



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.02.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE **A.D.JAGADISH CHANDIRA**

Crl.O.P. (MD)No.2782 of 2020

1.Chandru
2.Vijay
3.Mani
4.Ranjith Kumar
5.Selvam

... Petitioners/Juvenile Accused

Vs

1.The State rep. by,
The Inspector of Police,
Sullakari Circle,
Amathur Police Station,
(Crime No.19 of 2013)

... 1st Respondent/ complaintant

2.R.Sundarapandian

... 2nd Respondent/
Defacto Complaintant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records in Juvenile Case No.12 of 2019 on the file of Juvenile Justice Board and learned Judicial Magistrate No.1, Virudhunagar, Virudhunagar District and quash the same as against the petitioners concerned.

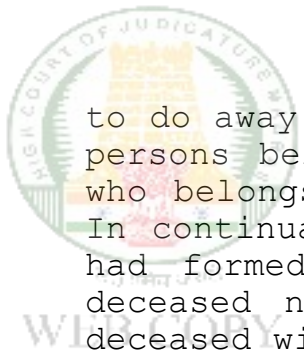
For Petitioners : Mr.S.Muthalraj

For 1st Respondent : Mr.R.Anandharaj
Additional Public Prosecutor

ORDER

1.This Criminal Original Petition has been filed to quash the proceedings in Juvenile Case No.12 of 2019 on the file Juvenile Justice Board and learned Judicial Magistrate No.1, Virudhunagar, Virudhunagar District as against the petitioners concerned.

2.The case of the prosecution is that the deceased is the 3rd brother of the defacto complainant. The accused No.1 to 29 are villagers belonging to Vadamalaikurichi, Virudhunagar District. The Accused 9, 10, 24, 27 and 28 are juveniles. There was previous enmity between the accused and the deceased due to panchayat local election during 2010. There were several cases pending against each other due to such rivalry. On 15.01.2013, the accused had conspired



to do away with the deceased. Whiles, on the same day at 5.30p.m. persons belonging to the accused group had teased one Parameswari who belongs to the group of the deceased and there was a quarrel. In continuation of the same, on the same day at 6.00pm the accused had formed into an unlawful assembly and they have waylaid the deceased near the milk diary and the first accused had cut the deceased with Aruval on the back side of his head. The accused No.2 and 3 had inflicted cut injuries on the leg, 4th accused caused injury on the head, 5th accused caused injury near the eye brow, 6th and 7th accused inflicted cut injuries on the left hand, 8th accused had inflicted a stab injury, accused 9, 10 and 11 had inflicted injuries with iron rod due to which, the deceased succumbed to injuries on the same day. Accused 12 to 19 had conspired with the other accused. On the complaint given by the defacto complainant a case in Cr.No.19 of 2013 was registered by the first respondent. After completion of investigation, the charge sheet was laid against the first accused for the offence under Section 147, 148, 294(b), 342, 302 IPC r/w.120(b) IPC. Since some of the accused were juveniles at the time of occurrence, separate final reports were filed. The case against the adult accused was taken up for trial in SC.No.135 of 2015 before the Additional District and Sessions judge, Virudhunagar. The case against the juvenile accused culminated into JC.No.12 of 2019 before the Juvenile Justice Board, Virudhunagar.

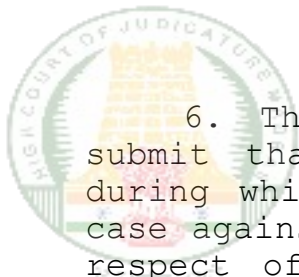
3. The charges against the Adult accused before the Additional District and Sessions Judge, Virudhunagar is as follows :-

Rank of the Accused	Offences under Section
A1, A2, A3, A4, A5, A6, A7, A8 and A11	147, 148, 342, 302, 506(ii) IPC r/w.120(b) IPC
A12 to A29	147, 342, 302, 506(ii) IPC r/w.120(b) IPC

4. The charges against the juvenile accused before the Juvenile Justice Board in JC.No.12 of 2019 is as follows :-

Accused	Offences under Section
A9 and A10	147, 148, 342 and 302 IPC r/w.120(b) IPC
A24, A27 and A28	147, 342 and 302IPC r/w.120(b) IPC

5. The trial against the adult accused were conducted in SC.No.135 of 2015 before the Additional District and Sessions Judge, Virudhunagar and the trial ended in acquittal. The present case against the petitioners who are Juvenile offenders is pending in JC.No.12 of 2019 before the Juvenile Justice Board/Judicial Magistrate No.I, Virudhunagar. The present petition filed seeking to quash the proceedings in JC.No.12 of 2019.



6. The learned counsel appearing for the petitioners would submit that the alleged incident had taken place on 15.01.2013 during which time, the petitioners were juveniles and thereby the case against them were filed before the Juvenile Justice Board. In respect of the adult accused the trial was conducted before the Additional District and Sessions Judge, Virudhunagar in SC.No.135 of 2015. The evidence and the materials relied on by the prosecution in SC.No.135 of 2015 and JC.No.12 of 2019 are one and the same, the witnesses are also one and the same. The case against the adult accused and the present petitioners are inseparable and indivisible. He would further submit that in SC.No.135 of 2015, the prosecution has examined 28 witnesses as PW1 to PW28 and marked Exs.P1 to P56. The entire eye witnesses have turned hostile and not supported the case of the prosecution and they have been treated as hostile. Even the brother of the deceased had not supported the case of the prosecution, further the other relatives have also not supported the case of the prosecution and thereafter, the trial Court had acquitted all the adult accused from the charges. The learned counsel would further submit that the prosecution in JC.No.12 of 2019 relies on the same set of evidence and materials. Since the evidence being indivisible and inseparable the case of the petitioner cannot be treated separately and ultimately the case will only end in acquittal and no useful purpose would be served by allowing the proceedings in JC.No.12 of 2019 to be continued against the petitioner and thereby he would seek for quashment of the proceedings.

