



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.10.2019
CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN
CRL.O.P (MD) No.15333 of 2019

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Vijayabalan

... Petitioner/Accused No.7

Vs

1. The State of Tamil Nadu
Deputy Superintendent of Police
Patteswaram Police Station
Thanjavur District
Crime No.110 of 2013

... Respondent/Complainant

2. Vinoth

... Respondent/Defacto
Complainant

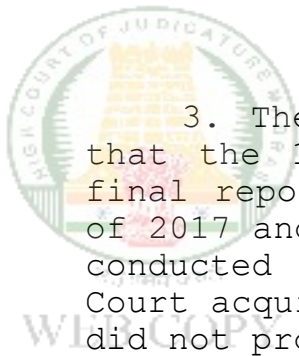
PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining in SSC No.21 of 2017 on the file of the I Additional District and Sessions Judge (PCR Court) Thanjavur and quash the same.

For Petitioner : Mr.A.Arun Prasad
For Respondents : Mr.K.Suyambulinga Bharathi,
G.A. (Crl. Side) for R1

O R D E R

This petition has been filed to quash the proceedings in SSC No.21 of 2017 on the file of the I Additional District and Sessions Judge (PCR Court) Thanjavur, having been taken cognizance for the offence under Sections 143, 294(b), 323 and 342 of IPC r/w. Section 3(1)(x) of SC/ST Act, 1989.

2. The case of the prosecution is that there are totally seven accused, in which, the petitioner is arraigned as A7. The respondent police after investigation, filed a final report and the same was taken cognizance as SCC No.2 of 2016 on the file of the I Additional District and Sessions Judge (PCR Court) Thanjavur. Since the petitioner could not attend the trial the case was split up and the trial was proceeded against other accused persons. After completion of the full fledged trial, the learned I Additional District and Sessions Judge, Thanjavur has acquitted the said accused persons in SCC No.2 of 2016 by Judgment, 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 SSC No.21 of 2017.



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 S.S.C No.21 of 2017 and thereafter, A1 to A6 appeared before the trial Court and conducted the case, which was also ended in acquittal. 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 10 and marked as Exs.P1 to 15 and the trial Court found that they have not spoken about the charges to prove the same and as such, A1 to A6 have been acquitted. In these circumstances, as against the petitioner/A7, there is absolutely no evidence and as such, the pendency of the proceedings in S.S.C.No.21 of 2017 would not serve any purpose and therefore, he prayed for quashment of entire proceedings.

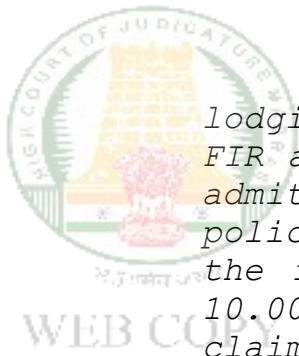
5. The learned Government Advocate (criminal side) would submit that there are totally seven accused, in which, the petitioner was arraigned as A7 and only because of the absence of the petitioner before the trial Court, his case has been split up from the main case, which was ended in acquittal. Therefore, the case as against the petitioner concerned is pending in S.S.C.No.21 of 2017 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 seven accused, in which, A1 to A6 are concerned, the trial has been conducted and they have been acquitted. All the accused have been charged for the offence under Sections 294(b), 323 and 342 of IPC and Section 3(1)(x) of SC/ST Act, 1989.

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

"12. Apart from that on perusal of Ex.D.1 First Information Report it is found that a complaint relating to the occurrence said to have happened at around 21.00 hrs was registered on 14.06.2013 at around 22.30 hours. On reading Ex.D.1 FIR it is found that PW2 was caught red handed and he was handed over to the police while



