



*Crl.O.P.No.31052 of 2022
in Crl. A. SR. No.5536 of 2020*

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**Crl.O.P.No.31052 of 2022
in
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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

(Order of this Court was made by **M.SUNDAR,J.,**)

This order will now dispose of the captioned 'Criminal Original Petition' (hereinafter 'Crl.O.P.' for the sake of brevity).

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 17.08.2023 which reads as follows:

**'Crl.O.P.No.31052 of 2022
in Crl.A.SR.No.5536 of 2020
(Filing Number)**

**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

[Order of this Court was made by M.SUNDAR,J.,]

Captioned 'Criminal Original Petition' [hereinafter 'Crl.OP' for the sake of brevity, convenience and clarity] has been filed seeking leave for preferring an appeal against a judgment of acquittal made by learned Principal Sessions Judge, Villupuram in S.C.No.8 of 2011 dated 12.09.2019. This 12.09.2019 judgment of acquittal shall hereinafter be referred to as 'impugned judgment' for the sake of convenience and clarity.



Crl.O.P.No.31052 of 2022
in Crl. A. SR. No.5536 of 2020

WEB COPY

2. There are fifteen respondents in all in the captioned Crl.OP. Respondents 1 to 14 were accused in the trial Court and respondent No.15 is State.

3. Mr.A.G.Rajan, learned counsel on record for petitioner, Mr.D.Ashok Kumar, learned counsel representing Mr.V.S.Dixit, counsel on record for respondents 1 to 10, Mr.D.Ashok Kumar, learned counsel on record for respondents 11 to 14 and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor, State of Tamil Nadu for respondent No.15 are before us.

4. The de facto complainant, who is father of the victim is the petitioner / proposed appellant before us. To be noted, charge was inter alia under Section 302 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity].

5. On a prima facie view, in the light of **Mallikarjun Kodagali** case law [**Mallikarjun Kodagali Vs. State of Karnataka and others reported in (2019) 2 SCC 752**] and **Naval Kishore Mishra** case law [**Naval Kishore Mishra Vs. State of Uttar Pradesh reported in (2019) 13 SCC 182**] it appears that the petitioner will also qualify as 'victim' within the meaning of Section 2(wa) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] and therefore, leave may really not be necessary. However, Mr.D.Ashok Kumar, learned counsel requests for a short accommodation.

6. We make it clear that leave is a matter between Court and petitioner nonetheless the respondents were put on notice as a matter of good order and as learned counsel for private respondents is before us, we accede to the request for



*Crl.O.P.No.31052 of 2022
in Crl. A. SR. No.5536 of 2020*

adjournment.

*7. Let the matter stand over by a fortnight. List on
31.08.2023.'*

3. Today, Mr.A.G.Rajan, learned counsel on record for petitioner, Mr.V.S.Dixit, learned counsel for respondents 1 to 10, Mr.D.Ashok Kumar, learned counsel for respondents 11 to 14 and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor for 15th respondent are before us.

4. As regards *Mallikarjun Kodagali [Mallikarjun Kodagali Vs. State of Karnataka and others reported in (2019) 2 SCC 752]* and *Naval Kishore Mishra [Naval Kishore Mishra Vs. State of Uttar Pradesh reported in (2019) 13 SCC 182]* principles, in a similar matter of appeal against judgment of acquittal, we had held that leave is really not necessary as the appellant is also a 'victim' within the meaning of Section 2(wa) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] being a close blood relative of the deceased. This is vide order dated 23.08.2023 in Crl.M.P.No.12168 of 2023 in Crl.A.No.649 of 2023, which reads as follows:



Crl.O.P.No.31052 of 2022
in Crl. A. SR. No.5536 of 2020

**' Crl.M.P.No.12168 of 2023
in Crl.A.No.649 of 2023**

M.SUNDAR, J.,

and

R.SAKTHIVEL, J.,

[Order of this Court was made by M.SUNDAR,J.,]

Captioned main criminal appeal has been filed in this Court against a judgement of acquittal dated 23.12.2022 made in S.C.No.62 of 2010 on the file of Court of Principal District and Sessions Judge, Thiruvavur' [hereinafter 'trial Court' for the sake of convenience and clarity].

2. Mr.R.Vivekanandan, learned counsel on record for petitioner submits that the petitioner is maternal uncle of victim {to be noted, it is a case of offence under Section 302 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity]} and he has also deposed as PW1 in the trial Court.

3. Be that as it may, learned counsel submits that in the light of **Mallikarjun Kodagali** case law [**Mallikarjun Kodagali Vs. State of Karnataka and others reported in (2019) 2 SCC 752**] leave is really not necessary as the petitioner qualifies as a 'victim' within the meaning of Section 2(wa) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity]. Section 2(wa) of Cr.PC reads as follows:

2. Definitions.- In this Code, unless the context otherwise requires, -

(a) to (w)



Crl.O.P.No.31052 of 2022
in Crl. A. SR. No.5536 of 2020

WEB COPY

'(wa) "Victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir.'

4. Adverting to the aforementioned provision, learned counsel submitted that a person who suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged will also qualify as a victim. Elaborating on this, learned counsel submitted that the term 'Injury' has been defined under Section 44 of IPC and the same reads as follows:

'44. "Injury" - The word "Injury" denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.'

5. It was emphasised that any harm to any person qua body, mind or reputation would also be injury within the meaning of Section 44 of IPC. Loss of his nephew would certainly be injury qua mind but we hasten to add (though obvious) that this is no expression of opinion on merits.

6. On the facts and circumstances of the case, we find that the submissions are acceptable and therefore, we deem it appropriate to dispose of the captioned Crl.MP as closed saying the same is unnecessary.

Captioned Crl.MP is disposed of as closed.'

5. In the case on hand, when the captioned criminal appeal against acquittal was originally filed, one Thiru.Devaraj, father of the



*Crl.O.P.No.31052 of 2022
in Crl. A. SR. No.5536 of 2020*

deceased was the appellant. Pending leave prayer, Thiru.Devaraj died and his another son Thiru.D.Karthi (blood brother of the deceased) is now the petitioner who is seeking leave. In the light of the aforementioned order dated 23.08.2023 in Crl.M.P.No.12168 of 2023 in Crl.A.No.649 of 2023, we have no hesitation in saying that the petitioner Thiru.D.Karthi would also qualify as a 'victim' within the meaning of Section 2 (wa) Cr.P.C. We are informed that according to the prosecution theory, the petitioner before us was also injured and he had also deposed as P.W.5 before the Trial Court but we hasten to add that this is set out only as a buttressing feature qua prima facie view as regards leave plea and therefore this will also be tested in the main appeal when taken up.

6. In the light of the narrative thus far, we hold that leave is really not necessary and we direct the Registry to process the captioned appeal, assign number to the same (if otherwise in order and if other objections are removed) and list the appeal 'for Admission'.

7. Captioned Crl.O.P. is ordered accordingly.

**[M.S.,J.] [R.S.V.,J.]
31.08.2023**

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*Crl.O.P.No.31052 of 2022
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**Crl.O.P.No.31052 of 2022
in Crl. A. SR. No.5536 of 2020**

31.08.2023