



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.10.2019
CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No. 14346 of 2019

and

Crl.M.P. (MD) No. 8663 of 2019

Anwar

... Petitioner

Vs

1. State rep. by the Inspector of Police,
Keeramangalam Police Station,
Pudukkottai District.
Crime No. 71 of 1998.

2. Abdul Alif

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the split-up S.C. No.72 of 2018 on the file of the learned Additional Subordinate Judge, Pudukkottai and quash the proceedings as against the petitioner.

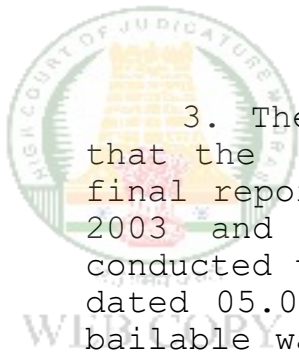
For Petitioner : Mr.B. Anandan

For R-1 : Mr.K.Suyambulinga Bharathi,
G.A. (Crl. Side)

O R D E R

This petition has been filed to quash the proceedings in split-up S.C.No.72 of 2018 on the file of the learned Additional Subordinate Judge, Pudukkottai.

2. The case of the prosecution is that there are totally three accused, in which, the petitioner was arraigned as A1. The respondent police after investigation, filed a final report and the same was taken cognizance as S.C.No.72 of 2018 on the file of the Additional Subordinate Court, Pudukkottai. Due to non appearance of the petitioner, the NBW has been issued as against the petitioner and hence, the case was split up and the trial was proceeded against the accused No.3. After completion of the full fledged trial, the learned Principal Sessions Judge, Pudukkottai has acquitted the said accused person in SC No.6 of 2003 by Judgment, dated 05.03.2003 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 SC No.72 of 2018.



3. The learned counsel appearing for the petitioner submitted that the respondent has completed the investigation and filed the final report and the same has been taken cognizance in S.C.No. 6 of 2003 and thereafter, A3 appeared before the trial Court and conducted the case, which was also ended in acquittal vide judgment dated 05.03.2003. Due to non-appearance of the petitioner/A1, 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 A1/the petitioner is concerned in S.C. No. 72 of 2018 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 5 and marked as Exs.P1 to 12 and the trial Court found that they have not spoken about the charges to prove the same and as such, A3 has been acquitted. In these circumstances, as against the petitioner/A1, there is absolutely no evidence and as such, the pendency of the proceedings in S.C.No.72 of 2018 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 three accused, in which, the petitioner was arraigned as A1 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.C.No. 6 of 2003, which was ended in acquittal vide judgment dated 05.03.2003. Therefore, the case as against the petitioner is concerned is pending in S.C.No. 72 of 2018 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 respondent.

7. It is the admitted case of the petitioner as well as the prosecution that there are totally three accused, in which, A3 is concerned, the trial has been conducted and he has been acquitted in S.C No.6 of 2003 and insofar as A1 is concerned, since non bailable warrant is pending as against him, the case has been split up in S.C.No.72 of 2018 and the same is pending for trial. A1 has been charged for the offence under Section 307 of I.P.C.

8. The entire dispute is that attempted to murder. The trial Court recorded the reason for acquittal as follows:

"15.The witness P.W.1 assorted unequivocally that, he did not know, who hit him by the auto rickshaw at the



place of the occurrence in question. He went to the extent of deposing clearly that, he never saw the accused at the time of the occurrence in question. Further, the witness P.W.2 Mr.Chinnasamy, who was stated to be an eye witness also turned hostile to the prosecution case in this case. He never whispered the presence of the accused at the time of the occurrence in question. Further, he also deposed categorically that, he never witnessed the occurrence in question. It is significant to note that the witness P.W.1 & 2 denied the very presence of the accused and his overt act in the alleged attempted to commit murder of the witness P.W.1 at the time of the occurrence in question. Apart from that the witness P.W.1 Abdul Aaliff admitted his signature only, which was marked as Ex.P.1 in the complaint. But, the recitals of the complaint in Ex.P.6 are quite contrary to the evidence of the witness P.W.1 who set the law in motion at the police station, Keeramangalam. So, no sanctity could be attached the recitals of the complaint in Ex.P.6, which were not at all proved by the prosecution side, through the witness P.W.1 or P.W.2 in this case. So, the accused could not be implicated for the offence u/s 307 IPC. Only on the basis of the medical evidence of the witness P.W.4 Dr.Krishnaraj and the accident register in Ex.P.5 in this case. As a matter of fact, the prosecution failed to establish the prima facie case against the accused Alipulla for the offence u/s 307 IPC on the basis of the complaint in Ex.P.6 in this case. That being the position, there is no option for this Court, except to exculpate the accused from the charge for the offence u/s 307 IPC, only due to the baffling act of the witnesses P.W.1 & 3 in this case.

16. It is explicit that the prosecution failed to prove the charge against the accused Alipulla for the offence u/s 307 of IPC beyond reasonable doubt in this case."

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.

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



WEB COPY

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., A3 has been tried the charges and acquitted in S.C.No. 6 of 2003 by the trial Court by the judgment dated 05.03.2003 disbelieving the case of the prosecution and holding that the prosecution has failed to prove the charges beyond reasonable doubt. The petitioner is being A1 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.C.No. 72 of 2018 on the file of the learned Additional Subordinate Judge, Pudukkottai is quashed as against the petitioner/A1 is concerned. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar (CS)



To

1. The Additional Subordinate Judge,
Pudukkottai.
2. The Inspector of Police,
Keeramangalam Police Station,
Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.B.ANANDAN, Advocate (SR-92029[F] dated 15/10/2019)

Order made in
CRL.O.P (MD) No.14346 of 2019
14.10.2019

ksa

MK (12.11.2019) 6P 5C