7. In support of his contention, the learned counsel relief on the following decisions :-

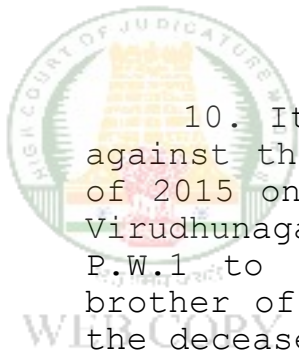
(i) 2001 (4) Crimes 417 [Mohammed Ilias vs.State of Karnataka]

(ii) (2005) 1 Supreme Court Cases 478 [Central Bureau of Investigation Vs.Akhilesh Singh] and

(iii) 2008 (2) CTC 153 [Thamilendi Vs. State by Inspector of Police, Orathanadu Police Station, Thanjavur District and another]

8.The learned Additional Public Prosecutor appearing for the first respondent Police would submit that at the time of occurrence, the petitioners were juveniles that the case against them was split up in Juvenile case No.12 of 2019 and posted for trial before the Juvenile Justice Board and learned Judicial Magistrate No.1, Virudhunagar, Virudhunagar District. He would further submit that the respondent is ready to get along with the trial and would submit that witnesses and the evidence relied on by the prosecution is one and the same in both the cases.

9. I have carefully gone through the materials and evidences available on record.



10. It is seen from the records that, case in Cr.No.19 of 2013 against the adult accused had been taken up for trial in SC.No.135 of 2015 on the file of the Additional District and Sessions Judge, Virudhunagar, the trial Court has examined the prosecution witnesses P.W.1 to P.W.28 and marked Ex.P.1 to Ex.P.56. P.W.9 who is a brother of the deceased, has spoken about the injuries sustained by the deceased viz., Soundara Pandiyan. P.W.1 to P.W.7 and P.W.16 were stated to be eye witnesses. P.W.8 was examined with regard to the conspiracy. P.W.10 is relative of the deceased, P.W.11 wife of the deceased. P.W.12 and P.W.13 villagers were examined with regard to the preparation of Observation Mahazar and Rough Sketch. P.W.14 and P.W.15 villagers were examined with regard to the arrest and confession statement of the accused. P.W.1 was examined with regard to prior incidents. P.W.18 was examined with regard to obtaining of confession statement from the first and second accused persons. P.W.19 to P.W.27 are official witnesses. PW1 to 8, 10 to 12 and 16 have not supported the case of the prosecution.

11. Further, P.W.9 brother of the deceased who is an auto driver had deposed before the Sessions Court that he heard that his brother was lying dead near Vadamalai Kurichi Bus stand and at that time he was on a trip near Virudhunagar and that on intimation, he had gone to the place of occurrence and taken the body of his brother in a 108 Ambulance and he had informed his another brother one Thangapandi and the said Thangapandi had intimated the same to the Amathur Police Station. Thereafter, at 10.00 p.m they have gone to the Police Station and given a complaint. He had admitted his signature found in the complaint. Further, he has stated that he was not aware about the contents in the complaint and thereby, he was treated as hostile witness by the prosecution. Similarly, P.W.2 to 7 and P.W.16 have stated that they do not know anything about the case and they have been treated as hostile. Further, the witnesses of Observation Mahazar, Rough Sketch and arrest and confession Statement of the accused have also not supported the case of the prosecution and they have been treated hostile witnesses and the trial Court, finding that the relatives and other independent witnesses have not supported the case of the prosecution, had acquitted all the accused in respect of the charges framed against them. The present petitioners, were juveniles at the time of occurrence and the case against them was split up and the case was sent to the Juvenile Board for trial. The case of the petitioner is inseparable and indivisible. The evidence and materials relied against the petitioners is same as that of the materials relied against the other accused. The trial Court in S.C.No.95 of 2004 finding that witnesses, more particularly, the close relatives have not supported the case of the prosecution had acquitted all the other adult accused. Though, acquittal of the other accused in the case cannot be a ground for allowing the quash petition in respect of the connected accused, this Court finds that the case against the petitioners and the other connected adult accused are one and the same. The materials relied against the petitioners and the witnesses are one and the same.



the same and the case is indivisible and inseparable.

12. 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.

13.In (2005) 1 Supreme Court Cases 478 [Central Bureau of Investigation Vs.Akhilesh Singh] this 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"

14.The same principle has been accepted by this Court in the judgement 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] wherein this Court has held as follows:

"6.The learned counsel for the petitioner placed reliance on a decision of this Court inTamilmaran 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 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."

15. This Court following the above principles and finding that the materials available against the petitioners and the other acquitted co-accused are one and the same, and the accused being similarly placed as that of the other co-accused and further that the evidences relied on by the prosecution against this petitioners is indivisible and inseparable is of the considered opinion that no useful purpose will be served by allowing the prosecution to be continued.

16. Accordingly, this Criminal Original Petition stands allowed and the proceedings in Juvenile Case No.12 of 2019 on the file of the Juvenile Justice Board and Learned Judicial Magistrate No.1, Virudhunagar, Virudhunagar District, is hereby quashed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar (CS)



To

1.The Juvenile Justice Board
and learned Judicial Magistrate No.1,
Virudhunagar,
Virudhunagar District.

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

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

+2 CC to M/s.S.MUTHAL RAJ, Advocate (SR-9443[F] dated 02/03/2020)

Crl.O.P. (MD)No.2782 of 2020

28.02.2020

SPU (12.06.2020) 8P-6C