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CrI.O.P.No.1072 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

CrI.O.P.No.1072 of 2024

K.Moorthy @ Jaya Moorthy @ K.N.K.Senjeraja ...Petitioner

Vs.

1.The Deputy Superintendent of Police
Gingee Sub Division
Gingee, Villupuram District.

2.The Inspector of Police
Gingee Police Station
Villupuram District.

3.Raja Maestrum ...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the record in SC No.1 of 2015 on the file of the Special Court for Exclusive Trial of SC/ST (POA), Villupuram.

For Petitioner : Mr.K.Moorthy @ Jaya Moorthy @
K.N.K.Senjeraja, P-in-P
For Respondents : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in S.C.No.1 of 2015 pending on the file of the Special Court for Exclusive Trial of SC/ST (POA), Villupuram.

2.This Court heard the petitioner, who appeared as Party-in-Person, the learned Additional Public Prosecutor, who appeared on behalf of the respondents 1 and 2.

3.It is brought to the notice of this Court that a case in counter was registered in Crime Nos.616 of 2006 and 617 of 2006. Both the FIR's resulted in filing of the final reports. In so far as the Crime No.616 of 2006 is concerned, it resulted in C.C.No.500 of 2006 on the file of the Judicial Magistrate, Gingee. In so far as the Crime No.617 of 2006, it resulted in S.C.No.1 of 2015 on the file of the Special Court for Exclusive Trial of SC/ST (POA), Villupuram, which is the subject matter in the present petition.



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4.It was brought to the notice of this Court that the C.C.No.500 of 2006 ended in acquittal by judgment dated 18.02.2016 by the learned Judicial Magistrate, Gingee, whereas, the counter case is kept pending before the Court below.

5. The manner in which the case in counter has to be dealt with by the Court was spelt out by the Hon'ble Apex Court in ***Nathi Lal and Ors., Vs. State of UP and Anr.***, reported in ***1990 SCC CrI 638***. This position of law once again reiterated by this Court in ***Ganesan and Ors., Vs. State rep.by the Inspector of Police (2011) 5 CTC 747*** and the relevant portions are extracted hereunder:-

“32. The said Judgment of the Hon'ble Supreme Court relates to counter cases. The Hon'ble Supreme Court has held that both the cases, which are counter cases relating to the same occurrence, should be tried by the same judge in the following manner:

“We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge



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must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the Judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the Judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate Judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the Judgments must be pronounced by the same learned Judge one after the other.

33. From the above, it is crystal clear that fair trial as guaranteed under Article 21 of the



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Constitution of India should be afforded to. In simple terms, the evidence, both oral and documentary, let in one case is not evidence in the other case and, therefore, the same cannot be considered for any purpose in the other case. Similarly, as laid down by the Hon'ble Supreme Court, there cannot be a common judgment delivered in two or more cases. Even in respect of cross cases arising out of a single occurrence in respect of each case there has to be a separate judgment. But, unfortunately, in the case on hand, the Trial Court has not followed the said procedure. As I have already stated, the Trial Court has recorded the evidence in one case and substituted the same in the other case. This procedure is illegal. Thereafter, the Trial Court has delivered a common judgment considering the evidence in common in respect of the other cases also. Rendering of a common judgment that too considering the evidences in common itself is illegal. For these reasons, I have no hesitation to hold that the common judgment delivered in all the four cases is vitiated. In these circumstances,



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this Court cannot again consider the evidence in common and render a common judgment solely because all these Appeals are against the common judgment, as the same would become another illegality. Therefore, these Appeals are disposed of on considering the evidence, if any, available on record in C.C. No. 9 of 2000 alone.”

6. In the light of the above discussion, it is clear that the case in counter has not been conducted as per the procedure and unfortunately, one of the case has already ended in acquittal as early as on 18.02.2016. Therefore, continuation of the proceedings in this case in S.C.No.1 of 2015 will be illegal and it would result in clear abuse of process of law and hence, it requires the interference of this Court.

7. In the result, the proceedings in S.C.No.1 of 2015 on the file of the Special Court for Exclusive Trial of SC/ST (POA), Villupuram, is quashed and the Criminal Original Petition is allowed.



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Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order

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To

1.The Deputy Superintendent of Police
Gingee Sub Division
Gingee, Villupuram District.

2.The Inspector of Police
Gingee Police Station
Villupuram District.

3.The Public Prosecutor,
High Court, Madras.



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