



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2018

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P. (MD) No.7407 of 2017

and

CRL.M.P. (MD) .No.5042 of 2017

Dinesh

.. Petitioner/Accused No.3/
Juvenile

-Vs-

1.State rep by

The Inspector of Police,
Thiruppachethi Police Station,
Sivagangai District.
In Crime No.87 of 2012.

.. 1st Respondent/Complainant

2.Sasikala

.. 2nd Respondent/Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the FIR in Crime No.87 of 2012 on the file of the respondent police and quash the same as against the petitioner.

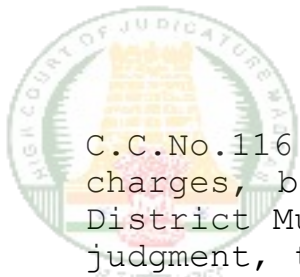
For Petitioner : Mr.G.Karuppasamy Pandian
For Respondent 1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)

ORDER

This petition has been filed to quash the FIR in Crime No.87 of 2001 pending on the file of the second respondent.

2.The petitioner has been arrayed as A4 in the FIR. It is seen from the records that the FIR was registered for the offences under Sections 341, 294 (b), 323 and 506(i) of IPC against four persons. The respondent police investigated the case and filed a final report only insofar as A1 to A3 are concerned. Insofar as the petitioner is concerned, since he was a minor on the date of the alleged incident, the respondent police was taking steps to file the final report before the Juvenile Justice Board. Further, the learned counsel for the petitioner submitted that no such final report was filed either before the Juvenile Justice Board, Madurai or the Juvenile Justice Board, Sivagangai till date.

3.The learned counsel for the petitioner brought to the notice of this Court, the final judgment that was passed in



C.C.No.116 of 2012 wherein A1 to A3 were acquitted from all the charges, by judgment, dated 30.08.2016, passed by the Additional District Munsif-cum-Judicial Magistrate, Manamadurai. In the said judgment, the learned Magistrate has come to a conclusion that the prosecution has not proved the case against the accused persons.

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4.The learned counsel for the petitioner would submit that in view of the said acquittal order passed in favour of A1 to A3, the benefit of the same will also enure in favour of the petitioner and this Court in exercise of its jurisdiction under section 482 of Cr.P.C can quash the very FIR itself that is pending against the petitioner.

5.The learned counsel in order to substantiate the submission brought to the notice of this Court two judgments passed by this Court. The first judgment is in **Thamilendi Vs. State by Inspector of Police, Orathanadu Police Station, Thanjavur District** and another reported in **2008 (2) CTC 153**, wherein in similar circumstances, this Court exercised its power under Section 482 and quash the proceedings on the ground that the split up case ended into acquittal in favour of the other accused persons. The relevant portion of the judgment is extracted here under.

"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



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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 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. 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 [**Tamilmaran V. State**, 2007 (1) LW (Cr1.) 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 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."

6. The second judgment is in **Anbuselvam Vs. State rep. by the Inspector of Police, District Crime Branch, Namakkal** reported in **2018 (2) MWN (Cr.) 442**. The relevant portion of the judgment are extracted here under.

"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 as acquittal, no useful purpose would be served to make the petitioner to under go the ordeal of the trial."

7. The above said judgments squarely applies to the facts of the present case. When the main accused persons have been acquitted on the ground that no case has been made out against them, no useful purpose will be served by keeping the FIR pending against the petitioner.

8. In the result, this Criminal Original Petition shall stands allowed. The FIR in Crime No.87 of 2012 pending on the file of the first respondent is hereby quashed. Consequently, connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS-II)



To

1.The Inspector of Police,
Thiruppachethi Police Station,
Sivagangai District.

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

+1 CC To MR.G.KARUPPASAMY PANDIAN, Advocate SR. NO. 83983

CRL.O.P. (MD) No.7407 of 2017

TM

TR/RP/SAR-II(18.09.2018) 5P 4C