



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order
13.07.2021

Date of Pronouncing Order
26.08.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1463 of 2017
and Crl.M.P.No.14522 of 2017
and Crl.M.P.No.10754 of 2017
in Crl.R.C.SR.No.36771 of 2017

Crl.R.C.No.1463 of 2017

1.Dhanapal
2.Muthukumar
3.Saroja

.. Petitioners/Accused 1 to 3

Vs.

1. The State rep.by
The Sub Inspector of Police,
Kattumannarkoil Police Station,
Cuddalore District.
Crime No.284 of 2013

.. Respondent/Complainant

PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records and set aside the judgment made in Crl.M.P.No.5155 of 2014 dated 19.06.2017 in STC.No.510 of 2014 passed by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District.

For Petitioners : Mr. G. Pugazhenth
For Respondent : Mr. R. Vinoth Raja, for R1
Government Advocate

Crl.M.P.No.10754 of 2017 in Crl.R.C.No.SR36771 of 2017

1.Dhanapal

.. Petitioner/Respondent

Vs.

1. The State rep.by
The Sub Inspector of Police,
Kattumannarkoil Police Station,
Cuddalore District.
Crime No.283 of 2013
2.Mohanraj (A1)



3.Jeyapal (A2)
4.Rajakumari (A3)
5.Kalaimathi (A4)

.. Respondents/Respondents

PRAYER : Petition filed under Section 5 of Limitation Act, to condone the delay of 1128 days in filing the accompanying criminal revision petition as against the judgment made in C.C.No.81 of 2014 dated 12.04.2014 passed by the learned District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District.

For Petitioner : Mr. G. Pugazhenthir
For Respondents : Mr. R. Vinoth Raja, for R1
Government Advocate
Mr.M.N.Kathir, for R2 & R5
No Appearance for R3 & R4

C O M M O N O R D E R

The matter is heard through "Video Conference".

2. CrI.M.P.No.10754 of 2017, is filed to condone the delay of 1128 days in filing the criminal revision in CrI.R.C.SR.No.36771/2017.

3. The revision petitioners are arrayed as accused 1 to 3 in STC.No.510/2014, before the District Munsif Judicial Magistrate, Kattumannarkoil. The respondent/police has registered the case in Crime No.283/2013, under Sections 323, 342, 324 and 506(ii) of IPC.

4. Based upon the complaint given by the first petitioner herein, alleging that on 16.10.2013 at about 8.00 am, when the 1st petitioner was loaded the river sand in the shed situated at his garden by using JCB machine, his brother and other accused came and assaulted him. First petitioner was attacked by above said 3 person with Aruval and the above case was registered. After completion of investigation, the respondent/police filed charge sheet for the alleged offence and the same was taken place on file in C.C.No.81/2014.

5. The accused No.2/Jayapal in C.C.No.81/2014, also lodged a complaint against the petitioner herein and the same was registered on the file of the respondent/police in Crime No.284/2013 under Section 294(b), 323 and 506(i) of IPC and after investigation, charge sheet was taken on file by the very same Judicial officer in STC.No.510/2014.

6. The case of the petitioner is that

6(a). the brother of the first petitioner herein Jayapal is aggressor of the occurrence took place on 16.10.2013 and hence, the respondent-police, ought to have followed the order 588A of



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the police standing order, ought to have filed charge sheet in both the cases, as a case and case in counter. Since, the same was not done, alleging the said violation, the accused-petitioners herein have filed the CrI.M.P.No.5155/2014 to drop the further proceedings in STC No.510/2014.

6(b). The trial Magistrate, after perusing the records in both the cases, have observed that since the accused in C.C.No.81/2014, have already appeared before the Court and filed a plead guilty memo and fine has been imposed upon A2 and A3 in the said C.C.No.81/2014. In view of the plead guilty memo filed by the accused, the learned the then Magistrate has accepted the memo and found A1 to A4 are found guilty, A2 and A3 are convicted and directed to pay fine and in respect of A1 and A4, taking into consideration that they are first offender, having a good conduct as admonition, under Section 3 and 4 of Probation of Offender Act, 1958 and the order was passed on 12.04.2014.

6(c). In view of the disposal of the said C.C.No.81/2014, the learned Magistrate has chosen to dismiss the CrI.M.P.No.5155/2014, filed by the petitioners herein and ordered them to face the trial. Aggrieved against the said order, they have preferred this criminal revision in CrI.R.C.No.1463/2017.

7. As against the order passed by the learned Magistrate in C.C.No.81/2014, they have preferred the criminal revision in CrI.R.C.SR.No.36771/2017, with a petition to condone the delay of 1128 days and both the criminal revisions and petition to condone the delay was taken together, common arguments have been heard and disposed of by this common order.

8. After perusing the evidence filed in support of the said CrI.M.P.No.10754/2017, I find that there is no plausible explanation for the long delay. Admittedly, the accused therein, pleaded guilty and filed a memo. The learned Magistrate has taken note of the alleged offence, has recorded his reasons for accepting the plead guilty memo and also awarded fine in respect of A2 and A3. In respect of A1 and A4, taking note of the fact that they are first offender having good conduct had admonition them and the learned Magistrate has rightly ordered admonition and hence, in the absence of any cogent explanation for long delay, I find there is no merit in CrI.M.P.No.10754/2017. Accordingly, the said petition shall stands dismissed.

