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CrI.O.P.No.22201 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

CrI.O.P.No.22201 of 2024

Arun Jain

... Petitioner

Vs.

State Rep.by
The Inspector of Police,
Central Crime Branch,
Tiruppur
C.C.No.734 of 2017

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C./
528 BNSS, pleased to call for the entire records in C.C.No.734 of 2017
(Crime No.4 of 2013) pending on the file of the learned Judicial
Magistrate Court No.III, Tiruppur and set aside the order passed on
08.03.2024.

For Petitioner : Mr.D.M.Bhalla

For Respondent : Mr.S.Udayakumar
Government Advocate (CrI.Side)

ORDER

Heard the learned counsel appearing for the petitioner and the
learned Government Advocate (CrI.Side) appearing for the respondent
police.



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2. The petitioner herein is one of the accused in C.C.No.734 of

2017, pending on the file of the Judicial Magistrate No.III, Tiruppur.

Since Accused 4 and 5 in that case were not appeared before the Court, summons and warrant issued against them but the same could not be served and executed due to absconding. In the said circumstances, proceedings in the case was delayed and the defacto complainant, Suresh Kumar earlier approached this Court in Crl.O.P.No.24584 of 2022 seeking expeditious disposal of the case within time frame.

3. While considering the said petition filed under Section 482 Cr.P.C., this Court disposed of the petition with the following directions:-

“In view of the above submission, this Court directs the respondent police to file a split up petition before the trial Court and also take steps to secure A4 and A5. If there is any further delay, declare them as proclaimed offender, split the case and proceed with the trial against A1 to A3. There are 43 witnesses listed. On filing of petition for proclamation, the learned Judicial Magistrate No.III, Tiruppur is directed to give top priority, proceed with the trial and dispose of the case



preferably within a period of six months from the date of receipt of a copy of this order.”

4. Pursuant to this direction, the prosecution has filed the petition under Rule 32(3) of the Criminal Rules of Practice to split up the case against A4 and A5 in C.C.No.734 of 2017. This petition was opposed by A1 to A3 by filing counter stating that before complying the conditions stipulated in Rule 32 of the Criminal Rules of Practice, particularly, the proclamation of the absconding accused, Court cannot proceed with the splitting of the case. The trial Court has to take all efforts to procure the absconding accused or else split up the case as against the absconding accused will greatly prejudice the Accused 1 to 3.

5. Relying upon Section 299 Cr.P.C., the Section 29 and 32 of Criminal Rules of Practice as well as the terms stipulated by the High Court in its order dated 26.06.2023 in CrI.O.P.No.24584 of 2022, the Accused 1 to 3 resisted the Court from passing order for splitting up the case against the absconding accused A4 and A5. However, the trial Court, considering the reasons stated by the prosecution to split up the case and the counter filed by the A1 to A3 resisting the application, has



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allowed the application to split up the case against A4 and A5, who are absconding accused in C.C.No734 of 2017.

6. Being aggrieved by the said order, this petitioner who is A3 has preferred a revision petition before the District and Sessions Judge, Tiruppur. It was again canvassed that the non compliance of Section 82 of Cr.P.C., and the terms laid in Rule 32 of Criminal Rules of Practice has caused great prejudice to the petitioner herein. It was contended that the prosecution cannot rely upon the order passed by the High Court as a direction issued and violate the mandatory requirements imposed under the Criminal Rules of Practice, for splitting up the case against the absconding accused. Section 299 of Cr.P.C., has no application to the case in hand, since the Calender Case against this petitioner and the absconding accused are for offence under Sections 406, 420 & 506(i) IPC. Whereas, Section 299 of Cr.P.C., is in respect of record of evidence in the absence of accused only when the offence punishable to death or life imprisonment. The said revision petition was heard by the learned Sessions Court and dismissed it vide order dated 08.03.2024 confirming the order of the trial Court allowing the application to split up the case against A4 and A5. Being aggrieved, the present Criminal Original



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Petition is filed.

