

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2015

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Cr1.O.P.No.22742 of 2013

1.E.V.Perumal Samy Reddy
2.E.V.R.Santhosh Reddy
3.Rajeswari Petitioners

Vs.

1.State Rep.by
the Inspector of Police,
T.16,Nasarathpettai Police Station,
Chennai 602 103.
2.Arnab KumarSakkraporthi
(R2 impleaded as per the order of this Court
in M.P.No.1 of 2015 dated 22.07.2015) Respondents

Prayer:- Petition has been filed under Section 482 of Cr.P.C. to call for the records in respect of P.R.C.No.7 of 2013 pending trial before Judicial Magistrate No.I, Poonamallee dated 8.4.2013 in Crime No.1271 of 2012 dated 2.10.2012 on the file of the respondent police and quash the same.

For Petitioners : Mr.R.C.Paul Kanagaraj
For R1 : Mr.C.Emalias
Additional Public Prosecutor

For R2/Defacto complainant: Mrs.Vasugi Ramanathan

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O R D E R

It is the case of the prosecution that the petitioners herein are running E.V.P.Theme Park at Sembarambakkam, where they have installed several jolly rides like Giant wheel , Merrygo Round, Octopus ride etc.

2. It is the admitted by the prosecution that the said Theme Park has been licensed by the authorities and it is open to public on

payment of charges. On 02.10.2012, a group of youngsters came to the Theme Park and they took tickets for Octopus ride. While the ride was in progress, the safety lock securing the rider to the seat got unlocked, on account of which, Ms.Afia Magh, the deceased, was thrown out from her seat, resulting in she sustaining injuries and later she succumbed to the injuries. In connection with this incident, the respondent police registered a case in Cr.No.1271 of 2012 and after completing the investigation, they have filed a final report and it has been taken on file as P.R.C.No.7 of 2013 by the learned Judicial Magistrate No.I, Poonamallee, for the offence under Section 304 (ii) I.P.C. R/w 109 of I.P.C. against the petitioners herein and the employees.

3. It is the prosecution case that, the petitioners, as owners of the Theme Park, should have ensured that the Octopus ride was provided with automatic safety lock and on account of failure of the owners to provide automatic safety lock, the incident occurred resulting in the death of Ms.Afia Magh.

4. On a complete reading of the final report, this Court is unable to comprehend as to how the petitioners and their employees can be prosecuted for the offence under Section 304(ii) I.P.C. on the facts of the case. It is sheer a accident and at the most they can only be charged for an offence under Section 304(A) I.P.C. Admittedly, during the ride, there were several persons, but unfortunately, the safety lock in the seat of Ms.Afia Magh alone got unlocked, resulting in she being thrown out. Thus, it is solitary incident for which the petitioners and their employees cannot be charged for an offence under Section 304(ii) I.P.C. In *Sushil Ansal v. State Through Central Bureau of Investigation* reported in (2014) 6 SCC 173, the accused were charged and convicted only for an offence under Section 304(A) I.P.C. for the death of several persons in a Theatre fire. There is absolutely, no reason for the owners of the Theme Park to deliberately create a situation whereby one of their customers should die. Recently, in *Rajan Vs Joseph and Others* [CrI.A.No.582 of 2015] order dated 08.04.2015], a Three Judge Bench of the Hon'ble Supreme Court quashed the prosecution for an offence under Section 304 (A) IPC against the accused in whose house, his servant maid died due to electric shock in the washing machine. The Hon'ble Supreme Court also directed the accused to pay compensation of Rs.1Lakh to the family of the deceased.

5. Now the mother of the deceased Afia Magh, is present before this Court and she has filed an affidavit, wherein, it is stated as follows, in paragraphs 3 to 7:

I submit that the petitioner herein filed quash petition before this Hon'ble Court in CrI.O.P.No.22742 of 2013 to quash the charge sheet filed by the respondent pending before the Judicial

Magistrate-I, Poonamallee in P.R.C.No.7 of 2013.

I submit that in view of the Apex Court Judgment compromise arrived between me and the petitioners and I agreed to receive the sum of Rs.25,00,000/- as the compensation and I have no objection to quash the charge sheet filed in P.R.C.No.7 of 2013 against the petitioners pending before the Judicial Magistrate-I, Poonamallee.

I submit that the compromised arrived due to my own satisfaction and there is no force or coercion from the petitioners or any other third parties.

I submit that the above said compensation amount may be deducted in the case filed in C.C.No.48 of 2013 before the State Consumer Dispute Redressal Commission, if the Commission pass an award of compensation in favour of me.

Hence I prayed that this Hon'ble Court may be pleased to accept the consent affidavit and quash the charge sheet filed in P.R.C.No.7 of 2013 before the Judicial Magistrate-I, Poonamallee.

