

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7302 of 2013

ORDER :

The petitioners are A3 to A5 of private P.R.C.No.3 of 2012 on the file of Judicial Magistrate of First Class, Special Mobile Court-cum-XI Metropolitan Magistrate, Cyberabad, L.B.Nagar. The 2nd respondent is the defacto complainant-cum-father of the deceased person by name, P.Srinath.

2. The factual back ground of the case is on 16.01.2014, LW.1 by name, P.Satyanarayana, watchman of C.S.R.State 42, Huda Complex, Flat No.12, at about 1630 hours presented a report to the Station House Officer, Saroornagar, stating that about 3.00 p.m. in the apartment of flat No.107 in C.S.R.Estate supra, fire coming out and he noticed it from flat No.501 and in the concerned flat door was closed and from window fire coming out and with other people gathered and helped he could save the person therein from further burns by name, P.Srinath, who by then almost totally burnt from fire injected and there is a kerosene box nearby and house items are in pelmel and he was noticed breath the lost, hence to take action. Pursuant to which the Inspector-cum-Station House Officer conducted an inquest over the dead body of the deceased in the presence of seven witnesses including mediators to the inquest LWs.6 and 7 apart from father(LW.3) and other relatives of the deceased and opined that death is suicidal. Body was shifted for post-mortem examination and received Post-Mortem report stating there are above 90% burns and death is due to the burnt injuries, a suicide. The investigating officer during the course of investigation, more particularly, at the time of inquest itself

examined as LW.3 the father of the deceased, by name, P.Chandra Mouli (complainant/protest petitioner) who by then did not state any suspicion of foul play.

3. The crime No.35 of 2004 initially registered was without showing any Indian Penal Code offences but under Section 174 Cr.P.C. and after taking up investigation, the police filed final closure report after receiving the Post-Mortem report and after raised several questions to be answered by the Doctor who conducted the autopsy on the body of the deceased and confirmed to the queries from the replies that it is a suicidal death and not a homicide.
4. It was at that stage, the father of the deceased(LW.3) by name, P.Chandra Mouli, filed a protest application not to close the case from police report as the death is otherwise. From the protest application the learned Chief Metropolitan Magistrate concerned conducted an enquiry by recording the sworn statement of as many as nine witnesses including the Doctor, who conducted post-mortem, the investigating officers including one who conducted the inquest and registered the First Information Report etc., The learned Magistrate after that pre-cognizance private complaint enquiry contemplated by Sections 200 to 202 Cr.P.C. from the protest application of the father of the deceased, by name, P.Chandra Mouli supra and after hearing with reference to the evidence of PWs.1 to 9 dismissed the protest application in accepting the inquest report of the police as death is suicidal and not homicide.
5. Impugning the legality and correctness of the dismissal of the protest application and accepting the police referred report, vide

Crl.M.P.No.6906 of 2005 dated 20.04.2007, the protest applicant(supra) filed revision in Crl.R.C.No.1021 of 2007 showing five accused persons, of whom the present quash petitioners are A3 to A5, no other than wife, father-in-law and mother-in-law of the deceased besides sister and brother of wife of the deceased. This Court, by order dated 03.08.2007 allowed the said revision by setting aside the dismissal of the protest application and remanded the matter to the learned II Metropolitan Magistrate, Cyberabad, Ranga Reddy District, for further consideration in accordance with law. It is by saying as per the revision petitioner's contest, the burns are post-mortem (post death burns) and not pre-death anti-mortem burns and it is created the homicide as suicide. The Head of the Department of Forensic Medicine has not given categorical finding of suicidal death by ruling out possibility of homicidal death and unless that is proved to the contrary with reference to surrounding circumstances also as to whether there is any prima-facie homicidal death or not and the Magistrate did not advert to this in arriving the conclusion which is wrong, thereby, hence passed the order supra.

6. Pursuant to which, the matter taken on file back by the learned Magistrate and ultimately the protest petitioner examined another Doctor, PW.10 and the Doctor opined that cause of death is not due to burns revealed from Post-Mortem report supra and that the body was burnt to conceal homicide as he concluded that the deceased was already died at the time of burns because of absence of soot in the wind pipe and there was no thermal injury to the respiratory track and 98% burn injuries does not suggest that the death is due to the burns as a suicide. It is that it

appears the only factor influenced the mind of the learned Magistrate from PW.10's evidence (the additional witness cause examined by the protest petition) pursuant to the revision order supra in taking cognizance for the offences punishable under Sections 120(b), 302 and 201 I.P.C. in omnibus against A1 to A5 and allotted private P.R.C. number to commit the case to the Court of Sessions, vide order dated 13.03.2012.

7. It is the same, now impugning in the quash petition. PW.10 evidence, no doubt, suggests that the death is not suicidal with 98% burns and the contention of the protest petitioner before the learned Magistrate is also that, had it been a self-humiliation, there could be hue and cry by the victim to save before reacting that stage. In fact, the watch man's report setting law in motion indicates that it is on seeing fire and smoke coming out from the closed doors of flat No.107 of the deceased, he along with other persons gathered assisted, broke open the doors and saved the body and found nearly kerosene tin and house hold articles in pell-mell and by the time observed the body of said P.Srinath breathed the lost. Even from the police investigation in filing the final report or from the protest application sworn statements of PWs.1 to 10 including pursuant to the revision direction order though it suggests another possibility of not a suicidal death but may be of homicidal outcome also. However, to say the complicity of any of A1 to A5 to the cause of death or the crime, there is practically nothing including from the say by father of the deceased, who is the protest petitioner, by name, P.Chandra Mouli examined as LW.3 during the course of inquest proceedings who did not suspect anything against any of the accused persons herein, but for after police final referred report

in the protest application and in his statement he is not even an eye witness to the occurrence much less any other person to say any of the accused are last seen together with deceased either in the flat or nearby and nothing from public anywhere to say any of their complicity. The learned Magistrate was simply influenced by the evidence of the additional witness as PW.10 saying another possibility of considering if not a suicide, a homicide. Here, that is not the case of be all and end all from PW.10's evidence, much less suffice, in the absence of showing any complicity of any of the accused persons. Even from protest applicants and some other witnesses sworn statements show bickerings between the couple and any differences with in-laws family and any sufferance there from by deceased mentally thereby before he breathed lost, that may be a different story to consider any possibility of abatement which is not even makes out as a direct consequence of suicide from abatement. There is no any external injury even found from post-mortem report if at all any homicidal attempt while making from any resistance including if at all while smothering for rigging out, that too it must be proved any of the accused seen in the company of deceased. It is not even a case against watchman showing his complicity to the crime, whose first information statement itself when clearly showing doors closed by deceased found alone, they entered by broke open, thereby the pre-committal cognizance taken for the offences alleged in particular against the accused persons by the learned Magistrate by the impugned order dated 13.03.2012 in allotting private P.R.C. to commit the case to the Court of Sessions is unsustainable and liable to be quashed.

8. Accordingly, the Criminal Petition is allowed and the proceedings relating to P.R.C.No.3 of 2012 on the file of Judicial Magistrate of First Class, Special Mobile Court-cum-XI Metropolitan Magistrate, Cyberabad, L.B.Nagar, are hereby quashed.
9. Miscellaneous petitions pending, if any, in the Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

01.12.2015

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