



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 07.01.2022
PRONOUNCED ON: 24.02.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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Crl.O.P. (MD)No.14128 of 2018
and
Crl.M.P. (MD)No.6326 of 2018

R.R.Govindarajan : Petitioner/1st Accused

Vs.

1. The Inspector of Police,
District Crime Branch,
Thanjavur.
(Ref.Crime No.17/2002) : Respondent/Complainant

2.R.R.Natarajan
(R.2 was impleaded as per
order of this Court dated 12.11.2018): Respondent

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for records pertaining the order passed in C.C.No.451 of 2003, dated 23.07.2018 by the learned Judicial Magistrate No.I, Thanjavur and set aside the same.

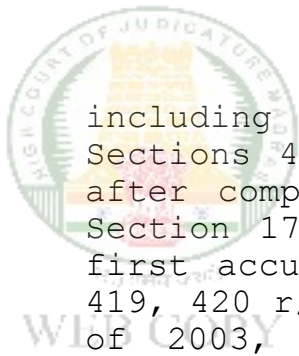
For Petitioner : Mr.Ajmal Khan
Senior Counsel
for Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
for R.1
: Mrs.Prabha for
Mr.M.Karunanithi
for R.2

ORDER

This Criminal Original Petition is directed against the order passed on 23.07.2018 in C.C.No.451 of 2003 by the learned Judicial Magistrate No.I, Thanjavur, directing *denovo* trial.

2. The petitioner is the first accused in C.C.No.451 of 2003, on the file of the Judicial Magistrate Court No.I, Thanjavur. On the basis of the complaint lodged by the second respondent, F.I.R. came to be registered in Cr.No.17 of 2002, against three persons

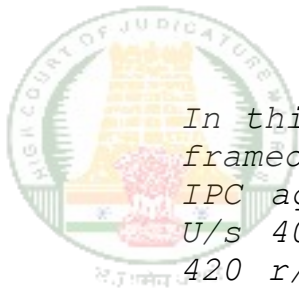


including the petitioner herein for the alleged offences under Sections 419, 465, 468, 471 and 420 I.P.C. The first respondent, after completing the investigation, has laid a final report under Section 173 Cr.P.C., against 6 persons arraying the petitioner as first accused for the offences under Sections 406, 465, 468, 471, 419, 420 r/w 34 I.P.C., and the case was taken on file in C.C.No.451 of 2003, on the file of the Judicial Magistrate Court No.I, Thanjavur. It is not in dispute that the petitioner herein has filed a petition under Section 239 Cr.P.C., in Crl.M.P.No.5018 of 2004, seeking discharge and the learned Judicial Magistrate, after enquiry, has passed an order dated 28.06.2005, dismissing the said petition, that the petitioner aggrieved by the said order of dismissal, has filed a criminal revision in Crl.R.P.No.22 of 2005, that the learned Principal Sessions Judge, Thanjavur, after hearing both sides, has passed an order dismissing the said revision, that the petitioner has then approached this Court, by filing a petition in Crl.O.P.No.9779 of 2005 challenging the dismissal of the Criminal Revision and that this Court, vide order dated 01.09.2009, has disposed of the petition directing the learned Judicial Magistrate to decide the criminal case on the available materials in accordance with law.

3. Admittedly, the second respondent/defacto complainant is the brother of the petitioner herein. The case of the prosecution is that one Ramasamy - father of the petitioner, was running a rice mill in the name and style of M/s Sri Ramavilas Rice Mill, which was his self acquired property, that the said Ramasamy had died on 17.07.2002 leaving behind his wife, sons and daughters including the petitioner as his legal heirs, without executing any Will or making any encumbrance in respect of the rice mill, that while-so the petitioner had created a Will purported to be executed by his father Ramasamy, that the accused 2 and 3 had identified the fourth accused as if he is the executant Ramasamy, that the petitioner and other accused had created a false and fabricated document to be used as genuine with an intention to grab the property and that therefore, the petitioner/accused had committed the offences of cheating and forgery.