lodging complaint. PW 7 who registered EX.D.1 registered FIR and Ex.P.2 FIR in this case in his cross examination admitted that the 1st accused and PW2 have come to the police Station by 10.00 p.m. From that it is clear that the first accused and PW 2 were in Pateeswaram P.S by 10.00 p.m onwards. Whereas the prosecution witnesses claimed that the occurrence alleged in this case was happened after 10.30 p.m. The alleged victim and injured in the occurrence PW 2 Viviek in his cross examination claimed that the occurrence was happened at about 10.00 a.m. PW.1 in his chief examination as well as in his cross examination claimed that he got information about the occurrence by 10.00pm . According to PW 4 the occurrence was happened between 10.00p.m to 10.15 p.m. PW 5 in this cross examination claimed that the occurrence was happened at about 10.15 p.m. According to PW8, the occurrence was happened by 11.00 p.m. From the above evidences, it is clear that the evidence of prosecution witness about the time of occurrence is not corroborate with each other. Further, as stated supra, when PW 2 and 1st accused were in police station from 10.00p.m onwards, the evidence of prosecution witnesses PW1, PW2 and PW 4, PW 5 and PW8 that the occurrence was happened between 10.00p.m and 11.00 p.m becomes doubtful.

13.13. Apart from that according to PW 1 and PW 2 in the occurrence the nose of the PW 2 was broken and blood was bleeding from his nose. Apart from the said oral eviden no other evidence was available on record to show that PW 2 was injured in the occurrence. No medical evidence was let in by the prosecution in this regard to prove the injury sustained by PW 2. PW 2 in his chief examination deposed that he was treated at Trichy Hospital before he was admitted intot he prison. However, no medical records were produced by the prosecution to prove the said injury. This also creates a strong suspicion in the case of the prosecution.

14. Further,as per the prosecution the occurrence was happened in front of the house of 1st accused. From the rough sketch, it is found that the houses of Durairaj and Ganesan were situate in front of th ehouse of 1sta ccused. However, the said Durairaj and Ganesan were not even examined by the investigation officer and not cited as witnesses before this Court. All the prosecution witnesses belongs to the community of PW 2 and no other independent witnesses were examined before this Court. The non examination of independent witnesses though available also created further doubts in the case of the prosecution.



15 Further on careful perusal of evidence of PW 1 to PW 5 and PW 8 it is found that the specific overt act of each accused was not spoken to. According to PW 1 the 2nd accused Thiagarajan is not involved in the above occurrence. According to PW 2 all the accused attacked him with hands. According to PW 3, there was a scuffle between PW2 and all the accused in which his motor cycle was also broken. PW 4 and PW 5 have not deposed the presence of other accused except the 1st accused. According to the case of prosecution, PW 8 is not an eye witness. But he claimed that he has seen the occurrence. Even PW8 did not say that the accused herein attacked PW 2. Though the prosecution witness claimed that as many as 7 persons attacked PW 2, it is strange that PW 2 has not even suffered a single scratch on his body. The evidence of prosecution witnesses without detailing the complicity of each accused does not inspire confidence of this Court.

16. Though the prosecution witness PW1, PW 2, PW 4 and PW 5 deposed that the 1st accused herein abused by saying "40 tPpl;L gwg;ga nghz;lhl;biaAk; vd;dplk; \$l;b nfhLq;flh". According to PW 1, the 1st accused uttered those words when he questioned him, according to PW2, PW 4 and PW5, the accused uttered those words when PW 4 questioned the 1st accused. Hence it becomes doubtful whether the 1st accused uttered those words when PW 1 questioned him or Pw 4 questioned him. Further, none of the witnesses have deposed that the above occurrence was happened in a public view and the 1st accused herein uttered those words with an intention to harass, humiliate or intimidate the prosecution witnesses. The Hon'ble High Court, Madras in Periyasamy and another versus State Represented by : The Deputy Superintendent of Police, Avinashi Sub Division, Coimbatore District as reported in CDJ 2012 MHC 4670 held as follows:

19. In Sekar and Others vs. D.S.P., Pudhuchatram {CDJ 2011 MHC 5916}, this Court brought out the ingredients of the said offence as under:-

"20. To attract the proviso to Clause (x) to Sub-Section (1) of Section 3 of the Act, the following ingredients are very much essential:

1. The person who is accused of shall not be a member of the Scheduled Caste or Scheduled Tribe;



2. The person who is aggrieved shall be a member of the Scheduled Caste or Scheduled Tribe;

3. Criminal intention to insult or intimidate or to humiliate;

4. The occurrence should have taken place in any place within public view.

21. Clause (x) to Sub-Section (1) of Section 3 of the Act itself is very clear that whoever not being a member of Scheduled Caste or Scheduled Tribe intentionally insults or intimidates with intentionally or humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view.

