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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 13.04.2018

DELIVERED ON : 25.06.2018

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)Nos.311, 296 and 298 of 2017
and

Crl.M.P.(MD)Nos.2725, 2726, 2779, 2780, 2940 and 2941 of 2017

1.Kandasamy

2.Mahesh

.. Petitioners/Petitioners/Accused 1 &2
in Crl. R.C.(MD)Nos.311, 296 and 298 of 2017

Vs.

The State by

The Inspector of Police,

Tenkasi Police Station,

Tirunelveli District.

.. Respondent/Respondent/Complainant in
Crl. R.C.(MD)Nos.311, 296 and 298 of 2017

Common Prayer : These criminal revision cases are filed under Sections 397 and 401 of Cr.P.C., to call for the records relating to the orders passed in Cr.M.P.Nos.8799, 8800 and 8801 of 2016 in C.C.No.123, 122 and 124 of 2002 by the Judicial Magistrate, Tenkasi dated 26.10.2016 and set aside the same.

For Petitioners

(in all petitions)

: Mr.D.Venkatesh

For Respondent

(in all petitions)

: Mr.K.Suyambulinga Bharathi

Government Advocate (Crl. Side)

COMMON ORDER

Heard Mr.D.Venkatesh, learned counsel appearing for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the respondent.

2.These petitions have been filed to set aside the orders passed in Cr.M.P.Nos.8799, 8800 and 8801 of 2016 in C.C.No.123, 122 and 124 of 2002 by the Judicial Magistrate, Tenkasi dated 26.10.2016 dismissed the discharge application filed by the



petitioners under Section 239 of Cr.P.C.

3.The case against the petitioners is that a week prior to 25.07.1997, the petitioners who are the 7th and 8th accused in the case and accused conspired together and in view of that conspiracy, the other accused purchased rectified spirit from the second petitioner and one from Balaji. The accused leased out a land and in the pump set, they download the rectified spirit and then packed them in cans and later prepared them into illegal liquor and sold them. Thereby, the accused defraud the Government and on 25.07.1997, when the defacto complaint was conducting prohibition raid along with police party, he caught hold of the first accused and the respondent came to know about the other accused persons on enquiry and filed a charge sheet under Sections 120(B) and 420 of IPC and Section 11 of Tamil Nadu Prohibition Act and Rule 6 of TNRSC Rules. It is stated that the petitioners and other accused Balaji were absconding. The case was split up as C.C.No.123 of 2002 against the petitioners. The case against the other accused was taken up as C.C.No.153 of 1998 for trial. After trial, the trial Court has acquitted the accused Nos.1 to 6, 10 and 11.

4.The petitioners filed a petition before the lower Court stating that the original case was ended in acquittal as against the other accused and prayed to discharge them in terms of Section 239 of Cr.P.C. After elaborate enquiry, the trial Court dismissed the petition. Hence, the petitioners are now before this Court for revision.

5.On the side of the petitioners, it is stated that two accused were already acquitted and another case was registered against them in Cr.No.296 of 2011. The seventh accused is said to have been in possession of the duplicate rectified spirit. All the eight accused except these petitioners were acquitted by Judgment, dated 30.06.2004. Non Bailable Warrant was filed against the petitioners. The case against these petitioners were split up as C.C.No.123 of 2002. It is further stated that the confession of the co-accused is unbelievable and it is not proved and the case against other accused was already acquitted, hence, keeping this case for trial is a waste of time for the trial Court.

6.On the side of the petitioners, the learned counsel relied upon the judgment passed by this Court in the case of **Sundaramoorthy @ A.S.Moorthy v. State, rep. By the Inspector of Police in Cr1.O.P. (MD)No.8331 of 2008**, which reads as follows:

" In the absence of any co-accused there would be no occasion to try the petitioner for such offence. For such reason and for the fact that except the first accused other accused were acquitted by the trial Court and the first accused stands acquitted by the Division



Bench of this Court and the Hon'ble Apex Court in K.Ramachandran's case informs that in such event revision against the acquittal of the other accused would be of no consequence, I am inclined to allow this petition."

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7. On the side of the petitioners, the learned counsel relied upon the judgment passed by this Court in the case of **Vedi @ Raman v. State by Inspector of Police** in **Cr1.O.P. (MD) No. 22371 of 2006**, which reads as follows:

"2. The case against A1 and A2 was split up and was tried in S.C.No.70 of 1999, they were acquitted of the charges by the learned III Additional Sessions Judge on the ground that the prosecution failed to prove the charges leveled against them beyond reasonable doubt.

.....

14. The evidence consists of only chaff in the present case. Therefore, the question of separating the chaff from the grain would not arise. Hence, it would be appropriate to quash the charges leveled against the Petitioner in order to meet the ends of justice."

8. On the side of the petitioners, the learned counsel relied upon the judgment passed by this Court in the case of **Thamilendi v. State rep. by Inspector of Police** reported in **(2008) 2 MLJ (Cr1.) 753**, which reads as follows:

"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.

