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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 14/12/2021

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.4836 of 2017

Elumalai

... Petitioner /Accused

Vs

The State

rep. By The Inspector of Police

Tirukoilur Police Station

Tirukoilur.

(Crime NO.146/2006)

... Respondent /Complainant

PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records in C.C.No.49 of 2006 on the file of the Juvenile Justice Board (Court), Villupuram and quash the same.

For Petitioner ...

Dr.A.Thiyagarajan

Senior Counsel

for Mr.S.Ramesh Kumar

For Respondent ...

Mr.R. Kishore Kumar

Govt.Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash C.C.No.49 of 2006, pending on the file of the Juvenile Justice Board (Court), Villupuram.

2. The prosecution case is that the petitioner/A.5 along with other accused unlawfully assembled in front of the house of the deceased and the petitioner/A.5 has caused injury on the right head and also caused multiple injuries, thereby, the accused had committed an offence punishable under Sections 147, 148, 302, 307 r/w. 149 of the Indian Penal Code.

3. Heard Dr.A.Thiyagarajan, learned Senior Counsel for Mr.S.R.Ramesh Kumar, for the petitioner and Mr.R.Kishore Kumar, learned Government Advocate (Criminal Side) for the respondent.



4. The case against the accused was split up and pending before the Juvenile Justice Board, since he was a minor at the time of occurrence. The main ground which the quashment is sought is that in respect of other accused, trial has seen its logical end and this Court, vide, order, dated 22/6/2016, in Criminal Appeal Nos.279 and 292 of 2014 has disbelieved the entire eye witnesses and recorded the finding that the entire prosecution version is not true and acquitted all the accused. Therefore, the contention of the learned Senior Counsel for the petitioner is that when the entire prosecution case itself is disbelieved by the Court, there is no point in continuing the trial against the accused, who was the then minor before the Juvenile Justice Court. Therefore, submitted that entire prosecution has to be quashed.

5. Learned Government Advocate (Criminal Side) has not disputed the order, dated 22/6/2016, passed by this Court, in Criminal Appeal Nos.279 and 292 of 2014.

6. Normally, the Court would not exercise its jurisdiction under Section 482 of the Code of Criminal Procedure, when the final report is filed and materials collected by the Investigation Officer show the prima facie materials against the accused to proceed the trial. At the same time, when the material collected by the prosecution is tested before this Court and disbelieved by the Courts, relying upon the same materials against one of the accused, who was the Juvenile, at the relevant point of time, no purpose would be served to continue with the prosecution.

7. It is relevant to extract paragraph Nos.19 and 20 of the order dated 22/6/2016, passed in CrI.A.Nos.279 and 292 of 2014:-

"19. A perusal of Ex.P.1 would go to show that P.W.1 had stated that 14 named persons and many other unnamed persons came in an unlawful assembly armed with deadly weapons and had attacked P.W.2 and the deceased. The positive case of the prosecution is that including Elumalai Son of Muniyan [not arrayed as an accused in this case, who, according to P.W.23, was a juvenile] in the occurrence there were only 14 persons participated. Thus, the information in Ex.P.1 which has been duly contradicted by P.W.1 that there were more than 14 assailants, have been found to be false



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even according to the investigating officer. Apart from that, the house of the learned Magistrate and the police station are within the same small town namely Thirukoilur. Had it been true that FIR was registered at 11.00 p.m. on 14.06.2006 it would not have taken 1 hour and 15 minutes for the same to reach the hands of the learned Magistrate. By all means, it would have taken only 15 to 20 minutes for the police to handover the Complaint and the FIR to the learned Magistrate. P.W.23 had visited the place of occurrence at 12.15 a.m. on 15.04.2006 itself. He prepared the observation mahazar and the rough sketch and also noticed the injuries on the person of the deceased. Then, he returned to the police station because he conducted inquest on the body of the deceased, examined the witnesses and recorded their statements only on the next day morning at 08.00 a.m. Thus, it is inferable that after having visited the place of occurrence and after having noticed the injuries on the person of the deceased, there is every possibility that FIR would have been prepared after 04.00 a.m. and that was the reason it had reached the hands of the learned Magistrate only at 05.15 a.m. When there are multiple number of accused and when the witnesses are partisan in character and highly motivated and when the entire family members of the deceased party are interested, this unexplained delay assumes much importance. Further more, though as per Ex.P.1, the assailants were more than 14, according to the final report, filed by the investigating officer, the assailants were assertively 14 persons only and not more. This only would indicate that even at the earliest point of time, an attempt has been made to implicate as many as number of enemies as accused to rope them all in the case. In the light of the aforesaid discussions, we are of the considered view that the unexplained delay in dispatching the FIR to the court raises a lot of doubts in the case of the prosecution.



