

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.24731 of 2010

and

M.P.No.1 &2 of 2010

A.Elango

.. Petitioner

Vs

State,
rep. by Inspector of Police
Dharapuram Police Station,
Erode District.

.. Respondent

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.246 of 2005 on the file of the Judicial Magistrate, Dharapuram and quash the same.

For Petitioner : Mr.B.Kumarasamy

For Respondent : Mr.P.Govindarajan
Addl.Public Prosecutor

ORDER

The petitioner has filed this petition to call for the records in C.C.No.246 of 2005 pending on the file of the learned Judicial Magistrate Court, Dharapuram and quash the same.

2. The case of the prosecution is that on 8.4.2003 at 1.00 A.M., the petitioner was driving an ambassador car bearing registration No.TDC 5686 from east to west on Dharapuram-Ottanchatram road and when the car was nearing Karuvelampallam, the petitioner drove the car negligently and dashed against the right side neem tree. Due to the accident, one Jaichandran, who was travelling in the car sustained grievous injuries in his head, face, lip and

succumbed to injuries on 25.2.2005 at 11.00 A.M. Therefore, the petitioner is punishable under Section 304 (A) I.P.C.

3. According to the petitioner, on 8.4.2003, the defacto complainant, petitioner and his friends were travelling in the car bearing registration No.TDC 5688 and the same dashed against the tree. Due to the accident, defacto complainant and his friends sustained injuries. On the basis of the complaint given by Selvam @ Babu, the respondent police registered a case in Crime No.143 of 2003 under Sections 279, 337, 338 (2 counts) IPC. The case was taken on file by the learned Judicial Magistrate, Dharapuram in S.T.C.No.640 of 2004, wherein the petitioner had filed guilty memo and the same was accepted by the learned Judicial Magistrate. By an order dated 29.12.2004, the learned Judicial Magistrate, Dharapuram convicted the petitioner and imposed a fine of Rs.500/- for the offence under Section 279 IPC; Rs.700/- for the offence under Section 337 IPC and Rs.700/- each for the offence under Section 338 (2 counts) and the petitioner paid the fine amount on the same date.

4. According to the petitioner, after two years of the accident, he received summons from the learned Judicial Magistrate, Dharapuram for the offence under Sections 279, 337, 338 alter into 304(A) IPC in C.C.No.246 of 2005. On verification, the petitioner found that injured Jaichandran expired on 25.2.2005 and hence, the respondent altered the offence into Section 304(A) IPC. Since the petitioner was already convicted and paid fine amount, he cannot be prosecuted twice for the same offence and prayed for quashing of C.C.No.246 of 2005 pending on the file of the learned Judicial Magistrate, Dharapuram.

5. I heard Mr.B.Kumarasamy, learned counsel for the petitioner and Mr.P.Govindarajan, learned Additional Public Prosecutor for the respondent and also perused the materials available on record.

6. The learned counsel for the petitioner submitted that taking cognizance of an offence under Section 304(A) IPC against the petitioner is against law and weight of evidence and all probabilities of case. He would submit that before filing the 2nd final report, the respondent ought to have obtained permission from the competent Court for further investigation as contemplated under Section 178 (3) Cr.P.C. According to the learned counsel none of the witnesses did not speak about the cause of death of the deceased.

7. The learned counsel next contended that the alleged accident took place on 8.4.2003 and the second final report was filed stating that the deceased was died on 25.2.2005 and hence, it is highly doubtful that whether the deceased died out of the injuries sustained by him in the accident. He contended that the petitioner was convicted and sentenced in S.T.C.No.640 of 2004 by the Judicial Magistrate, Dharapuram on 29.12.2004 and the petitioner cannot be prosecuted twice for the same offence. The learned counsel then contended that continuing the proceedings based upon the 2nd final report is nothing but abuse of process of Court. Hence, prayed for quashing of C.C.No.246 of 2005 pending on the file of the learned Judicial Magistrate, Dharapuram.

8. Per contra, the learned Additional Public Prosecutor submitted that since the deceased succumbed to injuries sustained in the accident that took place on 8.4.2003, the respondent filed the 2nd final report altering the offence into Section 304(A) IPC after examination of the witnesses. He would submit that for conducting further investigation, no permission from the Magistrate is required. Immediately, after the death of the deceased, the respondent police took up further investigation and examined witnesses on 26.12.2005 and filed the 2nd final report before the Judicial Magistrate, Dharapuram on 30.4.2005. Hence, there is no necessity to quash the criminal proceedings as prayed for the petitioner. In support of his submissions, the learned Additional Public Prosecutor relied upon the decision of the Hon'ble Supreme Court in State of Andhra Pradesh and A.S.Peter, reported in (2008) 2 SCC 383.

9. It appears that on 8.4.2003, the defacto complainant and his friends, including the petitioner, were travelling in the ambassador car bearing registration No.TDC 5688 on Dharapuram-Ottanchantram road and when the car was nearing Karuvelampallam, the petitioner who drove the car negligently, dashed against the neem tree. Due to the impact, one Jaichandran sustained grievous injuries. In the accident, the defacto complainant and even the petitioner sustained injuries. Regarding the accident, the defacto complainant Selvam @ Babu lodged a complaint before the respondent police against the petitioner and the respondent police filed a report before the Judicial Magistrate, Dharapuram and the Judicial Magistrate, Dharapuram has taken the case on file as S.T.C.No.640 of 2004 under Sections 279, 337 and 338 (2 counts). Before the Judicial Magistrate, Dharapuram, the petitioner appeared and filed guilty memo. After accepting the guilty Memo, by the judgment dated 29.12.2004, the Judicial

Magistrate, Dharapuram convicted the petitioner and sentenced him to pay fine of Rs.500/- for the offence under Section 279 IPC, Rs.700/- for the offence under Section 337 IPC and Rs.700/- each for the offence under Section 338 (2 counts) IPC.

