

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). _____ OF 2024
(Arising out of SLP(Cr1.)No(s).9447-9454/2022)

MUTHURAMALINGAM @ KORANGU

APPELLANT(S)

VERSUS

THE STATE REP. BY THE INSPECTOR OF POLICE,
RAMANATHAPURAM DISTRICT & ANR. ETC.ETC.

RESPONDENT(S)

WITH

CRIMINAL APPEAL NO(S). _____ OF 2024
(Arising out of SLP(Cr1.)No(s).9257-9259/2023)

AND

CRIMINAL APPEAL NO(S). _____ OF 2024
(Arising out of SLP(Cr1.)No(s).9738-9742/2023)

O R D E R

Leave granted.

2. In all these appeals, the appellants before this Court have challenged the order dated 29.04.2022 passed by the Division Bench of the Madras High Court ordering for re-trial. They were in total 8 accused persons in the incident. Accused-2 and Accused-8 have passed away during the trial itself and one was acquitted i.e. Accused-7 (Muthuramalingam @ Korangu, appellant in Criminal appeals @ SLP(Cr1.)Nos.9447-9454/2022) by the Trial Court and the other remaining 6 accused persons, who have filed appeal(s) before the High Court. In other words

they were only five accused who have filed their appeal(s) against their conviction and sentence before the High Court. The High Court came to the conclusion that the cases emanated from two different FIRs bearing Crime Nos.53/2006 & 54/2006 registered with the Police Station Abiramam, Tamil Nadu for the offences punishable under Sections 120(B), 307 r/w 34, 395 r/w 397, 302 r/w 34 and 396 of the Indian Penal Code respectively and as there were two different incidents, two different trial took place though the accused persons were common in both the cases. The trial which the accused persons had faced was in Sessions Case Nos.28/2007 & 27/2007 under Sections 120(B), 307 r/w 34, 395 r/w 397, 302 r/w 34 and 396 of the Indian Penal Code respectively. The result of the trial we have already referred above.

3. Now, the High Court while hearing the appeal(s) against conviction of the 5 accused persons who were so convicted and sentenced, came to the conclusion that there ought to have been one single trial instead of two different trials and because there have been two different trials, it has resulted in acquittal of Accused No.7 and therefore the High Court inter-alia passed the following order:

"18.In the cases on hand, the conduct of separate trials had not only resulted in documents being interchanged, but also vital documents have not been produced. The complaint in S.C.No.28/2007 is the foundation for the charge in S.C.No.27/2007. Unfortunately, the said complaint has not been produced. The finger print reports have been interchanged. These procedural irregularities, in our opinion, should not result in an undue advantage to the accused. If it results in undue

advantage to the accused, the trial cannot be said to be a fair trial. We are, therefore, of the considered opinion that this is a fit case where the trial Court must be directed to conduct a joint trial of the two sessions cases which would by and large cure technical defects in the trial. We are conscious of the fact that the trial will be delayed, but we have no other choice, but to direct a joint trial if we are to ensure a fair trial. The prejudice caused to the accused could be minimized or mitigated by directing the trial Court to enlarge them on bail. Since we are remitting the matter for a joint trial, we are not expressing any opinion on the merits of the matter. Whatever little discussion we have made on the evidence is only to show as to how the failure on the part of the trial Court in not conducting a joint trial, had affected the trial of the two sessions cases. We, therefore, have no hesitation in setting aside the judgments of the trial Court in both these cases.

19. Accordingly, all the criminal appeals will stand allowed and the judgments in S.C.Nos.27 and 28 of 2007 on the file of the Additional District Sessions Court, Paramakudi, Ramanathapuram District, are set aside and both the sessions cases will stand remitted to the trial Court for a joint trial with a direction to the trial Court to conduct a joint trial of both the cases. Considering the fact that the occurrence took place in the year 2006 and the trial was concluded in the year 2020, we direct the trial Court to complete the trial within a period of three months from the date of receipt of the records from this Court. It is made clear that the accused persons shall co-operate with the trial Court in concluding the trial within the period fixed above. The accused persons are at liberty to move the trial Court seeking bail and the trial Court will consider the bail applications sympathetically in the light of the fact that a re-trial has been directed by this Court. If the trial Court finds that the appellants adopt dilatory tactics, it will be open to the trial Court to ensure their presence by recalling the bail orders and remanding them to custody as pointed out by the Hon'ble Supreme Court in State of Uttar Pradesh vs. Shambhu Nath Singh reported in AIR 2001 SC 1403."

4. An important aspect, which the High Court lost sight of, was that, the High Court had also actually ordered for a retrial of one of the Accused- i.e. Accused No.7 (Muthuramalingam @ Korangu) who had already been acquitted by the Trial Court. Moreover, there was neither an appeal against acquittal on which such an order could have been passed.

5. Undoubtedly the High Court has wide powers to pass order under appeal which are given under Section 386 of the code of Criminal Procedure, which reads as:

"386. Powers of the Appellate Court.

- After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor, if he appears, and in the case of an appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may -

(a)in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(b)in an appeal from a conviction -

(i)reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

(ii)alter the finding, maintaining the sentence, or

(iii)with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

(c)in an appeal for enhancement of sentence -

(i)reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court competent to try the offence, or

(ii)alter the finding maintaining the sentence, or

(iii)with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

(d)in an appeal from any other order, alter or reverse such order;

(e)make any amendment or any consequential or incidental order that may be just or proper :Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement :

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the order or sentence under appeal."

6. It is now a settled law that order of retrial has to be done in very exceptional cases alone. For example where the Court itself had no jurisdiction to deal with the crime or there has been a total violation of fundamental principles of law.

