

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.8967 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.241 of 2014 on the file of VII Additional Judicial First Class Magistrate, Rajamahendravaram, for the offences punishable under Sections 406, 420, 427 and 477 r/w Section 34 IPC, on the sole ground that, except the petitioners herein, rest of the accused were acquitted in calendar and judgment in C.C.No.1034 of 2008 by the VII Additional Judicial First Class Magistrate, Rajamahendravaam, for the same offences, as the case against them was separated.

The allegations made against these petitioners and the other accused who were acquitted already in C.C.No.1034 of 2008 are one and the same. During trial, the listed witnesses were examined as P.Ws.1 to 7 and marked Exs.P-1 to 9 and Ex.D-1 was marked on behalf of the defense. After following necessary procedure, the Trial Court found Accused Nos.2,3,6 & 7 not guilty for the said charges and acquitted them. It is contended that, these petitioners are also facing the same charges, and avoided their appearance before the Trial Court, Non-bailable Warrants are pending against these petitioners.

The only objection raised by Sri N. Siva Reddy, learned counsel for the second respondent is that the petitioners along with the other accused earlier filed CrI.P.no.4330 of 2006, which was partly allowed by this Court, by quashing the proceedings against these petitioners for the offence punishable under Section 420 IPC, while permitting the respondent to proceed against the

petitioners in respect of other offences punishable under Sections 406, 427, 477 IPC. It is contended that, when the petitioners filed earlier criminal petition, which was allowed in part, the same petitioners are not entitled to file another criminal petition to quash the proceedings.

No doubt, filing of successive application under Section 482 Cr.P.C was deprecated by the Apex Court. However, the grounds urged in the earlier petition in CrI.P.No.4330 of 2006 is totally distinct from the ground urged in the present petition. The only ground raised before this Court is that, except the present petitioners/A 4 & 5, rest of the accused were found not guilty and acquitted.

This Court in **Pothula Suresh v. The State of A.P**¹ considered the scope of Section 482 Cr.P.C and held that when some of the accused in the same case found not guilty and acquitted after full-fledged trial, the proceedings against the other accused are liable to be quashed.

In the recent judgment of the Supreme Court in **Mohinder Singh v. State of Punjab**², had an occasion to deal with an identical question where some of the accused faced trial and found not guilty. But, the driver of the truck in question was found absconded, who faced trial subsequently after completion of trial. The Court held that, The NDPS Act being a presumptive legislation, the interpretation has to be strict, whether it is the acquittal of the co-accused or the defective investigation, the interest of justice calls for restoring the order of the acquittal passed by the Sessions

¹ 2011 CrLJ 609

² (2018) 11 SCC 570

Judge. The order of the High Court in appeal was set aside in the said case.

By applying the principle laid down in the above judgments to the present facts of the case, the proceedings against the petitioners in C.C.No.241 of 2014 on the file of VII Additional Judicial First Class Magistrate, Rajamahendravaram, for the offences punishable under Sections 406, 420, 427 and 477 r/w Section 34 IPC are hereby quashed by exercising inherent power under Section 482 Cr.P.C.

In the result, the criminal petition is allowed.

Consequently, miscellaneous applications pending if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 03.10.2018

SP

