



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
06.02.2020	26.02.2020

WEB COPY

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THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P(MD)No.713 of 2020

and

Crl.M.P(MD) No.291 of 2020

1. Paul Prabhakaran
2. K.A.Kumar

... Petitioners/Accused Nos.40 &109

Vs.

1. The Inspector of Police
Central Police Station,
Thoothukudi

... 1st Respondent/Complainant

2. L.Francis
The Inspector of Police
Central Police Station
Thoothukudi

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, praying to call for the entire records in connection with C.C.No.86 of 2018 on the file of the learned Judicial Magistrate No.II, Thoothukudi in connection with Crime No.148 of 2009 on the file of the Inspector of Police, Central Police Station, Thoothukudi and quash the same as devoid of merits.

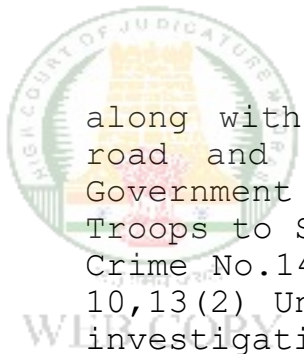
For Petitioner : Mr.A.D.Ganeshamoorthi
For Respondent : Mr.S.Chandrasekar
No.1 Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to quash the proceedings in C.C.No.86 of 2018 on the file of the learned Judicial Magistrate No.II, Thoothukudi in connection with Crime No.148 of 2009 on the file of the Inspector of Police, Central Police Station, Thoothukudi, as against the petitioner herein.

2. The learned counsel for the petitioners would submit that the case of the prosecution is that on 28.02.2009 the petitioners

<https://hcservices.ecourts.gov.in/hcservices/>

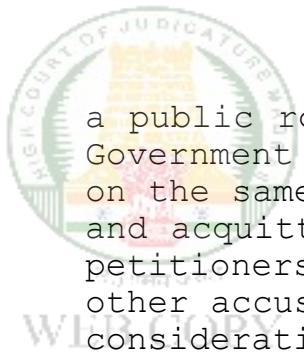


along with 156 others unlawfully assembled together in a public road and demonstrated and raised slogans against the Central Government and its External Affairs Minister for having sent Indian Troops to Srilanka. Hence the respondent police registered a case in Crime No.148 of 2009 for the offences under Sections 147,285 of IPC 10,13(2) Unlawful Activities(Prevention) Act, 1967. After completing investigation the respondent police filed final report before the learned Judicial Magistrate No.II, Thoothukudi and the same had been taken cognizance in C.C.No. 508 of 2009 against all the accused persons. Since the petitioners did not appear before the trial Court Non Bailable Warrant came to be issued against them and the case was split up against other accused persons. Thereafter the trial was conducted against other accused persons. He would further submit that on the side of the prosecution P.W 1 to P.W 7 were examined and Exhibits Ex.P.1 to Ex.P.8 were marked and one material object was also produced. and marked as M.O.1. The trial Court after conducting full fledged trial found that the prosecution has failed to prove the case beyond reasonable doubt and acquitted the accused persons by a judgment dated 11.09.2018. The charges against the petitioners are that they were member of the unlawful assembly along with the other accused and committed the offences in the occurrence. In the evidence let in before the trial Court none of the witnesses have spoken anything about the petitioners. The petitioners stand on the same footing as that of the other accused and since the same set of evidence is relied on by the prosecution in the present case also the petitioners cannot be convicted. The other accused have been acquitted since the prosecution has not proved the case beyond reasonable doubt and thereby no useful purpose would be served in making the petitioners to undergo ordeal of trial. He would further submit that the evidence adduced against all the accused persons are inseparable and indivisible and thereby the petitioner could not be treated differently on the basis of very same evidence. In support of the above contention, he would rely on the judgement reported in **2001 (4) Crimes 417 [Mohammed Ilias vs.State of Karnataka]** and the judgment reported in **(2005) 1 Supreme Court Cases 478 [Central Bureau of Investigation Vs. Akhilesh Singh]**.

3. The learned Additional Public Prosecutor would submit that the petitioners stand on the same footing as that of the other accused persons and the materials relied on by the prosecution in respect of the petitioners is same as that of the other accused person.

