

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:12.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CRL.O.P.No.25059 of 2009
and
M.P.Nos.1 & 2 of 2009

V. Ganesh

.. Petitioner/Accused

Vs.

State rep. By
The Inspector of Police
S-12, Chitlalpakkam Police Station,
Chennai - 600 064.

... Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the records and quash the proceedings in C.C.No.457 of 2009 pending on the file of the Learned Judicial Magistrate, Tambaram, for an offence under Section 304-A, IPC.

For Petitioner : M/s. K. Surendar

For Respondent : Mr.M. Maharaja
Addl. Public Prosecutor.

ORDER

The petitioner has been chargesheeted for offence u/s. 304-A, IPC on the file of C.C.No.457 of 2009 pending on the file of the Learned Judicial Magistrate, Tambaram and this petition is liable to be quashed.

2. It is submitted by the learned counsel for the petitioner that according to the prosecution, the petitioner is the tenant of the premises and he contacted one E.V.Sampath, who is engaged in the cleaning of septic tank and the said E.V.Sampath sent his two employees to clean the septic tank of the premises in which the petitioner was the tenant and when those two persons went into the septic tank, they died due to the leakage of the poisonous gas from the septic tank. Consequently, the petitioner and contractor, E.V.Sampath were chargesheeted and later, contractor was discharged from the chargesheet u/s 304 - A IPC. He further submitted that as per the chargesheet, the petitioner failed to provide necessary safety apparatus to the deceased persons before they were allowed to enter into the septic tank for the purpose of cleaning it and on that ground, the petitioner was chargesheeted.

3. The learned counsel for the petitioner further submitted that all the witnesses have stated during investigation that E.V.Sampath is doing the operation of cleaning of septic tank by engaging employees under him and when he was contacted by the petitioner, he sent two employees to clean the septic tank of the petitioner. As a contractor, it was the duty of the said E.V.Sampath to provide all the safety apparatus to the employees while they were sent for cleaning septic tank and the petitioner cannot be expected to provide safety apparatus and therefore, the petitioner cannot be prosecuted for the offence u/s. 304 - A IPC.

4. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

5. I have gone through the materials available on record and perused the same.

6. The learned Additional Public Prosecutor submitted that being the tenant of the premises and having called those persons to clean the septic tank, the petitioner ought to have verified whether those two persons were having the safety apparatus before allowing them to enter the septic tank and having failed to verify the same, case was filed against the petitioner.

7. I am unable to accept the contention of the learned Additional Public Prosecutor. I have also gone through the statement of witnesses and it is admitted that the petitioner engaged one E.V.Sampath for cleaning the septic tank and it is also admitted that the deceased were employed by E.V.Sampath and they were doing the job of cleaning septic tank and therefore, it is his duty to provide all the safety measures before allowing his employee to do the cleaning work in the septic tank and the person who engaged them for services cannot be expected to provide the safety measures to the persons who were asked to clean the septic tank.

8. As a matter of fact, the First Information Report was rightly registered against E.V.Sampath, but for the reason best known to the prosecution the said E.V.Sampath was relieved while filing chargesheet. According to me, the proper person to be prosecuted is E.V.Sampath. Hence, there is no negligence on the part of the petitioner, much less wilful negligence and hence, prosecution against the petitioner is quashed and petition is allowed.

In the result, the criminal original petition is allowed.
Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CO)

Dt:31/3/2015

True Copy

Sub-Assistant Registrar

To

1. The Inspector of Police
S-12, Chitralpakkam Police Station,
Chennai - 600 064.
2. The Judicial Magistrate, Tambaram.
3. The Public Prosecutor, High Court, Madras.

+ 1 cc to Mr.K.Surendar, Advocate SR 14152

gr(co)
prk1/4

CRL.O.P.No.25059 of 2009
and
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