10. According to the respondent, on 26.2.2005, the defacto complainant appeared before the respondent and stated that on 25.2.2005, Jaichandran succumbed to injuries. The other prosecution witnesses have also stated that Jaichandran died due to injuries sustained in the accident. After completing the examination of witnesses and after obtaining post-mortem certificate, the respondent filed the 2nd final report on 30.4.2005 before the Judicial Magistrate, Dharapuram altering the offence under Section 304(A) IPC.

11. The learned counsel for the petitioner submitted that for filing the 2nd final report, the respondent ought to have obtained permission from the competent Court for further investigation as per Section 173(8) Cr.P.C.

12. In Andhra Pradesh and A.S.Peter, supra, relied on by the learned Additional Public Prosecutor, the Hon'ble Supreme Court held:

"9. Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. A distinction also exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not."

Thus, it is clear that police has a right of further investigation under sub-section (8) of Section 173 Cr.P.C., but not fresh investigation.

13. In his petition, the petitioner admitted that the injured Jaichandran expired on 25.2.2005 at about 11.00 A.M. According to the respondent, due to injuries sustained in the accident, injured Jaichandran died. But nothing has been produced by the petitioner to show that Jaichandran died not due to injuries sustained in the accident. As stated supra, the accident took place on 8.4.2003 and the injured Jaichandran died on 25.2.2005 due to injuries sustained in the accident.

14. In this case, though no medical records have been produced by the respondent to show that from 8.4.2003

till 25.2.2005, the deceased was taken treatment for the injuries sustained in the accident, the same would be decided only after full fledged trial and same cannot be decided in this petition. Therefore, the contention of the petitioner that it is highly doubtful that after two years of the alleged accident, whether deceased died out of the injuries sustained by him in the accident cannot be countenanced.

15. It is pertinent to point out that the petitioner was already convicted and sentenced in S.T.C.No.640 of 2004 by the Judicial Magistrate, Dharapuram for the very same accident took place on 8.4.2003. The learned counsel for the petitioner vehemently contended that the petitioner cannot be prosecuted twice for the same offence. Therefore, continuing the criminal proceedings based upon the 2nd final report is nothing but abuse of process of Court. Admittedly, the petitioner has not produced any citation to show that a person convicted and sentenced in S.T.C., after further investigation cannot be prosecuted. In the absence of any material from the side of the petitioner and as stated supra, the respondent has right to further investigate the matter, there is no substance in the arguments of the learned counsel for the petitioner that the petitioner cannot be prosecuted twice for the same offence.

16. The contention of the petitioner that the entire allegation in the 2nd final report even if they were taken at the face value and accepted in entirety do not make out a prima facie case against the petitioner cannot be countenanced for the reason that the petitioner admitted that the injured Jaichandran died on 25.2.2005. On a perusal of the statement of prosecution witnesses, it is seen that immediately after the accident, the injured Jaichandran was admitted in the hospital and he was taken treatment for nearly four months and thereafter, as the family was not having sufficient money, the injured was not taken treatment as inpatient in any hospital. In fact, the statement of family members of deceased Jaichandran would reveal that Jaichandran was bedridden and his wife was looking after him.

17. It is pertinent to note that Dr.Chandrasekar, attached to Dharapuram Government Hospital, who conducted autopsy on the body of Jaichandran stated in his statement that Jaichandran died due to injuries sustained in his head and its complication. All these things would clearly show that there is substance in the case of the prosecution. Moreover, the factual aspects cannot be decided in this petition filed under Section 482 of Cr.P.C. Therefore, I

am of the view that it is for the petitioner to prove his case by facing trial proceedings before the learned Judicial Magistrate Court, Dharapuram.

18. It is apposite to note that by an order dated 5.6.2017, this Court recorded that at the time of admitting the Criminal Original Petition on 28.10.2010, this Court granted stay of further proceedings in C.C.No.246 of 2005 and despite stay order, the learned Judicial Magistrate, Dharapuram examined witnesses and therefore, the learned Judicial Magistrate, Dharapuram was directed to submit his report in C.C.No.246 of 2005 for the examination of witnesses. Pursuant to the direction of this Court, the learned Judicial Magistrate, Dharapuram submitted his report dated 8.6.2017 stating that on perusal of the records, after the crucial date of 28.10.2010, two witnesses were examined. In his report, the learned Judicial Magistrate stated that the counsel for both sides have failed to inform the stay order granted by the High Court and in fact, they have participated in the examination of witnesses.

19. Since trial has begun in C.C.No.246 of 2005, two witnesses were examined and also the petitioner had participated in the trial proceedings, as per the report of the learned Judicial Magistrate, it would not be appropriate, at this stage, to quash the criminal proceedings in C.C.No.246 of 2005.

20. For the foregoing reasons, no valid grounds have been made out to quash the criminal proceedings in C.C.No.246 of 2005 on the file of the learned Judicial Magistrate, Dharapuram.

21. In the result, the Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS viii)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate,
Dharapuram.

2. do thro the Judicial Magistrate,Erode District.

3. The Inspector of Police
Dharapuram Police Station,
Erode District.

4. THE PUBLIC PROSECUTOR,
HIGH COURT
MADRAS.

+1cc to Mr.B.KUMARASAMY , Advocate SR.No. 68677

CRL.OP.No.24731 of 2010 and
M.P.No.1 & 2 of 2010

ASK(23/10/2018)



WEB COPY