



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2018

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.(MD) No.250 of 2018

WEB COPY

Dhanam

... Petitioner/Appellant/

Vs.

1.Dhaya @ Dhayanithi

... Respondent/Accused

2.The Inspector of Police,
The Police Station Orathanadu,
Orathanadu Taluk,
Crime No.30/2003.

... Respondent/Complainant

PRAYER: The Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 21.07.2017 passed in Cr.M.P.No.159 of 2016 in S.C.No.264 of 2016 and consequently direct the III Additional District Sessions Court, Pattukottai to conduct the trial in S.C.No.264 of 2016 by allowing the criminal revision petition.

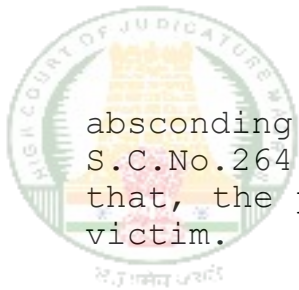
For Petitioner : Mr.K.Baalasundharam
For R1 : Mr.A.Thiruvadikumar
For R2 : Mr.A.Robinson
Government Advocate(Crl.Side)

ORDER

This criminal revision case has been filed to set aside the order dated 21.07.2017 passed in Cr.M.P.No.159 of 2016 in S.C.No.264 of 2016 and to direct the III Additional District Sessions Court, Pattukottai to conduct the trial in S.C.No.264 of 2016.

2.Heard the learned counsels on either side.

3.The petitioner herein is the mother of the deceased Dinesh, who died due to assault by the suspected accused, who were tried by the trial Court in S.C.No.2 of 2008. The petitioner was examined as P.W3. Pending trial, one Dhaya @ Dhayanithi, shown as A1, absconded. So, the case against him was split up in split up S.C.No.264 of 2016. Later the main case S.C.No.2 of 2008 against the other accused ended in acquittal. The absconding accused A-1 was later secured. He has filed an application for discharge on the ground that in the trial against the other accused, the Court has held that the prosecution has failed to prove the case beyond reasonable doubt. Pointing out the delay in FIR and shifting the scene of crime, the trial Court has held that the evidence let in by the prosecution is unbelievable. Relying upon the acquittal judgment in the main case S.C.No.2 of 2008 dated 21.01.2011, the



absconding accused has sought for discharge in the split up case S.C.No.264 of 2016. The Court has accepted the same. Aggrieved by that, the present revision case has been filed by the mother of the victim.

4.The learned counsel for the petitioner would submit that the trial Court has not considered the evidence of P.W7, who had specifically deposed about the act of the accused Dhaya @ Dhayanithi causing head injury was cause for his death. Further this accused is charged for offences under Section 302 IPC whereas the other accused were charged for causing injury and participating in other crime. Therefore, the acquittal judgment of the other accused can have bearing in for close his trial. The respondents herein have to face the trial. The trial Court ought not to have discharged him, the witnesses have spoken incriminating this accused.

5.The learned counsel appearing for the first respondent would submit that the trial Court has categorically held that the evidence for prosecution is unbelievable de hors of same evidence incriminating the first accused. It will not help the case of the prosecution to convict the first respondent, therefore, there is no purpose in subjecting the first respondent to face trial.

6.Perusal of the records reveal that the first respondent, who is arrayed as first accused in S.C.No.2 of 2008 later got split up due to his abscondance. He has been charged offence under Section 302 IPC. His guilty or innocence has to be proved independently on examination of witnesses. The evidence, which has been appreciated by the trial Court in respect of the other accused may not be applicable for this accused in *toto*. More so, in the light of the deposition of P.W7, who has attributed overt act against the first respondent, which co-relates the cause of death and the injury caused by the accused.

7.Therefore, this Court finds the impugned order of the Court below discharging the first respondent is erroneous, illegally and not backed by any law or fact. Hence, the order dated 21.07.2017 passed in Cr.M.P.No.159 of 2016 in S.C.No.264 of 2016 on the file of the III Additional District Sessions Court, Pattukottai, is set aside. The criminal revision case is allowed. Any observation made by this Court shall not influence the trial Court while deciding the case.

Sd/

Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar(CS-III)

To

<https://hcservices.ecourts.gov.in/hcservices/>

1.The III Additional District Sessions Judge,
Pattukottai;



2.The Inspector of Police,
The Police Station Orathanadu,
Orathanadu Taluk,Thanjavur District.

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

+1cc to Mr.K.BAALASUNDHARAM, Advocate, SR.No.83005
+1cc to Mr.M.THIRUVADI KUMAR, Advocate, SR.No.93011

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