

**Velayutha thevar Vs. State and ors.**

**Velayutha thevar Vs. State and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/820798](http://sooperkanoon.com/820798)

**Court :** Chennai

**Decided On :** Mar-25-1999

**Reported in :** 1999CriLJ3936

**Judge :** V. Kanagaraj, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 248(1); Indian Penal Code (IPC) - Sections 342, 363, 384 and 506

**Appeal No. :** Crl. Revision Case No. 261 of 1997

**Appellant :** Velayutha thevar

**Respondent :** State and ors.

**Advocate for Def. :** R. Karthikeyan, Adv.

**Advocate for Pet/Ap. :** M. Ravindran, Sr. Counsel for ;V. Vishwanathan, ;P. Ravishankar and ;D. Srinivasan, Advs.

**Disposition :** Petition allowed

**Judgement :**

ORDER

**V. Kanagaraj, J.**

1. The above Criminal Revision Case has been filed against the order dated 29-11-1996 made in C.C. No. 604 of 1989 by the Court of Judicial Magistrate, Thiruthuraipoondi in so far acquitting the respondent 2 to 5 herein under Section 248(1) of the Criminal Procedure Code.

2. Originally, the petitioner herein is the complainant in the First Information Report registered by the Voimeeu Police in Crime. No. 176/ 86 for alleged offences punishable under Section 363, 384 and 342, I.P.C. and later the Judicial Magistrate, Thiruthuraipoondi, while framing charges has also included Section 506 Part II, I.P.C. in which the petitioner is cited as the first witness.

3. It is a case wherein the trial is yet to be commenced. The first respondent herein is the prosecuting police and respondents 2 to 5 are the accused before the lower Court among whom the fourth respondent is said to be abroad and all the other respondent/accused in spite of being available locally, they were not in the habit of appearing before the lower Court and often and again Non Bailable Warrants would be issued by the lower Court, but they would not be executed. While such being the nature of the proceedings, that has been carried on by the lower Court from the year 1986, all of a sudden, the lower Court taking advantage of the judgment of the apex Court delivered in 'Common Cause', A Registered Society through its Director v. Union of India : AIR 1996 SC3538 has acquitted the accused under Section 248(1) of the Criminal Procedure Code.

4. It is contended in the revision petition that the Supreme Court has also held that 'if the accused persons did not appear for two years in cases involving offence punishable with three years, the cases need not be kept pending and they could be dismissed.' But, here is a case registered and charges framed under Section 506 Part II, I.P.C. also, wherein the punishment contemplated is imprisonment upto seven years and hence the said Supreme Court judgment is not applicable to the case in hand.

5. Today, when the above was taken up for consideration, the learned counsel appearing for the revision petitioner and the learned Government Advocate on the Criminal side appearing for the first respondent are very well present but none of the respondent Nos. 2 to 5 nor their authorised counsel is present. So far as the

respondent No. 4 is concerned, materials are available to the effect that he is abroad as reported and hence the other three respondents i.e. respondents 2, 3 and 5 should have at least been present for arguing the above case on their behalf. From the records it comes to be known that the respondents 2, 3 and 5 have very well been intimated with and served with notices and knowingly they have abstained from appearing before this Court and they have also not made any arrangement for any Lawyer to appear on their behalf. Hence, they were called absent and on the available records and upon hearing the learned counsel for the petitioner and the learned Government Advocate on Criminal Side appearing for the first respondent, the following order is passed today.

