



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) No.4235 of 2022

and

Crl.M.P.(MD)No.3017 of 2022

1. Karuppaiah

2. Sridhar

...Petitioners 1 & 2/

Accused No. 1 & 2

Vs.

1. The Deputy Superintendent of Police,
Alangudi,
Pudukkottai District.
(Crime No. 02 of 2014)

2. The Sub-Inspector of Police,
Vadakadu Police Station,
Pudukkottai District.
(Crime No. 02 of 2014)

...1st & 2nd Respondent/Complainant

3. C.Subramaniyan

...Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records pertaining to the charge sheet in Spl.S.C.No. 58 of 2019 on the file of the Special Court for the exclusive trail of SC/ST (POA) Act Cases, Pudukkottai in Crime No. 02 of 2014 on the file of the 2nd respondent and quash the same as illegal as against these petitioners are concerned.

For Petitioner : Mr.K.C.Maniyarasu

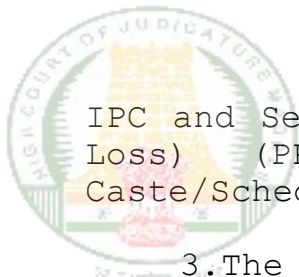
For R1 & R2 : Mr.R.M.Anbunithi

Additional Public Prosecutor

ORDER

This petition has been filed seeking a direction to quash the proceedings in Spl.S.C.No. 58 of 2019, on the file of the Special Court for the exclusive trail of Scheduled Caste/Scheduled Tribes (POA) Act Cases, Pudukkottai in Crime No. 02 of 2014 on the file of the second respondent.

2.The petitioners are arrayed as Accused Nos.1 and 2 in Special.S.C.No.58 of 2019, on the file of the Special Court for exclusive trail of SC/ST (POA) Act Cases, Pudukkottai arising out of the Crime No. 02 of 2014 on the file of the second respondent for the offences under Sections 147, ,148, 323, 294 (b) and 506(2) of



IPC and Section 3 of Tamil Nadu Property (Prevention of Damage and Loss) (PPDL) Act, 1992 r/w Section 3(1)(X) Scheduled Caste/Scheduled Tribes Act, 1989.

3.The case of the prosecution is that the third respondent belongs to Hindu Paraiyar community. The accused Nos.1 to 3 and 5 to 10 belong to Hindu Kallar Community and the fourth accused belongs to Hindu Yadhavar community. On 01.01.2014, the area residents of the defacto complainant had celebrated New Year in front of their community hall. The defacto complainant had watched that, while being so, the third accused had attacked the defacto complainant's head with a wooden log and caused simple injury in his right forehead. The first accused had dashed one Vignesh by his two wheeler bearing registration No.TN 55 B 9167 and caused grievous injury in his right forehead. All the accused had given life threat to the people and the second accused had damaged a house door worth about Rs.3,100/- and too damaged a street light.

4.Initially, the case was taken by the Principal District Judge in S.C.No.104 of 2014 since the NBW was pending as against the petitioners, the case was split up against the petitioner in S.C.No.216 of 2017. Even before commencement of trial, the defacto complainant died and all the witnesses PW1 and PW6 were treated as hostile by the prosecution. The investigation was examined as PW 7 and he had admitted that there was six days delay in lodging the complaint and the delay was not sufficiently explained and as such all the accused were acquitted in S.C.No.104 of 2014. Since S.C.No.216 of 2017 was transferred to the Special Court for trial of Scheduled Caste/Scheduled Tribes (POA) Act Cases, Pudukkottai from the Principal District Judge, Pudukkottai on 04.10.2019 and it was renumbered as Spl.S.C.No.58 of 2019. Now the petitioners are seeking the same benefit as given for other caste persons in S.C.No.104 of 2016.