22. Hence, the existence of mens rea or criminal intention to constitute an offence under Section 3(1) (x) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 is very essential. If there is no intention, no offence will constitute. And that is why, the Legislators have carefully employed the words "intentionally insults".

23. The test of criminality depends upon the presence of criminal intent. The maxim "actus non facit reum, nisimens sit rea" is then, as true here as it is in England. The above maxim conveys the meaning "the fact itself does not make a man guilty unless his intention was so".

22. As already stated such an occurrence should have been taken place in a place within public view. [See Section 3 (1)(x) of SC&ST (P.A.) Act, 1989, also See Madanlal Jaiswal vs. State of Chhattisgarh {CDJ 2013 Ch.HC 002 = 2013 CrI.J 510, and also see Asmathunnisa vs. State of A.P.(CDJ 2011 SC 332)].

23. In his evidence, PW-1 had stated that A-1 and A-2 came inside his house and beaten him with sticks, thereafter pulled him out and called him by his Caste name. In his complaint Ex.P-1, PW-1 had stated that the appellants came inside his house and beaten him with Casuarina sticks. PW-2, wife of PW-1 had stated that the accused have beaten her husband inside the house. However, PWs-4 and 5 have stated that after beating PW-1, the accused have forcibly took him out of the house and called him by his Caste name.



24. It is pertinent to note that Ex.P-10, FIR which set the criminal law in motion is the earliest document connected with this case. In FIR it is mentioned that the accused have beaten PW-1 with casuarina sticks in the house. However, before the Trial Court some of the witnesses such as PWs-2 and 3 have stated that after the beatings were over, the accused have forcibly took PW-1 outside the house. Thus, there is improvement in the prosecution evidence and that is not found in the FIR.

25. Considering the above aspects, it is seen that the prosecution had not established that the alleged occurrence had taken place in a place within public view. Thus one of the essential ingredient for the offence under Section 3(1)(x) of SC&ST (P.A.) Act, 1989 is not satisfied.

From the above decision, it is clear that in order to attract Section 3(1)(x) of SC/ST(POA) Act the offence must have been committed in public view and the accused shall act with an intention to harass, humiliate or intimidate the victim. In this case none of the witnesses have spoken that the accused abused the prosecution witnesses by citing their caste name in public view with an intention to harass, humiliate or intimidate them. Hence this Court is of the considered view that the prosecution has failed to prove the charge under Section 3(1)(x) of SC/ST(POA) Act.

17. Further as found supra, though a counter case is registered in Ex.D.1, FIR the prosecution has failed to produce the counter case materials before this Court and has completely suppressed the same. Hence, this Court is of the considered view that the prosecution has not come up with the true version of the occurrence. In the given circumstances, this Court is of the considered view that the prosecution has failed to prove its case beyond all reasonable doubts and the accused herein are entitled to benefits of doubts expressed above.

18. In the result, this Court comes to the inevitable conclusion that the accused 1 and 3 are not guilty of the offences punishable under Section 147, 342, 294(b), 352 IPC and Section 3(1)(x) of SC/ST(POA) Act and the accused 2, 4 to 6 are not guilty of the offences punishable under Sections 147, 352 IPC and records their acquittal from the above charges under Section 235(1) Cr.P.C. 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.

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



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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 viz., A1 to A6 have been tried the charges and acquitted in S.S.C.No. 2 of 2016 by the trial Court by the judgment disbelieving the case of the prosecution and holding that the prosecution has failed to prove the charges beyond reasonable doubt. The petitioner being A7 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 SSC No.21 of 2017 on the file of the I Additional District and Sessions Judge (PCR Court) Thanjavur is quashed as against the petitioner/A7 is concerned.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To

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

+1 CC to Mr.A.ARUN PRASAD, Advocate (SR-94417[F] dated 24/10/2019)

Order made in
CRL.O.P (MD) No.15333 of 2019
24.10.2019

AAV

MK (12.11.2019) 9P 5C