6. During the course of arguments, the learned senior counsel appearing for the petitioner would contend that it is a case taken on file by the Judicial Magistrate Tharuthuraipoondi for trying the respondents 2 to 5 herein for offences punishable under Sections 363, 384, 342 and 506-11, I.P.C. against the respondent herein that the learned Magistrate without proper application of mind and without properly studying the case in detail and without observing the norms fixed in the Apex Court judgment reported in : AIR 1996 SC3538 has ordered the acquittal of the accused under Section 248(1) Criminal Procedure Code in haste and in fact it is not a fit case, which would fall under the ambit of the said judgment of the Apex Court especially in view of the fact that the said judgment is not applicable in cases wherein pendency of the criminal proceeding is wholly or partly attributable to the dilatory tactics adopted by the accused concerned, such as one in hand, or on account of any other action of the accused, which results in prolonging the trial. But, on the other hand, it should be proved that the said criminal proceeding is kept pending despite full cooperation by the accused concerned to get proceedings disposed of and the delay in the disposal of these cases is not at all attributable to the accused concerned as held clearly in Para No. 1 of the above said judgment of the Apex Court.

7. The learned senior counsel would further contend that the above case has been taken on file by the learned Magistrate as C.C. No. 604 of 1989 and it was kept pending on account of the failure on the part of the accused to attend to the Court since the trial was not even able to be commenced by the lower Court till the

disposal of the above matter in the above said manner on 2-11-1996 and hence as held by the Apex Court in para No. 1 of the above said judgment, it is not a fit case in which the accused could be acquitted. The learned senior counsel appearing for the petitioner would submit yet another judgment delivered in Raj Deo Sharma v. The State of Bihar : 1998 CriLJ4596 wherein at para 16(v) it is held that: at page 4602 (of Cri LJ):

Where the trial has been stayed by the orders of Court or by operation of law such time during which the stay was in force shall be excluded from the aforesaid period for closing prosecution evidence. The above directions will be in addition to and without prejudice to the directions issued by this court in 'Common Cause' v. Union of India : 1996 CriLJ2380 as modified by the same bench through the order reported in 'Common Cause' A Registered Society v. Union of India : AIR 1996 SC3538 .

8. The learned senior counsel for the petitioner would further contend that in the very like manner the respondents 2 to 5 absented themselves before the lower Court, they have also chosen not to appear before this Court to conduct the above matter and hence the respondents are habituated in absenting themselves, thus obstructing the Court from prosecuting the case and hence they are not entitled to get the relief as granted by the lower Court ultimately ordering their acquittal and would pray for the criminal revision case to be allowed and the case to be remanded to the lower Court for a fresh trial to be held.

9. It is a case wherein it is more clearly established that the delay had occasioned only on account of the dilatory tactics adopted by the accused in not appearing before the lower Court and co-operating with the Court in conducting the trial proceedings. But, the lower Court attributing such delay for other reasons as though caused in the natural course, in spite of the promptness shown by the accused in attending the Court daily, has wrongly decided to discharge the accused thus acquitting them under Section 248(1) of the Criminal Procedure Code under the pretext and guise of the 'COMMON CAUSE' case cited : : 1997 CriLJ195 . It has been well established that the case in hand is not the one, which would fall under the ambit of the 'COMMON CAUSE' case. In result, it is hereby

ordered as follows :

(i) The above Criminal Revision Case is allowed ;

(ii) The judgment dated 29-11-1996 made in C.C. No. 604 of 1989 by the Court of Judicial Magistrate, Thiruthuraipoondi in acquitting the accused under Section 248(1), Cr.P.C. is hereby set aside;

(iii) The case is remanded to the jurisdiction Magistrate i.e. Judicial Magistrate, Thiruthuraipoondi with a direction to hold fresh trial summoning the witnesses and binding over the accused, taking such other legal steps to get the fourth respondent herein, who is said to be abroad; also to appear before the Court or in splitting the case so as to hold the trial against R2, R3 and R5 and on a full trial held to deliver the judgment on merits and in accordance with law;

(iv) In view of the long delay that has occurred so far in prosecuting the above matter and delivering the judgment, the lower Court is further directed to expedite the trial procedure treating the above case on a priority basis and even ordering the trial on day-to-day basis and to deliver the judgment within six months from the date of receipt of this order and the connected records and report compliance to this Court.

In result, the above criminal revision case is allowed with the above observations.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**