5.In this regard it is relevant to rely upon the judgment of this Court in **(2018) 2 MWN (Criminal) 442** in the case **Anbuselvam Vs. State** reads as follows:

*'7.The learned Senior Counsel relied upon two judgments of this Court reported in **2007-1-L.W (Crl.) 514 Tamilmaran Vs. The State rep. By Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Thiruvavur District and 2008 (2) CTC 153 Thamilendi Vs. State rep. by The Inspector of Police, Orathanadu Police Station, Thanjavur District** and submitted that in view of the acquittal of three other co-accused, no useful purpose would be served to subject the petitioner to undergo the ordeal of the trial. The relevant portion of the judgments read as follows:*

II. Tamilmaran Vs. The State rep. By Inspector of



**Police, Paravakottai Police Station, Mannargudi Taluk,
Thiruvavarur District, reported in 2007 -1-L.W (Crl.)
514:**

"7.This Court is of the considered view that there is much force on the contention put forward by the learned senior counsel to the effect that the learned trial Judge having disbelieved the prosecution case in toto no useful purpose would be served by putting the petitioner to undergo the ordeal of trial on the basis of the very same set of evidence. It is also pointed out by the learned senior counsel that even the defacto complainant himself turned hostile giving a total go-by to his earlier version and there is no other material available on record to implicate the petitioner. The learned senior counsel has rightly placed reliance on the decision of the Delhi High Court in a case in **Sunil Kumar v. State reported in 2000 (1) Crimes 73** wherein it is held as follows:

"3. The question thus is as to whether in the face of the judgment of acquittal the petitioner should still be permitted to undergo the ordeal of a trial. In **Sat Kumar v. State of Haryana (AIR 1974 SC 294)**, it was held that there is no rule of law that if the Court acquits some of the accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of evidence of that witness must be acquitted. (See also **Har Prasad v. State of Madhya Pradesh (AIR 1971 SC 1450,)** **Makan Jivan v. State of Gujarat (AIR 1971 SC 1797)** **Mohd. Moin Uddin V. State of Maharashtra (1971 S.C.C.(Cri.) 617)**). But 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 persons cannot be treated differently on the basis of the same evidence.

4. On perusal of the Judgment of acquittal dated 19.01.1998 it appears that the deceased Balwan Singh met with a homicidal death owing to burn injuries sustained by him has not been disputed by the accused persons. The evidence against the accused persons mainly consists of the evidence of the eyewitnesses, namely, Karan Singh (PW2) and Smt. Asha Rani(PW-5) (Wife of the deceased Balwan Singh) besides the dying declaration (Ex.PW-13/a) of the deceased Balwan Singh. Both the said witnesses have not supported the prosecution case and so they have been declared



hostile by the prosecution. Eliminating the evidence of the said eyewitnesses, there remains the dying declaration (Ex.PW.13/A) of the deceased Balwan Singh, which has been disbelieved by the learned Addl. Sessions Judge. It would, therefore, appear that the accused persons, namely, Jangli Tyagi, Balbir Singh, Anil Kumar Tyagi and Sushil Kumar Tyagi were acquitted on the ground of insufficiency of evidence. Thus, the evidence adduced in the case against all the accused persons is inseparable and indivisible and that being so the petitioner cannot be treated differently on the basis of the said evidence. In this view of the matter, there is no prospect of the case ending in conviction against the petitioner and the valuable time of the Court would be wasted for holding trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. If the Court is almost certain that the trial only would be an exercise in futility or sheer wastage of time, it is advisable to truncate or ship the proceedings at the stage of Section 227 if the Code itself."

8. In yet another decision, placed reliance by the learned senior counsel, in **Mohammed Ilias v. State of Karnataka reported in 2001 (4) Crimes 417**, the Karnataka High Court taken a similar view following the decision of Delhi High Court, cited supra.

9. Therefore, the above well settled principle of law laid down in the decisions cited supra, is squarely applicable to the facts of the instant case as in this case also admittedly the other accused, Viz., A-1 to A-4 have been acquitted by the learned trial Judge after disbelieving the entire prosecution case and as such this Court is of the considered view that no useful purpose would be served for putting the petitioner to undergo the ordeal of trial and therefore, the proceedings pending against the petitioner in C.C.No.1146 of 1997 on the file of the learned Judicial Magistrate, Mannargudi, is hereby quashed."

