

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2015

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The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.No.3933 of 2015
and M.P.Nos.1 and 2 of 2015

P.K.Vengadan

...Petitioner

vs.

State represented by
Inspector of Police
R6, Kumaran Nagar Police Station,
Chennai-600 083.
(Crime No.874 of 2003)

...Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records of the proceedings in C.C.No.5659 of 2014 pending on the file of the 23rd Metropolitan Magistrate, Saidapet, Chennai and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.R.John Sathyan -For N.Naganathan

For Respondent : Mr.M.Maharaja
Additional Public Prosecutor

O R D E R

The petitioner is the first accused in C.C.No.5659 of 2014 on the file of the 23rd Metropolitan Magistrate, Saidapet, Chennai. The respondent filed charge sheet against the petitioner and five others for having committed the offence under Section 304A IPC and Sections 4, 5 and 6 and 15 of the Tamil Nadu Lifts Act, 1997.

2. The learned counsel for the petitioner submitted that according to the charge sheet, the petitioner is a builder and he constructed the building "Manjula Apartments" and while constructing the apartment, he provided lift and entrusted the job of installation of lift to the accused 2 and 3, who fixed the lift which was manufactured by their company and they also entered into an agreement with the accused 4 to 6 for maintenance of the lift. While so, on 12.08.2003 at about 6.15 p.m. a girl named Sidhara, aged about 8 years, opened the lift and the lift was open and there was no floor in the lift and she had fallen into the lift pit, got injured in the

head and died and therefore, prosecution was launched against the petitioner and others for the aforesaid offences. The learned counsel for the petitioner further submitted that the petitioner is neither the owner of the place nor undertook to maintain the lift and as per Section 4 of the Tamil Nadu Lifts Act, 1997, owner is directed to erect lift in the place after getting permission from the appropriate authority and under Section 5, the owner of the place shall act according to the licence granted by the appropriate authority for operating the lift and under Section 6, the owner alone was given responsibility in respect of the lifts. As the petitioner is not the owner of the premises and he is only a builder who constructed the apartment and the lift was manufactured by the company in which the accused 2 and 3 are employees and they installed the lift and entered into a maintenance agreement with the members of the association of the said apartment, the petitioner cannot be prosecuted under the provisions of the Tamil Nadu Lifts Act, 1997. The learned counsel for the petitioner also submitted that possession of the apartment was handed over even in the year 1998 and the incident took place in the year 2003 and during that period, the petitioner has no control over the maintenance of the lift and the same was entrusted with the accused 2 and 3 by reason of the agreement entered into with the accused 4 to 6 and therefore, the petitioner cannot be prosecuted.

3. Heard learned Additional Public Prosecutor, who would submit that the petitioner while constructing the apartment, made arrangements for fixing the lift and therefore, he was arrayed as the first accused and having regard to the provisions of Section 4, 5 and 6 of the Tamil Nadu Lifts Act, 1997, charge sheet was laid against the petitioner and therefore, there is no need for quashing the charge sheet.

4. It is not in dispute that the petitioner was not the owner of the premises where the lift was fixed. It is admitted in the charge sheet that the petitioner has constructed the apartment and it has not been stated that the lift was fixed in the apartment as part of the construction agreement. On the other hand it is admitted in the charge sheet that the accused 2 and 3, who are the employees of the company which manufactured the lift, entered into an agreement of maintenance with the association of the apartment owners and therefore, the accused 2 and 3 were in-charge of the life in view of the arrangement entered into with the owner. Under Section 4 of the Tamil Nadu Lifts Act, 1997, the responsibility was fastened on the owners to apply for permission and maintain the lift and under Section 15, whoever contravenes any of the provisions of the Act are liable to be prosecuted.

5. As the petitioner is not the owner of the premises, he is not expected to comply with Sections 4, 5 and 6 of the Tamil Nadu Lifts Act, 1997 and therefore, he cannot be prosecuted under Section 15 of

the said Act. Further, having regard to the fact that possession of the building was handed over in the year 1998 and the lift was fixed by the accused 2 and 3 and they entered into agreement of maintenance with the owner of the building, it cannot be said that the petitioner is responsible for maintaining the lift and the prosecution launched against the petitioner is without any basis.

6. Hence, this Criminal Original Petition is allowed and the proceedings in C.C.No.5659 of 2014, on the file of the 23rd Metropolitan Magistrate, Saidapet, Chennai is quashed insofar as the petitioner is concerned. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm
To

1.Inspector of Police

R6, Kumaran Nagar Police Station,
Chennai-600 083.

2.The Public Prosecutor,
High Court, Madras.

3.the 23rd Metropolitan Magistrate, Saidapet, Chennai.

1 cc to Mr. N.Naganathan, Advocate, SR.No.12797

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Cr1.O.P.No.3933 of 2015

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