4. Upon consideration of the rival submissions, the learned I Additional Sessions Judge dismissed the petition holding that the books contained words supporting the Tamil Eelam and the author of the books inducing the Tamil people to raise their voice in support of Tamil Eelam and if the books were returned to the appellant, it will be circulated to the public and will cause great injury in the minds of the readers and also the peace and tranquility of the public would be disturbed. Aggrieved by the same, the appellant has preferred the present appeal.

5. Assailing the impugned order of the learned I Additional Sessions Judge, the learned Senior Counsel for the appellant contended that the lower Court ought to have returned the books when it found that no case was made out against the appellant and also no claim was made by any other person. The learned Senior Counsel argued that since the lower Court itself admitted the fact that the books which were marked as M.O.1 belong to the appellant, it ought not to have dismissed the petition filed by the appellant stating that the books will be circulated to the public and also it will cause great injury in the minds of the readers. The learned Senior Counsel next submitted that the lower Court ought to have seen that till date no appeal has been preferred by the respondent police qua ownership of seized books. Since there was no appeal, the lower Court ought to have returned the books to the appellant and prayed for setting aside the order of the lower Court and also prayed for return of the seized books to the custody of the appellant.

6. Per contra, the learned Advocate General for the State submitted that the seized books contain words supporting the Tamil Eelam and the appellant who is the author of the books induced the Tamil people to raise their voice in support of Tamil Eelam. The learned Advocate General further submitted that if the books are returned to the appellant, the same would be circulated to the public and will cause great hardship and injury in the minds of the readers and also peace and public tranquility would be disturbed. Noting all these things, the lower Court dismissed the petition filed by the appellant and there is no need to interfere with the order of the lower Court.

7. I heard Mr.S.Shanmugasundaram, learned Senior Counsel for Mr.N.Chandrasekaran, learned counsel for the appellant and Mr.Vijay Narayan, learned Advocate General assisted by Mrs.T.P.Savitha, learned Government Advocate (Criminal Side) for the respondent police and also perused the materials available on record.

8. The appellant and another person, viz., Sahul Hameed, were arrested by the respondent police for the offence under Section 124(1) and 505 IPC read with 120(B), 34 IPC and Section 10 of Unlawful Activities (Prevention) Act, 1967.

9. The case of the prosecution as could be seen from the materials available on record is that the appellant, who has been arrayed as 1st accused had written and published 1709 books in the title "Tamil Eelam Sivakkiradhu" and the 2nd accused (Sahul Hameed) was in possession of 1709 copies of books, of which 304 books were with wrapper containing title "Saiva Siddhantha Vilakkam"; 118 books with wrapper containing title "Periya Purana Saram" and the remaining 1287 books with wrapper "Tamil Eelam Sivakkiradhu". When the above said books were about to be exported, it was seized by the respondent police and had registered a case in Crime No.296 of 2002 under Section 124 (A), 153(B) IPC read with Section 10 of Unlawful Activities (Prevention) Act, 1967 against the appellant and Sahul Hameed. After completing the investigation, the respondent police laid charge sheet against the accused.

10. In exercise of the powers conferred by Section 17 of the Unlawful Activities (Prevention) Act, 1967 (Central Act 37 of 1967) read with the orders of the Ministry of Home Affairs, Government of India in SO.905(E), dated 10.12.1992, the Secretary to Government, Home Department, Government of Tamil Nadu accorded sanction for the prosecution of the accused for the offence punishable under Section 10 of the Unlawful Activities (Prevention) Act, 1967 and for taking cognizance of the offence by a Court of competent jurisdiction. Thereafter, by G.O.Ms.No.57, Public (Law & Order.H) Department, dated 17.01.2004, the Secretary to Government, accorded sanction for

prosecution of the appellant and Shahul Hameed for the offence punishable under Section 124(A) and clause (b) of sub-section (1) of Section 505 of IPC (Central Act XLV of 1860) and for taking cognizance of the offence by a Court of competent jurisdiction. Accordingly, the jurisdictional Court had taken cognizance of the offence and thereafter, the case was committed to the Sessions Court in S.C.No.443 of 2005.

