



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.OP[MD]No.13960 of 2015

and

M.P.(MD)No.1 of 2015

K.Kannan

... Petitioner/Accused No.3

Vs.

1.State represented by
The Inspector of Police,
Thiruvegampathur Police Station,
Kanyakumari District.
(Crime No.6 of 2008) ...1st Respondents/Defacto complainant

2.N.Veerapathiran ... 2nd Respondents/Defacto complainant

PRAYER: Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the Charge Sheet in C.C.No.76 of 2009, dated 31.12.2008 on the file of the Judicial Magistrate Court, Devakottai, Sivagangai District in Crime No.6 of 2008 on the file of the first respondent and quash the same as illegal so for petitioner's concerned.

For Petitioner : Mr.T.Lajapathy Roy

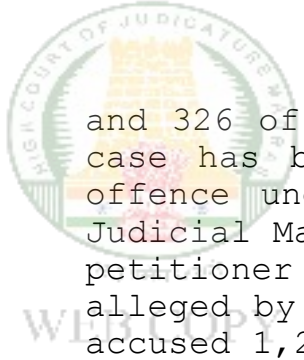
For R1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.side)

For R2 : Mr.P.Balamurugan

O R D E R

This petition is filed to quash the criminal proceedings in C.C.No.76 of 2009 on the file of the learned Judicial Magistrate, Devakottai, Sivagangai District, having taken cognizance for the offence under Sections 294(b) and 326 IPC against the petitioner.

2.The learned counsel for the petitioner would submit that there are totally four accused, in which, the petitioner arrayed as A3. The petitioner was not appeared before the trial Court in C.C.No.123 of 2010 and non-bailable warrant has been issued as against him. Therefore, the case was split up as against the other accused persons 1, 2 and 4 which have been tried by the trial Court. The trial ended in acquittal for the offence under Sections 294(b)



and 326 of IPC as against the accused 1, 2 and 4. Thereafter, the case has been taken cognizance as against the petitioner for the offence under Section 294(b) in C.C.No.76 of 2009 by the learned Judicial Magistrate, Devakottai, Sivagangai District. As far as the petitioner is concerned, he did not involve in any occurrence as alleged by the prosecution. Further, he would submit that when the accused 1,2 and 4 were acquitted, after disbelieving the case of the prosecution, the petitioner also should be given the same benefit. Therefore, he need not undergo RDI trial. Hence, he prays for quashing the criminal proceedings.

3.Per contra, the learned Government Advocate (Crl.side) for the respondent would submit that since the petitioner was not appeared, non bailable warrant has been issued as against the petitioner. Therefore, the case was split up from other accused and it was separately taken cognizance in C.C.No.76 of 2009 by the learned Judicial Magistrate, Devakottai, Sivagangai District and the trial commenced. During the trial, P.W.1 to P.W.3 were examined and as such, he prays for dismissal of the criminal proceedings.

4.Admittedly, the case was split up from other accused 1, 2 and 4, and it was taken cognizance separately in C.C.No.76 of 2009 by the learned Judicial Magistrate, Devakottai, Sivagangai District. In respect of A1, A2 and A4 in C.C.No.123 of 2010 ended in acquittal on the ground of benefit of doubt. As far as the petitioner is concerned, the case has been split up and taken cognizance in C.C.No.123 of 2010 for the offence under Section 294(b) of IPC.

5.On perusal of the records would show that P.W.2 and P.W.3 are eye witnesses. P.W.4 is witness for observation mahazar. P.W.1 is the the Doctor who treated the victim. P.W.5 and P.W.6 are the Investigating Officers. Among them P.W.2 and P.W.3 being the eye witnesses to the occurrence did not support the case of the prosecution and they had turned hostile. On that score, the case has been ended in acquittal. Hence, there is no iota of evidence to show that the accused have committed the alleged offence.

6.In this regard, it is relevant to refer the judgment in Deepak Rajak Vs. State of West Bengal reported in 2008 (1) MLJ 1333 (SC), the extension of benefit of acquittal to the accused on similar accusation came up for consideration and it has been held as follows:-

".....The position in law as to what happens in case of acquittal of similarly placed co-accused on the same set of facts and on similar accusations has been considered by this Court in several cases.

A departure may be made in cases where the accused had not surrendered after the conviction in addition to not filing an appeal against the conviction. But as in the present case, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be



extended.

7. In view of the above facts and on the light of the ratio laid down in the above cited decision, continuance of the proceedings against the petitioner / A36 in P.R.C.No.36 of 2000 on the file of the Judicial Magistrate, Pattukottai, is hereby quashed."

7. In view of the above judgment, this Court is of the view that the petitioner has also similarly placed and hence, the proceedings against the petitioner is liable to be quashed. Accordingly, this criminal original petition is allowed and C.C.No.76 of 2009 on the file of the learned Judicial Magistrate, Devakottai, Sivagangai District is hereby quashed as against the petitioner. Consequently, M.P(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(cs-III)

/True Copy/

Sub Assistant Registrar(cs-III)

To

1. The Judicial Magistrate Court, Devakottai, Sivagangai District
2. The Inspector of Police,
Thiruvegampathur Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.Mr.T.Lajapathy Roy Advocate in SR.No.91578

Cr1.OP[MD]No.13960 of 2015
and
M.P. (MD)No.1 of 2015
23.10.2018

RMI

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