
(2014) 11 MAD CK 0055

In the Madras High Court

Case No : Criminal O.P.(MD) No.16303 of 2014 & M.P.(MD) No 1 of 2014

Chinnappa (@ Mahendran

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-11-2014

Acts Referred:

Citation : (2015) 1 MadWNCri 259

Hon'ble Judges : P. Devadass, J.

Bench : Single Bench

Advocate : T.A. Ebenezer, Advocate, for the Petitioner; A.P. Balasubramani, Government Advocate (Crl. Side), for the Respondent No.1

Final Decision : Disposed Off

Judgement

P. Devadass, J.—Now, the 8th Accused, who is the lone Accused in Crime No. 749 of 1997 registered by the First Respondent, namely, Inspector of Police, Orathanadu Police Station, Thanjavur District, came forward with this Petition under Section 482, Cr.P.C. to quash the Preliminary Registration Case No.32 of 2013, pending before the learned Judicial Magistrate, Orathanadu.

2. The learned Counsel for the Petitioner contends that all the Accused except the Petitioner/A8 have took up their trial before the Special Court at Thanjavur. The star Witness of the case PW1, who is the Second Respondent herein has turned hostile. Giving the benefit of doubt on general points Special Judge acquitted the co-accused. Now, the remaining case is pending in PRC No.32 of 2013 before the committal Magistrate as against the Petitioner. The benefit of such acquittal also ensure to the Petitioner herein. In such circumstances, directing him to undergo the ordeal of Criminal trial will be wasting of public time and it will be abuse of process of the Court. Under such circumstances, this Court can exercise its inherent jurisdiction under Section 482, Cr.P.C. and quash such a Criminal proceedings. In this connection, the learned Counsel for the Petitioner cited C.B.I. v. Akilesh Singh, .AIR 2005 SC 268, and Tamilendi v. State, 2008 (2) CTC 153.

3. The learned Government Advocate submitted that the Petitioner has absconded fairly for a long time Subsequently, he had surrendered himself before the committal Court and the Non-Bailable Warrant was recalled and now he is appealing and he is awaiting committal of his case to the Special Court for trial of the case against him. At this juncture, he has directed this Petition. It will not lie.

4. I have considered their submissions, perused the materials on record and also the decisions cited at the bar.

5. Section 482, Cr.P.C. confirms the inherent jurisdiction of the High Court which power was with it very many years ago, even prior to the old Code of 1898. The theme of Section 482, is that a procedural code may not complete. Under the procedural law, provisions may not be made to meet all the contingent situations and situations which may arise in future. Courts were established to do justice and undo injustice. It is also the principle behind Section 482 of Cr.P.C. Its two catchy phrases are to "prevent abuse of process of any Court" or "otherwise to meet the ends of justice".

6. The 2nd Respondent-Paramasivam reported an occurrence that is alleged to have taken place on 30.10.1997, to the First Respondent, namely, the Inspector of Police, Orathanadu Police Station that he has been assaulted and insulted by calling his caste name. Thereupon, the Station House Officer (SHO) registered a case in Crime No.749 of 1997 under Sections 147, 341, 323, 506(ii), I.P.C and Section 3(1)(x) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (Act 33/1989). Investigation has been taken by the Deputy Superintendent of Police, Pattukottai Sub-Division, Thanjavur District. After completing his investigation, he filed the Final Report for offences under Sections 147, 341, 323, 355, 506(ii), I.P.C. and Section 3(1)(x), Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 as against. A1 to A9 before the learned Judicial Magistrate, Orathanadu.

7. While the accused were appearing before the committal Court, without knowing the fate of the case, as he was called by his Maker A4 bid farewell to his friends and to the world and thus charge against him abated.

8. The remaining Accused were rearrayed and they were A1 to A8. In between, it seems that some of the Accused including the Petitioner fed up with attending the Court and thus they have forgotten it. But, not the Court. So, as against them N.B.Ws. were issued. Some of them were diligent in attending the Court. Ultimately, the eluding Accused were also nabbed. Thus then attendance before the Court was enforced, but, it could not insofar as an Petitioner is concerned.

9. In the circumstances, the Accused in two sets were committed to the Special Court at Thanjavur A1 to A5 were tried in Special S.C. No. 19 of 2011. During the trial, PW1 -Paramasivam disowned his Complaint. He resiled from his previous Police Statement. He did not stick to the prosecution version of the case. All material Prosecution Witnesses turned hostile. They continued to do so even when they were subjected to cross-examination by the Special Public

Prosecutor with the leave of the Court. In the circumstances, on 2.8.2011 appreciating the evidence, the learned Special Judge recorded the finding that the prosecution has not established its case beyond all reasonable doubts and gave clean chit to A1 to A5, they have become free men, their presumption of innocence has been upheld and they were acquitted. So ended, a darker period of their life.