6. Today, the learned counsel for the petitioners handed over a Demand Draft bearing No.390171 dated 16.07.2015 drawn on Kotak Mahindra Bank, Adayar Branch, Chennai, for a sum of Rs.25,00,000/- (Rupees Twenty Five lakhs only) as compensation in favour of Mrs.Sasule, mother of deceased Ms.Afia Magh.

7. It is also seen that Mrs.Sasule has filed C.C.No.48 of 2013 before the State Consumer Dispute Redressal Commission, Chennai, claiming a compensation of Rs.50,20,000/- from the owners of the Theme Park and the Consumer case is still pending adjudication. This sum of Rs.25,00,000/- is paid without prejudice to the claim of Mrs.Sasule in C.C.No.48 of 2013 before the State Consumer Dispute Redressal Commission, Chennai. It is agreed by Mrs.Sasule and the petitioners herein that if any award is passed by the State Consumer Dispute Redressal Commission, Chennai, exceeding Rs.25,00,000/-, then the amount of Rs.25,00,000/- received now will be set off and only the balance amount will be required to be paid by the owners of Theme Park. If the State Consumer Dispute Redressal Commission, Chennai, passes an award lesser than Rs.25,00,000/-, Mrs.Sasule, will not be required to refund any amount to the owners of the Theme Park.

8. In view of the settlement arrived at between the parties, the entire prosecution in P.R.C.No.7 of 2013 on the file of the Judicial Magistrate No.I, Poonamallee, not only against the petitioners

herein, but also against the other accused, who are not before this Court, is hereby quashed.

In the result, this Criminal Original Petition is allowed.

-s/d-

Assistant Registrar(CO)
dt:03/08/2015

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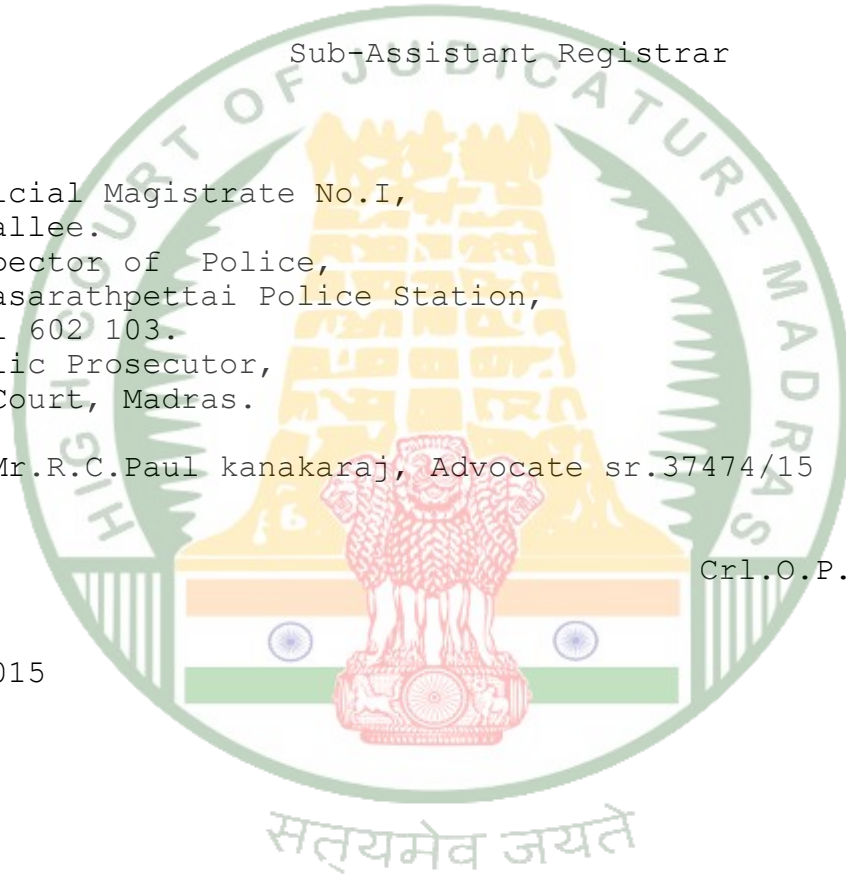
Sub-Assistant Registrar

To

- 1.The Judicial Magistrate No.I,
Poonamallee.
 - 2.The Inspector of Police,
T.16,Nasarathpettai Police Station,
Chennai 602 103.
 - 3.The Public Prosecutor,
High Court, Madras.
- +5 cc to Mr.R.C.Paul kanakaraj, Advocate sr.37474/15

Crl.O.P.No.22742 of 2013

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