4. It is not in dispute that the learned Magistrate has commenced the trial by examining the first witness P.W.1 on 13.11.2014 and that during the pendency of the trial, the accused 3 and 4 were reported dead. It is also not in dispute that the learned Magistrate has proceeded with the trial and examined 25 witnesses as P.W.1 to P.W.25, out of 33 listed witnesses shown in the charge sheet, as on 01.06.2018 and that all the said witnesses were cross-examined by defence. When the case was pending for examination of the remaining witnesses, the learned Judicial Magistrate, after coming to know that the charges were not at all framed, has passed the impugned order on 23.07.2018 and the same is reproduced hereunder:

<https://hcservices.ecourts.gov.in/hcservices/A4Died>). A.1, A.2, A.5 and A.6 are present.



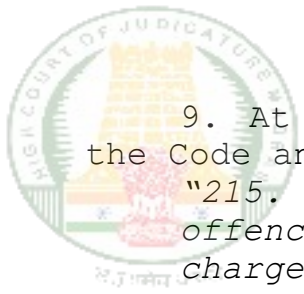
In this case before examination of witness charge was not framed. Now charge was framed U/s 406, 468, 471 and 420 IPC against A1 charge framed and A2, A5 and A6 against U/s 406 r/w 34, 465 r/w 34, 468 r/w 34, 471 r/w 34 and 420 r/w 34 of IPC charge framed and read out the charge and explained. A1, A2, A5 and A6 pleaded not guilty. Claim for trial. Before examination of witness charge was not framed. Now only charge was framed hence Denovo Trial is ordered. Issue fresh summons to LW1 to LW3 call on 27.07.2018."

5. The petitioner/first accused has challenged the impugned order directing the *denovo* trial. It is evident from the impugned order that since the charges were framed after examination of 25 witnesses, the learned Magistrate has ordered for *denovo* trial. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, the learned Magistrate has not assigned any other reason or ground for ordering *denovo* trial, except non-framing of charges before the commencement of trial.

6. A charge means accusation. Charge is defined under Section 2(b) Cr.P.C., which says charge include any head of charge when the charge contains more heads than one. Charge can be defined as a formal recognition of concrete accusation by a Court based upon a complaint or report against the accused. The very purpose of framing of charge is only to give intimation or information to the accused of the nature of the accusation that the accused is called upon to face in the trial. The Code of Criminal Procedure contemplates that the framing of charge is an important requirement to be complied with, in the criminal proceedings.

7. In summons cases, in Chapter 20 of the Code, substance of accusation shall be stated to the accused and he shall be asked whether he pleads guilty or not and the same has to be recorded before ever proceeding with the trial. But in Sessions cases and Warrant cases, if the trial Court considers that there is sufficient ground for proceeding against the accused and as such, they cannot be discharged, has to frame charges and thereafter the accused has to be asked whether he pleads guilty of the offences discharged and thereafter only, the Court has to summon the prosecution witnesses and to commence the recording of evidence.

8. Chapter XIV of the Code deals with the charge which contains 14 Sections in which Sections 211 to 217 speak about the form of charges and whereas Sections 218 to 224 speak about the joinder of charges. Section 216 of the Code gives powers to the Courts to add or alter charge. The words "add to" in that Section makes it clear that a charge can be added and the charge already framed can be altered or amended.



9. At this juncture, it is necessary to refer Section 215 of the Code and the same is extracted hereunder:

"215. Effect of errors. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice."

10. The above provision has to be read with Section 464 of the Code which deals with the effect of the omission to frame or absence of, or error in, charge. A combined reading of the above two provisions make it clear that unless the irregularity or omission has misled or caused prejudice to the accused in his defence and has occasioned a failure of justice, it will not vitiate the trial.

11. It is pertinent to mention that omission to frame the charge or any error in the charge, would only be material, if prejudice has been caused. Section 464 Cr.P.C. is in mandatory terms and specifically provides what is to be done in cases where a charge is not framed or there is an error, omission or irregularity in framing of the charge. To put it in other way, omission to frame a charge or any error, omission or irregularity in the charge will be a ground for retrial, if it has occasioned a failure of justice. The real test is to find out whether the accused has been prejudiced.

12. At this juncture, it is necessary to refer a judgment of the Constitution Bench of the Honourable Supreme Court in **Willie Slaney Vs. State of Madhya Pradesh** reported in **AIR 1956 SC 116** and the relevant passages are extracted hereunder:

" 6. Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere in consequential



errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.

