

S.Ganesa Vs. State

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Court : Chennai

Decided On : Jan-07-2013

Judge : M.Venugopal

Appellant : S.Ganesa

Respondent : State

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

07. 01/2013 CORAM THE HONOURABLE MR.JUSTICE M.VENUGOPAL
CRL.RC(MD)No.2 of 2013 S.Ganesan .. Petitioner/Accused No.11 Vs State
Represented by the Inspector of Police, Tirunelveli Taluk Police Station, Tirunelveli
District. (Crime No.205/2006) .. Respondent/Complainant Prayer Criminal
Revision Case has been filed under Section 397 r/w 401 of the Code of Criminal
Procedure to call for the records of the Learned Judicial Magistrate not III,
Tirunelveli in C.C.No.27 of 2007 dated 28.04.2008 and set aside the Judgment of
the 'Benefit of Doubt' acquittal and Honorary Acquit the Petitioner. !For Petitioner...
Mr.S.R.A.Ramachandran ^For Respondent... Mr.P.Kandasamy Government
Advocate (Crl.Side) :ORDER The Petitioner/Accused No.11 has preferred the
instant Criminal Revision Petition as against the Judgment dated 28.04.2008 in
C.C.No.27 of 2007 passed by the Learned Judicial Magistrate not III, Tirunelveli.

2. The Learned Judicial Magistrate not III, Tirunelveli, while passing the Judgment
in C.C.No.27 of 2007 on 28.04.2008 has among other things opined that "in the

First Information Report filed before this Court, the time of Registration of the case has been corrected as '16.30 hours', but P.W.6 in his evidence has deposed that the First Information Report has been registered at about 11.30 a.m in the morning and resultantly held that the time of registration of the First Information Report has not been established beyond doubt on the side of the prosecution".

3. Further, the trial Court has also in the Judgment in paragraph No.9 has candidly observed that other than the Investigating Officers evidence, no witness has deposed that at the time of occurrence the accused were taking the sand in a clandestine fashion. Also, the trial Court has held that the confession statement of accused have not been recorded in the presence of witnesses concerned. Consequently, it has acquitted the Petitioner/Accused holding that the offence under Section 379 of the Indian Penal Code levelled against him has not been proved to the subjective satisfaction of the Court and acquitted him under Section 248(1) of the Code of Criminal Procedure.

4. Before this Court in the instant Criminal Revision Petition, the Learned Counsel for the Petitioner/Accused No.11 contends that the trial Court has acquitted the Revision Petitioner/Accused No.11 granting him the 'Benefit of Doubt' and inasmuch as the Petitioner/Accused No.11 has been selected in the written examination and also come out successful in the physical fitness for Police selection, the 'Benefit of Doubt' acquittal cast as a stigma to the Petitioner for seeking employment prospectus. In a fact, the Revision Petitioner has prayed for an issuance of an order by this Court acquitted him Honourably from the case in C.C.No.27 of 2007.

5. At this stage, in support of the contention that the 'Honourable Acquittal' may be accorded to the Petitioner, the Learned Counsel for the Petitioner relies on the order passed by this Court in CrI.RC(MD)No.1002 of 2008 dated 13.07.2010 between V.Navaneethakrishnan Vs. The State through, the Inspector of Police, Sankarankovil Police Station, Tirunelveli District wherein at paragraph Nos.5 to 7, it is observed as follows:- "5. The Learned Counsel for the Petitioner in support of his contention, would place reliance upon a decision of this Court in CrI.R.C.No.289 of 2008, Somasundaram Vs. The State, dated 28.02.2008,

wherein after referring and following a decision of this Court, expunging the findings leading to acquittal of the petitioner, concluded that the petitioner has to be acquitted honourably. A Division Bench decision followed by the learned Judge reported in 2005(5) CTC- 672 (The Deputy Superintendent of Police, Sriperumbudur Sub Division, I/C, Chengalpattu Sub Division, Kanchepuram District Vs. W.D.Sekaran and another, is as follows:- "In the light of our discussion, it is clear that it is not axiomatic that in all cases where the criminal proceedings based on the very same set of facts ended in acquittal, the departmental action should not be proceeded with. As rightly observed by the earlier Division Bench of this Court in State of Tamil Nadu Vs. H.A.Munaf and another, 2002(3) LLJ 66.cited supra, if the acquittal in the criminal proceedings is not a honourable one, it is always open to proceed with the departmental proceedings. The Tribunal has not gone into the above relevant aspects and committed an error in quashing the charge memo at the threshold."

6. The aforesaid decision in Somasundram case has been subsequently followed by this Court in another case in CrI.RC.No.400 of 2008 (Kasinathan Vs. The State through the Sub-Inspector of Police, Checkanurani Police Station, Madurai District), dated 27.08.2008 wherein it is observed as follows:-

7. On a perusal of entire records and the judgment of the trial Court, this Court could not find any material against the petitioner. These circumstance of this case warrant expunging of findings available in the trial Court judgment as to the granting benefit of doubt for acquittal of this petitioner. In consonance with the earlier view of this Court in this regard and as to the circumstances available in this case, I am of the considered view that the petitioner has to be acquitted honourably and acquitted as such the findings of the Court below as regards acquittal on the ground of benefit of doubt stands expunged. The revision deserves to be allowed and it is accordingly allowed."

6. This Court has also heard the Learned Government Advocate (Criminal Side) appearing for the Respondent.

7. At this juncture, this Court pertinently points out that the trial Court in C.C.No.27 of 2007 dated 28.04.2008 has clearly resultantly come to the conclusion that the

offence as against the Petitioner/Accused No.11 under Section 379 of the Indian Penal Code has not been proved to its subjective satisfaction and acquitted him along with other 12 accused in the case.

8. In view of the aforesaid circumstances, this Court comes to an irresistible conclusion that the Judgment of Acquittal passed by the trial Court in C.C.No.27 of 2007 dated 28.04.2008 in respect of the Petitioner/Accused No.11 that the prosecution has not established the offence under Section 379 of the Indian Penal Code beyond reasonable doubt can be modified to one of 'Honourable Acquittal'. Consequently, the Criminal Revision Petition is allowed and the finding rendered by the trial Court insofar as the Petitioner/Accused No.11 is concerned, that he is acquitted on 'Benefit of Doubt' is modified to the effect that he shall stand Acquitted Honourably. ps To The Judicial Magistrate not III, Tirunelveli.

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