



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD).No.17653 of 2017

and

Crl.M.P.(MD) No.11553 of 2017

Muthuchezhiyan @ Muthuezhilan

...Petitioner/ Accused No.2

vs.

1) State,

Rep. by the Deputy Superintendent of Police,
Pattukottai,
Thanjavur District.

2) State

Rep. by the Inspector of Police,
Pattukottai Police Station,
Thanjavur District.
(Crime No.317/2009)

... Respondents/Complainants

3) Subramanian

... Respondent/ De facto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records pertaining to the Spl.S.C.No.31 of 2017 on the file of the I-Additional District & Sessions Judge(PCR), Thanjavur and quash the proceedings as against the petitioner herein.

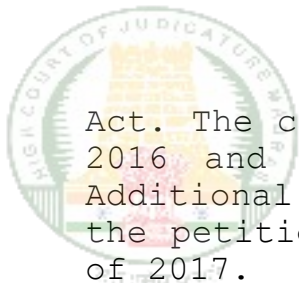
For Petitioner : Mr.S.Deenadhayalan

For RR 1 & 2 : Mr.M.Chandrasekaran,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in Spl.S.C.No.31 of 2017 on the file of the I-Additional District & Sessions Judge(PCR), Thanjavur.

2. It is seen from the records that, originally a final report came to be filed as against 16 accused persons and the same was taken on file in S.S.C.No.85 of 2010 for the offence under sections 147, 148, 324 & 326 of IPC read with 3(1)(x) & 3(2)(v) of the SC/ST



Act. The case was split up as S.S.C. No.85 of 2010 and S.C.No.30 of 2016 and both these cases were tried before the learned First Additional District and Sessions Judge, (PCR) Tanjore. Insofar as the petitioner is concerned, the case was split up in Spl.S.C.No.31 of 2017.

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3. The learned counsel for the petitioner submitted that all the accused persons were acquitted in this case and the said acquittal will also enure to the benefit of the petitioner. The learned counsel submitted that the petitioner is also placed in a similar footing with that of the other accused persons. The learned counsel in order to substantiate his arguments placed reliance upon the judgment of this Court made in ***Thamilendi vs. State rep by Inspector of Police, Orathanadu Police Station, Thanjavur District*** reported in 2008 (2) CTC 153.

4. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent submitted that all the accused persons were acquitted after a full fledged trial. The learned counsel submitted that this petitioner was absconding and therefore, the case was split up and the petitioner has to necessarily face the trial before the Court below and contest the case on merits.

5. This Court has considered the submissions made on either side and the records available on record.

6. It is seen from the records that all the other accused persons have been acquitted in Spl.S.C.No.30 and Spl.S.C.No.85 of 2010 by judgments dated 10.04.2017 and 19.09.2018 respectively. The charges against this petitioner is also similar to the charges that were faced by the other accused persons. The petitioner is also placed on the same footing and there is no other independent evidence available against the petitioner.

7. The judgments cited by the learned counsel for the petitioner squarely covers the facts of the present case.

(i) In ***Thamilendi vs. State rep by Inspector of Police, Orathanadu Police Station, Thanjavur District*** reported in 2008 (2) CTC 153, the relevant paragraphs are extracted hereunder:

" 6. The learned counsel for the petitioner placed reliance on a decision of this Court in *Tamilmaran v. State*, 2007 (1) LW (CrI.) 514, to the proposition that in the event of acquittal of the other accused disbelieving the entire prosecution case, no useful purpose would be served for putting the petitioner to undergo the ordeal of trial. In that decision this Court placed reliance on a decision of Delhi High Court in *Sunil Kumar v. State*, 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



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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 the 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 SCC (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 19.1.1998, 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 (PW 2) 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 Additional 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 of the Code itself."



7. This Court has also placed reliance on yet another decision of the Karnataka High Court in *Mohammed Ilias v. State of Karnataka*, 2001 (4) Crimes 417, taking the same view by following the decision rendered by the Delhi High Court [*Tamilmaran v. State*, 2007 (1) LW (Crl.) 514].

9. Therefore, this Court is of the considered view that no useful purpose would be served by putting the petitioner to undergo the ordeal of trial and as such the proceedings pending against the petitioner in S.C. No. 202 of 1999 on the file of the learned Principal Sessions Judge, Thanjavur, is hereby quashed."

(ii) In ***Chinnappa @ Mahendran vs. the State rep. by the Inspector of Police, Orathanadu Police Station, Thanjavur District*** reported in 2015 (1) MWN (Cr.) 259, the relevant paragraphs are extracted hereunder:

"16. By a catena of decisions it is well settled that where the evidence against all the accused is inseparable and indivisible and if some of the accused persons were acquitted, the remaining accused cannot be treated differently on the very same evidence (See MOHD. MOIN UDDIN V. STATE OF MAHARASHTRA, (1971 SCC (CRI.) 617)).

17. In ***C.B.I. V. AKILESH SINGH*** (AIR 2005 SC 268), the Hon'ble Apex Court upheld the quashing of the case against main accused under 482 Cr.P.C, who is alleged to have hatched the conspiracy and who had the motive to kill the deceased, the case against the other accused were discharged from the case on the ground that no purpose would be served in further proceedings with the case against them.

18. Similar view has been taken in *MOHAMMED ILIAS V. STATE OF KARNATAKA* (2001 (4) CRIMES 417).

19. Close on the heels, is the decision of my most esteemed Brother Hon'ble Justice K.N.Basha in *TAMILENDI V. STATE* (2008 (2) CTC 153) where there are more than one accused, trial against one absconding accused was split up and the remaining accused were tried, it was established that the prosecution has failed to prove the charge including the murder charge under Section 302 I.P.C, they were acquitted, in such circumstances, my learned Brother held that in such circumstances no useful purpose would be served by directing the remaining accused to undergo the ordeal of trial."

8. It is very clear from the above judgments that, where the evidence of all the accused persons is inseparable and indivisible and some of the accused persons have been acquitted, the remaining accused persons cannot be treated differently based on the very same evidence. No useful purpose would be served by making the petitioner



undergo the ordeal of trial.

9. In the result, the proceedings in Spl.S.C.No.31 of 2017 on the file of the learned First Additional District & Sessions Judge (PCR), Thanjavur is hereby quashed and accordingly, the Criminal Original petition is allowed. Consequently, connected Crl.M.P.(MD) No.11553 of 2017 is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

- 1)The I Additional District and Sessions Judge(PCR), Thanjavur.
- 2)The Deputy Superintendent of Police,
Pattukottai,Thanjavur District.
- 3)The Inspector of Police,
Pattukottai Police Station,
Thanjavur District.
(Crime No.317/2009)
- 4)The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S. DEENADHAYALAN, Advocate (SR-101991[F] dated
28/11/2019)

Order made in
Crl.O.P. (MD) .No.17653 of 2017

Dated:
27.11.2019

sts
TK/SAR./03.01.2020/5P/6C