

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2017
CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.23934 of 2017
and
Crl.M.P.Nos.13861 & 13882 of 2017

S.Vinay Saxena

.. Petitioner

Vs.

1.State rep. by
The Inspector of Police,
C-1, Sriperumpudhur Police Station,
Kanchipuram District.

2.Biswajitha Jana

.. Respondents

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the proceedings in S.C.No.60 of 2017 on the file of the learned Judge, District Court No.II, Kancheepuram and to quash the same insofar as it relates to the petitioner.

For Petitioner : Mr.R.Bharath Kumar

For Respondent-1 : Mr.C.Iyyapparaj, APP

For Respondent-2 : Mr.R.Murali

सत्यमेव जयते
O R D E R

This petition has been filed by the petitioner challenging the proceedings in S.C.No.60 of 2017 on the file of the learned Judge, District Court No.II, Kancheepuram and to quash the same.

2.The case of the prosecution is that on 19.08.2016, one Mr.Suvankar Dey had met with a fatal accident since he failed to hook the safety belt with life line rope on the roof of the plant resulting in an accidental fall. The accident occurred inside the premises of the M/s.Asahi India Glass Ltd. The contractor and the sub-contractor for the erection of solar power plants in the factory premises were arrayed as accused for offence under Section 304(ii) IPC r/w.34 of IPC.

3.Heard Mr.R.Bharath Kumar, learned counsel for the petitioner and Mr.C.Iyyapparaj, learned Additional Public Prosecutor for the first respondent as well as Mr.R.Murali, learned counsel for the second respondent.

4.According to the learned counsel for the petitioner, on 20.05.2016, M/s.Asahi India Glass Ltd., entered into a power purchase agreement with M/s.Clean Max Enviro Energy Solutions Pvt. Ltd., to install and operate solar power plants in the roof at their factory premises at SIPCOT Industrial park, Irungattukottai, Sriperumbudur, Kancheepuram District. The Contractor namely, M/s.Clean Max Enviro Energy Solutions Pvt. Ltd., had in turn entered into Sub Contract with M/s.Icon Engineering Works, Bangalore for the work of erecting the solar panels at the premises of M/s.Asahi India Glass Ltd. When the Sub-Contractor namely, M/s.Icon Engineering Works, Bangalore were erecting the solar panels, the work was supervised by the officials of the main Contractor namely, M/s.Clean Max Enviro Energy Solutions Pvt. Ltd. The deceased was directly employed by the Sub-Contractor namely, M/s.Icon Engineering Works, Bangalore. The petitioner herein, who is the plant head of M/s.Asahi India Glass Ltd., had no nexus with the accident since the deceased was neither employed by them nor was the work carried out under their supervision. It is, under these circumstances, that the second respondent had lodged the complaint against the petitioner, Contractor, Sub-Contractor and others which came to be registered in Cr.No.752 of 2016 for offences under Sections 304(ii) r/w.34 of IPC.

5.The learned counsel for the petitioner submitted that there was no material to implicate the petitioner herein for the offences, since neither the witnesses nor the complaint, discloses that the accident occurred due to the petitioner's mistake. The learned counsel further submitted that if at all an offence could be made out, it can only be against the Contractor and Sub Contractor namely, M/s.Clean Max Enviro Energy Solutions Pvt. Ltd., and M/s.Icon Engineering Works, Bangalore and that the petitioner is no way connected with the occurrence.

6.The learned Additional Public Prosecutor on the other hand submitted that the occurrence had taken place within the premises of M/s.Asahi India Glass Ltd., and that since the work was being carried out on behalf of M/s.Asahi India Glass Ltd., the petitioner herein has been properly arrayed as an accused.

7.Mr.Murali, learned counsel for the second respondent reiterated the submissions of the learned Additional Public

Prosecutor and submitted that there was sufficient materials to show that the petitioner herein is responsible for the accident.

8.I have given careful consideration to the submissions made by the respective counsels.

9.It is not in dispute that the work of installing and operating the solar power panels in the roof of the factory premises of M/s.Asahi India Glass Ltd., was entrusted under an agreement to M/s.Clean Max Enviro Energy Solutions Pvt. Ltd., under a power purchase agreement. As such, the responsibility for carrying out the installation work was transferred wholly to the Contractor namely, M/s.Clean Max Enviro Energy Solutions Pvt. Ltd. It is also not in dispute that the said Contractor had again entered into a sub contract with M/s.Icon Engineering Works, Bangalore for installing the solar power plants in the factory premises. The deceased was not under the direct employment of M/s.Asahi India Glass Ltd. It is seen that the accident had occurred in view of the deceased having failed to hook the safety belt with the life line rope while working on the roof of the plant at the time of accident. The deceased was directly under the supervision of M/s.Icon Engineering Works, Bangalore who were Sub-Contractor to the main Contractor namely, M/s.Clean Max Enviro Energy Solutions Pvt. Ltd. As such, M/s.Asahi India Glass Ltd., had apparently no nexus with either the work of installation of the solar power plants being carried out in their factory premises or the service conditions of the deceased and hence negligence cannot be attributed to the petitioner.