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7. The points canvassed before the trial Court as well as the revision Court been reiterated by the learned counsel appearing for the petitioner. Before advertng to the merits of the case, this Court is bound to place on record, the spirit and the purpose for which Rule 31 brought on statute. Taking into consideration, Section 82 of Cr.P.C., as well as the present scenario in the criminal Courts in India, whenever there are more than one accused, they abstain themselves one after another in turn and delay the process. This petition will be filed by the accused to recall warrant in turn. Taking advantage of the over load in the Courts, this technique has been well perfected by the accused. Therefore, to avoid delay in rendering justice atleast to the person who submit themselves to due process of law, it was thought fit that the case against absconding accused to be split up and the person who submit themselves to the process of law to be tried and justice delivered.

8. In the instant case CCB, Tiruppur on the complaint given by one Suresh Kumar registered a case on 13.03.2013 in Crime No.4 of 2013 as against five accused. On completion of investigation final report



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filed and initially it was taken on file as C.C.No.712 of 2015 by the Judicial Magistrate No.1, Tiruppur. After constituting new Court, it was transferred to the Judicial Magistrate No.III, Tiruppur and renumbered as C.C.No.734 of 2017. Pending investigation, all the five accused obtained anticipatory bail. However, the accused persons failed to furnish surety, this was brought to the notice of the Judicial Magistrate No.I, which lead to issuance of bailable warrant. On 23.11.2013, this petitioner who is arrayed as A3 alone was secured and others remained absconding. Final report filed showing rest of the accused as absconding accused. Later A1 and A2 surrendered.

9. In the said circumstances, due to inordinate delay in proceeding with the trial, the defacto complainant approached this Court for expeditious trial. In his application order was passed on 26.06.2023. The operative portion of the order already been extracted. Split up petition was filed as against A4 and A5 and that was taken into consideration and the order passed by the trial Court to split up the case was confirmed by the Sessions Court in the revision petition. The specific case of the petitioner herein is that before ordering split up, the trial Court ought to have complied the Rule 29 and 31 of Criminal Rules of Practice.



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Proclamation proceedings ought to have been initiated and completed before split up of the case. The failure to declare A4 and A5 as proclaimed offender renders the order splitting up the case against them a nullity.

10. This Court with certainty affirms that proclamation of an absconding accused is independent to the trial of remaining accused. Section 82 of Code, deals with proclamation of a person absconding. Section 299 of the Code deals with recording of evidence in the absence of the accused. The intend of both these provisions is to prevent prolonged delay of trial due to abscondance of one or more accused. However, mere proclamation will not be sufficient unless the case against the absconding accused gets split up and the trial of the remaining accused to be proceeded or else the absconding accused at the fag end of the trial will enter the scene of seek for recall the witnesses and delay the disposal of the case.

11. In this case, for not proclaiming the absconding accused A4 and A5 been shown as prejudice to the petitioner herein. It is pertinent to note that split up of the case of absconding accused can be done even



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without proclamation of the absconding accused, there is no bar. The process of proclamation can be done simultaneously and independently.

The effect of proclamation is only to the extent of using the testimony of the witnesses recorded in the absence of the absconding accused, since under the old Code, proclamation will enable the prosecution to use the testimony of the witnesses recorded in the absence of the proclaimed offender as against them and if the absconding accused not declared as a proclaimed offender, the prosecution has to examine the witnesses afresh. This difference is also now been taken away by the new BNSS. In the light of the above discussion, the Court has to look whether splitting up of the absconding accused any way cause prejudice to the accused who have submitted themselves for trial. In this case, this Court finds that though the petitioner claims that without proclamation splitting up the case against the absconding accused will cause prejudice, how he will be prejudice not been explained. This Court is of firm view that splitting up the case as against the absconding accused in fact will be in the interest of the petitioner and other two accused who have submitted themselves for the trial.

12. A preposterous argument placed by the counsel for the



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Neutral Citation : Yes/No

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To

1.The Judicial Magistrate Court No.III, Tiruppur

2.The Inspector of Police,
Central Crime Branch,
Tiruppur

3.The Public Prosecutor,
High Court of Madras,
Chennai.

Dr.G.JAYACHANDRAN,J.

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