



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.11.2019**

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P (MD)No.17767 of 2019

and

Crl.M.P. (MD)Nos.10450 and 10451 of 2019

1. Dhamotharan
2. Subramani ...Petitioner/Accused Nos 7& 10

Vs.

1.The State rep. by
The Deputy Superintendent of Police
Karaikudi, Sivagangai District
2.The Inspector of Police
Karaikudi South Police Station
Sivagangai District ... Respondents/Complainants
3.Sivam ... Respondent/Defacto Complainant
4.Pandi ... Respondent/Victim

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records pertaining to the P.R.C.No.13 of 2003 on the file of the learned District Munsif Cum Judicial Magistrate, Karaikudi and quash the proceedings as against the petitioners herein. .

For Petitioners : Mr.S.M.Sanjay
For R1& R2 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

O R D E R

This petition has been filed to quash the proceedings in P.R.C.No.13 of 2003 on the file of the learned District Munsif Cum Judicial Magistrate, Karaikudi, as against the petitioners.

2.The case of the prosecution is that there are totally ten accused in this case and the petitioners are A7 and A10. Due to previous enmity on 29.08.1994 at about 6.30 p.m., when Sivam and Pandi travelled in a town bus from Karaikudi to Devakottai ,the



petitioners herein along with others entered into the bus abused the defacto complainant using his caste name and also assaulted the defacto complainant . Hence, the complaint.

3.The learned counsel appearing for the petitioners submitted that the first respondent police completed the investigation and filed a final report and the same has been taken cognizance in S.C.No.202 of 2010 and thereafter, A1 to 6, A8 and A9 appeared before the trial Court and conducted the case, which was ended in acquittal . Initially, the case was taken on file in P.R.C.No.13 of 2003 and thereafter, the case was made over before the Sessions Judge, Sivagangai in S.C.No.202 of 2010 and now it is pending. The trial Court acquitted the other accused on the ground that the prosecution did support the case.

4.The learned counsel appearing for the petitioners further submitted that the petitioners have nothing to do with the crime as alleged by the prosecution. The prosecution examined Pws.1 to 3 and marked as Exs.P1 to 9 and the trial Court found that they have not spoken about the charges to prove the same and as such, other accused persons have been acquitted. In these circumstances, as against the petitioners/A7 and 10 there is absolutely no evidence and as such, the pendency of the proceedings in P.R.C.No.13 of 2003, would not serve any purpose and therefore, he prayed for quashment of entire proceedings.

5.The learned Additional Public Prosecutor appearing for the respondent police would submit that there are totally ten accused, in which, the petitioners are arraigned as A7 and A10 and only because of the absence of the petitioners before the trial Court, their case has been split up from the main case in S.C.No.202 of 2010, which was ended in acquittal. Therefore, the case as against the petitioners are concerned, is pending in P.R.C.No.13 of 2003 for trial and the prosecution has to let in evidence and there are incriminating evidence as against the petitioners and as such, he sought for dismissal of the quash petition.

6. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first and second respondents.

7.It is the admitted case of the petitioners as well as the prosecution that there are totally 10 accused, in which, insofar other accused persons are concerned, the trial has been conducted and they have been acquitted in S.C.No.202 of 2010 and insofar as A7 and 10 are concerned, the case is pending in P.R.C.No.13 of 2003 and the same is pending for trial. Now, according to the prosecution, except the petitioners, the other accused persons have been acquitted from the charge. While acquitting the other accused A1 to A11, A13 to A20, the trial Court recorded the reason as



