

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.10507 of 2019
and Crl.M.P.Nos.5421 & 5423 of 2019

- 1.Shafikkur Rahman
- 2.A.R.Marjuk
- 3.Iqbal

... Petitioners/Accused

Vs.

- 1.The State rep by
The Inspector of Police,
Kattumannarkoil Police Station,
Cuddalore District
(Crime No.143 of 2008)

- 2.Mohamed Abupakkar ... Respondents/Respondent/
Defacto Complainant

PAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records and quash the charge sheet in P.R.C.No.03 of 2012 pending on the District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District as for the petitioners are concerned.

For Petitioners: Mr.G.Pugazhenth

For R1 : Mr.C.Raghavan
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in P.R.C.No.03 of 2012, pending before the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District.

2. It is seen that the petitioners and 52 others were arrayed as accused by the respondent police in Crime No.143 of 2008 for the offence under Sections 147, 148, 323, 324, 307, 392, 109 of IPC and Section 3 of TN PPDL Act. The respondent police after investigation, filed a final report before the District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District as against the 50 persons. Since the petitioners were absconded, the case was split up insofar as the

other accused persons in S.C.No. S.C.Nos.290 of 2012 and 321 of 2017. After completion of the full fledged Trial, the learned Principal District and Sessions Judge has acquitted the said accused persons in S.C.Nos.290 of 2012 and 321 of 2017 by an order dated 16.11.2018. On the ground that the prosecution has not been proved the case beyond reasonable doubt.

3. The petitioners before this Court are A10, A17 and A44

4. The learned counsel for the petitioners would submit that the co-accused namely said accused persons has already been acquitted in the split up case and therefore, the said judgment must enure to the benefit of the petitioners also. The learned counsel would further submit that the nature of the allegation made against all the accused persons is similar and therefore, since the Court below had already found that there is no evidence as against other accused persons, the same will apply to this petitioners also. He also relied upon the judgment of this Court reported in (2018) 2 MWN (Criminal) 442 in the case Anbuselvam Vs. State reads as follows:

"7.The learned Senior Counsel relied upon two judgments of this Court reported in 2007 -1-L.W (Cr1.) 514 Tamilmaran Vs. The State rep. By Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Thiruvarur District and 2008 (2) CTC 153 Thamilendi Vs. State rep. by The Inspector of Polie, Orathanadu Police Station, Thanjavur District and submitted that in view of the acquittal of three other co-accused, no useful purpose would be served to subject the petitioner to undergo the ordeal of the trial. The relevant portion of the judgments read as follows:

II.Tamilmaran Vs. The State rep. By Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Thiruvarur District, reported in 2007 -1-L.W (Cr1.) 514:

"7.This Court is of the considered view that there is much force on the contention put forward by the learned senior counsel to the effect that the learned trial Judge having disbelieved the prosecution case in toto no useful purpose would be served by putting the petitioner to undergo the ordeal of trail on the basis of the very same set of evidence. It is also pointed out by the learned senior counsel that even the defacto complainant himself turned hostile giving a total go-by to his earlier version and there is no

other material available on record to implicate the petitioner. The learned senior counsel has rightly placed reliance on the decision of the Delhi High Court in a case in Sunil Kumar v. State reported in 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 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 S.C.C.(Cri.) 617). But 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.

4. On perusal of the Judgment of acquittal dated 19.01.1998 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) 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 Addl. 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 if the Code itself."

8. In yet another decision, placed reliance by the learned senior counsel, in Mohammed Ilias v. State of Karnataka reported in 2001 (4) Crimes 417, the Karnataka High Court taken a similar view following the decision of Delhi High Court, cited supra.

9. Therefore, the above well 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 admittedly the other accused, Viz., A-1 to A-4 have been acquitted by the learned trial Judge after disbelieving the entire prosecution case and as such this Court is of the considered view that no useful purpose would be served for putting the petitioner to undergo the ordeal of trial and therefore, the proceedings pending against the petitioner in C.C.No.1146 of 1997 on the file of the learned Judicial Magistrate, Mannargudi, is hereby quashed."

II. Thamilendi Vs. State rep. by The Inspector of Police, Orathanadu Police Station, Thanjavur District reported in 2008 (2) CTC 153

"4. On perusal of the Judgment of acquittal dated 19.01.1998, 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 (PW-2) 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, Balbir Singh, Anilkumar 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 state 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 and in this case also except the petitioner herein all the other accused, viz., A-1 to A-6, A-8 and A-9 who have been tried separately in S.C.No.86 of 1991 have been acquitted by the learned Trial Judge disbelieving to entire prosecution case and holding that the prosecution has failed to prove the charges including the charge under section 302, I.P.C. against A-3 who is the only accused alleged to have attacked the deceased."

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.

5.The judgment cited by the learned counsel for the petitioners will squarely apply to the facts of the case. Even if the case is sent back to the trial Court, the trial Court cannot re-assess the depositions already given by the witnesses and take a contrary view. No useful purpose will be served by keeping the proceedings pending. This Court is of the considered view that the order of acquittal passed in favour of other accused persons will also enure to the benefit of petitioners/Accused A10, A17 and A44.

6.In the result, this Criminal Original Petition is allowed. The proceedings in P.R.C.No.03 of 2012 on the file of the District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

mpa
To

- 1.The District Munsif cum Judicial Magistrate
Kattumannarkoil, Cuddalore District.
- 2.The Inspector of Police,
Kattumannarkoil Police Station,
Cuddalore District.
3. The Public Prosecutor,
High Court of Madras.

+1 CC to Mr.G.Pugazhenthii, Advocate sr 38600.

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NMI (CO)
SP(31/05/2019)