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7. Now here, as in all procedural laws, certain things are regarded as vital. Disregard of a provision-of that nature is fatal to the trial and at once invalidates the conviction. Others are not vital and whatever the irregularity they can be cured; and in that event the conviction must stand unless the Court is satisfied that there was prejudice. Some of these matters are dealt with by the Code and wherever that is the case full effect must be given to its provisions."

13. The Hon'ble Supreme Court in **Gurbachan Singh Vs. State of Punjab** reported in **AIR 1957 SC 623** has held that in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and dearly and whether he was given a full and fair chance to defend himself.

14. It is settled law that in view of Section 464 Cr.P.C., the appellate or revisional Court is of opinion that a failure of justice has in fact been occasioned in deciding the question of prejudice, the Courts would see the substance and not to technicalities and to assess whether the accused was given a fair trial and that he knew about what he is being tried for and whether he was afforded full opportunity to defend himself or not. If the answers to the above questions are in the affirmative, then Section 464 Cr.P.C., would be applicable and the trial will not be vitiated. Moreover, if the accused has not taken any objection as to the omission to frame a charge or irregularity in framing the charge before the trial Court, nor was any prejudice caused to him, as a result of such omission or irregularity, the defect is certainly curable under Section 464 Cr.P.C.

15. It is well settled law that the finding or sentence of the Court shall not be set aside merely on the ground that a charge was not framed or the charge framed was defective, unless it has occasioned any prejudice. No doubt, fair trial is a *sine qua non* in criminal justice system. But at the same time, the Code of Criminal Procedure is designed to further ends of justice and not to frustrate them by introducing a hyper technicalities and that every case must depend on its own merits and no straight jacket formula can be adopted.



16. In the case on hand, admittedly charges were not framed. It is evident from the records that the respondent has laid a charge sheet for the offences under Sections 406, 465, 468, 471, 419, 420 r/w 34 I.P.C. It is pertinent to note that the learned Magistrate has framed charges under Sections 406, 468, 471 and 420 I.P.C., against the first accused and under Sections 406 r/w 34, 465 r/w 34, 468 r/w 34, 471 r/w 34 and 420 r/w 34 I.P.C., as against the accused 2, 5 and 6.

17. As rightly contended by the learned Senior Counsel for the petitioner, the prosecution has proceeded with the trial and the defence has proceeded with the cross-examination of the prosecution witnesses on the basis of the accusation shown in the charge sheet. As already pointed out, the learned Magistrate has also framed charges for the said offences. As rightly contended by the learned Senior Counsel for the petitioner, the prosecution cannot contend that they have proceeded with the examination of the witnesses without knowing the case on hand.

18. It is pertinent to mention that the petitioner/accused has not taken any stand that he was not aware of the substance of the accusation or that he was not provided full and fair chance to cross-examine the prosecution witnesses and to defend himself.

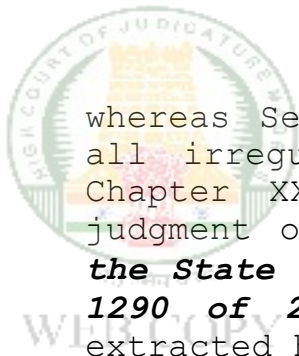
19. Now it is time to refer the residuary provision of Section 465 Cr.P.C., and the same is extracted hereunder:

465. Finding or sentence when reversible by reason of error, omission irregularity.

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

20. In Chapter XXXV Cr.P.C., Sections 462 to 464 speak about the specific irregularities which would vitiate the proceedings and



whereas Section 465 Cr.P.C., is a residuary provision that covers all irregularities that are not covered by other provisions in Chapter XXXV. At this juncture, it is necessary to refer the judgment of the Honourable Supreme Court in **Pradeep S.Wodeyar Vs. the State of Karnataka** reported in **LL2021 SC 691 (Crl.A.Nos.1288 to 1290 of 2021, dated 29.11.2021)** and the relevant passages are extracted hereunder:

"40. The overarching purpose of Chapter XXXV CrPC, as is evident from a reading of Sections 460 to 466, is to prevent irregularities that do not go to the root of the case from delaying the proceedings. Sections 462-464 lay down specific irregularities which would not vitiate the proceedings. Section 465 on the other hand is a broad residuary provision that covers all irregularities that are not covered by the above provisions. This is evident from the initial words of Section 465, namely, -Subject to the provisions hereinabove contained?. Therefore, irregular proceedings that are not covered under Sections 461-464 could be covered under Section 465. It is also evident that the theme of 'failure of justice', uniformly guides all the provisions in the Chapter. There is no indication in Section 465 and in Sections 462-464 that the provisions only apply to orders of conviction or acquittal. All the provisions use the words -finding, sentence or order."

43. The test established for determining if there has been a failure of justice for the purpose of Section 465 is whether the irregularity has caused prejudice to the accused.³³ No straitjacket formula can be applied. However, while determining if there was a failure of justice, the Courts could decide with reference to inter alia the stage of challenge, the seriousness of the offence charged, and apparent intention to prolong proceedings. It must be determined if the failure of justice would override the concern of delay in the conclusion of the proceedings and the objective of the provision to curb the menace of frivolous litigation."

21. There is a chance for interpretation that "omission to frame" found in Section 464(1) Cr.P.C., would not be applicable to the cases where charges were not at all framed. Even assuming for argument sake, that Section 464 Cr.P.C., would not be applicable to the cases where the charges were not at all framed, considering the dictum of the Hon'ble Supreme Court, that irregularity can be considered under Section 465 Cr.P.C.

22. Section 386 Cr.P.C., gives power to the Appellate Courts to order re-trial. The power of the Appellate Court to order re-



trial is recognised in Section 386(a) Cr.P.C., while considering the appeal from the judgment of the acquittal and the same is also recognised in Clause b(i) while considering the appeal from a conviction and in clause c(i), while considering the appeal for enhancement of sentence. Though the power to order re-trial has been referred in three places in Section 386 Cr.P.C., the position of law settled by the Hon'ble Supreme Court is that the same has to be made in exceptional cases.

23. The Constitution Bench of the Hon'ble Apex Court in **Pandit Ukha Kolhe vs The State Of Maharashtra** reported in **1964 SCR (1) 926** has observed as follows:

"An order for retrial of a criminal case is made in exceptional cases, and not unless the appellate court is satisfied that the Court trying the proceeding had no jurisdiction to try it or that the trial was vitiated by serious illegalities or irregularities or on account of misconception of the nature of the proceedings and on that account in substance there had been no real trial or that the Prosecutor or an accused was, for reasons over which he had no control, prevented from leading or tendering evidence material to the charge, and in the interests of justice the appellate Court deems it appropriate, having regard to the circumstances of the case, that the accused should be put on his trial again. An order of re-trial wipes out from the record the earlier proceeding, and exposes the person accused to another trial which affords the prosecutor an opportunity to rectify the infirmities disclosed in the earlier trial, and will not ordinarily be countenanced when it is made merely to enable the prosecutor to lead evidence which he could but has not cared to lead either on account of insufficient appreciation of the nature of the case or for other reasons."

24. In **State Of Madhya Pradesh vs Bhooraji & Others** reported in **(2001) 7 SCC 679**, the Hon'ble Apex Court has held that the Appellate Court can send the case for re-trial only when there is a failure of justice and the Court must be conscious of huge pendency of cases in the trial Court and the relevant passages are extracted herein:

"8.... A de novo trial should be the last resort and that too only when such a course becomes so desperately indispensable. It should be limited to the extreme exigency to avert a failure of justice. Any omission or even the illegality in the procedure which does not affect the core of the case is not a ground for ordering a de novo trial. This is because the appellate court has plenary powers for re-evaluating or re-appraising the evidence and even to



take additional evidence by the appellate court itself or to direct such additional evidence to be collected by the trial court. But to replay the whole laborious exercise after erasing the bulky records relating to the earlier proceedings, by bringing down all the persons to the court once again for repeating the whole depositions would be a sheer waste of time, energy and costs unless there is miscarriage of justice otherwise. Hence the said course can be resorted to when it becomes unpreventable for the purpose of averting a failure of justice. The superior court which orders a de novo trial cannot afford to overlook the realities and the serious impact on the pending cases in trial courts which are crammed with dockets, and how much that order would inflict hardship on many innocent persons who once took all the troubles to reach the court and deposed their versions in the very same case. To them and the public the re-enactment of the whole labour might give the impression that law is more pedantic than pragmatic. Law is not an instrument to be used for inflicting sufferings on the people but for the process of justice dispensation."