11. Before the learned Sessions Court, the prosecution examined 7 witnesses and marked 13 documents and also marked M.O.1-books. When the case was posted for judgment, the respondent police has filed petition under Section 321 Cr.P.C. seeking permission of the Court to withdraw the case and the same was allowed, thereby permitted the Additional Public Prosecutor to withdraw the case being S.C.No.443 of 2005. Accordingly, by the judgment dated 18.10.2006, the learned I Additional Sessions Judge, Chennai passed the following judgment:

"Permission Petition is filed by the learned Additional Public Prosecutor u/s. 321 Cr.P.C. and the same is allowed and the Additional Public Prosecutor is permitted to withdraw the case on the file of this Court. Accordingly the petition is allowed and the Accused are acquitted u/s.321(b) Cr.P.C."

12. The grievance of the appellant is that since the appellant/accused was acquitted, the learned Sessions Judge ought to have returned the books seized under Ex.P1-seizure mahazar to the appellant, as the respondent police has not preferred appeal qua ownership of the seized books.

13. As stated supra, under cover of seizure, the respondent police seized objectionable books relating to Liberation Tigers of Tamil Eelam, which is a banned organisation in India, being kept by the 2nd accused Sahul Hameed, who is a Clearing and Forwarding Agent having godown in the name of New Super Transport Corporation, No.29, Dr.Guruswamy Road, Chetpet, Chennai and seized 1709 books, compiled by Pazha Nedumaran (appellant/1st accused), the Leader of Tamil Desiya Iyakkam, who was also known sympathiser of Liberation Tigers of Tamil Eelam (LTTE), which is a banned organisation in India. Out of 1709 books, 304 books contained wrapper titled as "Saiva Siddhantha Vilakkam"; 118 books contained wrapper titled as "Periya Puranam Saram" and 1287 books contained wrapper titled as "Tamil Eelam Sivakkirathu".

14. The respondent police initiated criminal prosecution against the appellant being the author and publisher of the offending versions, while the 2nd accused knowingly in possession of the books containing offending articles for exporting the same. Apart from the book "Tamil Eelam Sivakkirathu"

authored by the appellant, he is also the author and publisher of the books "Saiva Siddhantha Vilakkam"; "Periya Puranam Saram".

15. Section 452 Cr.P.C. provides:

(1) When an inquiry or trial in any Criminal Court is concluded, the court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the court, engaging to restore such property to the court if the order made under subsection (1) is modified or set aside on appeal or revision.

(3) A Court of Session may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

16. Relying upon the decision of the Hon'ble Apex Court in N.Madhavan v. State of Kerala, reported in (1979) 4 SCC 1, the learned Senior Counsel for the appellant submitted that after trial when the accused was discharged/ acquitted, the trial Court ought to have given custody of the property to a person entitled to the possession thereof.

17. In N.Madhavan v. State of Kerala, supra, the Hon'ble Apex Court held:

"8.The material part of Section 517 of the Code of Criminal Procedure, 1898 (which has been re-enacted as Section 452(1) in the Code of 1973), reads as follows:

When an inquiry or trial in any criminal court is concluded, the court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

An analysis of this provision would show that it refers to property or document (a) which is produced before the court, or (b) which is in the custody of the court, or (c) regarding which any offence appears to have been committed, or (d) which has been used for the commission of any offence. Then, at the conclusion of the enquiry or trial, the disposal of any class of the property listed above, may be made by (i) destruction, (ii) confiscation, or (iii) delivery to any person entitled to the possession thereof.

9.In the case before us, the gun in question does not fall either under class (c) or class (d) because it is neither "property" regarding which any offence appears to have been committed, "nor" "which has been used for the commission of any offence". The acquittal of the accused on the ground that this gun was used in causing the fatal injury to the deceased, only in self-defence, necessarily involved a finding that the gun was not used in the commission of any offence for which the accused was tried. The gun was obviously property falling under class (b).

10. The words "may make such order as it thinks fit" in the section vest the court with a discretion to dispose of the property in any of the three modes specified in the section. But the exercise of such discretion is inherently a judicial function. The choice of the mode or manner of disposal is not to be made arbitrarily, but judicially in accordance with sound principles founded on reason and justice, keeping in view the class and nature of the property and the material before it. One of such well-recognised principles is that when after an inquiry or trial the accused is discharged or acquitted, the court should normally restore the property of class (a) or (b) to the person from whose custody it was taken. Departure from this salutary rule of practice is not to be lightly made, when there is no dispute or doubt - as in the instant case - that the property in question was seized from the custody of such accused and belonged to him."

