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Crl.O.P.No.31585 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2025

CORAM:

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.31585 of 2025
and Crl.M.P.Nos.21752 and 21754 of 2025

Gopi @ Gopinath

... Petitioner

Vs.

State by its
Inspector of Police,
Annamalai Nagar Police Station,
Annamalai Nagar,
Cuddalore District.
Crime No.367 of 2010.

... Respondent

PRAYER : Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 to call for the records relating to the case in S.C.No.180 of 2024 pending trial on the file of the II Additional District and Sessions Court, Chidambaram, Cuddalore District and quash the same with regard to the petitioner

For Petitioner : Mr.K.G.Senthilkumar

For Respondent : Mr.K.M.D.Muhilan
Government Advocate (Criminal Side)

ORDER

This criminal original petition has been filed seeking to quash the case in S.C.No.180 of 2024 on the file of the II Additional District and Sessions Court, Chidambaram, Cuddalore District.



2. The brief facts of the case are as follows:

2.1. One Mr.T.Subramaniyan, Inspector of Police attached to the respondent police station has registered a *suo motu* complaint in Crime No.367 of 2010 for the offence under Section 399 of IPC, 1860 based on the allegation that the petitioner, along with four other accused, was preparing to commit dacoity at about 12.30 p.m. by using a wooden log. Subsequently, the case was investigated and a final report was filed before the jurisdictional Judicial Magistrate Court and subsequently, the case was committed to the Court of Session and later made over to the II Additional District and Sessions Court, Chidambaram. The trial Court had framed charges against the accused for the offence under Section 399 of IPC, 1860 in S.C.No.273 of 2014.

2.2. Since the petitioner did not appear before the trial Court, the case against the petitioner was split up and the case in S.C.No.273 of 2014 was tried as against the remaining accused. The trial Court, after full-fledged trial, acquitted accused Nos.1,2,4, and 5 on the following grounds:

(i) No independent eye witness came to be examined. The P.W.3 who is the only independent witness turned hostile.

(ii) The case properties (C.P.) were not produced before the trial



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Court. After intimation from the court only, the C.P. came to be produced on 14.11.2011 with a delay of 13 months.

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(iii) The complainant being the Investigation Officer.

(iv) The evidence of the witnesses are contrary to each other.

(v) The prosecution has not proved the case beyond reasonable doubt and so, the accused are entitled to the benefit of doubt.

2.3. Subsequently, the split up case against the petitioner was taken on file as S.C.No.180 of 2024. The petitioner has since surrendered. Contending that his case is also similar to that of the other accused and based on the same set of evidence, the petitioner has filed the present petition seeking to quash the proceedings in S.C.No.180 of 2024.

3. The learned counsel for the petitioner submits that the petitioner was tried along with accused Nos.1, 2, 4 and 5 in S.C.No.273 of 2014 and the accused Nos.1, 2, 4 and 5 were acquitted vide judgement dated 02.04.2016. The respondent prosecution has relied on the same materials including the same set of witnesses. He further contends that when the other accused have been acquitted on the similar set of allegations and charges, the same benefit can be extended to the petitioner as well.

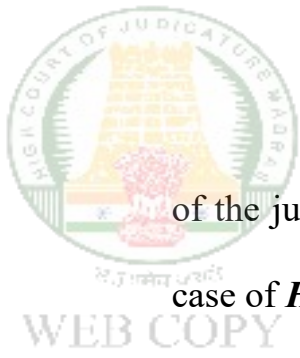


4. In support of his contention, the learned counsel for the petitioner placed reliance upon the decision of the Karnataka High Court in the case of ***Hassan @ Mohammed Hassan Vs. State of Karnataka*** in ***W.P.No.55102 of 2017*** dated ***14.12.2017*** and the decision of the Hon'ble Apex Court in the case of ***Yogarani Vs. State by Inspector of Police*** in ***2024 SCC Online SC 2609***.

5. The learned Additional Public Prosecutor appearing for the respondent police submits that since the petitioner was absconding, the case was split up against him. He further submits that in respect of the other accused, a full-fledged trial has been conducted and thereby they were acquitted. He further admits that the respondent police analysed on the same set of evidences and witnesses. He further submits that no appeal has been preferred against the acquittal of the other accused.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. Admittedly, the petitioner is one of the accused in Cr.No.367 of 2010 for the offence under Section 399 of IPC, 1860. The relevant portion



of the judgment relied upon by the learned counsel for the petitioner in the case of ***Hassan @ Mohammed Hassan supra*** is extracted hereunder:

13. In this regard, it is worth to note here a decision of the Apex Court reported in *AIR 2005 Supreme Court 268* in the case of *Central Bureau of Investigation V. Akhilesh Singh*, wherein, it was held that:

“ Quashing of charge and discharge of the accused when main accused who alleged to have hatched conspiracy and who have motive to kill the deceased were already discharged, that matter had attained finality, the discharge of co-accused by High Court by holding that no purpose would be served in further proceeding with case against co-accused held proper”.

8. The relevant portion of the judgment of the Hon’ble Apex Court in ***Yogarani supra*** is extracted hereunder:

“10. The Court cannot convict one accused and acquit the other when there is similar or identical evidence pitted against two accused persons. In the case of *Javed Shaukar Ali Qureshi v. State of Gujarat* reported in 2023 INSC 829, this court has held that:

“15. When there is similar or identical evidence of eyewitnesses against two accused by ascribing them



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the same or similar role, the Court cannot convict one accused and acquit the other. In such a case, the cases of both the accused will be governed by the principle of parity. This principle means that the Criminal Court should decide distinction between the two accused, which will amount to discrimination.”

In the case on hand, allegations against the appellant being the same as made against Accused No.3 & 4, the Courts below could not have convicted the Appellant while acquitting the other two.”

9. In view of the above, this Court finds that the allegations levelled against the petitioner and other accused are identical and inseparable in nature. On this score, in the considered opinion of this Court, the benefit of acquittal extended to the other accused is to be extended to the petitioner as well. It is also contended by the prosecution that no appeal has been preferred against the judgment of acquittal, In such circumstances, no purpose would be served and even if the accused is ordered to be tried before the trial Court, it would be a futile exercise by the trial Court and waste of judicial time.



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10. *Ex consequenti*, this criminal original petition stands allowed and consequently the proceedings in S.C.No.180 of 2024 on the file of the II Additional District and Sessions Court, Chidambaram Cuddalore District stands quashed. Consequently, connected miscellaneous petitions are closed.

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Neutral Citation: Yes/No
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To

1. The Inspector of Police,
Annamalai Nagar Police Station,
Annamalai Nagar,
Cuddalore District.
2. The II Additional District and Sessions Court,
Chidambaram Cuddalore District
2. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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