

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2016

CORAM:

THE HONOURABLE MS.JUSTICE R.MALA

Crl.O.P.No.7022 of 2016
and CrlMP.Nos.3660 and 3661 of 2016

Karthikeyan

... Petitioner

Vs.

State rep.by

The Inspector of Police,
Erode Town Police Station,
Erode District.

.... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records and quash the proceedings in PRC No.4 of 2012 on the file of the learned Judicial Magistrate No.II, Erode, Erode District.

For Petitioner :Mr.D.Balachandran

For Respondent :Mr.C.Emalias

Additional Public Prosecutor

O R D E R

This petition has been filed to quash the proceedings in PRC No.4 of 2012 on the file of the learned Judicial Magistrate No.II, Erode, Erode District, for offences punishable under Sections 120-B, 364, 368, 302 and 201 read with 34 IPC.

2.The learned counsel appearing for the petitioner submitted that the petitioner/A1 was doing lorry booking business in the name and style of "S.M.K. Lorry Booking Office", at Erode District. The deceased Sathish was working under the petitioner and as he committed misappropriation of Rs.2 lakhs from the petitioner's office, he was removed from the service. Thereafter, the deceased Sathish started his own business in the name and style of "Balaji Road Ways" and so, the business of the petitioner was seriously affected. On the basis of the complaint given on 11.03.2011 by one P.S.Selvam, who is the father of the deceased, a case has been registered under "man missing" in Crime NO.377 of 2011. On 31.05.2011, nearly after two months from the date of the original complaint, the said P.S.Selvam gave further complaint stating that the petitioner had kidnapped his son Sathish and so, the case has been altered

to Sections 147, 148, 364, 302 and 201 IPC on 11.06.2011. Thereafter, investigation has been done and the Charge sheet has been filed. Merely because the deceased Sathish was originally working under the petitioner's office and thereafter, he started a new Company, which had seriously affected the business of the petitioner, it was presumed to be the cause for the murder of the deceased Sathish and the petitioner was falsely implicated in the case.

3.The learned counsel appearing for the petitioner further submitted that the body was identified to be that of the deceased Sathish, only after the superimposition of the skull has been done. Further, some leading question has been posed with the Forensic Department personnel in superimposition Division. He further submitted that the cause of the death has not been ascertained. Thus, the learned counsel for the petitioner prayed for quashing the proceedings.

4.The learned Additional Public Prosecutor appearing for the respondent submitted that the petitioner is absconding and now, he has filed the present quash petition. Further, he would submit that the NBW issued against the petitioner has been recalled on 24.03.2016 and now, he is again absconding. Hence, a Non-Bailable Warrant has been issued. Thus, the learned Additional Public Prosecutor prays for dismissal of this petition.

5.Considering the rival submissions made by both sides, and perused the typed set of papers.

6.It is an admitted fact that one Sathish, who is the son of P.S.Selvam, the complainant, was working in the petitioner's office. As he misappropriated a sum of Rs.2,00,000/-, he was removed from service and thereafter, the deceased Sathish had started his own business in the name and style of "Balaji Road Ways". While so, on 11.03.2011, one P.S.Selvam, the father of the deceased Sathish has given the complaint before the respondent and hence, a case has been registered in Crime No.377 of 2011 as "man missing". It is also pertinent to note that the deceased went missing on 08.03.2011 and in the complaint given on 11.03.2011, no allegation was made against the petitioner.

7.Subsequently, the body of the deceased Sathish was found and after following the procedure, they conducted postmortem. Thereafter, the charge sheet has been filed in FIR No.1501 of 2011 on the file of the Inspector of Police, (Law & Order), Erode City Police Station, Erode, for offences punishable under Sections 120-B, 364, 368, 302 and 201 IPC and 364, 368, 302, 201 r/w 34 IPC before the learned Judicial Magistrate No.II, Erode. It is pertinent to note that the case is based on the circumstantial evidence and the body of the deceased Sathish has

been found in a decomposed state. After following the procedure, the postmortem has been conducted and skull has been sent for superimposition. After due investigation, charge has been filed against 9 persons which was taken in PRC No.4 of 2012 before the learned Judicial Magistrate No.II, Erode.