No direct charge under Section 302, Indian Penal Code, 1860 framed against petitioner - All the accused acquitted since prosecution failed to prove charges - No purpose will be served by putting petitioner to undergo ordeal of trial when all others acquitted - Proceeding before Sessions Judge quashed."

9. On the side of the petitioners, the learned counsel relied upon the Judgment passed by this Court in the case of **Chinnapa @ Mahendaran v. State represented by the Inspector of Police** in **Cr1.O.P. (MD) No. 16303 of 2014**, which reads as follows:

"Giving the benefit of doubt on general points Special Judge acquitted the co-accused. Now, the remaining case is pending in P.R.C. No.32 of 2013 before the committal Magistrate as against the petitioner. The benefit of such acquittal also enure to the petitioner herein. In such circumstances, directing



him to undergo the ordeal of criminal trial will be wasting of public time and it will be abuse of process of the Court."

10. On the side of the respondent, it is stated that the petitioners are the main accused in the case and that the second accused supplied the rectified spirit which is a raw material for preparation of Whisky. It is further stated that the acquittal of the co-accused has nothing to do with the case of this petitioners and that the petitioners cannot be presumed to be innocent just because co-accused are acquitted and that the petitioners wantonly abscond to avoid the process of law.

11. On the side of the respondent, the learned counsel relied upon the Judgment passed by this Court in the case of **P. Vijayan v. State of Kerala and Another** reported in CDJ 2010 SC 110, which reads as follows:

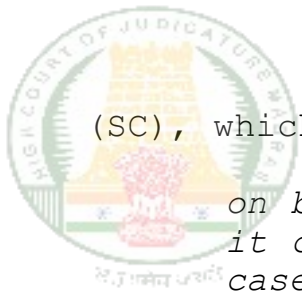
"After evaluating the materials produced by the prosecution and after considering the probability of the case, the Judge being satisfied by the existence of sufficient grounds against the appellant and another accused framed a charge. Whether the materials at the hands of the prosecution are sufficient or not are matters for trial. At this stage, it cannot be claimed that there is no sufficient ground for proceeding against the appellant and discharge is the only remedy. Further, whether the trial will end in conviction or acquittal is also immaterial. All these relevant aspects have been carefully considered by the High Court and it rightly affirmed the order passed by the Trial Judge dismissing the discharge petition filed by A3-appellant herein. We fully agree with the said contention."

12. On the side of the respondent, the learned counsel relied upon the Judgment passed by this Court in the case of **Moosa v. Sub Inspector of Police**, which reads as follows:

"...expressed his feeling that granting relief to an absconder accused may give a wrong message to a law abiding co-accused who stood trial that it was foolish on his part to attend the process of trial and its result will be that like-minded accused persons also will be

tempted to adopt elusive tactics for the eventual resort to such short-cut method."

13. On the side of the respondent, the learned counsel relied upon the Judgment passed by this Court in the case of **State of Tamil Nadu by Inspector of Police Vigilance and Anti Corruption v. N. Suresh Rajan and Other** reported in (2014) 1 MLJ (Cr1.) 315



(SC), which reads as follows:

"If Court thinks that accused committed offence on basis of materials on record on its probative value, it can frame charge - Court required to see prima facie case for proceeding against accused - If Trial Court satisfied that prima facie case made out, charge to be framed - Defect in investigation itself cannot be ground for discharge-"

14. Records perused. The offence is said to have been committed by the petitioners and other accused by transferring and selling illegal Whisky. It is stated that other accused purchased rectified spirit from the second petitioner and from one Balaji. It is stated that with the help of the rectified spirit, they prepared some illegal whiskey and planned to sell them. The case against the petitioners was registered as C.C.No.123 of 2002 and Non Bailable Warrant was pending against them from the year 2002. Originally the offence is said to have been committed in the year 1995. The petitioners are impleaded in this case based on the confession statement of the co-accused and the co-accused who gave the confession statement was acquitted by the trial Court. The prosecution agency has failed to secure the absconding petitioners to face the trial. The citations referred by the Additional Public Prosecutor is not applicable to the facts and circumstances of this case. The citations referred by the petitioners is applicable to this facts and circumstances of the case. Conducting trial for these two petitioners is waste of time for the Court. Hence, considering the facts and circumstances of the case, the impugned orders passed by the trial Court is set aside and the Criminal Revision Cases are allowed. Consequently, connected miscellaneous petitions are closed. The Registry is directed to send the order copy to the trial Court.

Sd/-

Assistant Registrar(CS-I)

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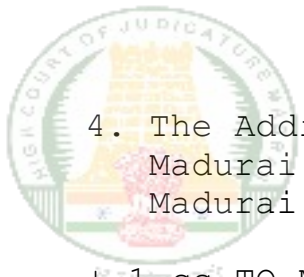
Sub Assistant Registrar

To

1. The Principal Sessions Judge,
Tirunelveli.

2. The Judicial Magistrate,
Tenkasi.

3. The Inspector of Police,
Tirunelveli District.



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

+1cc TO Mr.D.Venkatesh , Advocate in SR No. 69804

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Cr1. R.C.(MD)Nos.311, 296 and 298 of 2017
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