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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2022

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.20207 of 2021

and

Crl.M.P(MD)Nos.11441 & 11443 of 2021

R.Thirumanacheri ... Petitioner/Accused No.10

Vs.

1.The State represented by,
The Deputy Superintendent of Police,
Alangudi, Pudukkottai District.

2.The State represented by,
The Inspector of Police,
Vadakadu Police Station,
Pudukkottai.

(Crime No.2 of 2014) ... Respondents 1 & 2/Complainant

Subramanian (died) ... Defacto complainant

3.Vignesh ... 3rd Respondent/Victim/P.W.1

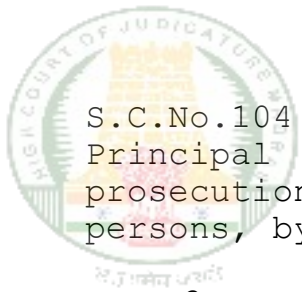
Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to **(*)Spl.S.C.No.58 of 2019** on the file of the learned the **(*)Special Court for SC/ST (POA) Act cases**, Pudukkottai and quash the proceedings as against the petitioner herein.

For Petitioner : Mr.D.Rameshkumar
For RR 1 & 2 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in **(*)Spl.S.C.No.58 of 2019** on the file of the learned **(*)Special Court for SC/ST (POA) Act cases**, Pudukkottai as against the petitioner.

2.Originally, a case has been registered in Crime No.2 of 2014 as against 11 named persons including the petitioner herein. After investigation, the respondent filed the final report as against 11 named accused persons. Subsequently, the said case was split up in S.C.No.216 of 2017 and the learned Principal District and Sessions Judge, Pudukkottai has taken cognizance as against the petitioner and others for the alleged offences under Sections 147, 148, 294(b) and 506(ii) of I.P.C and Section 3 of TNPPDL Act and Section 3(1)(r) of SC/ST Act. After elaborate trial, in main case in



S.C.No.104 of 2014, A.1 to A.6 have been acquitted by the Principal District and Sessions Judge, Pudukkottai, since the prosecution failed to prove the charges as against the accused persons, by judgment dated 06.03.2019.

3. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 and perused the entire materials available on record.

4. On a perusal of the materials available on record revealed that the other accused persons faced trial in S.C.No.104 of 2014 and ended in acquittal from all the charges for the reason that all the witnesses turned hostile. The relevant portion of the Judgment reads as follows:-

"17. As discussed above, all the witnesses are denying the alleged occurrence and their evidence are not corroborated with the statements recorded by the Investigation Officer. Moreover the complainant also died. Even then the other eye witnesses are not stated about the alleged occurrence. All the witnesses are turned hostile. Therefore, the prosecution witnesses are failed to establish that with intention of the accused abused the complainant by mentioning his caste and also not proved that the complainant was threatened by the accused and the damages also not proved by the prosecution witnesses. Therefore charges against the accused not been proved beyond reasonable doubt and that the accused are entitled to get the benefit of doubts and the resultant acquittal."

5. In this regard, it is relevant to rely the judgment reported in **2007-1 L.W.(Crl.) 514 - Tamilmaran Vs. The State rep. by Inspector of Police, Paravakottai Police Station, Mannargudi Taluk, Thiruvarur District**, where, this Court has held as follows:

"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:



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"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 eye-witnesses, 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 eye-witnesses, 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



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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."

6.Further, this Court and various High Courts repeatedly held that the acquittal of the other co-accused, after considering the depositions and holding their evidence to be unreliable, the trial Court cannot re-assess their depositions once again and take a contrary view. Therefore, this Court is of the considered view that the above settled proposition of law laid down in the above decision is squarely applicable to the case on hand.

7.In the present case, A.1 to A.6 have been tried the charges and acquitted in C.C.No.104 of 2014 by the trial Court by the judgment dated 06.03.2019 holding that all the witnesses are turned hostile. The petitioner being A10 is also standing in the same footing like the other accused persons. While being so, if the trial proceeded as against the petitioner with the same witnesses, no useful purpose would be served to make the petitioner to undergo the ordeal of the trial since all the witnesses were turned hostile.

8.In view of the above discussion, this Criminal Original Petition is allowed and the proceedings in **(*)Spl.S.C.No.58 of 2019** on the file of the learned **(*)Special Court for SC/ST (POA) Act cases**, Pudukkottai is quashed as against the petitioner/A10 is concerned. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

(*)Amended as per order of this Hon'ble Court dated 14.06.2022 made in Crl.MP(MD)No.6566 of 2022 in Crl.OP(MD)No.20207 of 2021

Sd/-

Assistant Registrar (CO)

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/ /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 / concerned.

To

(*)To be substituted to the order already despatched on 19/04/2022

1.The Principal District and Sessions Judge,
Pudukkottai.

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

3.The Inspector of Police,
Vadakadu Police Station,
Pudukkottai.

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

5. The Judge,
Special Court for SC/ST (POA) Act cases,
Pudukkottai.

Order made in
Crl.O.P(MD)No.20207 of 2021
29.03.2022

RD(13.04.2022) 5P 5C

RD(12.07.2022) 5P 6C