



Crl.O.P(MD).No.19946 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2024

CORAM :

THE HON'BLE MR JUSTICE A.A.NAKKIRAN

Crl.O.P(MD).No.19946 of 2022 and
Crl.M.P(MD).Nos.13757 and 13758 of 2022

1.Abu Jamal
2.Akbar Ali
3.Tippu Javathu
3.Mohammed Siddiq

... Petitioners

Vs.

1.State through
The Inspector of Police,
Devipattinam Police Station,
Devipattinam,
Ramanathapuram District.
(Crime No.199 of 1995)

2.Malairaj

... Respondents

PRAYER:- Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the C.C.No.136 of 1996 on the file of the Sub Court, Ramanathapuram and quash the same.

For Petitioner : Mr.U.Mohamed Aslam

For Respondent No.1 : Mr.R.M.Anbunithi

Additional Public Prosecutor



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ORDER

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This Criminal Original Petition has been filed to call for the records pertaining to the case in C.C.No.136 of 1996 on the file of the Sub Court, Ramanathapuram and quash the same.

2. The case of the prosecution is that due to previous enmity with regard to the temple festival, the petitioners herein and other accused have attacked the defacto complainant and also caused damages to the properties belonging to the defacto complainant worth about Rs.16,5000/- and hence, based on the complaint given by the defacto complainant case has been registered in Crime No.199 of 1995 on the file of the first respondent Police for the offences under Sections 147, 148, 427 and 436 IPC and thereafter, the case has been charge sheeted in S.C.No.136 of 1996 on the file of the Sub Court, Ramanathapuram. Seeking quashment of said S.C.No.136 of 1996, the petitioners herein have filed the present petition.

3. The learned counsel appearing for the petitioners submitted that in that case PW.1 turned hostile witness and not supported the case of prosecution. Based on that the other accused got acquittal



from the said case and hence, there is no useful purpose will be served keeping this matter pending before this Court and prays for allowing this petition.

4. In support of his contention the learned counsel appearing for the petitioner has also relied on the Judgment reported in **2007-1-L.W(Crl.) 514 in the case of Tamilmaran Vs. State rep. by Inspector of Police, Paravakollai Police Station, Mannargudi Taluk**, wherein at paragraph Nos.6, 7 and 9 it has been held as follows:

6. It is not disputed that the co-accused viz., A-1 to A-4 have been already tried by the learned trial Judge and the case ultimately ended in acquittal as the learned trial Judge disbelieved the entire prosecution case. As far as this petitioner is concerned, he has been originally arrayed as A-5 and as he was absconding, Non-Bailable Warrant was issued and pending and as the petitioner ultimately returned to India from Singapore, he has voluntarily surrendered before the learned trial Judge and the Non-Bailable Warrant is also recalled by the learned Magistrate and as such the petitioner is facing the trial for the alleged offences under [Sections 326, 447 and 427 I.P.C.](#) before the learned trial Judge.

7. This Court is of the considered view that there is much force on the contention put forward by the learned senior counsel to the effect that the learned trial Judge having disbelieved the prosecution case in toto no useful purpose would be served by putting the petitioner to undergo the ordeal of trial on the basis of the very same set of evidence. It is also pointed out by the learned senior counsel that even the defacto complainant himself turned hostile giving a total go-by to his earlier version and there is no other material available on record to implicate the petitioner. The learned senior counsel has rightly placed reliance on the decision of the Delhi High



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Court in a case in [Sunil Kumar v. State](#) reported in 2000 (1) Crimes 73 wherein it is held as follows :

"3. The question thus is as to whether in the face of the judgement of acquittal the petitioner should still be permitted to undergo the ordeal of a trial. In [Sat Kumar v. State of Haryana](#) (AIR 1974 SC 294), it was held that there is no rule of law that if the Court acquits some of the accused on the evidence of a witness raising doubt with regard to them the other accused against whom there is absolute certainty about his complicity in the crime based on the remaining credible part of the evidence of that witness must be acquitted. (See also [Har Prasad v. State of Madhya Pradesh](#) (AIR 1971 SC 1450), [Makan Jivan v. State of Gujarat](#) (AIR 1971 SC 1797), [Mohd. Moin Uddin V. State of Maharashtra](#) (1971 S.C.C. (Cri.) 617). But where the evidence against all the accused persons is inseparable and indivisible and if some of the accused persons have been acquitted, the remaining accused persons cannot be treated differently on the basis of the same evidence.

4. On perusal of the judgment of acquittal dated 19-1-1998, it appears that the deceased Balwan Singh met with a homicidal death owing to burn injuries sustained by him has not been disputed by the accused persons. The evidence against the accused persons mainly consists of the evidence of the eye-witnesses, namely, Karan Singh (PW 2) and Smt.Asha Rani (PW-5) (Wife of the deceased Balwan Singh) besides the dying declaration (Ex.PW-13/A) of the deceased Balwan Singh. Both the said witnesses have not supported the prosecution case and so they have been declared hostile by the prosecution. Eliminating the evidence of the said eye-witnesses, there remains the dying declaration (Ex.PW.13/A) of the deceased Balwan Singh, which has been disbelieved by the learned Addl. Sessions Judge. It would, therefore, appear that the accused persons, namely, Jangli Tyagi, Balbir Singh, Anil Kumar Tyagi and Sushil Kumar Tyagi were acquitted on the ground of insufficiency of evidence. Thus, the evidence adduced in the case against all the accused persons is inseparable and indivisible and that being so the petitioner cannot be treated differently on the basis of the said evidence. In



this view of the matter, there is no prospect of the case ending in conviction against the petitioner and the valuable time of the Court would be wasted for holding trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. If the Court is almost certain that the trial only would be an exercise in futility or sheer wastage of time, it is advisable to truncate or ship the proceedings at the stage of [Section 227](#) of the Code itself."

9. Therefore, the above well settled principle of law [laid down](#) in the decisions cited supra, is squarely applicable to the facts of the instant case as in this case also admittedly the other accused, viz., A-1 to A-4 have been acquitted by the learned trial Judge after disbelieving the entire prosecution case and as such this Court is of the considered view that no useful purpose would be served for putting the petitioner to undergo the ordeal of trial and therefore, the proceedings pending against the petitioner in C.C.No.1146 of 1997 on the file of the learned Judicial Magistrate, Mannargudi, is hereby quashed.

5. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent and perused the materials available on record.

6. Considering the submissions made by the learned counsel appearing on either side that PW.1 turned hostile witness and based on that, the other accused acquitted from the trial Court and that the said Judgment relied on by the petitioners is squarely applicable to the facts of the present case, this Court is inclined to quash the proceedings in C.C.No.136 of 1996 on the file of the Sub Court, Ramanathapuram.



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7. Accordingly, this Criminal Original Petition is allowed and the proceedings made in C.C.No.136 of 1996 on the file of the Sub Court, Ramanathapuram is hereby quashed. Consequently, the connected Miscellaneous Petitions are closed.

25.04.2024

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

trp

To

1. The Inspector of Police,
Devipattinam Police Station,
Devipattinam,
Ramanathapuram District.

2. The the Sub Court, Ramanathapuram.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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A.A.NAKKIRAN, J.

Trp

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