



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 19.04.2021
DELIVERED ON : 21.05.2021

CORAM:

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.OP(MD)No.15897 of 2020 &

Crl.MP(MD)No.7818 of 2020

WEB COPY

K.Mohamed Ashik

... Petitioner/Accused

Versus

The Inspector of Police,
Ariyamangalam Police Station,
Tiruchirapalli District.
(Crime No.730/2011)

...Complainant/ Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to PRC.No.31 of 2013 on the file of the learned Judicial Magistrate VI, Trichy District, taken on file in SC.No.123 of 2020 of the Principle Sessions Court, Tiruchirapalli District and quash the same.

For Petitioner : Mr.K.S.Durai Pandian

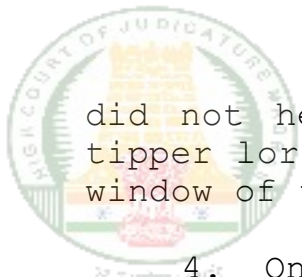
For Respondent : Mr.R.Srinivasan,
Government Advocate (Crl. Side)

O R D E R

This petition is filed seeking quashment of PRC.No.31 of 2013 on the file of the learned Judicial Magistrate VI, Trichy District, which was taken on file in SC.No.123 of 2020 of the learned Principle Sessions Judge, Tiruchirapalli District.

2. The case of the prosecution before the Committal Court is that, the Village Administrative Officer, Ariyamangalam lodged a complaint with the respondent police with the following allegations.

3. On 29.12.2011, at about 07.00 am, a van bearing Registration No.TN 67 D 8321 dashed against the persons who were waiting for the bus near Ariyamangalam Oil Mill Bus Stop, due to bursting of tyre. The injured persons were taken to hospital. Because of this incident, one Saravanan who belongs to a Political Party and one Parthiban along with several other persons staged a road agitation in National Highway causing disturbance to the traffic on either side. The defacto complainant went to the place of occurrence along with Police officials. However, the accused



did not heed to the advise. Instead they caused damaged to a tipper lorry bearing Registration No.TN 30 Y 6954. The front side window of the lorry was damaged because of the stone pelting.

4. On the basis of the complaint given by the Village Administrative Officer, a case in Crime No.730 of 2011 under Sections 147, 188, 341 and 353 of IPC read with Section 3 of TNPPDL Act was registered by the respondent police.

5. Based on the complaint and the First Information Report, investigation was undertaken by the respondent, materials collected, statements of witnesses recorded and final report was filed before the learned Judicial Magistrate VI, Tiruchirappalli on 12.02.2012 against 30 accused persons. Among them, this petitioner is arrayed as accused No.26. Thereafter, the case was committed to Principal Sessions Court, Tiruchirappalli, which was taken on file as SC.No.20 of 2016. Totally 29 persons were facing this trial. Since the petitioner did not appear before the Court, case was split up and the case against this petitioner is now pending in SC.No.123 of 2020 on the file of the Principal Sessions Court, Tiruchirappalli. Before the trial Court, 8 witnesses examined, 10 documents marked and MO1 was also marked. After conclusion of trial in SC.No.20 of 2016, the learned Principal Sessions Judge, Tiruchirappalli acquitted all 29 persons by Judgment dated 29.07.2019 holding that the prosecution has failed to prove the guilt of the accused beyond doubt. The trial Court also held that the accused persons were not properly identified by the prosecution witnesses.

6. Now since the case was split up against this petitioner, he is facing trial before the Sessions Court. Seeking quashment of the proceedings, this petition is filed, mainly on the ground that, since in the parent case all the accused were acquitted by the learned Principal Sessions Judge, Tiruchirappalli, no useful purpose is going to be served by directing this petitioner to undergo the trial process. For that purpose, he would rely upon a number of Judgments, more particularly, the decision of this Court in Tamilmaran vs. State reported in 2007 (1) LW (Crl.) 514 which followed the Judgment of the Hon'ble Supreme Court in Sat Kumar vs. State of Haryana reported in AIR 1974 SC 294. The above Judgments were followed by this Court in Crl.OP(MD)No.7407 of 2017 dated 11.09.2018. The Hon'ble Supreme Court in Sat Kumar vs. State of Haryana (*cited supra*) has held that if some of the persons are acquitted by the trial court, it is not necessary that other accused must also be acquitted. However, it has been further held that, when the evidence against all the accused persons is inseparable and indivisible and if some of the persons are acquitted, then the remaining persons cannot be treated differently on the basis of the same evidence.

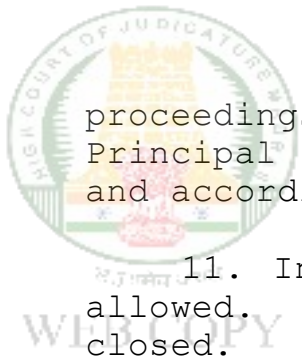


7. The principle laid down in the above said case is to the effect that it is not always possible to acquit the co-accused simply because other persons were acquitted. However, if the evidence are same and inseparable, then that person is also entitled for an order of acquittal. So, with this principle in background, we have to analyse the evidence that has been produced by the respondent before the Principal Sessions Court, Tiruchirappalli, in the parent case.

8. The evidence given by the witnesses are produced in the additional typed set of papers. A perusal of the evidence shows that in the place of occurrence, there were about 100 to 200 persons. Among them, persons who were simply watching the incident and who were actually involved in the criminal offence could not be correctly identified. The trial court after considering this fact of evidence given by PW1, came to the conclusion when the prosecution was not in a position to identify each and every person who were present in the place of occurrence and could not clearly say who are the offenders and who are the witnesses, benefit of doubt must be given to the accused. PW1 was the Village Administrative Officer. Other witnesses namely Agustin, Balaiyya, Prakash and Kumar turned hostile and did not support the prosecution case. So, absolutely, there was no independent witness examined on the side of the prosecution to identify the offenders. This fact was also taken into consideration by the trial Court.

9. The second aspect is that the tipper lorry bearing Registration No.TN 30 Y 6954 was not taken to Motor Vehicle Inspector for inspection and explanation offered by the Investigating Officer PW8 to the effect that since the tipper lorry is a private vehicle, the Motor vehicle Inspector refused to inspect the vehicle, the trial Court refused to accept the above statement, by stating that the explanation given by the Investigating Officer, PW8 for not inspecting the vehicle is not satisfactory and no evidence is produced on the side of the prosecution to show that damage was caused to the tipper lorry. Therefore, all the 29 accused were acquitted in this case.

10. The evidences which are available now against this petitioner are the ones who were examined as witnesses before the trial Court. No new evidence has been brought on record by the respondent police during this period. In the facts and circumstances, I am of the considered view that no useful purpose would be served in directing this petitioner to undergo the trial process. Identification of witnesses was not possible during the trial process in the parent case. Same facts will repeat against this petitioner also, if trial is undergone. Hence, the



proceedings pending in SC.No.123 of 2020 on the file of the Principal Sessions Court, Tiruchirappalli is liable to be quashed and accordingly quashed.

11. In view of the same, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar/
Vacation Officer (CS-III)

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/ /2021
Sub Assistant Registrar (CS)

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To

1. The Inspector of Police,
Ariyamangalam Police Station,
Tiruchirappalli District.
2. The Chief Judicial Magistrate,
Trichy District.
3. The Judicial Magistrate VI,
Trichy District.
4. The Principle Sessions Court,
Trichy District.
5. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order in
Crl.OP(MD)No.15897 of 2020 &
Crl.MP(MD)No.7818 of 2020
21.05.2021

VB(02/06/2021) 4P / 6C