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20 As we have already pointed P.Ws.1 to 8 claimed to be the eye witnesses. They belonged to either the family of P.W.1 or his close relatives. It is in evidence that the accused party and the prosecution party were in inimical terms for quite some time. The alleged occurrence had taken place not near the house of the witnesses whereas, near the house of one Mr.Muthusamy. Neither Mr.Muthusamy nor anybody else from his house has been examined. These witnesses have got their houses no anywhere near the place of occurrence. They have stated that they went to the place of occurrence only on hearing the commotion. Had it been true that more than 14 assailants, all armed with deadly weapons, that too, during night hours, had indiscriminately attacked two persons, it would not have been possible for these eye witnesses to meticulously notice every blow which was inflicted and every resultant injury either on P.W.2 or on the deceased. But, quite strangely, all these eye witnesses have stated about every injury found on the deceased and P.W.2 and the corresponding overt act for each accused. In other words, the evidences of these eye witnesses are in a parrot like manner accounting for every injury and stating injuries found on the body of the deceased. This is highly impossible and improbable. The trial court has found their evidences not believable in respect of acquitted accused. Thus, even according to the trial court these witnesses are only partly believable. The trial court has adopted a curious method of appreciation to convict these appellants alone. A perusal of the judgement of the trial court would go to show that the trial court had verified the injuries found on the body of the deceased and the evidences of the eye witnesses and compared to the overt acts spoken by each witnesses with the corresponding injuries found on the body of the deceased. The trial court acquitted A4 inasmuch as though all the witnesses have stated that he attacked the deceased with iron rod, there was no corresponding injury on the leg. This approach, in our considered view is not scientific and it



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is, in fact, not realistic also. When the witnesses are highly partisans and motivated, the possibility of false implication of some of the accused cannot be rule doubt. As we have already pointed out, the final report filed by P.W.23 itself speaks that there were only 14 persons who were the assailants and the statement of P.W.2 that there were more than 14 is not correct. In a case of this nature, when the occurrence had taken place in the midst of many houses, in order to find out the truth, the court would, as a rule of prudence, look forward for evidence from any independent sources. Unfortunately, no independent witness has been examined in the instant case. In cases of this nature, where the witnesses have spoken in a parrot like manner, which reflects tutoring to support the case of the prosecution, the Hon'ble Supreme Court has taken the view that the witnesses are unbelievable as they are prone to tutoring. If the court is in a position to separate the grains from chaff, there cannot be any difficulty for the court to act upon the grain. But, in the instant case, it may be true that some of the accused would have participated in the crime, but, it is too difficult to separate the grains from the chaff and to find out as to who were the real assailants. Therefore, we have no option, except to give the benefit of doubt arising out of the said doubt in favour of the accused and to acquit them all from the charges levelled against them."

9. When the version of the eye witnesses itself disbelieved, the Court particularly taking into consideration in dealing with the FIR and other aspects, this Court is of the view that continuation of the trial against the accused, who was the then minor, is nothing but a futile exercise. Though in normal circumstances, a separate trial is required, but the fact remains that all the eye witnesses relating to the previous cases are the witnesses to be examined before this Court. Therefore, continuation of the charge against the accused for the offences referred to above is a futile exercise on the part of the prosecution.



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10. Accordingly, this Criminal Original Petition is allowed. C.C.No.49 of 2006, pending on the file of the Juvenile Justice Board (Court), Villupuram, is quashed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

mvs.
To

1. The Juvenile Justice Board (Court),
Villupuram.
2. The Inspector of Police,
Tirukoilur Police Station,
Tirukoilur.
3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.S.Ramesh Kumar, Advocate Sr.66768

Cr1. O.P. No.4836 of 2017

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srg 04/01/2022