

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

CORAM :

THE HONOURABLE MS. JUSTICE R.MALA

Crl.O.P.No.1977 of 2016
and Crl.M.P.Nos.997 and 998 of 2016

R.Sivachandran

.. Petitioner/Accused

Vs.

State rep. by
Inspector of Police
TIW (E) Police Station
Coimbatore.

.. Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for records in S.T.C.No.1171 of 2015 on the file of the learned Judicial Magistrate No.VIII, Coimbatore and quash the same.

For Petitioner :Mr.P.Venkatasubramaniam

For Respondent :Mr.C.Emalias
Addl. Public Prosecutor

O R D E R

The petitioner has come forward with this petition for quashing the proceedings in S.T.C.No.1171 of 2015 on the file of the learned Judicial Magistrate No.VIII, Coimbatore.

2.The learned counsel for the petitioner submitted that a charge sheet has been filed against the petitioner herein for offences under Sections 279, 338 IPC (2 counts) and Section 196 Motor Vehicles Act, in S.T.C.No.1171 of 2015 on the file of the learned Judicial Magistrate No.VIII, Coimbatore. But there is a delay in preferring complaint. Further, Accident Register copy of one of the victims viz., Prem Kumar was not filed. The Doctor, who treated Prem Kumar was also not examined. He further submitted that after discussion with the relatives of the victim only, complaint was lodged against the petitioner. Hence, he prays for quashing the proceedings in S.T.C.No.1171 of 2015.

3.Learned Additional Public Prosecutor submits that issue involved in this case is only a question of fact and that can be decided only at the time of trial. It cannot be decided at an early stage. Hence, he prayed for dismissal of the petition.

4.Considered the rival submissions made on both sides and perused the materials available on record.

5.On the basis of the complaint lodged by one Kaalairajan, a case in Crime No.530 of 2014 has been registered for offences under Sections 279, 338 IPC (2 counts) and Section 196 Motor Vehicles Act, against the petitioner herein, stating that the petitioner, who is the owner of the motor bike 'Herohonda' bearing Registration No.TN 37 BD 9499, has driven the vehicle in a rash and negligent manner and dashed against the victim Premkumar, who is the rider of the motor bike "Passion Pro" bearing Registration No.TN 66 D 8204 and that he sustained injuries. The respondent police, after registering the case, enquired the matter and filed a final report against the petitioner for offences under Sections 279, 338 IPC (2 counts) and Section 196 Motor Vehicles Act.

6.According to the learned counsel for the petitioner, there is a delay in preferring the complaint. The occurrence was said to have taken place at 6.00 a.m., the victim Premkumar was admitted in the hospital at 8.00 a.m. But the complaint was lodged at 5.30 p.m. So there is an improvement in the process. Therefore, delay in preferring the complaint is a clear ground for quashing the proceedings. Further, the learned counsel for the petitioner would also take me to Section 161 Cr.P.C. Statement of Premkumar, wherein it was stated that after his relatives came to the hospital and due discussion, one of his relatives lodged the complaint.

7.It is pertinent to note that whether the delay in preferring complaint is fatal, has to be decided only after considering the nature of offences. Admittedly, complaint was lodged by one Kaalairajan, who is a junior paternal uncle of Premkumar. But he is not an eye witness.

8.On perusal of wound certificate of Premkumar, it reveals that he sustained head injury and he was first seen by Dr.V.Raghupathi, PSG Hospital. The injuries mentioned in the wound certificate are: vomiting, left ear bleed, lacerated wound on right foot and fractures in petrous bone. He was also admitted under Neuro surgery. It clearly shows that the victim Premkumar was not in a position to give a complaint. Therefore, one of his relatives viz., Kaalairajan has given the complaint before the respondent police at 5.30 p.m. In F.I.R., delay has been mentioned and the same was accepted by the complainant. Under such circumstances, whether the delay is fatal to be decided only at the time of trial and it is only a question of fact. Further, the learned counsel for the petitioner submits that the petitioner has not driven the motor bike in a rash and negligent manner. That aspect has also to be decided only at the time of trial.

9.It is well settled dictum of the Apex Court, once question of fact has been involved, it will need full fledged trial. So the delay in preferring complaint is not a ground for quashing the charge sheet. Furthermore, it is pertinent to note that Section 161 Cr.P.C. statement of Premkumar has prima facie proved that the petitioner herein has driven the motorbike in a rash and negligent manner and dashed against the motor bike driven by the victim Premkumar, which came in the opposite direction and caused grievous injuries not only to the victim Premkumar and also the wife of petitioner namely, Geetha, who was the pillion rider.

10.Considering the aforestated circumstances of the case, I do not find any reasons to quash the proceedings in S.T.C.No.1171 of 2015. Since the matter is of the year 2015, the learned Judicial Magistrate No.VIII, Coimbatore, is directed to dispose of the same within a period of three months from the date of receipt of a copy of this order. The trial Court, uninfluenced by any of the observations made by this Court in this order, shall dispose of the matter on merits.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.Inspector of Police
TIW (E) Police Station
Coimbatore.

2.The Judicial Magistrate No.VIII, Coimbatore.

3. The Chief Judicial Magistrate, Coimbatore.

4.The Public Prosecutor
High Court, Chennai.

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and CrI.M.P.Nos.997 and 998 of 2016

GJ(CO)

Eu 17.02.16