



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2020

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.17077 of 2017

and

Crl.M.P.(MD)Nos.11233 & 11234 of 2017

1.D.Ganapathy

2.G.Sivanesan

... petitioners/Accused Nos. 3 & 4

Vs

1. State rep by

The Deputy Superintendent of Police,
Mannargudi,
Thiruvarur District.

2.The Inspector of Police,

Paravakkottai Police, Station,
Paravakkottai,
Thiruvarur District.

... Respondents/Complainants

3.Mahalingam

... Respondent/Defacto Complainant

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in S.S.C.No.74 of 2017 in PRC.No.20/2013 pending trial in learned 1st Additional District and Sessions Court (PCR), Thanjavur and quash the same.

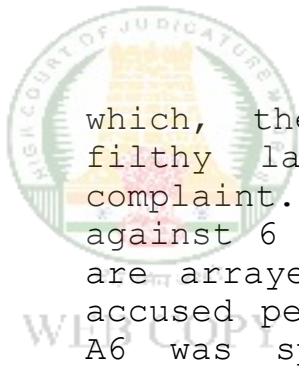
For petitioners : Mr.C.D.Johnson

For R1 & R2 : Mr.KR.Bharathi Kannan
Government Advocate (Crl.Side)

ORDER

This petition has been filed to quash the proceedings in S.S.C.No.74 of 2017 in PRC.No.20/2013 pending trial in learned 1st Additional District and Sessions Court (PCR), Thanjavur.

2.The case of the prosecution is that on 17.11.2009, at about 01.30 p.m, the first accused went to the house of the defacto complainant and questioned him about his cattle destroyed the crops by grazing in the field of the first accused. For that, the defacto complainant answered reluctantly that not only his cattle, all the cattle are grazing in the first accused's land. Due to



which, the first accused abused the defacto complainant with filthy language by calling his caste and name. Hence the complaint. After investigation, a charge sheet has been laid as against 6 persons in P.R.C.No.17 of 2010, in which the petitioners are arrayed as third and fourth accused. Since the some of the accused persons were not appeared, the case in respect of A1 and A6 was split up and renumbered as P.R.C.No.17 of 2010 and committed to the learned I Additional District and Sessions Judge (PCR), Thanjavur and the same was taken on file in S.C.No.100 of 2013.

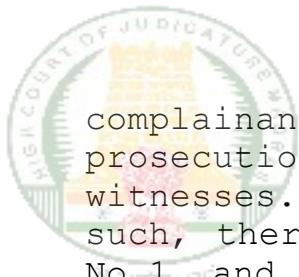
3. The prosecution examined P.W.1 to P.W.10 and marked Ex.P.1 to Ex.P.11 against the accused persons.

4. On complaint of the trial, the trial Court was pleased to acquit the accused persons. The prosecution witnesses P.W.7 to P.W.10 are official witnesses and the defacto complainant was examined as P.W.1, who did not support the case of the prosecution and turned hostile. Likewise, P.W.2 and P.W.4, who were examined to prove the athatchi and confession, did not support the case of the prosecution and they were also treated as hostile witnesses. Therefore, no one has spoken about the cognizance and there is absolutely no evidence as against the accused persons. When other accused persons were acquitted by the trial Court, the petitioner also shall have the same benefit under the order of acquittal. Therefore, he sought for quashing the criminal proceedings.

5. Per contra, the learned Government Advocate (Crl.Side) would submit that co-accused persons were acquitted in S.C.No.100 of 2013 by an order dated 01.03.2016 by the trial Court. The petitioners are standing on the different footing and without taking the trial, he cannot be given the benefit of doubt. Further he would submit that the petitioners absconded and as such, the case has been split up and trial commenced in respect of the accused 1 and 6. Therefore, he prayed for dismissal of this petition.

6. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the respondents.

7. A perusal of records reveals that the petitioners arrayed as the third and fourth accused and they did not appear before the committal Court. Therefore, the case in respect of A1 and A6 was split up and renumbered as PRC.No.17 of 2010 and committed to the learned I Additional District and Sessions Judge (PCR), Thanjavur and the same was ended in acquittal by an order dated 01.03.2016. The trial Court acquitted the accused 1 and 6 on the ground that the prosecution examined P.W.1 to P.W.6, in which, P.W.1 is the



complainant and he himself did not support the case of the prosecution and turned hostile, P.W.7 to P.W.10 are the official witnesses. They did not support the case of the prosecution and as such, there is no evidence to connect charges against the accused No.1 and 6. Therefore, the trial Court acquitted them. The petitioners are being the third and fourth accused, also stand in the same footing of the accused Nos.1 and 6. Therefore, they are also entitled to get the same benefits.

8.In this regard, the learned counsel appearing for the petitioners relied upon the judgment of this Court reported in **2008 (2) CTC 153** in the case of **Thamilendi Vs State by Inspector of Police, Orathanadu Police Station, Thanjavur District**. The paragraphs Nos. **6 and 7** are extracted hereunder:-

"6.The learned counsel for the petitioner place reliance on a decision of this Court in *Tamilomaran Vs 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 ordeal of trial. In that decision, this Court placed reliance on a decision of Delhi High Court in *Sunil Kumar Vs 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 under 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 Hivan 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 I s inseparable and indivisible and if some of the 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



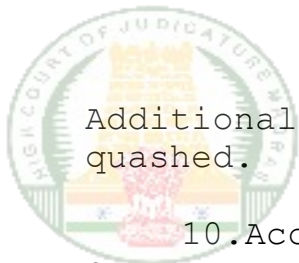
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disputed by the accused persons. The evidence against the accused persons mainly consists of the evidence of the eye-witnesses, namely, Karan Singh)PW2) and Smt. Asha Rani besides the dying declaration (Ex-PW-13-A) of the deceased Balwan Singh. Both 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 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**)."

9.The above said principles laid down in the decision cited supra of this Court clearly applied to the case on hand. Therefore, this Court is of the considered view that the above said principles of law laid down in the decision cited supra are clearly applicable to the benefits of the instant case and all the accused persons were acquitted holding that the prosecution failed to prove the charges. Therefore, no useful purpose will be served by putting the petitioners to undergo ordeal of trial and as such, the criminal proceedings pending against the petitioners in

<https://hccases.hccourt.gov.in/hccservices/17> in PRC.No.20/2013 pending trial in learned 1st



Additional District and Sessions Court (PCR), Thanjavur, is quashed.

10. Accordingly, the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

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Assistant Registrar(Records)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The 1st Additional District and Sessions Judge (PCR),
Thanjavur
2. The Deputy Superintend of Police,
Mannargudi,
Thiruvarur District.
- 3.The Inspector of Police,
Paravakkottai Police, Station,
Paravakkottai,
Thiruvarur District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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