



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.09.2018
CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WEB COPY

Cr1.O.P.(MD) .No.1310 of 2018
and
Cr1.M.P.(MD)No.552 of 2018

Prabhu

...Petitioner/ Accused No. 1

Vs.

The State Represented by
The Inspector of Police,
Abiramam Police Station,
Ramnad District.
(Crime No.124 of 2009)

... 1st Respondent/Complainant

2.Xavier

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records relating to the case in P.R.C.No.16 of 2016 pending on the file of the District Munsif cum Judicial Magistrate, Kamuthi, Ramnad District and quash the same.

For Petitioner : Mr.G.Karuppasamy Pandiyan

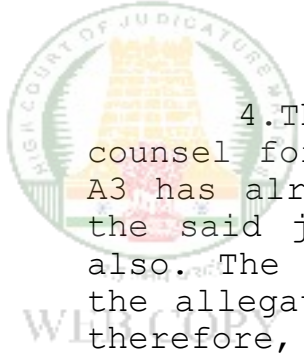
For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Cr1.Side)

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in P.R.C.No.16 of 2016, pending before the learned District Munsif cum Judicial Magistrate, Kamuthi, Ramnad District.

2.The petitioner along with two others were arrayed as accused by the respondent police in Crime No.124 of 2009 for an offence under Section 3(1) of TNPPDL Act. The respondent police after investigation, filed a final report. At that point of time, since the accused persons were absconding, the case was split up and A3 alone faced trial in S.C.No.157 of 2016.

3.The learned Additional District Judge, (FTC), Paramakudi, by judgment, dated 30.10.2009, after considering the entire evidence on record, acquitted A3 on the ground that the prosecution has not been proved the case beyond reasonable doubt.



4. The petitioner before this Court is A1. The learned counsel for the petitioner would submit that the co-accused namely A3 has already been acquitted in the split up case and therefore, the said judgment must enure to the benefit of the petitioner also. The learned counsel would further submit that the nature of the allegation made against all the accused persons is similar and therefore, since the Court below had already found that there is no evidence as against A3 in this case, the same will apply to A1 also.

5. The learned counsel for the petitioner relied upon the judgment of this Court in Anbuselvam Vs. State reported in (2018) 2 MWN (Criminal) 442. The relevant portions in the judgment are extracted here under:

"7. The learned Senior Counsel relied upon two judgments of this Court reported in 2007 -1-L.W (Crl.) 514 Tamilmaran Vs. The State rep. By Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Thiruvarur District and 2008 (2) CTC 153 Thamilendi Vs. State rep. by The Inspector of Police, Orathanadu Police Station, Thanjavur District and submitted that in view of the acquittal of three other co-accused, no useful purpose would be served to subject the petitioner to undergo the ordeal of the trial. The relevant portion of the judgments read as follows:

II. Tamilmaran Vs. The State rep. By Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Thiruvarur District, reported in 2007 -1-L.W (Crl.) 514:

"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 out by the learned senior counsel that even the defacto 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 Sunil Kumar v. 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 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 evidence of that witness must be



acquitted. (See also Har Prasad v. 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 (PW2) 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 if 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.

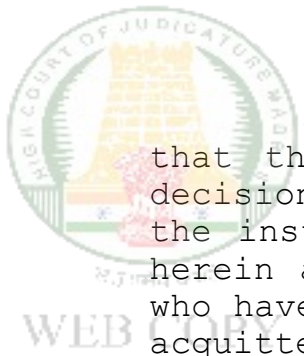


9. Therefore, the above well settled principle of law laid down in the decisions cited supra, is squarely applicable to the facts of the instant case as in this case also admittedly the other accused, Viz., A-1 to A-4 have been acquitted by the learned trial Judge after disbelieving the entire prosecution case and as such this Court is of the considered view that no useful purpose would be served for putting the petitioner to undergo the ordeal of trial and therefore, the proceedings pending against the petitioner in C.C.No.1146 of 1997 on the file of the learned Judicial Magistrate, Mannargudi, is hereby quashed."

II. *Thamilendi Vs. State rep. by The Inspector of Police, Orathanadu Police Station, Thanjavur District reported in 2008 (2) CTC 153*

"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 Additional Sessions Judge. It would, therefore, appear that the accused persons, namely, Jangli Tyagi, Balbir Singh, Anilkumar 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 state of Section 227 of the Code itself.

7. This Court has also placed reliance on yet another decision of the Karnataka High Court in *Mohammed Ilias v. State of Karnataka*, 2001 (4) Crimes 417, taking the same view by following the decision rendered by the Delhi High Court in *Tamilmaran v. State*, 2007 (1) LW (Crl.) 514).



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 and in this case also except the petitioner herein all the other accused, viz., A-1 to A-6, A-8 and A-9 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, I.P.C. against A-3 who is the only accused alleged to have attacked the deceased."

8.The above proposition is self-explanatory. In view of the acquittal of other three accused, after considering the statements of the witnesses and holding their statements to be unreliable, the trial Court cannot re-assess their depositions once again and take a contrary view. Since the proceedings against the petitioner has to necessarily end in an acquittal, no useful purpose would be served to make the petitioner to undergo the ordeal of the trial.

6.The judgment cited by the learned counsel for the petitioner will squarely apply to the facts of the case. Even if the case is sent back to the trial Court, the trial Court cannot re-assess the depositions already given by the witnesses and take a contrary view. No useful purpose will be served by keeping the proceedings pending. This Court is of the considered view that the order of acquittal passed in favour of A3 will also enure to the benefit of A1.

7.In the result, this Criminal Original Petition is allowed. The proceedings in P.R.C.No.16 of 2016 on the file of the District Munsif cum Judicial Magistrate, Kamuthi, Ramnad District, is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1.The District Munsif cum Judicial Magistrate,
Kamuthi, Ramnad District.

2.The Inspector of Police,
Abiramam Police Station,
Ramnad District.



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

+1CC to Mr.S.SARAVANA KUMAR, Advocate, SR.No. 87213

WEB COPY

Cr1.O.P. (MD) .No.1310 of 2018
27.09.2018

LS

ES/RP/SAR 1/30.10.2018/6P/5C