

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2019

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

Crl.O.P.No.28114 of 2019
and Crl.M.P.No.15055 of 2019

Madan @ Salman

... Petitioner

Vs.

State

Represented by
The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District.
(Crime No.1434 of 2004)

... Respondent

PRAYER:Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to Preliminary Register Case in PRC No.31 of 2011 pending on the file of the Court of the Judicial Magistrate No.1, Cuddalore and quash the same.

For Petitioner : Mr.S.Vadivel Murugan

For Respondent : Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

The petitioner herein has been arrayed as 13th accused in the case of PRC.No.31 of 2011 for various offences under Sections 147, 148, 294, 450, 451, 452, 323, 324, 506(ii) and Section 307 read with Section 149 and along with Section 153A (1)(a) and 505 (1)(b)(c) and (2) of IPC read with Section 3 and 10 of the Unlawful Activities (Prevention) Act, 1967. It is stated that, the charge sheet was filed in PRC.No.22 of 2009 against all 26 accused persons including the petitioner herein. The case against the petitioner along with A4, A6, A14, A15, A18, A21, A23 and A24 was split up and assigned separate PRC. No.31 of 2011 on the file of the learned Judicial Magistrate No.I, Cuddalore. Subsequently, the case was committed to the Sessions Court, Cuddalore insofar as the accused A1, A2, A3, A5, A7, A8, A9, A10, A11, A12, A16, A17, A19, A20, A22, A25 and A26 and assigned with SC.No.241 of 2011. After due trial, all these accused were acquitted from all the charges.

2.It is the case of the petitioner that the overt acts attributed to the petitioner herein in the complaint as well as in the statement of the witnesses are similar and identical to that of the accused persons A9, A11 and A12, who were already acquitted by the Sessions Court in SC.No.241 of 2011. Since, the charges insofar as those accused are concerned are quashed, the learned counsel for the petitioner would submit that the proceedings should be quashed.

3.In the identical circumstances, this Court had relied upon two other decisions of this Court and had come to the conclusion that when the acquittal of the co-accused has been made after consideration of the statement of the witnesses, the identically placed accused should not face the ordeal of trial and that the trial Court will also not be in a position to reassess the witnesses once again and take contrary view. The relevant portion of the said decision reads as follows:

7. The learned Senior Counsel relied upon two judgments of this Court reported in 2007 -1-L.W (Crl.) 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 Police, 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:

Tamilmaran Vs. The State rep. By Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Thiruvarur District, reported in 2007 -1-L.W (Crl.) 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 trial 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 Polie, 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-3) (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 acquittal, no useful purpose would be served to make the petitioner to under go the ordeal of the trial.

9. In the result, the Criminal Original Petitions stand allowed. The proceedings as against the petitioner in C.C. Nos.114 of 2012 and 115 of 2012 on the file of Judicial Magistrate No.I, Namakkal are quashed. Consequently, the connected Miscellaneous petitions are closed."

4. In the light of the above decisions as well as the observations made by this Court, I am of the view that the petitioner also may not have to under go the ordeal of criminal trial, in view of the acquitting order passed in favour of similarly placed accused.

5. Accordingly, this criminal original petition stands allowed and the proceedings in PRC No.31 of 2011 pending on the file of the Judicial Magistrate No.1, Cuddalore insofar as the petitioner herein is concerned, stands quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

सत्यमेव जयते
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Judicial Magistrate No.1, Cuddalore.

2. The Inspector of Police,
Nellikuppam Police Station,
Cuddalore District.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Vadivel , Advocate SR.No. 96847

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