8.Further, as one accused or the other had not appeared before the Trial Court, the Court below was unable to furnish the copies under Section 207 IPC and hence, the matter is pending before the learned Judicial Magistrate No.II, Erode, without committal. Now, according to the learned Additional Public Prosecutor, the petitioner has not appeared before the Court and hence, a Non bailable warrant issued.

9.The main contention of the learned counsel appearing for the petitioner is that only while giving the complaint dated 31.05.2011, the father of the deceased had suspected the petitioner. A perusal of the complaint given on 11.03.2011 would only state that his son has not returned back. In such circumstances, there is no allegation made against the petitioner. Only in the second complaint which was preferred nearly after two months, the father of the deceased had stated that his son was kidnapped by the petitioner.

10.It is pertinent to note that FIR is not an encyclopedia and this case is based on the circumstantial evidence and the investigation has been done. The petitioner has been arrayed as A1 and I am of the view that it is very premature to decide the matter and quash the same. During the superimposition process, the investigating officer has posed a question to the Doctor regarding the cause of death and the weapon used, for which the Doctor had submitted that he has written in Tamil words in his hand stating that the death happened due to the injuries inflicted in the mentioned Aruval. He further submitted that the injuries are fatal in nature. In the final opinion in English language, he has written that even after obtaining the reports, the exact cause of death could not be ascertained. Even though the postmortem report and the final opinion of the Doctor has been received, that can be testified based on the other documents. So, I am of the considered view that it is premature to decide whether the death is homicidal or natural death. Hence, this petition deserves to be dismissed.

Accordingly, this Criminal Original petition is dismissed. Consequently, connected Miscellaneous Petitions are quashed.
mps

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

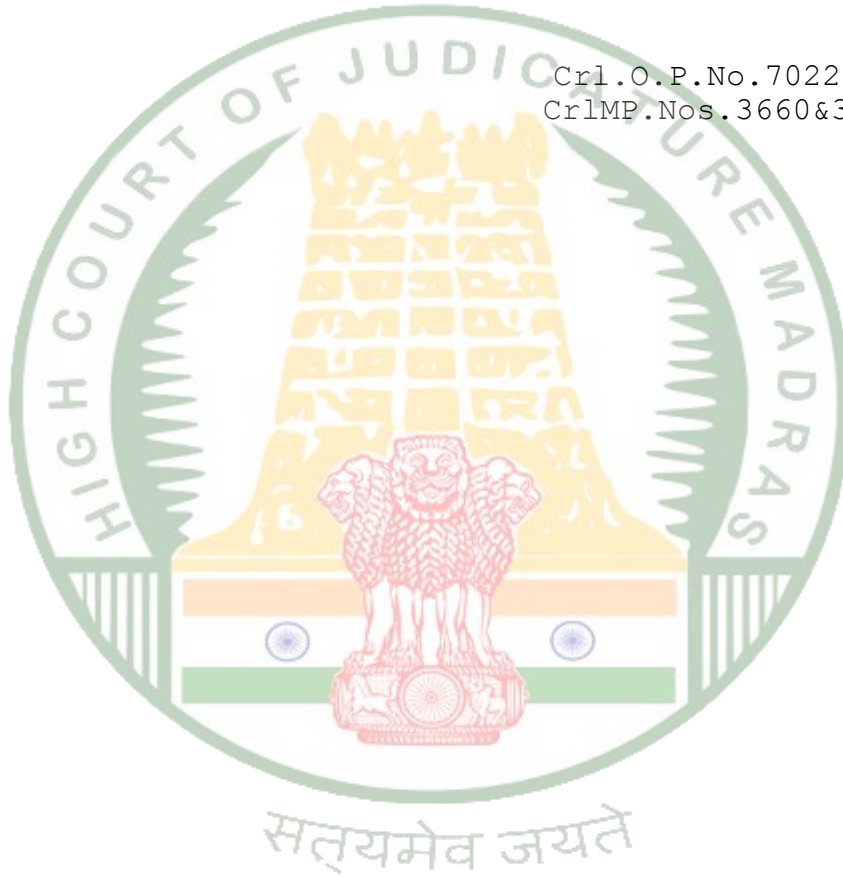
1.The Judicial Magistrate No.II,
Erode,
Erode District.

2.The Public Prosecutor,
Madras High Court,
Madras.

+ 1 cc to Mr.D.Balachandran, Advocate SR 19991

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CrI.O.P.No.7022 of 2016 &
CrIMP.Nos.3660&3661 of 2016



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