

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

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THE HONOURABLE MR. JUSTICE R.SUBBIAH

CrI.O.P.No.28929 of 2015

Reserved on 07.12.2015

P.Mahendran

... Petitioner

Vs

State rep. By Inspector of Police,
H-8, Police Station,
Thiruvotriyur, Chennai-600 019.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking a direction to alter the final report in C.C.No.68 of 2015 on the file of the Judicial Magistrate, Thiruvotriyur, for the alleged offences under Sections 337, 304 (A) of IPC and consequently direct the respondent to file amended final report.

For Petitioner : Ms.S.Deepika

For Respondents : Mr.C.Emalias

Additional Public Prosecutor

O R D E R

The present criminal original petition has been filed seeking a direction to the respondent alter the final report in C.C.No.68 of 2015 on the file of the Judicial Magistrate, Thiruvotriyur, for the alleged offences under Sections 337, 304 (A) of IPC and consequently direct the respondent to file amended final report.

2. According to the petitioner, his brother deceased Mahesh @ Kannan was a contractual labour, used to be engaged by the accused 1 to 3 who are the contractors for doing sewage works on behalf of the Metro Water Board. They used to engage the scavengers for doing labour works, such as clearing sewage and blockages in drainages. On 10.02.2014, the accused No.2 had offered drainage work to the deceased stating that there was a cleaning work in the main drainage well situated near MSM Theatre, Thiruvotriyur, for which, the deceased refused stating

that his marriage was fixed in a week's time. However, the accused No.2 insisted the deceased to do the work and offered Rs.600/-. During the course of cleaning and removing the wastages in the main drainage, unfortunately, the deceased fell down in the drainage well and sustained head injury due to lack of safety measures. The employees lives were not insured by the Chennai Metro Water Service and Sewage Board and they also failed to provide immediate medical care and proper attention. The contractors did not take the deceased to a proper hospital, but they took to Aakash Hospital, which is far away from General Government Hospital and due to delayed medical attention, the deceased had succumbed to his head injury. They could have taken him immediately to nearby Appollo Hospital in Tondiarpet or to Stanly Hopital so that life of the deceased could be saved. Aggrieved over the death of his brother, the petitioner lodged a complaint before the respondent, which was registered in Crime No.228 of 2014 for the offences under Sections 288 and 337 of IPC and later altered to Section 304-A IPC. The respondent police had registered the case only against the contractors/accused 1 to 3 who had engaged the deceased for the drainage work. The grievance of the petitioner is that the respondent police have not included the officers of the Chennai Metro Water Service and Sewage Board in the FIR nor in the charge sheet. According to the petitioner, the said officials are the responsible who used to engage the scavengers without providing proper medical facilities, safety measurements and insurance coverage and hence, they are liable to prosecuted. Therefore, the petitioner has come forward with the present petition.

3. When the matter is taken up for consideration, the learned counsel appearing for the petitioner, while reiterating the above facts, would submit that unless the officials of the Chennai Metro Water Service and Sewage Board are included in the charge sheet, there would be no ends of justice to the relatives of the deceased, who died at his tender age only due to lack of providing safety measures and medical facilities and they are not taking steps to bring the scavengers under the coverage of proper insurance policy, but utilizing their services. Hence, the learned counsel sought for the relief stated supra.

4. The learned Additional Public Prosecutor would submit that the accused 1 to 3 who are the contractors engaged the deceased for the drainage work, alone are the responsible as they failed to provide safety measures and accordingly, the respondent police have rightly registered the case against them under Section 304-A r/w 34 IPC and the officials of the Chennai Metro Water Service and Sewage Board are not responsible since they were not directly involved in engaging the deceased for the drainage work. He also submitted that if the petitioner is aggrieved over the non-coverage of insurance, he can workout his

remedy for compensation in the manner known to law, but for this, the petitioner cannot seek implication of the officials in the charge sheet as no criminal liability can be attached against them. Therefore, the learned Additional Public Prosecutor sought for dismissal of the petition.

5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor for the respondent and perused the entire materials place on record.

6. It is not in dispute that the deceased scavenger was engaged by the accused 1 to 3 who are the contractors for the drainage work and the officials of the Chennai Metro Water Service and Sewage Board were not even aware of this fact since they were not directly involved in engaging the deceased for the drainage work. Now, on completion of the investigation, the respondent police has also filed the charge sheet under Section 304(A) r/w 34 IPC against the contractors/accused 1 to 3. As rightly submitted by the learned Additional Public Prosecutor, since the officials of the Chennai Metro Water Service and Sewage Board were not directly involved in engaging the deceased for the drainage work, but through the contract, cannot be impleaded as accused since no criminal liability can be attached against them. Therefore, I do not find any reasonable ground to order for alteration of the charge sheet as prayed for by the petitioner.

7. For the foregoing reasons, I am of the view that the prayer sought for the petitioner, cannot be granted. Accordingly, this petition is dismissed. However, it is made clear that this order would not preclude the petitioner to work out his remedy for compensation in the manner known to law.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

Suk

1. The Inspector of Police, H8 Police Station,
Thiruvotriyur Chennai-19.

2.The Judicial Magistrate, Thiruvotriyur.

3. The Public Prosecutor, High Court, Madras.

+ 1 cc to Ms. S. Deepika, Advocate Sr.66384

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