



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.04.2019

Delivered on : 08.07.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P. (MD)No.4187 of 2016

and

Crl.M.P. (MD)No.2102 of 2016

V.P.R.Chandramohan

... Petitioner

Vs.

1.State rep. by

The Inspector of Police,
Vilathikulam Police Station,
Tuticorin District.
[Crime No.110 of 1995]

2.P.Rathinavelu

... Respondents

Prayer: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records pertaining to the Charge Sheet in P.R.C.No.50 of 2000 on the file of the learned Judicial Magistrate, Vilathikulam in Crime No.110 of 1995 dated 18.02.1995 on the file of the first respondent and quash the same.

For Petitioner

: Mr.S.Rajasekar

For Respondents

: Mr.R.Anandharaj

Additional Public Prosecutor for R.1

No appearance for R.2

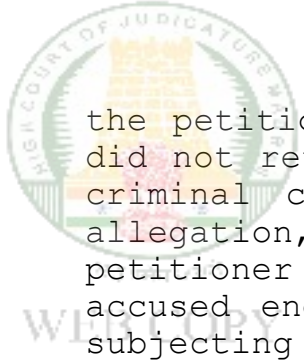
ORDER

This Criminal Original Petition has been filed by the petitioner / third accused to quash the charge sheet pending against him in P.R.C.No.50 of 2000 on the file of the learned Judicial Magistrate, Vilathikulam.

2. According to the petitioner, he is the third accused in the ground case in Crime No.110 of 1995, dated 18.02.1995, on the basis of which, the impugned charge sheet came to be filed. The case was registered at the instance of the second respondent herein and charge sheet was filed under Sections 120(B), 109, 302 r/w 34 IPC. The learned Counsel for the petitioner would submit that as regards the accused nos.1, 2, 4 & 5, the case was split up and they were tried in S.C.No.4 of 2001 and absconding charge sheet has been filed insofar as the petitioner / third accused is concerned before the learned Judicial Magistrate, Vilathikulam, in P.R.C.No.50 of 2000. Pending the proceedings, the fourth accused died and after full fledged trial, the learned Additional and District Sessions Judge, Fast Track Court No.II, Tuticorin, vide judgment dated 07.06.2005, in S.C.No.4 of 2001, acquitted the accused nos.1, 2 & 5.

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3. The learned Counsel for the petitioner would submit that



the petitioner had gone to his native place for his livelihood and did not return. In fact, the petitioner has nothing to do with the criminal case and has not involved in the crime. Moreover, the allegation, even according to the prosecution, is that the petitioner is only the conspirator. Since the case against the co-accused ended in acquittal, no useful purpose would be served by subjecting the petitioner to undergo the ordeal of trial and therefore, he prayed for allowing the present petition. In support of his contention, the learned Counsel has relied upon the decision of this Court reported in **2018 (2) MWN (Cr.) 442**, in the case of **Anbuselvam v. State, Rep. by Inspector of Police, District Crime Branch, Namakkal**, wherein, this Court has held that since the trial Court acquitted the other accused holding that the prosecution failed to establish the case beyond reasonable doubt, it cannot come to a different conclusion in respect of the petitioner's case and thereby, quashed the charge sheet filed in respect of the absconding accused. He has also relied upon the following latest decisions of this Court for the same analogy:

i) **Crl.O.P.(MD)No.1310 of 2018, decided on 27.09.2018**, in the case of **Prabhu v. State rep. by Inspector of Police, Abiramam Police Station, Ramnad District and another**;

ii) **Crl.O.P.No.23265 of 2018, decided on 03.12.2018**, in the case of **Paramaguru v. State rep. by Inspector of Police, CBCID, Cuddalore Post, Cuddalore District and others**;

iii) **Crl.O.P.No.26387 of 2014, decided on 03.12.2018**, in the case of **S.Martin v. State rep. by Inspector of Police, B6 Peelamedu Police Station (L & O), Coimbatore**.

4. Learned Additional Public Prosecutor, on the other hand, demonstrated the facts of the case, which is of the year 1995 and submitted that this petitioner / third accused is absconding since 1999 and therefore, the case was split up and the other accused faced trial and got an order of acquittal. A Non-Bailable Warrant was issued as against this petitioner in the year 2000 and the same is pending till date. Just because the other accused were acquitted, an accused, who is absconding for nearly about twenty years, should not be permitted to take advantage of the same. Therefore, he prays for dismissing this petition.

5. Heard the learned Counsel appearing on either side and perused the documents placed on record.

6. The case of the prosecution is that there exists a motive between the deceased, namely, Palanivel and the petitioner herein, with regard to their real estate business. Consequent to the same, on 17.02.1995, the accused persons criminally conspired and on 18.02.1995, at about 08.30 am, the accused nos.1, 2, 4 & 5 murdered the deceased, upon the instigation of the third accused / petitioner herein.

7. The prosecution has examined as many as twelve witnesses and all the witnesses, other than the official witnesses, have



turned hostile, based on which, the trial Court has extended the benefit of doubt to the accused nos.1, 2 & 5 and acquitted them.

8. According to the learned Additional Public Prosecutor, a Non-Bailable Warrant was issued as early as in the year 2000 against this petitioner and the same is pending till date. For the past twenty years, Non-Bailable Warrant is pending without execution. The petitioner has not even surrendered before the trial Court and without filing any petition for re-calling the warrant, the petitioner has come before this Court.

