

2023 LiveLaw (SC) 1016

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
ABHAY S. OKA; J., PANKAJ MITHAL; J.
November 21, 2023.

CRIMINAL APPEAL NO.3563 OF 2023 (Arising out of S.L.P.(CrI.) No. 3663 of 2023)
S. MUJIBAR RAHMAN versus THE STATE REP. BY INSPECTOR OF POLICE & ANR.

Code of Criminal Procedure, 1973; Section 317 (2) - Splitting of the Trial - When the High Court permitted splitting of the trial, two important aspects were not noted by the High Court. The first one was that the Magistrate was not satisfied that the police have made sufficient efforts to procure the presence of all the accused. The second factor which is more important is the order of further investigation. Therefore, this was not the stage at which the High Court could have permitted splitting of the case.
(Para 5)

(Arising out of impugned final judgment and order dated 23-02-2021 in CRLRC(MD) No. 17/2021 passed by the High Court of Judicature at Madras at Madurai)

For Petitioner(s) Mr. A Velan, AOR Ms. Navpreet Kaur, Adv. Mr. Mritunjay Pathak, Adv. Mr. Ts Nanda Kumar, Adv.

For Respondent(s) Mr. V Krishnamurthy, Sr. Adv., A.A.G. Dr. Joseph Aristotle S., AOR Ms. Shubhi Bhardwaj, Adv. Ms. Richa Vishwakarma, Adv.

ORDER

Leave granted.

2. Heard the learned counsel appearing for the appellant and the learned senior counsel appearing for the respondents/State.

3. First Information Report was registered for the offences punishable under Sections 395, 397, 212, 120B and Section 3 of the Tamil Nadu Public Property Damages Act against 31 accused. As can be seen from the order dated 16th June, 2019 passed by the learned Judicial Magistrate that the presence of some of the accused could not be procured. The said order was passed on a petition filed by the second accused invoking sub-section 2 of Section 317 of the Code of Criminal Procedure, 1973 (for short "CrPC"). The learned Magistrate observed that non-bailable warrants and summons have been sent through the police department but a report has not been filed by the police department expressing inability to execute the non-bailable warrants or summons. Therefore, the learned Magistrate rejected the said prayer.

4. A Revision Application was filed before the High Court by the second accused for challenging he said order of the learned Magistrate. In the impugned judgment, the High Court observed that the case was pending from 2016 and the police could not serve summons and/or nonbailable warrant to certain accused persons. It is observed that only 20 out of 31 accused persons were attending the Court.

5. After having perused the impugned judgment, we find that the High Court has not even considered the reasons recorded by the learned Magistrate in the order dated 16th July, 2019. Secondly, the High Court has not noticed that the learned Judicial Magistrate on 13th February, 2019 had permitted further investigation. Therefore, when the High Court permitted splitting of the trial, two important aspects were not noted by the High Court. The first one was that the learned Magistrate was not satisfied that the police have made sufficient efforts to procure the presence of all the accused. The second factor which is more important is the order of further investigation passed on 13th February, 2019,

Therefore, this was not the stage at which the High Court could have permitted splitting of the case.

6. The learned senior counsel representing the respondent-State pointed out that now the Deputy Superintendent of Police is the Investigating Officer. However, as far as the nature and quality of investigation is concerned, we will have to address the said issue in the companion petition i.e. SLP(Criminal)No.7378 of 2023.

7. Accordingly, the impugned judgment and order dated 23rd February, 2021 is set aside and the order dated 16th June, 2019 of the learned Judicial Magistrate is restored.

8. The appeal is accordingly allowed.

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