



CRL OP(MD)No.8626 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.08.2024

PRONOUNCED ON : 05.09.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

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Tamilarasan

... Petitioner

Vs

1.The Deputy Superintendent of Police,
Alangudi,
Pudukottai District.

2.The State,
Represented by the Inspector of Police,
Vadakadu Police Station,
Pudukottai.
[Crime No.2 of 2014]

... Respondents /
Complainants

Subramanian (died)
[Defacto complainant dies
and notice may be given up]

... Defacto complainant

3.Vignesh

... 3rd Respondent / Victim

PRAYER : Criminal Original Petition filed under Section 482 CrPC to call for the records pertaining to the SC.No.58 of 2019 on the file of the learned District and Sessions Court [Special Court for SC/ST (POA) Act, Cases], Pudukottai and quash the proceedings as against the petitioner herein.

For Petitioner : Mr.D.Ramesh Kumar

For Respondent : Mr.M.Sakthi Kumar
Nos.1 & 2 Government Advocate (Crl Side)



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ORDER

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The petitioner / A9 in Crime No.2 of 2014 on the file of the Inspector of Police, Vadakadu Police Station, Pudukottai District has filed this petition to quash the proceedings which is pending against him in SC.No.58 of 2019 before the District and Sessions Court (Special Court for SC / ST (POA) Act Cases), Pudukottai.

2.The case in Crime No.2 of 2014 is that on 01.01.2014 at about 1.15 am the defacto complainant was celebrating his birthday by cutting cake in front of a community hall and the accused, who came in a motor cycle have abused them by degrading their community and also assaulted the defacto complainant and others. In this incident, one Veeraiah has suffered grievous injuries and all the accused criminally intimidated the defacto complainant and others. Based on his complaint a case was registered in Crime No.2 of 2014 for the offence under Sections 147, 148, 294(b), 323, 326, 506(ii) and 307 IPC r/w Section 3(i)(x) of SC / ST (POA) Act, 1989 and Section 3 of TNPPDL Act. The respondents have filed their final report in the year 2014 and this petitioner was shown as A9 and he was charge sheeted for the offence under Sections 147, 148, 294(b), 326, 506(ii), 307 IPC and Section 3 of TNPPDL Act and Section 3 (i)(x) of SC/ST(POA) Act.

3.The case was committed to the Court of Sessions (Special Court for SC/ST (POA) Act Cases, Pudukottai in SC.No.104 of 2014. This petitioner / A9 and few other



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accused have not appeared before the trial Court in SC.No.104 of 2014 and therefore the case was split up and tried as against A1 to A6. A1 to A6 were acquitted by judgment dated 06.03.2019. As against the remaining accused, the case has been split up in SC.No.58 of 2019 and the case is posted for trial. Since the main accused A1 to A6 in the very same case in SC.No.104 of 2014 were acquitted by the trial Court by judgment dated 06.03.2019, this petitioner / A9 has filed this application to quash the proceedings, which is pending in SC.No.58 of 2019 on the file of the District and Sessions Court (Special Court for SC/ST (POA) Act cases, Pudukottai.

4.The learned Counsel for the petitioner submits that the charges as against this petitioner and A1 to A6 are similar and the witnesses in SC.No.104 of 2014 and SC.No.58 of 2019 are also one and the same. In the same set of charges and the evidence the trial Court in SC.No.104 of 2014 has already acquitted A1 to A6 in Crime No.2 of 2014. He further submits that no purpose would be served by subjecting the petitioner to undergo the ordeal of trial in SC.No.58 of 2019, when the main accused were acquitted. The defacto complainant as well as the eye witnesses have turned hostile and therefore, the case in SC.No.104 of 2014 ended in acquittal. Applying the very same evidence in SC.No.58 of 2019, there cannot be any other order than acquittal and therefore, this ordeal of trial is unnecessary and waste of judicial time. According to him even in the second round of trial the evidence to be produced by the prosecution must be similar and should not make any difference and therefore, there is no purpose to proceed the trial in SC.No.58 of 2019.



5.This Court considered the submissions of the learned Counsel for the petitioner and also perused the materials placed on record.

6.If the witnesses have not supported the case of the prosecution as against A1 to A6 in SC.No.104 of 2014, it cannot be presumed that the witnesses would take the very same stand in SC.No.58 of 2019 also. The charges framed as against A1 to A9 are also different. It is only during the course of trial, the witnesses adduce evidence as against the accused concerned. Therefore, this Court is not inclined to entertain this quash petition on the sole ground that the trial conducted as against A1 to A6 in SC.No.104 of 2014 ended in acquittal. It would be relevant to refer to the decision of a Full Bench of Kerala High Court in Moosa Vs Sub Inspector of Police, reported in 2006 CriLJ 1922 in similar circumstances and the relevant portion is extracted as under:

“53. In the light of the above discussions, we may summarise the legal position as follows:

(i) The inherent powers of the High Court reserved and recognised under [Section 482](#) of the Code of Criminal Procedure are sweeping and awesome; but such powers can be invoked only

(a) to give effect to any order passed under the Code of Criminal Procedure or

(b) to prevent abuse of process of any court or

(c) otherwise to secure the ends of justice.