7. For ordinary lapses or procedures, a retrial is not necessary as the appellate Court itself has been given extremely wide powers to correct or to take a decision on the anomalies pointed out before the Appellate Court. Even if rehearing has to be done by the Trial Court itself, the Court has got the powers to frame the issue and remit the matter to the Trial Court on that limited issue. But ordering a retrial, lock, stock and barrel is an exception, which the present set of facts do not warrant and we are therefore of the opinion that in the present set of facts as indicated by the High Court itself in its paragraph 18 & 19 referred above, retrial was not necessary.

8. A three Judge Bench of this Court in the case of Nasib Singh vs. State of Punjab & Anr., reported in 2022 (2) SCC 89 has held that:-

"51. From the decisions of this Court on joint trial and separate trials, the following principles can be formulated:

51.1. Section 218 provides that separate trials shall be conducted for distinct offences alleged to be committed by a person. Sections 219-221 provide exceptions to this general rule. If a person falls under these exceptions, then a joint trial for the offences which a person is charged with *may* be conducted. Similarly, under Section 223, a joint trial *may* be held for persons charged with different offences if any of the clauses in the provision are separately or on a combination satisfied.

51.2. While applying the principles enunciated in Sections 218-223 on conducting joint and separate trials, the trial court should apply a two-pronged test, namely, (i) whether conducting a joint/separate a joint separate trial will prejudice the defence of the accused; and/or (ii) whether conducting a joint/separate trial would cause judicial delay.

51.3. The possibility of conducting a joint trial will have to be determined at the beginning of the *trial* and not *after* the trial based on the result of the trial. The appellate court may determine the validity of the argument that there ought to have been a separate/joint trial only based on whether the trial had prejudiced the right of accused or the prosecutrix.

51.4. Since the provisions which engraft an exception use the phrase "may" with reference to conducting a joint trial, a separate trial is usually not contrary to law even if a joint trial could be conducted, unless proven to cause a miscarriage of justice.

51.5. A conviction or acquittal of the accused cannot be set aside on the mere ground that there was a possibility of a joint or a separate trial. To set aside the order of conviction or acquittal, it must be proved that the rights of the parties were prejudiced because of the joint or separate trial, as the case may be."

9. In view of the above, we allow the prayer of the appellants and set aside the orders of the High Court dated

29.04.2022 and we now request the High Court to consider these appeals/petitions afresh on the merits of the case as apart from finding on the anomalies in the procedures, the High Court has in fact to apply its mind to the merits of the case. We therefore, request the High Court to decide the appeals/petitions purely on its merits and take a decision as expeditiously as possible.

10. For such of the accused who have already been granted bail by the Trial Court/Court concerned, subsequent to the remand of the matters by the High Court in the order(s) impugned, shall continue to remain on bail on the same terms and sureties as decided by the Court concerned and for the rest of the accused person(s) who have not granted bail, will always be at liberty to seek bail afresh.

11. The present appeals are disposed of in the above terms.

12. All pending applications stand disposed of.

.....J.
[SUDHANSHU DHULIA]

.....J.
[AHSANUDDIN AMANULLAH]

New Delhi;
December 04, 2024.

ITEM NO.2

COURT NO.14

SECTION II-C

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) Nos.9447-9454/2022

[Arising out of impugned final judgment and orders dated 29-04-2022 in CRLAMD No. 352/2020 29-04-2022 in CRLAMD No. 355/2020 29-04-2022 in CRLAMD No. 27/2021 29-04-2022 in CRLAMD No. 29/2021 29-04-2022 in CRLAMD No. 25/2022 29-04-2022 in CRLAMD No. 153/2022 29-04-2022 in CRLAMD No. 257/2022 29-04-2022 in CRLAMD No. 258/2022 passed by the High Court of Judicature at Madras at Madurai]

MUTHURAMALINGAM @ KORANGU

PETITIONER(S)

VERSUS

THE STATE REP. BY THE INSPECTOR OF POLICE,
RAMANATHAPURAM DISTRICT & ANR. ETC.ETC.

RESPONDENT(S)

(IA No. 127082/2022 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 147601/2022 - EXEMPTION FROM FILING O.T., IA No. 127083/2022 - EXEMPTION FROM FILING O.T. & IA No. 147600/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(CrI) No. 9257-9259/2023 (II-C)
(IA No. 136770/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 144677/2023 - EXEMPTION FROM FILING O.T., IA No. 136773/2023 - EXEMPTION FROM FILING O.T. & IA No. 143366/2023 - INTERLOCUTARY APPLICATION)

SLP(CrI) No. 9738-9742/2023 (II-C)
(IA No. 130732/2023 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 143198/2023 - EXEMPTION FROM FILING O.T., IA No. 130733/2023 - EXEMPTION FROM FILING O.T. & IA No. 143197/2023 - INTERLOCUTARY APPLICATION)

Date : 04-12-2024 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSHU DHULIA
HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH

For Petitioner(s) Mr. Jayanth Muth Raj, Sr. Adv.
Mr. Siddarath Agarwal, Sr. Adv.
Mr. R. Basant, Sr. Adv.
Mr. V. Purushothaman Reddy, Adv.
Mr. Vinodh Kanna B., AOR

Mr. Sarath S Janardanan, Adv.
Mr. Viswajeet, Adv.
Mr. Pradeep Kumar Kar, Adv.
Mr. Naman Vashishtha, Adv.

For Respondent(s) Mr. V. Krishnamurthy, Sr. A.A.G.
Mr. Sabarish Subramanian, AOR
Mr. Vishnu Unnikrishnan, Adv.
Mr. C. Kranthi Kumar, Adv.
Ms. Azka Sheikh, Adv.
Mr. Danish Saifi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are disposed of in terms of the signed order,
which is placed on the file.

Pending application(s), if any, shall stand disposed of.

(NIRMALA NEGI)
COURT MASTER (SH)

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR