



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 01.11.2018

C O R A M

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.19944 of 2018

and

Crl.M.P. (MD)Nos.9142 and 9143 of 2018

Murugan

...Petitioner

/Vs./

1. The State represented by
The Inspector of Police,
Aralvaymozhi Police Station,
Kanyakumari District.
(Crime No.420 of 2000)

2.Rajkumar

...Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in S.C.No.82 of 2013 on the file of the learned Principal District and Sessions Judge, Kanyakumari District at Nagercoil and quash the same as against the petitioner.

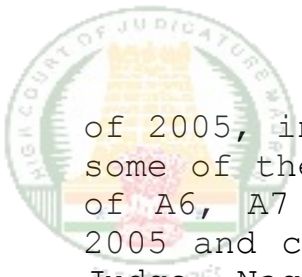
For Petitioner : Mr.R.Anand

For R-1 : Mr.K.Suyambulinga Bharathi
Government Advocate, (Crl. Side)

ORDER

This petition has been filed to quash the case in S.C.No.82 of 2013 on the file of the learned Principal District and Sessions Judge, Kanyakumari District at Nagercoil, for the offences under Sections 147, 148 and 302 IPC r/w Section 14 IPC.

2. The case of the prosecution is that on 17.05.2000, at about 05.25 p.m., the petitioner with three others came out from Aralvaymozhi Police Station, after complying with the conditions imposed by the Court, the petitioner and three others had followed the defacto complainant and made a life attempt by dashing with a car. In the said incident, he sustained grievous injury. Hence, the complaint. After investigation, a charge sheet has been laid as against 11 accused persons in P.R.C.No.15



of 2005, in which the petitioner arrayed as 3rd accused. Since the some of the accused persons were not appeared, the case in respect of A6, A7 and A9 was split up and renumbered as P.R.C.No.18 of 2005 and committed to the learned Principal District and Sessions Judge, Nagercoil and the same was taken on file in S.C.No.152 of 2008.

3. The prosecution examined P.W.1 to P.W.6 and marked Ex.P.1 to Ex.P.43 and produced M.O.1 to M.O.21 to substantiate the charges against the accused persons.

4. On completion of the trial, the trial Court was pleased to acquit the accused persons. The prosecution witnesses P.W.4 to P.W.6 are official witnesses and the defacto complainant was examined as P.W.1, who did not support the case of the prosecution and turned hostile. Likewise, P.W.2 and P.W.3, who were examined to prove the athatchi and confession, did not support the case of the prosecution and they were also treated as hostile witnesses. Therefore, no one has spoken about the cognizance and there is absolutely no evidence as against the accused persons. When other accused persons were acquitted by the trial Court, the petitioner also shall have the same benefit under the order of acquittal. Therefore, he sought for quashing the criminal proceedings.

5. Per contra, the learned Government Advocate would submit that co-accused persons were acquitted in S.C.No.152 of 2008 by an order dated 16.09.2009 by the trial Court. The petitioner is standing on the different footing and without taking the trial, he cannot be given the benefit of doubt. Further he would submit that the petitioner absconded and as such, the case has been split up and trial commenced in respect of the accused 6, 7 and 9. Therefore, he prayed for dismissal of this petition.

6. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the first respondent.

7. A perusal of the records reveals that the petitioner arraigned as the third accused and he did not appear before the committal Court. Therefore, the case in respect of A6, A8 and A9 was split up and renumbered as P.R.C.No.18 of 2005 and pending committal, the accused persons A1 and A2 died. Therefore, the trial commenced as against the accused No.6,7 and 9 in S.C.No.152 of 2008 and case was ended in acquittal by an order dated 16.09.2009. The trial Court acquitted the accused on the ground that the prosecution examined P.W.1 to P.W.6, in which, P.W.1 is the complainant and he himself did not support the case of the prosecution and turned hostile. P.W.4 to P.W.6 are the official witnesses. They did not support the case of the prosecution and as such, there is no evidence to connect charges against the



accused No.6,7 and 9. Therefore, the trial Court acquitted them. The petitioner is being the third accused, also stand in the same footing of the accused 6,7 and 9. Therefore, he is also entitled to get the same benefits.

8. In this regard, the learned counsel appearing for the petitioner relied upon the judgment of this Court reported in **2008 (2) CTC 153** in the case of **Thamilendi vs. State by Inspector of Police, Orathanadu Police Station, Thanjavur District**. The paragraphs Nos.6 and 7 are extracted hereunder:

"6. The learned counsel for the petitioner placed reliance on a decision of this Court in *Tamilmaran v. State*, 2007 (1) LW (Crl.) 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 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 under 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; *Makan 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 accused persons is inseparable and indivisible and if some of the 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 eye-witnesses, namely, Karan Singh (PW2)



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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 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]."

9. The above said principles laid down in the decision cited supra of this Court clearly applied to the case on hand. Therefore, this Court is of the considered view that the above said principles of law laid down in the decision cited supra are clearly applicable to the benefits of the instant case and all the accused persons were acquitted holding that the prosecution failed to prove the charges. Therefore, no useful purpose will be served by putting the petitioner to undergo ordeal of trial and as such, the criminal proceedings pending against the petitioner in S.C. No. 82 of 2013 on the file of the Principal District and Sessions Judge, Kanyakumari District at Nagercoil is quashed.



10. Accordingly, this criminal original petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (WRITS)

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Sub Assistant Registrar (CS-II)

To

1. The Principal District and Sessions Judge,
Kanyakumari District at Nagercoil.
2. The Inspector of Police,
Aralvaymozhi Police Station,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr. R. Anand, Advocate, Sr. No. 94387.

Cr1.O.P (MD) No. 19944 of 2018

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RAM-ES/RSK/SAR 2/24.12.2018/2P/5C