



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2020

CORAM:

WEB COPY

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

Crl.O.P.(MD).No.15103 of 2018

and

Crl.M.P.(MD).No.6688 and 6689 of 2018

Siva @ Sivaraman

..Petitioner/Accused No.1

Vs.

1.State Represented by,
The Inspector of Police,
Gandarvakottai Police Station,
Pudukkottai District.
(Crime No.168/2008)

... 1st Respondent/Complainant

2.Lakshmanan

... 2nd Respondent/Defacto Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the C.C.No.287 of 2009 on the file of the learned Judicial Magistrate, Pudukkottai and quash the proceedings as against the petitioner herein.

For Petitioner : Mr.T.Veerakumar
for M.Karunanithi

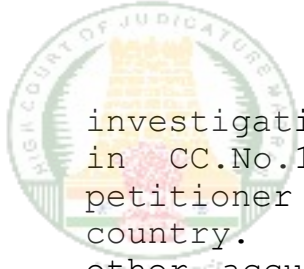
For 1stRespondent: Mr.S.Chandrasekar
Additional Public Prosecutor

For 2nd Respondent: No appearance

O R D E R

This petition has been filed to quash the proceedings in C.C.No.287 of 2009 on the file of the learned Judicial Magistrate, Pudukkottai as against the petitioner herein, for the offences under Sections 147, 294(b), 323, 332 and 506(ii) of IPC r/w Sections 3 and 4 of Tamil Nadu Prohibition of Harassment of Women Act.

2. The learned counsel for the petitioner would submit that the respondents registered the case in Cr.No.295 of 2008, based on the complaint given by the respondent/defacto complainant. The case of the prosecution is that on 22.05.2008 at about 14.15hrs, during the temple festival the petitioner along with other accused are stated to have teased the woman folk who had came to attend the festival and it was questioned by the other accused and they have caused injuries to the complainant. After completion of



investigation, the final report was filed and the case was taken up in CC.No.152 of 2009, during the pendency of the case, the petitioner got employed in abroad and he had gone out of the country. In the meanwhile, the case has been split up against the other accused and the trial was conducted in CC.No.152 of 2009. 11 witnesses were examined on the side of the prosecution, since the witnesses did not support the prosecution case, the other accused who face trial were acquitted against which no appeal has been filed. The case against the petitioner was split up and taken on file in CC.No.287 of 2019, the petitioner later surrendered before the Court and he is facing trial.

3. The learned counsel would further submit that the petitioner stands on the same footing as that of all the other accused and the materials relied on by the prosecution are one and the same and the case of the petitioner is inseparable and indivisible from that of all the other accused, and the case of the petitioner cannot be treated differently, since, the offence are one and the same. Once the other accused have been acquitted after disbelieving the entire prosecution case, no useful purpose will be served by allowing the trial to be conducted against the petitioner. Most of the prosecution witnesses have turned hostile, and the others have not supported the prosecution and even in the evidence in the earlier trial, nothing has been spoken about the petitioner herein.

4. In support of his contention, the learned counsel for the petitioner relied 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]**

5. The learned Additional public prosecutor would submit that since the petitioner did not appear before the trial Court, the case against him was split up and taken up in CC.No.287 of 2009. The main case in respect of the other remaining accused was taken up in CC.No.159 of 2009 and since the witnesses did not support the case of the prosecution, the trial Court had acquitted the other accused. The allegation against the petitioner is that he is also one of the member of the unlawful assembly. He would further submit that the evidence relied on by the prosecution against the petitioner and the other acquitted accused are one and the same, Against the order of acquittal no appeal has been filed either by the prosecution or by the defacto complainant.



6. Heard both sides and perused the materials on records.

7. The petitioner along with other accused was charge sheeted for the offence under Sections 147, 294(b), 323 and 506(ii) IPC r/w.3 and 4 of the Tamil Nadu Prohibition of Harassment of Women Act. The case had been originally taken up for trial in CC.No.152 of 2009. The prosecution had cited 11 witnesses, when the case had been taken up for trial, the present petitioner had absconded and the case was split up against him and taken up in CC.No.287 of 2009. The trial continued in respect of the remaining accused. The prosecution has examined 11 witnesses, during the trial, PW1 had not identified the accused. PW2, 4, 5, 6 and 7 have not supported the case of the prosecution and they were treated hostile witnesses. PW8 is the Sub Inspector of Police. PW9 is the Head constable. PW10 is the Sub Inspector of Police who had registered the case and PW11 is the I.O. The independent witnesses have not supported the case of the prosecution and thereby the trial Court finding that there was no evidence against the accused had acquitted the other accused. Further, the witnesses including the official witnesses in CC.No.152 of 2009 have not spoken anything about the present petitioner. It is seen that the charge against the petitioner and the other acquitted co-accused is one and the same and the witnesses, materials and evidences relied on by the prosecution against the petitioner and the other acquitted accused is one and the same.

8. Though the acquittal of the other accused cannot be taken as a ground for quashing the proceeding, while analysing the materials it is seen that the case of the petitioner is inseparable and indivisible from that of the other accused. The case of the petitioner cannot be treated differently from that of the other accused.

9. 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.

10. 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"



11. 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 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 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 (Cr1.) 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."



12. This Court following the above principles and finding that the materials available against the petitioner and the other acquitted co-accused are one and the same, and the accused being similarly placed as that of the other co-accused is of the considered opinion that no useful purpose would be served by allowing the prosecution to be continued against the petitioner.

13. In view of the above, the criminal original petition is allowed and the proceedings in C.C.No.287 of 2009 on the file of the learned Judicial Magistrate, Pudukkottai is hereby quashed. Consequently, the connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

vsg

To:

1. The Judicial Magistrate,
Pudukkottai.
2. The Inspector of Police,
Gandarvakottai Police Station,
Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.RAMESHKUMAR, Advocate (SR-4612[F] dated 04/02/2020)

Cr1.O.P.(MD).No.15103 of 2018

03.02.2020

NR(12.06.2020) 6P 5C