



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.01.2020

CORAM:

THE HON'BLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P. (MD)No.1532 of 2020

Rajkumar

... Petitioner

Vs.

1.State rep. by

The Inspector of Police,
Sullakarai Circle,
Amathur Police Station
(Crime No.324/2012))

2.Jamuna

...Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records in Juvenile Case No.43 of 2019 on the file of the Juvenile Justice Board and learned Judicial Magistrate No.I, Virudhunagar, Virudhunagar District and quash the same.

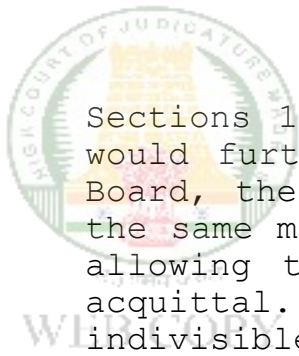
For Petitioner : Mr.S.Muthalraj

For R1 : Mrs.S.Bharathi
Government Advocate (crl.side)

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in Juvenile Case No.43 of 2019 on the file of the Juvenile Justice Board and learned Judicial Magistrate No.I, Virudhunagar, Virudhunagar District.

2. The learned counsel appearing for the petitioner would submit that the petitioner was a juvenile, at the time of occurrence and he was only 15 years old. In respect of the other accused, trial has been conducted in S.C.No.85 of 2015 on the file of the Additional District and Sessions Judge, Virudhunagar and the other accused have been acquitted, by judgment dated 29.02.2016. He would further submit that the petitioner was originally arrayed as A4 in the F.I.R. Thereafter, the case was split up against the petitioner, being a juvenile and the case was taken up before the Juvenile Justice Board in Juvenile Case No.43 of 2019. In respect of the other accused in S.C.No.85 of 2015 before the Sessions Court, the respondent has examined 14 prosecution witnesses [P.W.1 to P.W.14] and marked 18 documents [Ex.P1 to P.18] and also marked 2 material objects (M.O.1 and M.O.2). The trial Court after full-fledged trial, acquitted all the accused on the charges under



Sections 147, 148, 448, 114, 294 (b), 342, 302 r/w 149 I.P.C. He would further submit that in the case before the Juvenile Justice Board, the prosecution is relying on the same set of witnesses and the same materials and thereby no useful purpose will be served by allowing the trial against the petitioner, which would result in acquittal. The case of the petitioner is inseparable and indivisible from that of the other accused and the petitioner could not be treated differently.

3. The learned Government Advocate (criminal side) would submit that the case against the other adult accused was taken up in S.C.No.85 of 2015 and the witness cited in the present proceedings against the petitioner were examined in the Sessions Court in S.C.No.85 of 2015 and that the Sessions Court after full-fledged trial had acquitted all the accused in S.C.No.85 of 2015, dated 29.02.2016. The State has not preferred any appeal against the order of acquittal in S.C.No.85 of 2015 and the defacto complainant has also not preferred any appeal against the acquittal order.

4. This Court perused the judgment passed in S.C.No.85 of 2015, dated 29.02.2016. The prosecution has examined 14 witnesses, marked 18 Exhibits and 2 Material Objects. The trial Court after full-fledged trial had acquitted the accused. Even the eye witnesses have not spoken anything about the present petitioner. No appeal has been preferred by the state against the order of acquittal and the order of acquittal has become final.

5. 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 petitioner 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.

6. 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.



7. 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".

8. 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."

WEB COPY

9.This Court following the above principles and finding that the materials available against the petitioner / accused and the other acquitted co-accused are one and the same, and the petitioner / accused being similarly placed as that of the other co-accused and the case of the petitioner 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 petitioner, who is a juvenile.

10. In view of the above, this this Criminal Original Petition is allowed and the proceedings in Juvenile Case No.43 of 2019 on the file of the learned Judicial Magistrate No.I, Virudhunagar, Virudhunagar District, is quashed.

Sd/-

Assistant Registrar (P AND A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ls

To:

1.The Judicial Magistrate No.I,
Virudhunagar,
Virudhunagar District.

2.The Inspector of Police,
Sullakarai Circle,
Amathur Police Station

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

+1 CC to M/s.S.MUTHAL RAJ, Advocate (SR-4435[F] dated 03/02/2020)

Crl.O.P.(MD)No.1532 of 2020

30.01.2020

KK/09.03.2020/ 5P- 5C