(emphasis supplied).

"15. A reading of the section makes it clear that the error, omission or irregularity in the proceedings held before or during the trial or in any enquiry were reckoned by the legislature as possible occurrences in criminal courts. Yet the legislature disfavoured axing down the proceedings or to direct repetition of the whole proceedings afresh. Hence, the legislature imposed a prohibition that unless such error, omission or irregularity has occasioned "a failure of justice" the superior court shall not quash the proceedings merely on the ground of such error, omission or irregularity.

16. What is meant by a failure of justice occasioned on account of such error, omission or irregularity? This Court has observed in Shamnsaheb M. Multtani vs. State of Karnataka {2001 (2) SCC 577} thus:

"23. We often hear about failure of justice and quite often the submission in a criminal court is accentuated with the said expression. Perhaps it is too pliable or facile an expression which could be fitted in any situation of a case. The expression failure of justice would appear, sometimes, as an etymological chameleon (the simile is borrowed from Lord Diplock in Town Investments Ltd. v. Deptt. of the Environment, 1977 (1) All E.R. 813). The criminal court, particularly the superior court should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage."

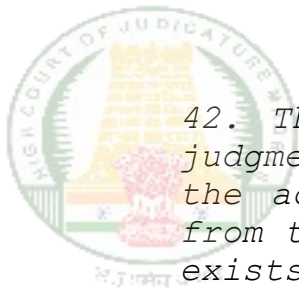


25. In **Zahira Habibullah Sheikh & Another vs State Of Gujarat & Others** (called as best Bakery case) reported in (2004)4 SCC 158, the Hon'ble Supreme Court had directed re-trial and when the said judgment was relied on subsequently, the Hon'ble Apex Court has specifically observed that the law laid down in **Best Bakery case** for re-trial was in the extraordinary circumstances and cannot be applied for all cases.

26. It is necessary to refer the judgment of the Hon'ble Supreme Court in **Ajay Kumar Ghoshal etc. Vs. State of Bihar and another** in **Crl.A.Nos.119 - 122 of 2017, dated 31.01.2017:**

"17. After considering the question a "speedy trial" and "fair trial" to a person accused of a crime and after referring to a catena of decisions and observing that guiding factor for retrial must always be demand of justice, in Mohd. Hussain @ Julfikar Ali vs. State (Govt. of NCT of Delhi) (2012) 9 SCC 408, this Court held as under:-

"41. 'Speedy trial' and 'fair trial' to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of an accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal court is confronted with the question whether or not retrial of an accused should be ordered.



42. The appellate court hearing a criminal appeal from a judgment of conviction has power to order the retrial of the accused under Section 386 of the Code. That is clear from the bare language of Section 386(b). Though such power exists, it should not be exercised in a routine manner. A 'de novo trial' or retrial is not the second trial; it is continuation of the same trial and same prosecution. The guiding factor for retrial must always be demand of justice. Obviously, the exercise of power of retrial under Section 386(b) of the Code, will depend on the facts and circumstances of each case for which no strait jacket formula can be formulated but the appeal court must closely keep in view that while protecting the right of an accused to fair trial and due process, the people who seek protection of law do not lose hope in legal system and the interests of the society are not altogether overlooked."

