

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 06.01.2017

Coram

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.5958 of 2011
and
M.P.Nos.1 and 2 of 2011

G.Annadurai

.. Petitioner

Vs.

1.State rep. by the Inspector of Police,
Law & Order, E-4, Abhiramapuram Police Station,
Chennai - 600 018.

2.V.Ravi

.. Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C to call for the entire records concerned in CC No.10 of 2011 from the file of XXIII Metropolitan Magistrate, Saidapet, Chennai- 600 015 and quash the same.

For Petitioner :Mr.N.Rajavadivelu
For R1 :Mr.C.Emalias, APP
For R2 :Mr.K.Shahul Hameed

ORDER

By this petition under Section 482 of the Criminal Procedure Code, 1973, the petitioner has prayed for quashing the proceedings in CC No.10 of 2011 pending on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

2. The facts, which need to be stated herein are as follows:

The criminal proceedings, which is challenged herein, is arising out of the complaint lodged by the second respondent herein, alleging that on 23.09.2010, when the second respondent and three persons viz., Sundar @ Sundarraj, Pandian and Pudurasa along with three women were about to complete the plastering work of the premises at No.2/3, 2nd Street, Kailash Apartment, Abhiramapuram, Chennai, at about 5.30 pm, the said Sundar @ Sundar raj, while alighting from the scantling, fell down from the height of 15 feet and sustained injuries. He was immediately taken to Kaliappa Hospital and then shifted to Government Royapettah Hospital, where he died while in treatment. According

to the complainant, the deceased died due to negligent act of the contractor G.Annadurai, who is the petitioner herein. After investigation, the petitioner was charged sheeted for the alleged offence punishable under Section 304A IPC. Subsequently, the charge sheet was taken on file as CC No.10 of 2011 by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and the same is pending trial.

3. Learned counsel for the petitioner contended that the petitioner is a contractor and the deceased was working under the mason as a coolie and there was no direct relationship of an employer and employee between the petitioner and the deceased and therefore, the petitioner cannot be held liable for an offence under section 304A IPC. Learned counsel further contended that subsequent to the alleged incident, the matter has been settled between the parties and the petitioner has also paid compensation to the family of the deceased. By contending so, learned counsel seeks to quash the criminal proceedings pending against the petitioner.

4. Learned counsel for the second respondent affirmed the factum of compromise and receipt of compensation by the family members of the deceased from the petitioner. He has also no objection in quashing the proceedings.

5. This Court also heard the learned Additional Public Prosecutor appearing for the first respondent.

6. There is no dispute with regard to the incident and the death of the deceased due to the same. The point for consideration before this Court is, as to whether the petitioner being a contractor, be held responsible for such incident and be prosecuted for the alleged offence punishable under Section 304-A IPC.

7. The legal position with regard to the offence punishable under Section 304-A IPC is that "to impose criminal liability under this section, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the causa causans, it is not enough that it may have been the causa sine qua non".

8. According to the learned counsel for the petitioner, the deceased was not a direct employee of the petitioner, who is a contractor and he was drawing salary from the mason on weekly basis and that, in the absence of direct nexus between the death of the deceased worker and the rash or negligent act of the accused, it cannot be said that the petitioner caused the death of the worker by doing any rash or negligent act. Therefore, the

petitioner cannot be fastened with the liability of having caused death of the worker by his own rash and negligent act and he should be acquitted of the offence under Section 304A IPC.

9. Even otherwise, learned counsel for the petitioner submitted that after the alleged incident, the matter has been amicably settled between the parties and the petitioner has duly paid compensation to the family of the deceased worker. An agreement dated 26.09.2010 has also been executed by the brother of the deceased worker in favour of the petitioner stating that they are not initiating any legal proceedings against the petitioner herein. Based on the same, the criminal proceedings pending against the petitioner can be quashed.

10. This Court carefully considered the submissions made on either side and also perused the documents, especially the agreement executed by the brother of the deceased worker, which would prove the factum of settlement between the petitioner and the family members of the deceased worker and payment of compensation by the petitioner. The said fact of settlement has also been accepted by the learned counsel for the second respondent / complainant, who has also expressed no objection in quashing the proceedings as against the petitioner.

11. In such circumstances, this Court is of the view that since the substratum of the prosecution case has been lost, no purpose will be served by allowing the petitioner to face the trial again on the basis of the same set of facts and nature of evidence adduced. In the event of the petitioner being allowed to face trial, it will only amount to abuse of process of court and wastage of judicial time. Therefore, this Court is inclined to quash the proceedings pending against the petitioner for the offence under Section 304A IPC.

12. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in CC No.10 of 2011 on the file of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai is quashed. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The XXIII Metropolitan Magistrate, Saidapet, Chennai

2.The Inspector of Police,
Law & Order, E-4, Abhiramapuram Police Station,
Chennai - 600 018.

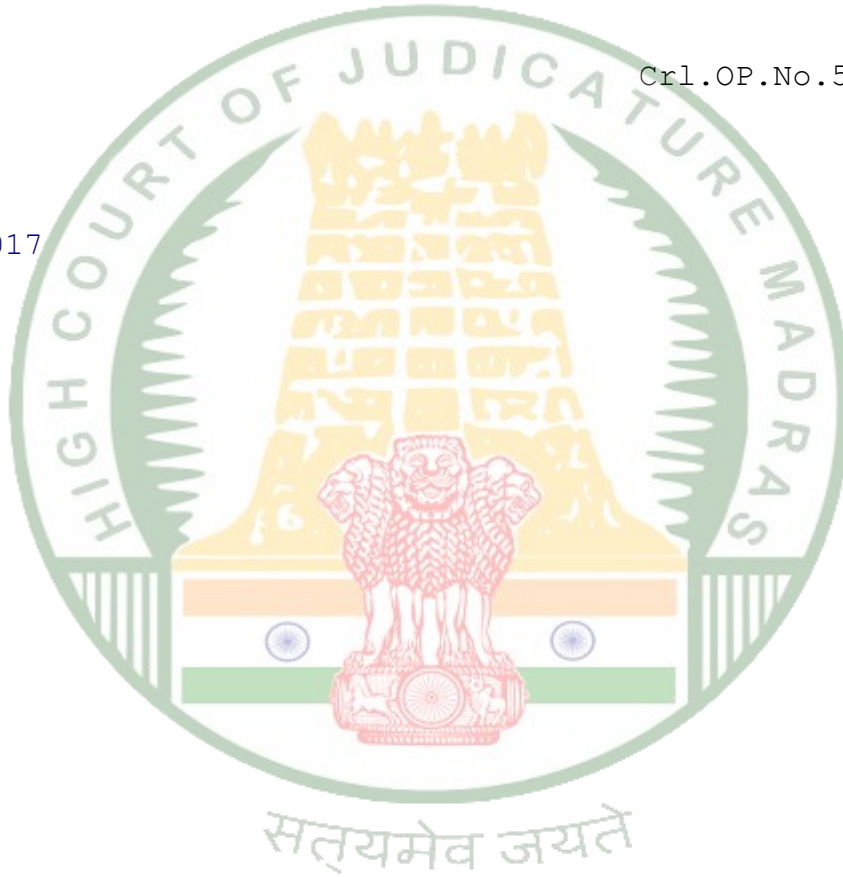
3.The Public Prosecutor, High Court, Madras-104.

+1 cc to M/s.N.Rajavadivelu Advocate sr 1409

+1 cc to M/s.K.Shahul Hameed Advocate sr 2177

Cr1.OP.No.5958 of 2011

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