4.I have carefully gone through the materials and evidences available on record and the judgment of the trial Court in C.C.No. 508 of 2009 dated 11.09.2018.

5. The charge against the petitioners is that on 28.02.2009 the petitioners along with 156 others unlawfully assembled together in



a public road demonstrated and raised slogans against the Central Government and its External Affairs Minister. The petitioners stands on the same footing as that of the other accused who have been tried and acquitted. It is also seen that the material relied against the petitioners are the same materials which were relied against the other accused. The trial Court after full fledged trial taking into consideration the entire evidence on record disbelieved the case of the prosecution and finding that the prosecution has not proved its case beyond reasonable doubts had acquitted all the other accused who faced trial. No appeal has been preferred by the state against the order of acquittal and the order of acquittal has become final.

6. As stated earlier, the petitioner stands on the same footing as that of the other accused and the materials relied on by the prosecution are one and the same. This Court is aware that the acquittal of the other accused cannot be a sole ground to quash the proceedings in respect of the petitioners without there being a trial in the present case. However while analysing the materials on record, it is seen that the case of the petitioner is inseparable and indivisible from that of all the other accused and that the petitioner could not be treated differently since the evidence and material relied on by the prosecution are one and the same. Once the other accused have been acquitted after disbelieving the entire prosecution case, this Court is of the opinion that no useful purpose would be served by making the petitioner to undergo the ordeal of the trial.

7. In the judgment reported in **2001 (4) Crimes 417 [Mohammed Ilias vs.State of Karnataka]** this Court has held as follows:

".....Full-fledged trial was held against 3 accused before acquitted - Second round of trial against petitioner, evidence to be produced could not be different from one that was produced in earlier Trial -Hence, proceedings" Quashed.

8. Further In **(2005) 1 Supreme Court Cases 478 [Central Bureau of Investigation Vs.Akhilesh Singh]** the Honourable Apex Court has held as follows:

" 5.....Once the main accused, who is alleged to have hatched the conspiracy and who had the motive to kill the deceased was discharged, and when that matter had attained finality, the learned Single Judge was fully justified in holding that no purpose would be served in further proceeding with the case against the respondent".

9. Later in the decision reported in **2008 (2) CTC 153 [Thamilendi Vs. State by Inspector of Police, Orathanadu Police Station, Thanjavur District (Crime No.58 of 1991) and another]** this



Court accepting the same principle has held that:

"6. The learned counsel for the petitioner placed reliance on a decision of this Court in *Tamilmaran v. State*, 2007 (1) LW (Crl.) 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 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 eyewitnesses, 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].

8.Therefore, this Court is of the considered view that the above settled principle of law laid down in the decisions cited supra is squarely applicable to the facts of the instant case as in this case also except the petitioner herein all the other accused,viz.,A-1 to A-6, A-8 and A-9 who have been tried separately in S.C.No. 86 of 1991 have been acquitted by the learned Trial Judge disbelieving the entire prosecution case and holding that the prosecution has failed to prove the charges including the charge under Section 302, I.P.C. against A-3 who is the only accused alleged to have attacked the deceased.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."

10. This Court following the above principles and finding that the materials available against the petitioners/accused and the other acquitted co-accused are one and the same, and the petitioners/ accused being similarly placed as that of the other co-accused and the case of the petitioners cannot be treated differently , this Court is of the considered opinion that no useful purpose will be served by allowing the prosecution to be continued against the present petitioners.



11. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.86 of 2018 on the file of the learned Judicial Magistrate No.II, Thoothukudi, is hereby quashed insofar as the petitioners are concerned. Consequently connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.II, Thoothukudi
2. The Chief Judicial Magistrate,
Thoothukudi
3. The Inspector of Police
Central Police Station,
Thoothukudi
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai

+1 CC to Mr.A.D.GANESHA MOORTHY, Advocate (SR-8664[F] dated
27/02/2020)

Crl.O.P(MD)No.713 of 2020

and

Crl.M.P(MD) No.291 of 2020

26.02.2020

MK (10.03.2020) 6P 6C