9. In CrI.R.C.No.1463/2017, the prime allegation averred by the revision petitioners are that the respondent-police, without following the order 588A of police standing order, have filed a charge sheet in both the cases arising out of the same



transactions on two different ways, the charge sheet in Crime No.284/2013 was filed on 29.10.2013 and the charge sheet for the case in Crime No.283/2013 was filed on 12.04.2014.

10. The learned counsel for the petitioner stated that the occurrence took place in the same transaction and therefore, the trial of both the cases have to be filed simultaneously. Since the trial of the other case is already disposed of on plead guilty memo, he has filed the present petition to drop the entire proceedings. Non observance of order 588A of the police standing order does not vitiate the trial of the summary trial case.

11(a). Taking into the nature of the case therein, the case was taken as STC in STC.No.510/2014. In both the cases, it is illegally taking river sand, the dispute between the brothers. In this instant cases, as regards to the injury, L.W.2-Mohan, the Government Doctor, who had given treatment for L.W.1 is also filed.

11(b). The present application is filed under Section 245(2) and 239 of Cr.P.C. to terminate the proceedings. However, the same is applicable to warrant case. It remains to be stated that discharge of the accused without trial has been empaneled in the above said provision. In the instant case, the accused have filed the present application "for stopping of the proceedings" in a "summary trial case" on the ground that case and case in counter were not tried together. The non observance of procedure contemplated under Section 588(A) of the Police Standing Order as a ground of stopping of the proceedings cannot be upheld for more than one reason.

12. As stated supra, the earlier case was taken on file as C.C.No.81 of 2004 and the same has ended in conviction on plead guilty memo and this case was taken on file as Summary Trial Case. The stopping of the proceedings are governed by provision under Section 258 of Cr.P.C. In any summons-case instituted otherwise than upon a complaint wherein, the learned Judicial Magistrate is empowered to order stop the proceedings after the evidence of the principal witnesses has been recorded and thereupon he can pronounce the judgment of acquittal and in any other case, release the accused.

13. In the case in hand, the assertion of the accused herein is that in the alleged counter case, the accused therein are found guilty and hence, those accused has to be treated as an aggressor and the accused in this case has to be released as discharged by stopping the proceedings without probabilising whether the accused in the connected case is an aggressor or not. Mere conviction laid does not give rise to presumption



that they are aggressors and it is for the accused to face the trial and the prosecution has to prove the charges beyond reasonable doubt and hence, the mere conviction in the connected case cannot be lead to an inference that the accused convicted therein, (who are arrayed as list witnesses 1 and 2 in the present case), as aggressors and hence, stopping the proceedings cannot be ordered on mere presumption or assumption or surmises.

14. In this view of the matter, I find no reason to uphold the said contention. It is to be stated that discharge of an accused in warrant cases instituted on a police complaint are dealt with under Section 239 of Cr.P.C. while discharge of accused in a case instituted otherwise on police report are dealt with under Section 245 of Cr.P.C. While stopping of proceeding in respect of summon cases has been dealt with under Section 258 of Cr.P.C.

15. The present application is filed under Section 245(2) and 239 of Cr.P.C., to terminate the proceedings, however, the same is applicable to warrant cases. Merely, because the another counter case against the defacto complainant has end up in conviction on pleading guilty, the same cannot be a ground to stop the further proceedings in the other STC (Summary Trial Case). Whether, the prosecution has proved the charges beyond reasonable doubt is the point to be considered in main case during trial.

16. As rightly observed by the learned Magistrate that due to previous enmity, the list witness No.1/Jayapal was attacked by the accused herein and uttered obscene words. In view of the injuries sustained, he has taken treatment in the Government Hospital, the Doctor who had given treatment is arrayed as list witness No.2 and hence, this case cannot be stopped in view of the termination of the connected case on mere assertion that P.W.1 in the present case who is the accused therein, is alleged to be an aggressor. In the absence of full trial, the same cannot be determined and hence, the learned trial Magistrate has rightly come to the conclusion that the relief sought for viz., to stop further proceedings cannot be granted for the above said reason.

17. Accordingly, this criminal revision No.1463/2017 is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



AT

To

1. The Sub Inspector of Police,
Kattumannarkoil Police Station,
Cuddalore District.

2. The District Munsif cum Judicial Magistrate,
Kattumannarkoil, Cuddalore District.

+1CC to Mr.G.Pugazhanthi, Advocate, Sr.No.43167

+1CC to Mr.M.Gnanasekar, Advocate, Sr.No.43481

+1 cc to Mr.M.Gnanasekar, Advocate Sr.No.43482 (10/03/2022)

Crl.R.C.No.1463 of 2017
and Crl.M.P.No.14522 of 2017
and Crl.M.P.No.10754 of 2017
in Crl.R.C.SR.No.36771 of 2017

PVS (CO)

K.RK. (28.09.2021)