

(2015) 02 MAD CK 0440

In the Madras High Court

Case No : Criminal O.P. No. 9775 of 2008 and M.P. No. 1 of 2008

Karunanithi

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 05-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235(1)
Penal Code, 1860 (IPC) — Section 147, 148, 323, 324, 427
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(x)

Citation : (2015) 02 MAD CK 0440

Hon'ble Judges : C.T. Selvam, J

Bench : Single Bench

Advocate : A. Arun Prasad, for the Appellant; K. Anbarasan, Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

C.T. Selvam, J.—The petitioner herein seeks to quash the proceedings pertaining to the case in S.S.C. No. 58 of 2008 on the file of the learned First Additional Sessions Judge (PCR), Thanjavur.

2. The petitioner is the fourth accused in the case. The de facto complainant alleged commission of offences under Sections 147, 148, 323, 324, 427 of Indian Penal Code and Section 3(1)(x) of SC/ST (Prevention of Atrocities) Act, 1989 against 17 persons.

3. The learned counsel for the petitioner submits that the case has been split up against the petitioner and in respect of the other accused, the trial was conducted and the case in S.S.C. No. 15 of 2005 on the file of the learned First Additional District and Sessions Judge (PCR), Thanjavur ended in acquittal and while acquitting the accused, it was observed as follows:

"16. In order to bring home of the guilt of the accused the prosecution has

examined as many as 14 witnesses and exhibited 41 documents besides 4 M.Os.

Even though P.W.1 to P.W.10 examined as eye witnesses and injured witnesses as to occurrence, above witnesses have not supported the prosecution case. In fact P.W.1 is said to be complainant has not only denied the very complaint itself, but also denied the entire occurrence itself. According to P.W.1, about 5 years back at 9.30 p.m., the mob consisting of 20 to 30 people have come and attacked him. Except this he has not attributed any specific overt act against the accused. In fact P.W.1 has stated that accused were not present in the mob, therefore, the evidence of the P.W.1 no way pointing towards the accused in respect of the crime and alleged offence, likewise P.W.2 to P.W.10 alleged injured witnesses also not supported the prosecution version and they not at all implicated the accused as to the occurrence.

17. In fact P.W.1 and P.W.6 stated that the accused were not at all present in the occurrence. In view of the injured witnesses turning hostile not supporting the prosecution case. The evidence relating to the occurrence and injury is absolutely lacking in this case. Therefore the other witnesses available on record is that of P.W.11 and P.W.12. The Medical officers, who have treated the injured and issued Ex.P.2 to Ex.P.12 wound certificates copies. On perusal of the same all the injuries are simple in nature. At the same time except evidence as to treatment of the injuries, there is no particulars in the wound certificate copies to connect the accused as to occurrence. Therefore the evidence of the Medical officer only prove the factum of certain injuries to the witnesses. However in the absence of the evidence of the injured witnesses as to occurrence or the manner in which they suffered injuries highly difficult to come to the conclusion that it is only the accused, who are instrumental for such vandalism as projected by the prosecution.

18. Therefore, now only the investigation officer's evidence alone is on record against the accused, even on perusal of the investigation officer's evidence he has stated only about the nature of investigation and arrest of the few accused only. On careful perusal of the evidence of the Investigation officer, the same shows that even prior to the filing of an First Information Report, police have been deployed in the place of occurrence, said have been taken place on 13.2.01 between two communities. Therefore it goes without saying that the entire occurrence was emanated from the group clash between two groups. In that situation in the absence of the evidence of the injured and in the absence of the identification of the accused mere investigation officers evidence alone not sufficient to clothe the liability on the accused with that of the crime. No doubt the 5 evidence of Tahsildar would prove the fact that the accused are belong to backward community same does not serve any purpose to prosecution. Therefore this Court hold that prosecution has not been able to bring home the guilt of the accused beyond reasonable doubt.

19. Therefore this Court has no other option except to extend the benefit of doubt to the accused. In the result the accused Nos. 1 to 3, 5 to 15 and 17 are

acquitted from all the charges under section 235(1) Cr.P.C. they shall be set at liberty forthwith. Bail bond at any executed by them stand cancelled."

4. On similar plea, this Court, under orders in Crl.O.P.(MD)No. 466 of 2010, dated 20.01.2010, had observed thus:

"6. In the judgment in Deepak Rajak Vs. State of West Bengal, (2007) 9 JT 31 : (2007) 7 SCR 1022 , the extension of benefit of acquittal to accused on similar accusation came up for consideration and it has been held as follows:

"The position in law as to what happens in case of acquittal of similarly placed co-accused on the same set of facts and on similar accusations has been considered by this court in several cases.

A departure may be made in cases where the accused had not surrendered after the conviction in addition to not filing an appeal against the conviction. But as in the present case, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be extended."

7. In view of the above said facts and on the light of the ratio laid down in the above cited decision, continuance of the proceedings as against this petitioner would definitely result in miscarriage of justice. In view of the same, this Court is of the opinion that the proceedings as against the petitioner/A.36 in P.R.C. No.36 of 2000, on the file of the Judicial Magistrate, Pattukottai, is liable to be quashed.

8. Accordingly, the Criminal Original Petition is allowed and the proceedings against the petitioner/A.36 in P.R.C. No.36 of 2000, on the file of the Judicial Magistrate, Pattukottai, is hereby quashed."

5. In view of the fact that the petitioner is also similarly placed, the Criminal Original Petition shall stand allowed and the proceedings as against the petitioner/A-4 in S.S.C. No. 58 of 2008 on the file of the learned First Additional Sessions Judge (PCR), Thanjavur shall stand quashed. Consequently, the connected miscellaneous petition is closed.