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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P. (MD) No.8735 of 2021

and

Crl.M.P. (MD) No.4476 of 2021

1.K.Jeyaraj

... Petitioner

2.K.Jeyaraj

... Arrayed as Accused No.7
(as per final report)

Vs.

1.The Inspector of Police,
Tallakulam H.1 Police Station,
Madurai District.
Crime No.418 of 1996

2.Mariappan

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in P.R.C.No.31 of 1998 pending on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as illegal.

For Petitioners : Mr.C.Arul Vadivel @ Sekar

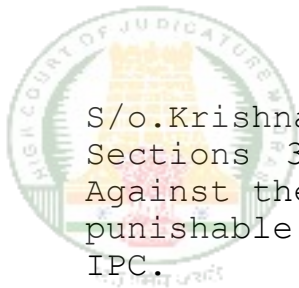
For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor
(Crl.side)

ORDER

This petition is filed seeking quashment of the case in P.R.C.No.31 of 1998 on the file of the learned Judicial Magistrate No.II, Madurai.

2.The facts in brief are as follows:-

3.The 2nd respondent herein is the defacto complainant in Crime No.418 of 1996, which was registered for the offences punishable under Sections 343 and 506 (ii) of IPC against 6 persons. Out of the 6 persons, 3 were named in the FIR and 3 were unnamed. On the basis of the complaint given by the 2nd respondent, investigation was undertaken and final report was filed, making allegations that all the accused persons, namely, 7 members including one Jeyaraj,



S/o.Krishnamoorthy, were charged for the offences punishable under Sections 343, 366 and 506 (ii) of IPC r/w Section 109 of IPC. Against the 7th accused, final report has been filed for the offences punishable under Sections 343 and 506 (ii) of IPC r/w Section 109 of IPC.

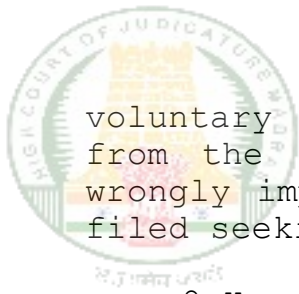
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4.The case of the prosecution as found in the final report is that the daughter of the 2nd respondent was studying 3rd year in Madurai Medical College. On 11.03.1996 at about 09.00 am., when the defacto complainant, namely, Sujatha was on the way to the college, the 4th accused took her to Shenoy Nagar, where, the 5th accused was waiting in a car. They lifted the said Sujatha and abducted her with the help of the accused 1 and 4. She was taken to Manis Lodge and kept in Room No.2 and later in Room No.55. The 7th accused came to the room and threatened the victim to marry the 1st accused. Later, she was taken to Rajeswari Lodge and kept in Room No.304. Later on 12.03.1996, she was taken to the Surya Nagar and she was detained there. There also, she was threatened and on 14.03.1996, she was dropped near her house. So, on the basis of the aforesaid complaint as mentioned above, a case has been registered and final report has been filed after collecting materials and recording the statement of the witnesses.

5.In the final report, the 7th accused was shown as one Jeyaraj. Since warrant was pending against him, the case was split up against him and the remaining accused were tried in P.R.C.No.19 of 1997 by the learned Judicial Magistrate No.II, Madurai. Later, the case was committed to the III Additional Sessions Court, Madurai. During the course of trial proceedings, all the witnesses turned hostile. So, it ended in acquittal on 14.03.2000.

6.Since warrant was issued against the 7th accused, the case against him was split up and assigned P.R.C.No.31 of 1998. Now it is in the committal stage. This petitioner herein during the relevant time of the trial proceedings was working as Chief Judicial Magistrate, Ramanathapuram. During that time, a charge memo was issued to him stating that pendency of the criminal case against him has been suppressed, while joining the service. The petitioner is not an accused and noway involved in the said occurrence. However, due to the misidentification of the father's name, a wrong information has been given to the effect that this petitioner involved in the aforesaid occurrence. On the basis of the report given by the police, the learned Judicial Magistrate No.II, Madurai sent a letter dated 13.09.2011 to the Registrar (Admin) attached to this Bench informing about the split up case. So, based upon that, a charge memo was issued to the petitioner and after a detailed enquiry, the petitioner was exonerated from the departmental proceedings.

7.The petitioner was working as 6th Additional Judge, City Civil Services, Government of Madurai. On 08.01.2021, he submitted an application for



voluntary retirement from service. It was allowed and he retired from the service from 30.04.2021. Since the petitioner has been wrongly implicated in the aforesaid case, this petition came to be filed seeking quashment.