10. Subsequently, the case against A6 & A7 were committed. They were prosecuted in Special S.C. No.63 of 2013 before the said Special Court. But, now also there is no change in the attitude of the main Prosecution Witnesses. They continued to turn hostile. They have withstood the cross-examination of the learned Special Public Prosecutor. They have refused to oblige, budge the prosecution. Thus a verdict of no guilty giving them benefit of doubt was rendered by the Special Judge So, their chapter is also over.

11. Subsequently A8/the Petitioner surrendered himself before the Court in the remaining case in P.R.C. No.32 of 2013. Now, he is attending the hearing before the committal Court. At this juncture, the Petitioner approached this Court seeking quashment of the entire Criminal proceedings against, him.

12. We have heard the lucid submissions of the learned defence Counsel. He has also drew inspiration from certain decided cases ranging from Hon'ble Apex Court to this Court. Now, in the light of the rival submissions, in the midst of the records, enlightened by the decisions cited, we shall deal with the plight of the Petitioner on the anvil of Section 482, Cr.P.C.

13. Precisely, what the learned Counsel for the Petitioner seeks is extend the benefit of doubt, given to the other Accused by the acquittal Judgments rendered by the Special Judge, Thanjavur to the Petitioner also.

14. One of the principle under Section-482, Cr.P.C. is that the High Court will not exercise its inherent power at the nascent stage of the case stilling the prosecution. But, it cannot be an invariable Rule. It depends on the facts and circumstances of each case When it is established to the Court continuation of the prosecution is an abuse of the process of the Court or in the interest of justice continuing the prosecution will not serve any purpose, this Court can step in and put an end to such useless, wasteful, unnecessary prosecution and relieve the Accused from the ordeal of a Criminal trial.

15. In *S. Nalini v. State*, 2013 (3) MWN (Cr.) 80, CrI.O.P. No.22192 of 2013, dated 11.9.2013. I happened to quash the Calender case when the prosecution was about to complete its evidence, when I was convinced that the continuation of the trial is an abuse of the process of the Court.

16. By a catena of decisions it is well settled that where the evidence against, all the Accused is inseparable and indivisible and if some of the Accused persons were acquitted, the remaining Accused cannot be treated differently on the very same evidence (See *Mohd. Moin Uddin v. State of Maharashtra*, 1971 SCC (Cri.)

617).

17. In C.B.I. v. Akilesh Singh, AIR 2005 SC 268, the Hon''ble Apex Court upheld the quashing of the case against main Accused under 482 Cr. P.C., who is alleged to have hatched the conspiracy and, who had the motive to kill the deceased, the case against the other Accused were discharged from the case on the ground that no purpose would be served in further proceedings with the case against them.

18. Similar view has been taken in Mohammed Ihas v. State of Karnataka, 2001 (4) Crimes 417.

19. Close on the heels, is the decision of my most esteemed Brother Hon''ble Justice K.N Basha in Tamilendi v. State, 2008 (2) CTC 153, where there are more than one Accused, trial against one absconding Accused was split up and the remaining Accused were tried, it was established that the prosecution has failed to prove the charge including the murder charge under Section 302, I.P.C., they were acquitted, in such circumstances, my learned Brother held that in such circumstances no useful purpose would be served by directing the remaining Accused to undergo the ordeal of trial.

20. Now, we revert back to our case.

21. PW1, who is the de facto Complainant, who is the eyewitness, who is the main witness, who is the star witness upon whom the prosecution pinned much hope for its success turned hostile, while deposing before the Trial Court. The other Witnesses also followed his Suit. In the circumstances, the co-Accused were acquitted on the ground that the prosecution had failed to establish all the charges. Now the lone Accused in this case is the Petitioner. In the circumstances, no useful purpose will be served, in committing his case and conducting the trial. It will be no more than subjecting him to undergo the ordeal of a Criminal trial, which is more painful.

22. The principles laid down in the decisions already noted squarely applies to the facts of this case.

23. I have been successfully persuaded by the learned Counsel for the Petitioner to close the Criminal proceedings against the Petitioner by quashing it.

24. In view of the foregoings, this Criminal Original Petition is allowed. The entire Criminal proceedings in P.R.C. No.32 of 2013 pending on the file of Judicial Magistrate, Orathanadu are quashed. Consequently, connected M.P.(MD) No. 1 of 2014 is closed.