



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 04.10.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

WEB COPY

Crl.O.P.(MD)No.13537 of 2021
and
Crl.MP(MD)Nos.7034 & 7035 of 2021

Edison ... Petitioner/Accused No.9

Vs.

1.The Inspector of Police,
Panagudi Police Station,
Panagudi,
Tirunelveli District. ... 1st Respondent/Complainant

2.Alagesan ... 2nd Respondent/Defacti
Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the criminal case now pending proceedings in S.C.No.554 of 2017, on the file of the Sub-Court, Valliyoor, sofar as the petitioner is concerned.

For Petitioner : Mr.N.Pragalathan
For R1 : Mr.K.Sanjai Gandhi,
Government Advocate (Crl.Side)

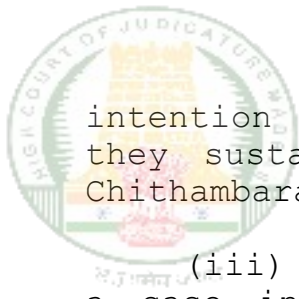
ORDER

This Criminal Original Petition is filed seeking quashment of the proceedings in S.C.No.554 of 2017, on the file of the Sub-Court, Valliyoor.

2. The case of the prosecution in brief:-

(i) On 20.11.1998, at about 10.00 p.m, there was a School function at RC Thiru Irudhaya School, Kaval Kinaru, Tirunelveli District. During the course of the above said function, the accused persons 1 to 12 were dancing on the floor near the stage and also caused nuisance to others. When it was questioned by the witnesses namely, Alagesan, Kumar S/o. of Muthu Nadar and Kumar S/o. Jesudas, there was a wordy quarrel arose between them.

(ii) Because of that, on 21.11.1998, at about 2.00 a.m in the early morning, when the witnesses were proceeding at the junction of R.C Church street at Kaval Kinaru, Tirunelveli District, the accused persons 1 to 12 indulged in indiscriminate assault upon them with an



intention to commit murder at the instigation of A1. Due to which, they sustained multiple injuries and they were admitted in the Chithambaranathan Hospital, Kaval Kinaru.

(iii) Based upon the complaint given by the second respondent, a case in Crime No.502 of 1998 was registered for the offence punishable under Sections 147, 148, 341, 324, 307 r/w 109 of IPC. After completing the investigation, final report was filed against the accused before the learned Judicial Magistrate, Valliyoor and the same was taken on file in P.R.C.No.45 of 2000. After completing the proceedings, the trial undertook in S.C.No.554 of 2017, on the file sub-Court, Vallioor.

3. Because of the absence of the petitioner herein and the accused No.2 & 5, the case was split up and the sessions has been tried in S.C.No.135 of 2012 was proceeded against the A1 & A4 and during the course of trial proceedings, all the witnesses turned hostile. So, the Trial Court recorded the findings of acquittal on 12.04.2017.

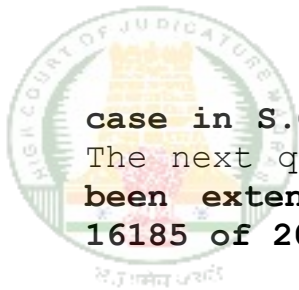
4. Since the case against the petitioner herein and the another accused namely, Sujan, has been split up in S.C.No.554 of 2017 seeking quashment of the proceedings, this petition came to be filed. Similarly, on the ground that a petition in Crl.OP(MD) No.16185 of 2019 was moved by the above said Sujan and the same was allowed, on 08.11.2019. Since the petitioner is also standing in the very same footing, the same benefit must be extended to this petitioner also.

5. Heard both sides.

6. Since the defacto complainant namely, Alagesan turned hostile in the parent case in S.C.No.554 of 2017, notice was not ordered to him and after hearing the learned Additional Public Prosecutor as well as the learned counsel for the petitioner, this order is passed.

7. In the criminal case, totally 12 persons were arrayed as accused. The judgment of the case in S.C.No.135 of 2012, dated 12.04.2017 was produced by the petitioner. In that case, A1 & A4 namely, Madhan & Mugilan were acquitted and the petitioner, the second accused namely, Sujan and another accused namely, Altrin have faced the trial. After full trial, the Trial Court recorded the findings of the acquittal upon A1 & A4. During the course of trial, all the injured persons turned hostile. The another accused namely, Sujan filed a petition in Crl.OP(MD)No.16185 of 2019 before this Court and that was also allowed and the proceedings against him in S.C.No.554 of 2017, was quashed, as per the order, dated 08.11.2019.

8. The question, which arises for consideration in this case is **whether the order of acquittal passed in the parent**



case in S.C.No.554 of 2017 will give any benefit to the petitioner. The next question is that **whether the benefit of quashment that has been extended to the co-accused namely, Sujana in Crl.OP(MD)No. 16185 of 2019 can also be extended to the petitioner.**

9. In the judgment reported in **Sat Kumar Vs. State of Haryana AIR 1974 SC 294**, the Hon'ble Supreme Court has pointed out that simply because the co-accused have been acquitted in the parent case, it will not lead to necessary order of acquittal upon the other co-accused also. But, however, the Hon'ble Supreme court has pointed out that when the evidence in both the cases are similar and inseparable, the benefit of acquittal can be extended to the co-accused also.

10. With this principle in mind, let us proceed to see **whether the evidence in both the cases are one and the same and inseparable in nature.** For that purpose, the charge that has been levelled against the petitioner herein as well as the evidence that have been let in the parent case must be seen.

11. In the final report, it has been mentioned that the petitioner assaulted the defacto complainant with aruval on his head. The injured defacto complainant was shown as witness No.1 in the final report and also examined as P.W.1 before the Trial Court in S.C.No.135 of 2012. During the course of evidence, he stated that on the date of occurrence, he was returning to his house from Kavalkinaru Bus Stop and fell down and sustained injuries. He did implicate the accused persons before the Officer, who recorded his statement. But, he has admitted the signature found in the statement, which is marked as Ex.P.1. He was treated as a hostile witness.

12. Similarly, the eye witnesses, who were examined as P.W.2, P.W.3, P.W.4 & P.W.5 also turned hostile and they stated that they did not witness the occurrence. But, however, from the evidence of the Doctor, who was examined as P.W.8, it is seen that P.W.1 sustained injuries on head and back side of the head. One injury was shown as grievous and the second also simple in nature. Even though, P.W.1 sustained injuries, it has stated that the same was not caused due to the assault made by the accused persons.

13. It is seen that in both the cases, the witnesses are one and the same and inseparable in nature. So, noting the above said development only, the co-accused has been given the benefit of quashment in Crl.OP(MD)No.16185 of 2019, dated 08.11.2019. So, the same benefit can be extended to the petitioner herein and no purpose is going to be served by directing the petitioner to undergo the trial process. By applying the judgment of the Hon'ble Supreme Court in **Sat Kumar Vs. State of Haryana** (cited supra), this petition is **liable to be allowed.**



14. In view of the above, the proceedings in S.C.No.554 of 2017 on the file of the Sub-Court, Valliyoor, is hereby quashed insofar as the petitioner herein is concerned and this Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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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 Sub-Court,
Valliyoor.
2. The Inspector of Police,
Panagudi Police Station,
Panagudi,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-31239[F] dated
05/10/2021)

Crl.O.P. (MD)No.13537 of 2021
and

Crl.MP(MD)Nos.7034 & 7035 of 2021
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TSK(CO)
KB(25.11.2021) 4P 5C