

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.06.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.No.21378 of 2011

and

M.P.No. 1 of 2011

V. Krishna Kumar

.. Petitioner

Vs.

State Represented by
The Inspector of Police,
E-4, Abiramapuram Police Station,
Chennai - 18

... Respondent

Prayer: Criminal Original Petition was filed under Section 482 of Cr.P.C to call for the records in C.C.No. 13092 of 2009 pending trial on the learned 23rd Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.C.D.Johnson

For Respondent : Mr. P.Govindarajan
Additional Public Prosecutor

O R D E R

This criminal original petition is preferred by the petitioner/accused to quash the proceedings pending against him in C.C.No.13092 of 2009 on the file of the learned 23rd Metropolitan Magistrate, Saidapet, Chennai.

2.Brief case of the petitioner/accused:

The prosecution case is that the petitioner /accused have been charged for the offence under section 336, 427 of IPC on the strength of complaint given by one Gaurav Dugar residing at Chennai. The defecto complainant is the resident in the said building and an Airtel signal tower was erected and remained there. On 27.7.2008 at about 3.15 PM the said tower fell on a Toyota Innova car bearing registration No TN 07 AS 1577 and as a result of the same,

car has been completely damaged. The defacto complainant preferred a complaint to the respondent police and filed a case in Cr.No.839 of 2008 for the offences under section 336,427 of IPC. The respondent police after conducting investigation filed final report on 12.9.2009, and the same has been taken file as C.C.No.13092 of 2009 by the learned 23rd Metropolitan Magistrate, Saidapet, Chennai. Aggrieved over the same, the petitioner/accused filed this quash petition.

3.Heard the arguments on either side and perused the entire materials available on record.

4.The petitioner is only an employee under a contractor who used to maintain the said tower. In the said circumstances whether the petitioner being paid employee of the said contractor can he be held liable for the fall of the said tower. However without any proper investigation the respondent police hurriedly and hastily filed charge sheet against the petitioner.

5.The petitioner charged for offences u/s 337 and 427 of IPC. On reading of the ingredients of the offence no offence is made out as against the petitioner herein. There is no negligence or mischief on the part of the petitioner/accused, in the absence of the same whether the petitioner/accused can be charged for the above said section.

6.Even assuming for a moment the tower had fallen on the vehicle and caused the damage to the vehicle, the said act is not done by the petitioner. It may due to various reasons such as wind velocity or due to gusty wind or may be due to the unseen reasons. However the respondent police without any justification made the petitioner liable for the fall of the tower.

7.The learned counsel for the petitioner/accused submits that the fall of the tower will be governed by the doctrine of "vis major". The incident happened only due to the reason which is beyond the control of the petitioner and no liability can be fixed on the petitioner.

8.It is made clear that if there is any loss to the property the defacto complainant has to proceed only under civil law for recovery and the defacto complainant cannot circumvent the civil proceedings one into criminal proceedings. The trial is pending for more than two years without any progress and not able to go for any other better job.

9.The learned Additional Public Prosecutor appearing for the respondent supported the findings of the trial court and sought for dismissal of the criminal original petition, on the ground that after proper investigation only, the charge sheet has been filed. The penal provision charge against this petitioner/accused is proper one.

10.In the case on hand, admittedly on reading the entire case papers no ill-motive can be attributed to the petitioners/accused. The ingredients for the offence under section 337 and 427 of IPC is not made out against this petitioner/accused. Hence, the very proceedings of the case is amounts total abuse of process of law and wasting of the precious time of the Court. Hence, the petition is liable to be allowed.

11.In the result, this criminal original petition is allowed and the proceedings in C.C.No.13092 of 2009 on the file of the learned 23rd Metropolitan Magistrate, Saidapet, Chennai is quashed. Consequently, connected miscellaneous petition is closed.

vs

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

To

The XXIII Metropolitan Magistrate, Saidapet, Chennai.

2.The Chief Metropolitan Magistrate, Egmore, Chennai.

3.The Inspector of Police,
E-4, Abiramapuram Police Station, Chennai - 18

4.The Public Prosecutor, High Court , Madras.

+lcc to Mr.C.D.Johnson , Advocate SR.No. 45585

CRL.O.P.No.21378 of 2011

and

M.P.No. 1 of 2011

A.SK(20/03/2019)