'The prosecution case is that when the defacto complainant PW 1 Sivam and PW 2 Pandi on 29.08.1994 at 6.30 p.m travelled in the town bus 3 A from karaikudi to Devakottai, the accused No.1 to 4 and the six other accused of the split up case in PRC No.13/2003 suddenly moved into said Town Bus 3-A at Aravayal Bus stop and assaulted the caused injuries with the case pallar based abusive words upon the defacto complainant -PW1 sivan and PW 2 Pandi in this regard. The prosecution examined the defacto complainant-PW 1 Sivam and PW 2 in this regard. But the defacto complainant -PW1 Sivam who as hostile witness disowned Ex.P.2 complaint allegedly preferred against the accused no.1 to 4 and six other accused of the split up case in PRC No.13/2003 did not support the prosecution about the charges,a lledged against the accused No.1 to 4 above said. Under the circumstances the prosecution case that when the defacto complainant- PW 1 Sivam and PW2 Pandi on 29.08.1994 at about 06.30 p.m travelled in a town bus 3-A from Karaikudi to Devakottai , the accused No.1 to 4 and six other accused of the split up case in PRC No.13/2003 due to motive between the defacto complainant - PW1 Sivam and the said split up case accused no.1 Kumar suddenly moved into the said Town bus 3-A at Aravayal Bus stop and assaulted and caused injuries with the caste- Paller based abusive words on the defacto complainant -PW1 Sivam and PW2 Pandi in this regard, cannot be easily believed.

6) However, submission on behalf of the prosecution is that all other evidence, produced by the prosecution would support its case alleged against the accused No.1 to 4 and other and that the prosecution case alelged against the accused No.1 to 4 may be accepted. But, as stated above, the defacto complainant- PW.1 Sivam and PW.2 Pandi as hostile witnesses did not support the prosecution about the charges, levelled against the accused No.1 to 4. In such situation, Ex.P.6wound certificate of the defacto complainant - PW.1 Sivam,Ex.P.6 Wound certificate of PW 2 Pandi and the evidence of PW 3 Inspector of Police, Karaikudi south P.S would not improve the prosecution case alleged against the accused No.1 to 4 . So the prosecution case that when the defacto complainant - Pw.1 Sivam and PW.2 Pandi on 29.08.1994 and 6.30 P.M travelled in the Town 3-! from Karaikudi-Devakottai the accused No.1 to 4 due to motive with the defacto complainant PW.1 Sivam, suddenly moved into said Town Bus 3-A at Aravayal Bus stop and



assaulted and caused injuries with the caste pallar based abusive words upon the defacto complainant PW1 Sivam and PW2 Pandi cannot be believed as proved beyond reasonable doubt. Hence it is held for Point No.1 that the charges, framed against the accused No.1 to 4 of the offence under Sections 147,341 and 323 IPC and Section 3(1)(x) of SC/ST(Prevention of Atrocities) Act 1989 have not been proved as alleged. So, it is decided to acquit the accused No.1 to 4 of the offences U/s. 147,341 and 323 of IPC and Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989.

Finally the accused No.1 to 4 are acquitted of the offence U/s.147,341 & 323 IPC and Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989. The bail bonds executed by the accused No.1 to 4 shall stand cancelled. No material object has been recovered and produced for passing suitable order in this regard.'

8.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



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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 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."

9.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.

10. In the present case, except the petitioners, other accused have been tried the charges and acquitted in S.C.No. 202 of 2010 by the trial Court by the judgment dated 28.06.2011 disbelieving the case of the prosecution and holding that the prosecution has failed to prove the charges beyond reasonable doubt. The petitioners being A7 and 10 are also standing in the same footing like the other accused persons. Under these circumstances, no useful purpose would be served to make the petitioners to undergo the ordeal of the trial.

11. In view of the above discussion, this Criminal Original Petition is allowed and the proceedings in P.R.C.No.13 of 2003 on the file of the learned District Munsif Cum Judicial Magistrate, Karaikudi, is quashed as against the petitioners/A7 and 10 are concerned. Consequently, connected miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

- 1.The District Munsif Cum Judicial Magistrate,
Karaikudi
2. The Deputy Superintendent of Police
Karaikudi, Sivagangai District
- 3.The Inspector of Police
Karaikudi South Police Station
Sivagangai District



4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.M.SANJAY, Advocate (SR-102077[F] dated 28/11/2019)

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