27. The Hon'ble Supreme Court recently in **Nasib Singh vs The State Of Punjab and another** in **Crl.A.Nos.1051-1059 of 2021, dated 08.10.2021**, after considering various decisions of the Supreme Court, has formulated the principles on retrial and the same are extracted hereunder:

"(i) The Appellate Court may direct a retrial only in 'exceptional' circumstances to avert a miscarriage of justice;

(ii) Mere lapses in the investigation are not sufficient to warrant a direction for re-trial. Only if the lapses are so grave so as to prejudice the rights of the parties, can a retrial be directed;

(iii) A determination of whether a 'shoddy' investigation/trial has prejudiced the party, must be based on the facts of each case pursuant to a thorough reading of the evidence;

(iv) It is not sufficient if the accused/ prosecution makes a facial argument that there has been a miscarriage of justice warranting a retrial. It is incumbent on the Appellant Court directing a retrial to provide a reasoned order on the nature of the miscarriage of justice caused with reference to the evidence and investigatory process;

(v) If a matter is directed for re-trial, the evidence and record of the previous trial is completely wiped out; and

(vi) The following are some instances, not intended to be exhaustive, of when the Court could order a retrial on the ground of miscarriage of justice :



- a) The trial court has proceeded with the trial in the absence of jurisdiction;
- b) The trial has been vitiated by an illegality or irregularity based on a misconception of the nature of the proceedings; and
- c) The prosecutor has been disabled or prevented from adducing evidence as regards the nature of the charge, resulting in the trial being rendered a farce, sham or charade."

28. Section 259 Cr.P.C., deals with the power of Court to convert summons cases into warrant cases and in a case of conversion into a warrant case, the Magistrate has to frame charges and to proceed to rehear the case in the manner provided by the Code, for the trial of warrant cases and may recall any witness who may have been examined. Even in the case of change in nature of the proceedings, the Code contemplates the procedure of recalling the witnesses who have been examined and not for retrial. As already pointed out, even if a judgment of conviction is passed and the same is challenged before the Appellate Court, the judgment cannot be set aside on the ground that the illegality or irregularity has been committed, if it is not shown the failure of justice had occasioned.

29. It is pertinent to note that the learned Senior Counsel appearing for the petitioner, on instructions, would submit that the petitioner undertakes that he will not challenge the proceedings or the result of the proceedings on the ground that the charges were not framed before the commencement of trial. As rightly contended by the learned Senior Counsel for the petitioner, neither the prosecution nor the defacto complainant has shown in what way they were prejudiced or they would be prejudiced if the trial is proceeded. As rightly argued by the learned Senior Counsel appearing for the petitioner, the right to speedy trial has been recognised as a fundamental right by the Hon'ble Supreme Court and the Constitution Bench of the Hon'ble Supreme Court in **Kartar Singh Vs. State of Punjab** reported in **(1994)3 SCC 569** has held as follows:

"86. The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. In this context, it may be noted



that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure."

30. In the case on hand, admittedly the case is pending from the year 2003 onwards for the past 19 years. As already pointed out, 25 witnesses have already been examined and if the re-trial is permitted, then it will consume more time to summon and examine all the 25 witnesses, who were already examined. As rightly contended by the learned Senior Counsel, the learned Magistrate has not advanced any reason or ground for ordering *denovo* trial except saying that the charges were not framed initially.

31. As rightly pointed out by the learned Senior Counsel for the petitioner, if re-trial is allowed, then the accused will be put to great prejudice since evidence already recorded including the admissions elicited in favour of the defence will be wiped out. It is pertinent to note that if the trial is ordered to be proceeded, the prosecution as well as the defence will not be prejudiced.

32. Considering the above facts and circumstances and on applying the legal dictum laid down by the Hon'ble Supreme Court, this Court has no hesitation to hold that the impugned order of the learned Judicial Magistrate in ordering *denovo* trial is not good in law and the same is liable to be set aside. But, at the same time, the prosecution as well as the defence are at liberty to recall any or all of the witnesses who have been already examined.

33. In the result, the Criminal Original Petition is allowed and the impugned order of the learned Judicial Magistrate directing *denovo* trial is set aside. Consequently, the connected Miscellaneous Petition is closed. It is clarified that the prosecution as well as the defence are at liberty to recall any or all of the witnesses who have been already examined. The learned Judicial Magistrate is directed to complete the trial and dispose of the same within a period of three months from the date of receipt of a copy of this order.

Sd/-

Deputy Registrar (Accounts)

// True Copy //

/ /2022

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 Court No.I,
Thanjavur.

2.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D.SHANMUGARAJA SETHUPATHI, Advocate (SR-8581[F] dated
25/02/2022)

Crl.O.P. (MD) No.14128 of 2018
24.02.2022

RD(16.03.2022) 14P 4C