



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.10.2019

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.4994 of 2018

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Balaji

... Petitioner/Accused No.12

Vs.

1. State rep by

The Deputy Superintendent of Police,
Puthupattinam Police Station,
Nagapattinam.

(Crime No.348 of 2003)

... Respondent/Complainant

2. Senthilkumar

... Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to call for the records and quash the same in S.S.C.No.27 of 2016 on the file of the I Additional District and Sessions Judge (PCR), Thanjavur as against the petitioner.

For Petitioner : Mr.A.Arun Prasad

For R1 : Mr.R.Suyambulinga Bharathi
Government Advocate (Crl.Side)

O R D E R

This petition has been filed to quash the proceedings in S.S.C.No.27 of 2016 on the file of the I Additional District and Sessions Judge (PCR), Thanjavur, having been taken cognizance for the offence under Sections 147, 341, 323, 307 of IPC and 3 (1) (x) and 3 (2) (II) (V) of SC/ST Act.

2. The case of the prosecution is that there are totally 18 accused, in which, this petitioner is arraigned as A12. The respondent police after investigation, filed a final report and the same was taken cognizance as S.S.C.No.81 of 2008 on the file of the I Additional District and Sessions Judge (PCR), Thanjavur. Since the petitioner was not able to attend the trial and hence, the case was split up in S.S.C.No.27 of 2016 and the trial was proceeded against the petitioner/accused No.12. After completion of the full fledged trial, the learned I Additional District and Sessions Judge, Thanjavur has acquitted all accused person in SSC No.81 of 2008 by Judgment, dated 07.10.2016 on the ground that the prosecution has not been proved the case beyond reasonable doubt and the case against the petitioner is now pending as S.S.C.No.27 of 2016.



3. The learned counsel appearing for the petitioner submitted that the 1st respondent completed the investigation and filed the final report and the same has been taken cognizance in SSC No.81 of 2008 and thereafter, A12 appeared before the trial Court and conducted the case, which was also ended in acquittal vide judgment dated 07.10.2016. Since, the petitioner/A12 went to abroad and non bailable warrant has been issued as against him and also, since the same was unable to execute the warrant issued against the petitioner, the trial Court split up the case insofar as A-12/the petitioner is concerned in S.S.C.No.27 of 2016 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.

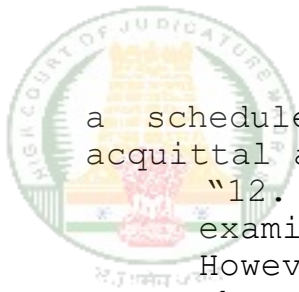
4.The learned counsel appearing for the petitioner further submitted that the petitioner has nothing to do with the crime as alleged by the prosecution. The prosecution examined Pws.1 to 12 and marked as Exs.P1 to 30 and the trial Court found that they have not spoken about the charges to prove the same and as such, A-12 have been acquitted. In these circumstances, as against the petitioner/A-12, there is absolutely no evidence and as such, the pendency of the proceedings in S.S.C.No.27 of 2016 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 eighteen accused, in which, the petitioner is arraigned as A-12 and only because of the absence of the petitioner before the trial Court, his case has been split up from the main case in S.S.C.No.81 of 2008, which was ended in acquittal vide judgment dated 07.10.2016. Therefore, the case as against the petitioner is concerned is pending in S.S.C.No.27 of 2016 for trial and the prosecution has to let in evidence and they have incriminating evidence as against the petitioner and as such, he sought for dismissal of the quash petition.

6.Heard the learned counsel appearing for the petitioner 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 eighteen accused, in which, all the accused are concerned, the trial has been conducted and they have been acquitted in S.S.C.No.81 of 2008 and insofar as A-12 is concerned, since non bailable warrant is pending as against him, the case has been split up in S.S.C.No.27 of 2016 and the same is pending for trial. All the accused have been charged for the offence under Sections 147, 341, 323, 307 of IPC and 3 (1) (x) and 3 (2) (II) (V) of SC/ST Act.

