



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.13613 of 2019

and

Cr1.M.P. (MD) Nos.8290 and 8291 of 2019

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1. Pushparaj
2. Senthilkumar

... Petitioners/Accused 1&2

Vs

1. State through its
Inspector of Police,
Taluk Police Station,
Thanjavur,
Crime No. 130 of 2005

...1st Respondent/Complainant

2. Subramanian

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining in SSC No. 99 of 2012 on the file of the I Additional District and Sessions Court, Thanjavur and quash the proceedings in respect of the petitioner.

For Petitioner : Mr.T.A. Ebenezer

For Respondents : Mr.K.Suyambulinga Bharathi,
G.A. (Cr1. Side) for R1

O R D E R

This petition has been filed to quash the proceedings in SSC No. 99 of 2012 on the file of the I Additional District and Sessions Court, Thanjavur, having been taken cognizance for the offence under Sections 342, 294(b), 323 and 363 and Section 3(1) (x) of SC/ST Act, 1989.

2. The case of the prosecution is that there are totally four accused, in which, these petitioners were arraigned as A3 & A4. The respondent police after investigation, filed a final report and the same was taken cognizance as SSC No.1 of 2006 on the file of the I Additional District and Sessions Court, Thanjavur. Since the petitioners went to abroad for their survival, they could not attend the trial and hence, the case was split up and the trial was proceeded against the accused Nos.1 & 2. After completion of the full fledged trial, the learned I Additional District and Sessions Judge, Thanjavur has acquitted the said accused persons



in SSC No.1 of 2006 by Judgment, dated 28.05.2013 on the ground that the prosecution has not been proved the case beyond reasonable doubt and the case against the petitioners is now pending as SSC No.99 of 2012.

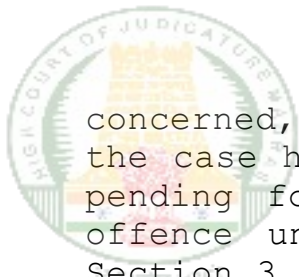
3. The learned counsel appearing for the petitioners submitted that the 1st respondent completed the investigation and filed the final report and the same has been taken cognizance in S.S.C.No. 1 of 2006 and thereafter, A1 and A2 appeared before the trial Court and conducted the case, which was also ended in acquittal vide judgment dated 28.05.2013. Since, the petitioners/A3 & A4 went to abroad and non bailable warrant has been issued as against her and also, since the same was unable to execute the warrant issued against the petitioners, the trial Court split up the case insofar as A3 & A4/the petitioners are concerned in S.S.C. No.99 of 2012 and it is now pending. The trial Court acquitted the other accused on the ground that the prosecution did not prove the case beyond doubt.

4. The learned counsel appearing for the petitioners further submitted that the petitioners have nothing to do with the crime as alleged by the prosecution. The prosecution examined Pws.1 to 5 and marked as Exs.P1 to 16 and the trial Court found that they have not spoken about the charges to prove the same and as such, A1 & A2 have been acquitted. In these circumstances, as against the petitioner/A3 & A4, there is absolutely no evidence and as such, the pendency of the proceedings in S.S.C.No.99 of 2012 would not serve any purpose and therefore, he prayed for quashment of entire proceedings.

5. The learned Government Advocate (criminal side) would submit that there are totally four accused, in which, the petitioners were arraigned as A3 & A4 and only because of the absence of the petitioners before the trial Court, his case has been split up from the main case in S.S.C.No. 99 of 2012, which was ended in acquittal vide judgment dated 28.05.2013. Therefore, the case as against the petitioners are concerned is pending in S.S.C.No.99 of 2012 for trial and the prosecution has to let in evidence and they have incriminating evidence as against the petitioners and as such, he sought for dismissal of the quash petition.

6. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (criminal side) appearing for the 1st respondent.

7. It is the admitted case of the petitioner as well as the prosecution that there are totally four accused, in which, A1 and A2 are concerned, the trial has been conducted and they have been acquitted in S.S.C No.1 of 2006 and insofar as A3 & A4 are



concerned, since non bailable warrant is pending as against them, the case has been split up in S.S.C.No.99 of 2012 and the same is pending for trial. All the accused have been charged for the offence under Sections 342, 294(b), 323 and 363 of I.P.C. and Section 3 (1)(x) of SC/ST Act, 1989.

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8.The entire dispute is that intentionally insults or intimidates with intent to humiliate witness Subramanian and Anand belongs to a scheduled caste. The trial Court recorded the reason for acquittal as follows:

"P.W.4 deposed that while he was proceedings his native place Keezhavasthachavadi in a route No.64 town bus about six years prior to deposed his evidence, at about 9.30 p.m and the bus was stopped in the bus stop of his village and while he along with P.W.1 tried to alight from the bus at the time they were prevented to get down from he bus and P.W.1 & 4 were brought to the village, 40 to 50 person beat him with hands and log all over his body, but he does not depose that the accused committed the offence, through he speaks that the Ponnappur villagers committed the said act but he would say that those persons are ot in the Court (1 and 2 accused were present at the time of examination of P.W.4) so he was treated as hostile with the permission of this Court by the Special Public Prosecutor. The above said P.W.1 & P.W.4 did not depose whether that the accused committed any offence and presence of the accused and the scene of occurrence it is to be stated Keezhavasthavchavadi bus stop or Ponnappour village are the alleged occurrence and no incriminating circumstances, direct the witness regarding the involvement of the accused A1 and A2 in the commission of the offence. In the circumstances, the evidence of Investigating officers is no way helpful to convict the accused. In these circumstances the prosecution has not proved the charges framed against the accused and the accused are to be acquitted from all the charges framed against them and the point is answered accordingly".

9.In this regard, it is relevant to rely the judgment reported in **2007-1 L.W.(Crl.) 514 - Tamilmaran Vs. The State rep. by Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Thiruvavarur District**, where, this Court has held as follows:

"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



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



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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."

10.Further, this Court and various High Courts repeatedly held that the acquittal of the other co-accused, after considering the depositions and holding their evidence to be unreliable, the trial Court cannot re-assess their depositions once again and take a contrary view. Therefore, this Court is of the considered view that the above settled proposition of law laid down in the above decision is squarely applicable to the case on hand.

11.In the present case, except the petitioner, other accused viz., A1 and A2 have been tried the charges and acquitted in S.S.C.No. 1 of 2006 by the trial Court by the judgment dated 28.05.2013 disbelieving the case of the prosecution and holding that the prosecution has failed to prove the charges beyond reasonable doubt. The petitioners are being A3 & A4 are also standing in the same footing like the other accused persons. Under these circumstances, no useful purpose would be served to make the petitioners to undergo the ordeal of the trial.

12.In view of the above discussion, this criminal original petition is allowed and the proceedings in S.S.C.No. 99 of 2012 on the file of the I Additional District and Sessions Court, Thanjavur is quashed as against the petitioners/A3 & A4 are



concerned.
closed.

Consequently, connected miscellaneous petitions are

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The I Additional District and Sessions Judge,
Thanjavur.

2. The Inspector of Police,
Taluk Police Station,
Thanjavur.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.A.EBENEZER, Advocate (SR-90040[F] dated 27/09/2019
)

Order made in
CRL.O.P (MD) No.13613 of 2019
26.09.2019

_KM/ (22.10.2019) 6P 5C