

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 28.06.2016

PRONOUNCED ON: 01.07.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No. 17513 of 2014 & M.P. Nos.1 & 2 of 2014

Marie Wilson
Managing Trustee
S/o Nestore Jeppiaar Remibai
Educational Trust
Jeppiaar Nagar
Kunnam Village
Sriperumpudur Taluk
Kanchipuram District 631 604 ...Petitioner

vs.

- 1 State of Tamil Nadu
represented by its
Deputy Superintendent of Police
Sriperumpudur Sub-Division
Kanchipuram District
- 2 The Inspector of Police
C-2, Sunkuvarchatram Police Station
Kanchipuram District ... Respondents

Criminal Original Petition filed under Section 482, Cr.P.C.
to call for the records and quash the case in P.R.C. No.4/2014
on the file of the District Munsif -cum-Judicial Magistrate
Court, Sriperumbudur, as against the petitioner.

For petitioner Mr. R.C. Paul Kanagaraj

For respondents Mr. Shanmugavelayutham,
Public Prosecutor
assisted by Mr. C. Emalias
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed to call for
the records and quash the case in P.R.C. No.4/2014 on the file
of the District Munsif -cum-Judicial Magistrate Court,
Sriperumbudur, as against the petitioner.

2 The petitioner is the Managing Trustee of Jeppiaar Remibai Educational Trust, which runs an Engineering College in the name of Jeppiaar Institute of Technology. On the instructions of the petitioner, a basketball indoor auditorium was being constructed in the Engineering College in the year 2012. In addition to the construction of the said auditorium, the petitioner had instructed the contractors to build an arch. When the arch was being constructed, it collapsed resulting in the death of 10 labourers and grievous injuries to 2 others. In connection with this incident, the respondent police registered a case in Crime No.679/2012 under Sections 308 and 304 (ii) IPC and after completing the investigation, has filed a final report against the petitioner and 4 others in P.R.C. No.4 of 2014 before the District Munsif-cum-Judicial Magistrate Court, Sriperumpudur for the offences under Sections 308 and 304 (ii) IPC, challenging which the petitioner is before this Court.

3 After registration of the First Information Report, one of the Trustees, viz., Jeppiaar was arrested on 09.08.2012 and he was granted bail by this Court in Crl.O.P. No.19301 of 2012 by order dated 21.08.2012 on condition that he should deposit a sum of Rs.26 lakhs. Likewise, this petitioner also was granted bail by this Court in Crl.O.P. No.22164 of 2012 by order dated 12.09.2012 on condition that he should deposit a sum of Rs.27 lakhs.

4.1 According to the petitioner, the bail conditions have been complied with and the amount of Rs.53 lakhs has been deposited, apart from payment of ex gratia amount of Rs.2.50 lakhs to each of the deceased.

4.2 It is further contended by the petitioner that this Court has quashed the First Information Report against Jeppiaar and Remibai Jeppiaar in Crl.O.P. No.25259 of 2012 on 29.11.2012 and therefore, the present prosecution also should be quashed on the ground that the petitioner also is on the same footing.

4.3 It is further contended by the petitioner that the provisions of Section 308 read with Section 34 IPC will not stand attracted in the light of the fact that the petitioner had awarded construction work to an independent contractor and for his lapse, the petitioner cannot be mulcted with criminal liability.

4.4 Lastly, it is contended by the petitioner that he had filed Crl.O.P. No.615 of 2014 challenging the very First Information Report in which this Court had granted stay on 10.01.2014, which has been extended from time to time, despite which, the respondent police have filed a final report and therefore, the same is bad in law.

5 As regards the contention of the petitioner that filing of final report during the pendency of CrI.O.P. No.615 of 2014 is bad in law, this Court perused the records in CrI.O.P. No.615 of 2014 and found that this Court has disposed of the said petition on 24.03.2014 in the following terms:

"2. Learned Additional Public Prosecutor submits that charge sheet stands filed informing offences under Section 308, 304(i) IPC r/w 34 IPC on 20.02.2014 before Judicial Magistrate, Sriperumpudur. Even while disposing of this petition as closed, there shall be a direction to the Judicial Magistrate, Sriperumpudur, to consider the charge sheet filed in Crime No.679/2012 on the file of the first respondent without any further delay."

