

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 04..11.2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.23864 of 2016

S.Vinoth

... Petitioner

-Versus-

The Inspector of Police,
TIW East Coimbatore Police Station,
Coimbatore.

... Respondent

Prayer: This petition is filed under Section 482 Cr.P.C. praying to call for the records relating to the case in PRC No.1 of 2015 pending on the file of the learned Judicial Magistrate No.VIII, Coimbatore dated 08.02.2015.

For Petitioner : Mr.Silambanan, SC for
Ms.Kaavya Silambanan

For Respondent : Mr.C.Emalias, APP

ORDER

This original petition has been filed seeking to quash the case in PRC NO.1 of 2015 pending before the learned Judicial Magistrate No.VIII, Coimbatore.

2. On 08.11.2014 at 01.30 a.m., a road accident took place on Avinashi Road near Nava India Junction in which two persons had lost their lives. It is the case of the prosecution that on the above said date and time when the deceased Raghunathan was proceeding on his motor cycle bearing Regn.No.TN 38 BU 5400 to his house at Singanallur on Avinashi Road from West to East direction along with his wife - deceased Anuradha, the petitioner - Vinoth who had driven his SKODA car bearing Regn. No.TN 66E 6162 in a rash and negligent manner, hit behind the motor cycle bearing Regn. No.TN 38 PU 5400 which resulted in fatality of both the husband and wife. It is also the further case of the prosecution that after hitting the motor cycle from behind, the car driven by the petitioner went berserk and capsized resulting in grievous injuries to the petitioner also. The petitioner was immediately admitted in the hospital where he was subjected to medical examination. On a complaint from the nephew of the deceased Raghunathan, the respondent police registered have initially registered a case in Crime No.462 of 2014 for offences under Sections 279 and 304-A of IPC and after completing the investigation, they filed an alteration report

before the learned Magistrate concerned thereby altering the penal provision into one under Section 304 of IPC. Later, on the respondent police have filed final report in P.R.C.No.1 of 2015 before the learned Judicial Magistrate No.VIII, Coimbatore, for offences under Section 304 of IPC and Section 185 of The Motor Vehicles Act. Challenging the above said final report and seeking to quash the case in PRC No.1 of 2015, the petitioner is before this court with the present original petition.

3. Mr.Silambanan, the learned senior counsel appearing for the petitioner contended that the petitioner cannot be prosecuted for the offence under Section 304 of IPC inasmuch as alcohol test was not conducted on him which is refuted by the learned Additional Public Prosecutor.

4. Mr.Silambanan, the learned counsel for the petitioner placed reliance on the medical certificate issued by the Casualty Medical Officer, Coimbatore Medical College Hospital, wherein something have been written in vernacular which is indecipherable. Placing reliance on the judgement of the Hon'ble Supreme Court in State v. Sanjeev Nanda, (2012) 8 SCC 450 and a judgement of Karnataka High Court in M.Rajavalse v. State, 1999 CrL.L.J. 58, he submitted that for fastening liability under Section 304 of IPC, alcohol contents in blood sample should exceed 30 mg per 100 ml of blood sample. In the absence of such a certificate, prosecution under Section 304 of IPC is a clear abuse of process of law.

5. Per contra, the learned Additional Public Prosecutor submitted that the petitioner did not cooperate with the investigating agency and the doctor for drawing blood and urine samples and therefore, he cannot now assail the certificate in a quash proceedings.

6. This court finds justification in the argument of the learned Additional Public Prosecutor. In a proceeding under Section 482 of Cr.P.C., disputed questions of fact cannot be gone into. It is for the doctor who is said to have examined the petitioner in the hospital to explain during trial the entire circumstances as to whether blood and urine samples were drawn or not and if not, why they were not drawn. As a matter of fact in Sanjeev Nanda case [cited supra], after the accident the accused therein ran away and this conduct of the accused was held against him by the Hon'ble Supreme Court.

7. In the light of the above legal position, this court is of the considered view that it is not a fit case to exercise its inherent power at this stage to quash the criminal prosecution pending against the petitioner.

8. In the result, the criminal original petition is dismissed with the above observations.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1.The Judicial Magistrate No.VIII,Coimbatore,Coimbatore District.

2.-do- thor'The Chief Judicial magistrate, Coimbatore.

3.The Inspector of Police, TIW East Coimbatore Police Station, Coimbatore, Coimbatore District.

4.The Public Prosecutor, High Court, Madras. (27/12)

+1 cc to M/s.Kavvya Silambanan,advocate,sr.63190.

gj(co)
krd 1/12

Cr1.O.P.No.23864 of 2016



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