18. Admittedly, while acquitting the accused after permitting the Additional Public Prosecutor to withdraw the case, the trial Court has not stated anything in respect of return/destruction/confiscation of the seized books. As far as the criminal case is concerned, at the conclusion of the judgment, the Court has to say the mode of disposal of the property namely, destruction; confiscation or delivery to any person entitled to the possession thereof.

19. One of the principles is that after trial when the accused is acquitted, the Court should restore the property which was produced before the Court and/or the property in the custody of the Court to the person from whose custody it was taken. Admittedly, in the case on hand, as per Ex.P1-seizure mahazar, the seizure was from the 2nd accused and he had not sought for return of the seized books.

20. On the basis of the acquittal of the appellant from the charges, he cannot seek return of the books marked under M.O.1, as the seized books contain speeches of accused supporting the Liberation Tigers of Tamil Eelam and if the books were returned to the appellant, he would circulate the same to the public and it will cause disturbance to the peace and public tranquility.

21. During the course of arguments, a copy of the book in question was produced before this Court. When this Court looked into the said book, it shows that it contains speeches of the appellant supporting the Liberation Tigers of Tamil Eelam,

which is a banned organisation in India. On a further perusal of the book, this Court finds that the author (appellant) of the books induced the Tamil people to raise their voice in support of Tamil Eelam. If such type of books are returned to the appellant, as stated supra, he will circulate the same to the general public and it will cause harm in the mind of the readers and also law and order problem would create, as the real intention behind publication of such books is to circulate the same to people at large, more particularly, even according to the appellant, to foreign readers.

22. There is no rule that the property like the books seized from the accused, must on his acquittal be returned to the accused, more particularly when they are in support of a banned organization in India. Section 452 Cr.P.C. gives the Court a very wide discretion to choose any one of the modes of disposal mentioned in the Section, irrespective of whether the trial results in acquittal or conviction of the accused.

23. On overall analysis of the materials produced before this Court and exercising discretion as contemplated in Section 452 Cr.P.C., this Court is of the firm view that it would be appropriate to order destruction of the books, which were seized in the case on hand, as the books seized in question contain words supporting the Liberation Tigers of Tamil Eelam, which is a banned organisation in India and also the author of the books induced the Tamil people to raise their voice in support of Tamil Eelam. Therefore, if the seized books were returned to the appellant, the same would be circulated to the public and it will cause disturbance to the peace and public tranquility.

24. Before parting with the order, it would be necessary to state that Liberation Tigers of Tamil Eelam is a terror group that was behind the assassination of the former Prime Minister of India Thiru.Rajiv Gandhi and was decimated by the Sri Lanka Military in 2009. The Government of India had banned Liberation Tigers of Tamil Eelam after the assassination of Thiru.Rajiv Gandhi in 1991. The Indian Government, under the provisions of the Unlawful Activities (Prevention) Act, 1967, has proscribed the Liberation Tigers of Tamil Eelam as an Unlawful Association. The declaration of Liberation Tigers of Tamil Eelam as an Unlawful Association has been periodically extended by the Indian Government. When Liberation Tigers of Tamil Eelam has been declared as Unlawful Association, if the books were returned to the appellant, naturally, the appellant will circulate the books to general public and there is every possibility of the general public and/or buyer of the books get persuaded by the principles of the banned organization and cause disturbance and threat to the peace and public tranquility.

25. For the foregoing reasons, I am of the firm view that the trial Court after analysing the rival contentions of both sides, rightly dismissed the petition filed by the appellant. The order of the learned I Additional Sessions Judge, City Civil Court., Chennai is well founded. There is no merit in this appeal and the same is liable to be dismissed.

26. In the result:

(a) the appeal is dismissed and the order of the learned 1st Additional Sessions Judge, City Civil Court, Chennai dated 02.03.2007 made in CrI.M.P.No.11292 of 2006 in S.C.No.443 of 2005 is confirmed;

(b) the books seized in the case on hand are ordered to be destroyed immediately after following the procedures contemplated under law. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. Inspector of Police,
'Q' Branch, CID,
Chennai.

2. The I Additional Sessions Judge,
City Civil Court,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.N.Chandrasekaran, Advocate sr.no.77902

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