



Crl.OP.No.22317 of 2024
in
Crl.A.SR.No.40751 of 2024

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S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

(Order of the Court was made by
S.M.SUBRAMANIAM, J.)

The Criminal Original Petition has been filed to grant leave to file an appeal against the acquittal judgment passed by the learned I Additional District and Sessions Court at Cuddalore in S.C.No.31 of 2019 dated 28.04.2023.

2. The learned Additional Public Prosecutor would mainly contend that the Trial Court has erred in not considering the vital evidence of P.W.1, who is an eye witness in the seen of occurrence.

3. The evidence of P.W.1 reveals that all the accused acquitted by the Trial Court are named and their participation also has been specifically deposed by P.W.1 before the Trial Court. However, there is no finding with reference to the deposition of P.W.1 naming the accused persons, who have been acquitted by the Trial Court.



4. Mr.T.Vijay, the learned Counsel for the respondents would oppose by stating that in para.23(g) of the Judgment impugned, A5, A8, A9, A12, A14, A16, A17 to A19 and A21 are acquitted on the ground that the evidence of P.W.1 to P.W.8 and P.W.10 deposed in general mode that the said 20 accused persons appeared during the evidence are very much present during the crime, but it requires to be tested. Therefore, the trial court tested the credibility of the witness, who deposed about the presence of these acquitted accused persons by the trial court.

5. We have considered the submissions made on behalf of the parties.

6. P.W.1 evidence is clear about the presence of accused persons A5, A8, A14, A16, A19 & A21. Their participation in the commission of crime also has been narrated by P.W.1 in his evidence. However, there is no specific finding with reference to the said evidence in the Judgment impugned.

7. Pertinently, the acquitted accused persons were also charged under Section 148, 302 r/w 149 of Indian Penal Code. When their presence are spelt out by the eye witness P.W.1, grant of acquittal requires further



consideration from the hands of this Court. Since the prosecution made out a *prima facie* case for the purpose of entertaining the appeal against the

Judgment of the Trial Court, we are inclined to grant leave as prayed for.

Accordingly, leave is granted.

(S.M.S., J.) (M.J.R., J.)
13.11.2024

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