8.The entire dispute is that intentionally insults or
<https://hcmv.cemilab.com/hcmv/cas/> intent to humiliate witness Senthikumar belongs to



a scheduled caste. The trial Court recorded the reason for acquittal as follows:

"12. To substantiate its case, the prosecution has examined P.W.1 to P.W.12 and exhibited Ex.P1 to Ex.P30. However, the defacto complainant P.W.1 did not support the case of the prosecution. According to him, prior to 13 years when P.W.1 to P.W.3 visited Maathanam Bazar for having tea, there was a huge crowd and in that crowd some body has beaten P.W.1 to P.W.3. Further, the injured witnesses P.W.2 Sudahar and P.W.3 Selvakumar also do not support the case of the prosecution and their evidence is also in the same line as that of P.W.1. The evidence of P.W.1 to P.W.3 is not at all implicating the accused herein. P.W.1 to P.W.3 were treated as hostile by the prosecution, Though the prosecution was given permission to cross examine them, it could not extract anything in its favour.

13) Further, the witnesses said to have seen the occurrence P.W.4 Ramesh, P.W.5 Jeeva and P.W.6 Jayaraman were also not supported the case of the prosecution. P.W.8 who is said to have admitted P.W.1 in hospital is also not supported the case of the prosecution. Even as per the case of the prosecution P.W.9 is a hearsay witness and he also did not support the case of the prosecution and nothing could be elicited from them even in their cross examination. The mahazar witnesses were not examined before this Court. In the result no substantive evidence available as against the Accused herein.

14) Though P.W.10 Dr.Devalatha deposed about the injury sustained by P.W.1 to P.W.3, her evidence is only corroborative in nature and in the absence of any evidence to show that the injuries were caused by the accused herein, the evidence of P.W.10 cannot be put against the accused herein. The defacto complainant disowned his complaint and his signatures alone is marked as Ex.P.1. Even assuming that the receipt of complaint was proved through P.W.11, the complaint statement and F.I.R are only a corroborative piece of evidence, they cannot be used against the accused herein in the absence of any substantive piece of evidence. In the given circumstances, this Court is of the considered view that the prosecution has miserably failed to prove its case beyond all reasonable doubts and the accused herein are entitled to benefit of doubts.

15) In the result, this court is driven to an inevitable conclusion that the 1st Accused is not guilty of the offences punishable under Sections 147, 294 (b), 307 IPC r/w 3 (2) (v) SC/ST (POA) Act or 325 r/w 3 (2) (v) SC/ST (POA) Act. In the result, the Accused 3, 4 & 5 are not guilty of the



offences punishable under Sections 147, 342 IPC and the Accused 2, 6 to 15 are not guilty of the offences punishable under Section 147, 323 IPC and recorded their acquittal from the above charges under Section 235 (1) Cr.P.C., The 1st accused who is in custody is ordered to be set at liberty at once. The bail bonds executed by the Accused are hereby discharged."

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, Thiruvarur 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 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.

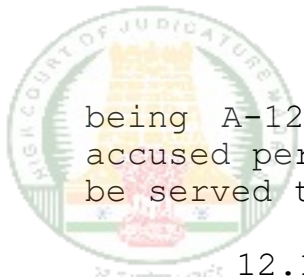


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4. On perusal of the Judgment of acquittal dated 19.01.1998 it appears that the deceased Balwan Singh met with a homicidal death owing to burn injuries sustained by him has not been disputed by the accused persons. The evidence against the accused 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."

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 have been tried the charges and acquitted in S.S.C.No.81 of 2008 by the trial Court by the judgment dated 17.10.2016 disbelieving the case of the prosecution and holding that the prosecution has failed to prove the charges beyond reasonable doubt. The petitioner is



being A-12 is also standing in the same footing like the other accused persons. Under these circumstances, no useful purpose would be served to make the petitioner 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.27 of 2016 on the file of the I Additional District and Sessions Judge (PCR), Thanjavur is quashed as against the petitioner/A-12 is concerned.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The I Additional District and Sessions Judge (PCR),
Thanjavur.
2. The Deputy Superintendent of Police,
Puthupattinam Police Station,
Nagapattinam.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P.(MD)No.4994 of 2018
17.10.2019

DSS

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