Such powers may have to be exercised in an appropriate case to render justice even beyond the law.

(ii) Considering the nature, width and amplitude of the powers, it would be unnecessary, inexpedient and imprudent to prescribe or stipulate any straight jacket formula to identify cases where such powers can or need not be invoked.

(iii) But such powers can be invoked only in exceptional and rare cases and cannot be invoked as a matter of course. Where the Code provides methods and procedures to deal with the given situation, in the absence of exceptional and compelling reasons, invocation of the powers under [Section 482](#) of the Code of Criminal Procedure is not necessary or permissible.

(iv) The fact that an accused can seek discharge/dropping of proceedings/acquittal under the relevant provisions of the Code in the normal course would certainly be a justifiable reason, in the absence of exceptional and compelling reasons, for the High Court not invoking its extraordinary powers under [Section 482 Cr.P.C.](#)

(v) In a trial against the co-accused the prosecution is not called upon, nor is it expected to adduce evidence against the absconding co-accused'. In such trial the prosecution cannot be held to have the opportunity or obligation to adduce all evidence against the absconding co-accused. The fact that the testimony of a witness was not accepted or acted upon in the trial against the co-accused is no reason to assume that he shall not tender incriminating evidence or that his evidence will not be accepted in such later trial.

(vi) On the basis of materials placed before the High Court in proceedings under [Section 482](#) of the Code of Criminal Procedure (which materials can be placed before the court in appropriate proceedings before the subordinate courts) such extraordinary



inherent powers under [Section 482](#) of the Code of Criminal Procedure cannot normally be invoked, unless such materials are of an unimpeachable nature which can be translated into legal evidence in the course of trial.

(vii) The judgment of acquittal of a co-accused in a criminal trial is not admissible under [Sections 40 to 43](#) of the Evidence Act to bar the subsequent trial of the absconding co-accused and cannot hence be reckoned as a relevant document while considering the prayer to quash the proceedings under [Section 482](#) Cr.P.C. Such judgments will be admissible only to show as to who were the parties in the earlier proceedings or the factum of acquittal.

(viii) While considering the prayer for invocation of the extraordinary inherent jurisdiction to serve the ends of justice, it is perfectly permissible for the court to consider the bona fides - the cleanliness of the hands of the seeker. If he is a fugitive from justice having absconded or jumped bail without sufficient reason or having waited for manipulation of hostility of witnesses, such improper conduct would certainly be a justifiable reason for the court to refuse to invoke its powers under [Section 482](#) of the Code of Criminal Procedure.

(ix) The fact that the co-accused have secured acquittal in the trial against them in the absence of absconding co-accused cannot by itself be reckoned as a relevant circumstance while considering invocation of the powers under [Section 482](#) of the Code of Criminal Procedure.

(x) A judgment not interparties cannot justify the invocation of the doctrine of issue estoppel under the Indian law at present.

(xi) Conscious of the above general principles, the High Court has to consider in each case whether the powers under [Section 482](#) of



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the Code of Criminal Procedure deserve to be invoked. Judicial wisdom, sagacity, sobriety and circumspection have to be pressed into service to identify that rare and exceptional case where invocation of the extraordinary inherent jurisdiction is warranted to bring about premature termination of proceedings subject of course to the general principles narrated above.”

7.This Court is of the view that depending upon the evidence, which has to be adduced by the witnesses during the trial in SC.No.58 of 2019, the case has to be decided on merits and mere because the witnesses have not supported the case of the prosecution as against A1 to A6, it cannot be automatically presumed that the witnesses would take a similar stand as against the petitioner / A9 also.

8.In view of the above discussion and also applying the ratio laid down in the decision cited supra, this Court is not inclined to entertain this application to quash the proceedings on the ground of acquittal of the co-accused in SC.No.104 of 2014. Accordingly, this criminal original petition is dismissed. Consequently connected miscellaneous petition is also dismissed.

Index :Yes/No
DSK

.08.2024



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To

- 1.The District and Sessions Judge,
[Special Court for SC/ST (POA) Act, Cases]
Pudukottai
- 2.The Deputy Superintendent of Police,
Alangudi,
Pudukottai District.
- 3.The Inspector of Police,
Vadakadu Police Station,
Pudukottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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B.PUGALENDHI,J.

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