

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.20934 of 2019 and
Crl.M.P.Nos.10793 & 10794 of 2019

- 1.Nondi Haja
- 2.Thafrey Alam Badusha
- 3.Navas Khan
- 4.Abubacker Sidiq
- 5.Nazar
- 6.Mohamed Riasudeen
- 7.Abdul Sukkur
- 8.Anwardeen
- 9.Sidiq Ahamed
- 10.Thajudeen
- 11.Nagore

.... Petitioners

Vs.

- 1.State Rep by its,
The Inspector of Police,
Muthupettai Police Station,
Tiruvarur.

Sounderarajan (Died)

.... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in S.C.No.58/2017 pending on the file of the Magalir Neethimandram Fast Track Mahila Court, Tiruvarur and quash the same as illegal.

For Petitioners : Mr.I.Abdul Basith

For Respondents : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor
(for R1)

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O R D E R

This petition has been filed seeking to quash the proceedings pending in S.C.No.58 of 2017 on the file of the Magalir Neethimandram Fast Track Mahila Court, Tiruvarur.

2.The respondent police had filed a final report as against 31 accused persons for an offence under Sections 147, 148 and 324 IPC and Section 25(1)(a) Arms Act and Section 307 r/w 149 IPC and Section 3(1) of TNPPDL Act, 1992.

3.The case was split up and A1 to A10 faced trial before the Chief Judicial Magistrate, Thiruvarur in S.C.No.133 of 2016. The Chief Judicial Magistrate, Thiruvarur by a judgment dated 02.03.2017 acquitted all the accused persons in that case mainly on the ground that all the main prosecution witnesses had turned hostile and the defacto complainant had died during the pendency of the proceedings. Therefore the prosecution failed to prove the charges beyond reasonable doubts as against the accused persons. The petitioners before this Court are the remaining accused persons for whom the case was split up and numbered as S.C.No.58 of 2017. The case is now at the stage of trial, in so far as these petitioners are concerned.

4.The learned Counsel for the petitioner submitted that the judgment that was passed in S.C.No.133 of 2016, will enure to the benefit of these petitioners also and there is no other evidence available as against the petitioners. In order to substantiate the submissions, the learned Counsel for the petitioners relied upon the judgment of this Court in CrI.O.P. (MD)No.7407 of 2017, dated 11.09.2018 (Dinesh vs. State and Ors.) reported in MANU/TN/5262/2018.

5.Heard the learned Additional Public Prosecutor appearing on behalf of the respondent police.

6.It will be relevant to extract the petitions of the judgment cited by the learned Counsel for the petitioners as follows:

"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* [MANU/TN/8381/2007 : 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 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*, MANU/SC/0168/1973 : 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*, MANU/SC/0112/1971 : AIR 1971 SC 1450; *Ma-kan Jivan v. State of Gujarat*, MANU/SC/0136/1971 : AIR 1971 SC 1797; *Mohd. Moin Uddin v. State of Maharashtra*, MANU/SC/0144/1971 : 1971 SCC (Cri.) 617. But where the evidence against all the 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 19.01.1998, 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 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, MANU/KA/0744/2001 : 2001 (4) Crimes 417, taking the same view by following the decision rendered by the Delhi High Court [Tamilmaran V. State, MANU/TN/8381/2007 : 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 reassess 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 undergo 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."

7.It is seen from records that the petitioners are also placed on par with the other accused persons who were acquitted by the Trial Court in S.C.No.133 of 2016. The above judgment will squarely apply to the facts of the present case also. 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 making the petitioners undergo the ordeal of facing the trial .

8.In the result, the proceedings in S.C.No.58 of 2017 on the file of the Magalir Neethimandram Fast Track Mahila Court, Tiruvarur is hereby quashed and accordingly this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

jas/vs
To

1.The Presiding Judge,
Magalir Neethi Mandram,
Fast Track Mahila Court,
Tiruvarur.

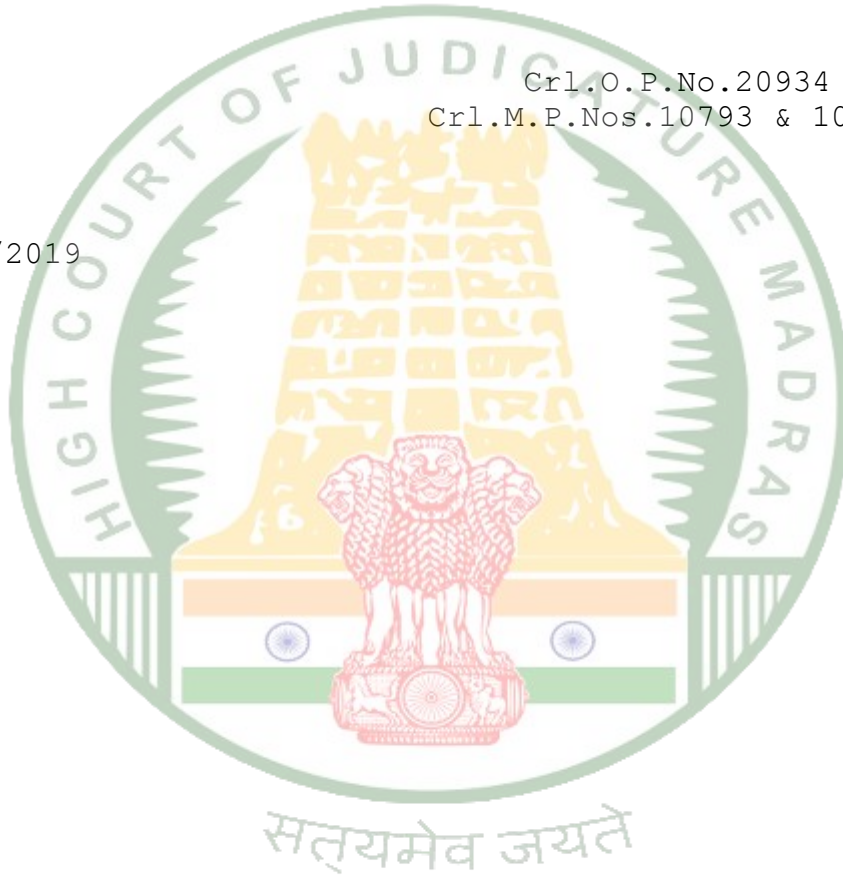
2.The Inspector of Police,
Muthupettai Police Station,
Tiruvarur.

3.The Public Prosecutor,
High Court, Madras.

+lcc to M/s.I.Abdul Basith, Advocate Sr.66644

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