II. *Thamilendi Vs. State rep. by The Inspector of Polie, Orathanadu Police Station, Thanjavur District reported in 2008 (2) CTC 153*

"4. On perusal of the Judgment of acquittal dated 19.01.1998, it appears that the deceased-Balwan Singh met with a homicidal death owing to burn injuries sustained by him has not been disputed by the accused persons. The evidence against the accused persons



mainly consists of the evidence of the eyewitnesses, namely, Karan Singh (PW-2) and Smt. Asha Rani (PW-5) (Wife of the deceased Balwan Singh) besides the dying declaration (Ex.PW-13/A) of the deceased Balwan Singh. Both the said witnesses have not supported the prosecution case and so they have been declared hostile by the prosecution. Eliminating the evidence of the said eyewitnesses, there remains the dying declaration (Ex.PW.13/A) of the deceased Balwan Singh, which has been disbelieved by the learned Additional Sessions Judge. It would, therefore, appear that the accused persons, namely, Jangli Tyagi, Balbir Singh, Anilkumar Tyagi and Sushil Kumar Tyagi were acquitted on the ground of insufficiency of evidence. Thus, the evidence adduced in the case against all the accused persons is inseparable and indivisible and that being so the petitioner cannot be treated differently on the basis of the said evidence. In this view of the matter, there is no prospect of the case ending in conviction against the petitioner and the valuable time of the Court would be wasted for holding trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. If the Court is almost certain that the trial only would be an exercise in futility or sheer wastage of time, it is advisable to truncate or ship the proceedings at the state of Section 227 of the Code itself.

7. This Court has also placed reliance on yet another decision of the Karnataka High Court in **Mohammed Ilias v. State of Karnataka, 2001 (4) Crimes 417**, taking the same view by following the decision rendered by the Delhi High Court (**Tamilmaran v. State, 2007 (1) LW (Cr1.) 514**).

8. Therefore, this Court is of the considered view that the above settled principle of law laid down in the decisions cited supra is squarely applicable to the facts of the instant case and in this case also except the petitioner herein all the other accused, viz., A-1 to A-6, A-8 and A-9 who have been tried separately in S.C.No.86 of 1991 have been acquitted by the learned Trial Judge disbelieving to entire prosecution case and holding that the prosecution has failed to prove the charges including the charge under section 302, I.P.C. against A-3 who is the only accused alleged to have attacked the deceased."

8.The above proposition is self-explanatory. In view of the acquittal of other three accused, after



considering the statements of the witnesses and holding their statements to be unreliable, the trial Court cannot re-assess their depositions once again and take a contrary view. Since the proceedings against the petitioner has to necessarily end in as acquittal, no useful purpose would be served to make the petitioner to under go the ordeal of the trial.'

6.The judgment cited by the learned counsel for the petitioners will squarely apply to the facts of the case. Even if the case is sent back to the trial Court, the trial Court cannot re-assess the depositions already given by the witnesses and take a contrary view. No useful purpose will be served by keeping the proceedings pending. This Court is of the considered view that the order of acquittal passed in favour of other accused persons will also enure to the benefit of petitioners/Accused 1 and 2.

7.With the above observation, the criminal original petition is allowed. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

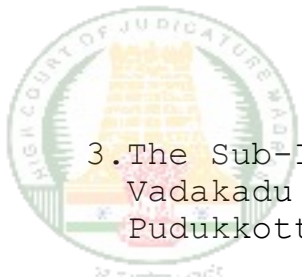
1r

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 Special Court for the exclusive trail of SC/ST (POA) Act Cases,
Pudukkottai.

2.The Deputy Superintendent of Police,
Alangudi,
Pudukkottai District.



3.The Sub-Inspector of Police,
Vadakadu Police Station,
Pudukkottai District.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.C.MANIYARASU, Advocate (SR-10548[F] dated 08/03/2022)
CrI.O.P.(MD) No.4235 of 2022
04.03.2022

KG(CO)
GC(23.03.2022) 7P 6C