10.The learned counsel for the petitioner by relying on the judgment of this Court in Geetha Ramesh and others Vs. The Sub-Inspector of Police, Udagamandalam reported in 2010 CrI.L.J. 762 submitted that since the entire installation work was handed over to the Contractor, who in turn had sub contracted it, there cannot be any prosecution against the petitioner herein is concerned, who is neither the Contractor nor the Sub Contractor. The relevant portion of the finding of this Court is as follows:

18.If the case on hand is considered in the light of the abovesaid decisions, this Court has to necessarily come to the conclusion that the petitioner cannot be prosecuted for the offences punishable under Sections 304-A and 337 IPC for the death of one of the workers and injuries caused to six of the workers engaged by the contractor (A1) and labour sub-contractor (A2) since the excavation work was not done in the presence of any one of the petitioners or under the supervision of or in accordance with the specific directions issued by the petitioners

regarding the dimensions and the manner in which excavation work is to be done. The petitioners have made clear averments that the entire construction work was entrusted to the contractor (A1) and the excavation work for construction of retaining wall was undertaken by the contractor himself engaging the labour sub-contractor. It is an admitted fact that the petitioners are residing in Chennai which is more than 500 Km. away from Udagamandalam. Therefore, it is quite obvious that they could not have directly supervised the work. Furthermore, the learned counsel for the petitioners has also pointed out the fact that there is no legally admissible evidence collected by the Investigating Officer to show that the work was done under their supervision and that there was rashness and negligence on the part of any one of the petitioners which resulted in the accident without there being intervention of negligence of any other person. In this case, it is the case of the prosecution that the contractor (A1) and labour sub-contractor (A2), who were directly supervising the work acted in a rash and negligent manner which resulted in the accident. Therefore, even as per the prosecution case, there was intervention of the negligence on the part of A1 and A2. Under such circumstances, applying the ratio decided in the cases cited supra, this Court comes to the conclusion that the petitioners have made out a clear case for quashing of the charge-sheet filed in Cr.No.109 of 2006 a case registered on the file of G-1, Town West Police Station, Udagamandalam which was taken on file by the learned Judicial Magistrate, Udagamandalam on the file of his Court in C.C.No.100 of 2002 so far as the petitioners are concerned.

19. In the result, this petition is allowed and the charge-sheet filed in Cr.No.109 of 2006 for offences under Sections 304-A and 337 IPC which has been taken on the file of the learned Judicial Magistrate, Udagamandalam as C.C.No.100 of 2008 is quashed so far as the petitioners shown as accused 3 to 5 in the said case are concerned."

11. The respondent police had also implicated the main Contractor and the Sub Contractor as accused in Cr.No.752 of

2016. In my view, the petitioner herein cannot be held responsible for the accident since there was neither negligence on their part nor the deceased was under their payroll. If at all any criminal liability can be implicated, it could either be against the Sub Contractor namely, M/s.Icon Engineering Works, Bangalore or the Contractor namely, M/s.Clean Max Enviro Energy Solutions Pvt. Ltd. The charge sheet does not make out a prima facie case of commission of a cognizable offence by the petitioner herein. Even if the trial is permitted to be proceeded against the petitioner herein, the Court below cannot reach a logical conclusion to implicate the petitioner herein for the negligence or any other act amounting to culpable homicide or as a matter of act amounting to culpable homicide or as a matter of act, for any other penal offence. While that being so, the petitioner herein, who is no way responsible for the accident, need not be made to undergo the ordeal of facing the criminal trial.

12.In the result, the Criminal Original Petition stands allowed. Consequently, the proceedings in S.C.No.60 of 2017 on the file of the learned Judge, District Court No.II, Kancheepuram insofar as it relates to the petitioner herein is concerned, stands quashed. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judge, District Court No.II,
Kancheepuram.
2. The Inspector of Police,
C-1, Sriperumpudhur Police Station,
Kanchipuram District.

- 3.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.R.Bharathkumar, Advocate, S.R.No.89225

CrI.O.P.No.23934 of 2017 and
CrI.M.P.Nos.13861 & 13882 of 2017

RRK(01/02/2018)