8. Heard both sides.

9. After hearing the learned counsel for the petitioner and the learned Additional Public Prosecutor (Crl.side), notice to the 2nd respondent, who is the defacto complainant herein, was dispensed, since in the parent case, namely, S.C.No.142 of 1998, he turned hostile and did not support his own case before the Court. So, on the basis of the available records, the matter was heard.

10. The counsel for the petitioner straight away relied upon the judgment of the Hon'ble Supreme Court in **Sat Kumar Vs. the State of Haryana** reported in **AIR 1974 SC 294**, it has been held that simply because some of the accused persons were acquitted, there is no ruling that the co-accused must also be acquitted. It has been further observed that 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 cannot be treated differently on the basis of the same evidence. This is the cautious note that has been struck by the Hon'ble Supreme Court while dealing with acquittal in parent cases.

11. Taking a guidance from this judgment, we will go to the evidence available on record that has been let in by the prosecution in S.C.No.142 of 1998. The judgment copy dated 14.03.2020 is made available to this Court by the petitioner.

12. As per the case of the prosecution, the 7th accused, namely, Jeyaraj was practising as an Advocate and he was a close relative of the 1st accused. A specific charge against him is that he threatened the victim to marry the 1st accused, as mentioned earlier. The other accused were charged differently. The accused 2, 3 and 7 were charged for the offences punishable under Sections 343 and 506 (ii) of IPC r/w Section 109 of IPC.

13. It appears that the charge against this petitioner is one and the same. The accused 2 and 3, namely, Nithyanantham and Sagunthala also participated in the trial proceedings and the evidence were let in. During the course of evidence of P.W1, the defacto complainant stated that on 11.03.1996, the victim, namely, Sujatha did not return to the house till evening hours. So, he gave a complaint before the Tallakulam Police Station. On the next day, she returned to the house. He also disowned the contents of the complaint. He was treated as hostile and cross examined by the prosecution.



14. During the cross-examination, a suggestion was made to the defacto complainant to the effect that the accused 4 and 5, namely, Almara and Predith abducted and kidnapped the victim through a lorry. That fact was denied by him. Similarly, the mother of the victim also turned hostile and stated that since the victim did not return to the house, P.W1 lodged a complaint.

15. P.W3 is the victim girl. During the chief examination, she stated that on the particular date, there was a delay in returning the house and only because of that, P.W1 gave a complaint and except that, nothing happened. During cross-examination, she also stated that she was not kidnapped or detained or assaulted. P.W4 was the Inspector during the relevant time. He stated that based upon the complaint given by P.W1, a case has been registered and investigation was undertaken and final report has been filed, after completing the investigation.

16. From the reading of the entire evidence that has been let in the aforesaid sessions case, it is seen that not only P.W1 turned hostile but also even the victim turned hostile. So, during the course of arguments, the counsel for the petitioner submitted that it was a love affair between the 1st accused and the victim girl. Because of that, complaint has been given by the father of the victim girl, who did not like the affair. But, whatever it may be, now it is seen that the evidence that has been let in in S.C.No.142 of 1998 is one and the same that is going to be let against this petitioner in P.R.C.No.31 of 1998. So, as stated by the Hon'ble Supreme Court in the aforesaid case, the evidences now are inseparable from the one that is going to be let in by the prosecution, if the trial is ordered in P.R.C.No.31 of 1998. So, conviction is not possible, on the basis of the evidence that has been going to be let in by the prosecution. So, no useful purpose will be served. The benefit that has been extended to the co-accused may also be extended to this petitioner also.

17. The petitioner's stand that he is not the real accused as mentioned in the First Information Report may not be correct on records. For the purpose of identifying the real accused, a report has been called for from the 1st respondent herein. He informed this Court, vide letter dated 03.08.2021 that the person, namely Jeyaraj, who is arrayed as 7th accused and the petitioner is one and the same person. So, the contention on the part of the petitioner that he is not the real accused person in the matter cannot be correct. But, whatever it may be, now the parent case ended in acquittal. So, the benefit can be extended to this petitioner also, in view of the aforesaid settled position of law. Even though a number other judgments have also been cited by the counsel for the petitioner, it is not necessary to go into those judgments as it may be superfluous.



18.In the result, this petition is liable to be allowed and accordingly, the same is allowed. The proceedings in P.R.C.No.31 of 1998 in the learned Judicial Magistrate No.II, Madurai, stands quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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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 Judicial Magistrate No.II,
Madurai.
- 2.The Inspector of Police,
Tallakulam H.1 Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.8735 of 2021
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RK (01.09.2021) 5P 4C