6 That apart, just because final report has been filed during the pendency of CrI.O.P. No.615 of 2014, it cannot be quashed as illegal, if there are sufficient materials for the prosecution to proceed further.

7 Coming to the contention in the petition that this Court has quashed the First Information Report against Dr. Jeppiaar and Remibai Jeppiaar in CrI.O.P. No.25259 of 2012, it is seen that this Court has quashed the prosecution on the ground that they were only ordinary Trustees and there was no material collected by the prosecution to implicate them. In fact, there is a clear finding in the order passed by this Court which is as follows:

"7. From this it is very clear that as per the Trust Deed the Managing Trustee alone is empowered to put up buildings or structures on the said property or under the control and possession of the Trust. The other two Trustees are not empowered to play any role prima facie except to participate in the Board Meeting."

8 At this juncture, it may be necessary to extract the allegation against the petitioner in the final report, as under:

"On 06.08.2012, as per the instructions and active guidance of the A1 Maria Wilson, and on the supervision of the accused A5 Annadurai, the accused A4 Sudhananthan has engaged the services of construction labourers from the States of Assam and Orissa and the entire construction was designed and monitored by the accused A2 and A3. The construction labourers were compelled by the accused to construct the arch portion over and above the pillars which were already laid. When the construction labourers have refused to put more weight in the form of concrete to proceed with the arch construction by

stating that the concrete already laid did not sufficiently underwent the process of curing and hence did not attain the required strength to sustain the additional weight, the accused A1 to A5 have compelled the construction labourers to proceed with the continuation of the arch portion without even adhering to the basic rules and norms of construction and without affording sufficient strength to the already used concrete and by also using substandard materials in the concrete and thereby intentionally and with the sufficient knowledge that the newly laid concrete will collapse in all probabilities and it is very likely to cause danger to the construction labourers involving danger to their lives. During this process of construction of the arch, on the same day at about 15.30 hrs. due to the intentional improper construction works done at the instance of the accused herein above, the entire construction of the arch portion collapsed and fell on the construction workers, who were not even provided with basic safety amenities such as helmets, etc., and in this occurrence, the labourers Shankar, Pagalu, Mandu, Paswan, Thaban, Mindu all the six died on the spot itself and Sagar, Sathrugan, Rengai, Paijan subsequently died on the way to hospital and Nano and Vinoth were grievously injured.

The margin noted accused A1 to A5 conjointly, intentionally and knowingly under above said such circumstances did commit culpable homicide not amounting to murder and caused death of the above said 10 persons and attempted to caused grievous bodily injuries to above said 2 persons as it as likely to cause death committed an offence and that thereby accused A1 to A5 is punishable."

9 Further, the police have recorded the statements of Biji Madini, Rathul Boro, Kasiram Vaidha and Ravichandran and these witnesses have clearly stated that the Management had directed them to complete the construction work expeditiously, despite the note of caution that no construction should be made immediately after putting up pillar and that some time should be given for curing. Only on account of that, the construction gave way killing 10 workers and grievously injuring two.

10 In the light of the above, it cannot be stated that there are no materials against the petitioner for the prosecution to proceed against him.

11 Admittedly, the petitioner was the Managing Trustee and the materials collected by the prosecution show that the entire construction was taking place under his very nose. Therefore, he cannot absolve himself of his liability and seek quashment of the prosecution.

In the result, this Criminal Original Petition stands dismissed, as being devoid of merits. Connected Crl.M.P.s are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad
To

- 1 The Deputy Superintendent of Police
Sriperumpudur Sub-Division
Kanchipuram District
- 2 The Inspector of Police
C-2, Sunkuvarchatram Police Station
Kanchipuram District
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104

Crl.O.P. No.17513 of 2014

RK(CO)
Eu 26.7.16

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