9. The occurrence is of the year 1995 and the petitioner's name found place in the FIR. But, the petitioner was not arrested and the final report was filed in the year 1996 and the trial was concluded in the year 2005. The petitioner was absconding all these years and without even surrendering before the Court, the petitioner had approached this Court to invoke the powers under Section 482 CrPC to quash the proceedings, pending against him. According to the learned Counsel for the petitioner, no useful purpose would be served by allowing the petitioner to undergo the ordeal of trial, when the co-accused have been acquitted in the trial.

10. This is a case of murder, where certain specific allegations have been made against this petitioner in the FIR as well as in the final report. The trial as against the other accused have been ended in acquittal, since the prosecution witnesses have not supported the case of the prosecution. It may be not presumed that the prosecution witnesses would take the similar stand as against this petitioner also and it is not a straightjacket formula that the result of a split up charge sheet shall follow the result of the main case. Of course, it is a settled position of law that where the evidence is inseparable and indivisible and on the same set of evidence, the co-accused have been acquitted then the remaining accused need not face trial. But, if the evidence is separable and divisible and there are specific allegations against the accused, who was not available at the time of trial of co-accused who were acquitted, then, it would be a matter for trial.

11. In similar circumstances, the High Court of Karnataka, in an unreported decision in **State v. Govinda**, in **Criminal Revision Petition No.648 of 2016**, decided on 13.01.2017, has held as follows:

"18. It is not a straightjacket formula that the result of split up charge sheet shall follow the result of the main case. There may be circumstances that even after acquitting the accused in the main case, still there is incriminating evidence against the accused person of a split up charge sheet. The facts and circumstances in each case differ and the result of the main case cannot be applied to a split up charge sheet unmindful of the quality of evidence brought in the main case. There is no discussion by the trial Court how the evidence recorded in the main case is sufficient to bail out the accused person of the



split up charge sheet."

12. In yet another unreported decision, the Delhi High Court, in the case of **Inder Singh Bist v. State**, in **Crl.Rev.P.746 of 2006**, decided on 27.04.2012, has held as follows:

"26. Merely because some of the accused are acquitted in a trial separately held, the other accused is not entitled to benefit of acquittal order in all cases. It is settled law that where the evidence is inseparable and indivisible and on the same set of evidence, the co-accused have been acquitted, then the remaining accused need not face trial. However, if the evidence is separable and divisible and there are specific allegations and accusations against the accused who were not there in the case at the time of trial of co-accused who were acquitted, then it would be a subject matter of trial."

13. This Court also feels that the conduct of the petitioner needs to be viewed. The petitioner, whose name was found in the FIR was absconding for nearly 20 years, has come forward to file this application, even without surrendering before the Court. In this regard, it would be appropriate to refer to the decision of a Full Bench of Kerala High Court in **Moosa v. Sub Inspector of Police**, reported in **2005 SCC OnLine Ker 605**, wherein, the Full Bench, after detailing the brief history of the legislation behind the incorporation of a provision like Section 482 Cr.P.C.; discussed its objects and details; the extent of the powers and circumstances under which, it is generally exercised and summarised the legal position and the relevant portion is extracted hereunder:

"53. In the light of the above discussions, we may summarise the legal position as follows:

... ..

(vii) The judgment of acquittal of a co-accused in a criminal trial is not admissible under Sections 40 to 43 of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot hence be reckoned as a relevant document while considering the prayer to quash the proceedings under Section 482 Cr.P.C. Such judgments will be admissible only to show as to who were the parties in the earlier proceedings or the factum of acquittal.

(viii) While considering the prayer for invocation of the extraordinary inherent jurisdiction to serve the ends of justice, it is perfectly permissible for the court to consider the bona fides - the cleanliness of the hands of the seeker. If he is a fugitive from justice having absconded or jumped bail without sufficient reason or having waited for manipulation of hostility of witnesses, such improper conduct would certainly be a justifiable reason for the court to refuse to invoke its powers under Section 482 of the Code of Criminal Procedure.

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(ix) The fact that the co-accused have secured acquittal in the trial against them in the absence of



absconding co-accused cannot by itself be reckoned as a relevant circumstance while considering invocation of the powers under Section 482 of the Code of Criminal Procedure."

14. Admittedly, in this case the petitioner has been absconding from the year 2000 and NBW is pending against the petitioner, till date. Without surrendering before the trial Court and without even filing a petition to re-call the warrant, the petitioner has straightaway approached this Court.

15. In view of the discussion held above and applying the principles cited supra, this Court is not inclined to exercise the power under Section 482 Cr.P.C., to quash the charge sheet and accordingly, this criminal original petition is **dismissed**. The petitioner shall surrender before the Committal Court, namely, the learned Judicial Magistrate, Vilathikulam within a period of one month from the date of receipt of a copy of this order. In case of any failure on the part of the petitioner, the respondent Police shall secure the petitioner and subject him to judicial process. In the event of the petitioner surrendering before the Court, the committal process shall be concluded within a period of 15 days from the date of his surrender and the Court of Sessions shall conclude the trial as expeditiously as possible. The Superintendent of Police, Tuticorin District is directed to monitor the further progress in this case. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

gk

To

- 1.The Judicial Magistrate,Vilathikulam.
- 2.The Superintendent of Police,Tuticorin District
- 3.The Inspector of Police,
Vilathikulam Police Station,Tuticorin District
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,Madurai.

Order made in

Cr1.O.P. (MD)No.4187 of 2016 and

Cr1.M.P. (MD)No.2102 of 2016

08.07.2019