

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2018

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

Crl.R.C.No.974 of 2014

and

MP No.1 of 2014

Syed Anwar

.. Petitioner

Vs.

The State Represented by
The Assistant Commissioner of Police,
Traffic Investigation West,
D-6, Anna Square Traffic Wing,
Chennai.

.. Respondent

Criminal Revision Case filed under Section 397 and 401 Cr.P.C. against the order dated 23.07.2014 made in Crl.M.P.No.9077 of 2014 in S.C.No.19 of 2014 passed by learned VII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.V.Arul,
Additional Public Prosecutor.

O R D E R

This Criminal Revision Case arises against the order dated 23.07.2014 made in Crl.M.P.No.9077 of 2014 in S.C.No.19 of 2014 passed by learned VII Additional Judge, City Civil Court, Chennai.

2. Petitioner is A3 in the case. The prosecution case is that on 23.05.2013 at about 1.00 hrs on Pantheon Road, Egmore, near Government Hospital for Women and Children, the driver of a Mercedes Benz Car bearing Registration No.TN-01-X-5959, drove the same in a rash and negligent manner at high speed from South to North in inebriated state, along with three occupants, who had consumed alcohol and dashed against a Bolero Police vehicle bearing Registration No.TN-21-G-2508, which was approaching from the opposite direction, then dashed against a parked auto bearing registration No.TN-02-U-6913 and motorcycle bearing registration No.TN-22-T9841. During the course of the same transaction three children, who were sleeping on the platform and two persons, who were engaged in fixing a flex

board in the nearby bus stop on the road side were run over and they sustained severe injuries. Damage to the stainless steel barricade, Stainless Steel Seats, MS Iron Advertisement frame of bus stand and shelter and other properties to the tune of Rs.43,500/- and to the Corporation footpath valued about 19,000/- was caused. On receipt of a complaint from an eye-witness Rajesh, a case was registered in D6, Anna Square Traffic Investigation PS in Cr.No.354/T2/13 u/s 279, 337 (3 counts), 338 (2 counts) IPC and Section 185(2 counts) and 134(a) (b) r/w 187 of M.V.Act and investigation was taken up by the SSI, Tr.Kathirvel of D6, Anna Square Police Station. On completion of investigation, final report was filed informing the commission of offences as follows:-

'11. A1 drove the vehicle with drunken state in a rash and negligence manner with the knowledge that it would likely to cause death and injuries. Hence, A2 had committed an offence punishable u/s 304(ii) and 308 IPC and Section 185 of M.V.Act and as A1 failed to give first aid treatment to the injured and to inform the law enforcing authority to set the law in motion, he has committed the offences punishable u/s 134 (a) (b) r/w 187 M.V.Act. As A2 had not possessed a valid Driving Licence at the time of occurrence, he had committed the offence punishable u/s 3 r/w 181 M.V.Act. Further he had caused damages to the public properties; he had committed the offences punishable u/s 3 of TNPPD Act.

12. The accident occurred also due to the repeated abetment of A2 to A4. Hence Accused A2 to A4 had committed the offences punishable u/s 304(ii) and 308 IPC r/w Sec.114 of IPC.

13. A2 failed to give first aid to the injured and also failed to inform police. Hence, he had committed the offences punishable u/s 134(a) & (b) r/w 87 M.V.Act.

14. After the occurrence A3 and A4 fled away from the scene without giving first aid treatment to injured and also failed to inform the law enforcing authority to set the law in motion. Hence, they have committed the offences punishable u/s 134 (a) (b) r/w 187 M.V.Act.

15. After the occurrence A1 fled away to abroad with the intention to evade legal action. Warrant has been ordered against the absconded A1 Shaji, special team has been formed to secure him, as he evaded the arrest, the warrant was returned to the Hon'ble Court, obtained proclamation warrant. While so on the basis of LOC, A1 Shaji@Shaji Purushothaman was secured by Cochin Airport

Immigration authority and handed over him to Airport Police, Cochin. On receipt of information from Airport Police, a special team reached there and arrested the accused at 15.30 hrs on 13.06.13 on authorization and he was brought to Chennai Airport and handed over to the IO at 19.45 hrs and Remanded to judicial custody. This proves the subsequent contact of the accused.

16. Thus A1 appeared to have committed the offences punishable u/s 304(ii) IPC and 308 (4 counts) IPC and 3 of TNPPD Act, Sec. 185 and Sec.134(a) & (b) r/w 187 of M.V.Act and Sec 3 r/w 181 of M.V.Act.

17. A2 to A4 appears to have committed an offence punishable u/s 304(ii) IPC and 308 IPC r/w 114 IPC and Sec.134(a) (b) r/w 187 of M.V.Act.'

3. A3 & A4 moved a discharge petition in CrI.M.P.No.9077 of 2014 in S.C.No.19 of 2014 before the learned VII Additional Sessions Judge, Chennai and the same was dismissed on 23.07.2017. There against, petitioner/A3 has filed the present Revision.

4. There is no dispute over the fact that the petitioner/A3 was a co-passenger in the offending vehicle. There is no dispute over the fact that he too was in drunken state. Even so, the offences alleged viz., Section 134(a) (b) r/w 187 of M.V.Act and Section 109 IPC would not be made out against him. Section 134 of M.V.Act casts a duty to seek medical attention for a person injured in an accident. Such duty is cast upon the driver of the vehicle or other person in-charge of the vehicle. It is not the prosecution case that this petitioner/A3 was either the driver of the vehicle or in-charge thereof.

5. As regards offence under Section 109 IPC, we may simply reproduce paragraph 12 of the decision of Supreme Court in Kulwant Singh Alias Kulbansh Sing Vs. State of Bihar [(2007) 15 SCC 670):-

"12.Where a person aids and abets the perpetrator of a crime at the very time the crime is committed, he is a principal of the second degree and Section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Considering the definition in Section 109 strictly, the instigation must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation.

Section 109 is attracted even if the abetter is not present when the offence abetted is committed provided that he had instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the conspiracy some act or illegal omission takes place or has intentionally induced the commission of an offence by an act or illegal omission. In the absence of direct involvement, conviction for abetment is not sustainable."

6. This Criminal Revision Case shall stand allowed. The order dated 23.07.2014 made in Crl.M.P.No.9077 of 2014 in S.C.No.19 of 2014 passed by learned VII Additional Judge, City Civil Court, Chennai, shall stand set aside insofar as this petitioner is concerned. Consequently, connected miscellaneous petition is closed.

7. Learned Additional Public Prosecutor submits that the occurrence was of the year 2014 and there has been absolutely no progress in the case.

8. Trial Court shall make every endeavor to dispose of the main case in S.C.No.19 of 2014, within a period of six months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

kmi

To

1.The VII Additional Judge,
City Civil Court,
Chennai.

2.The Assistant Commissioner of Police,
Traffic Investigation West,
D-6, Anna Square Traffic Wing,
Chennai.

3.The XIV Metropolitan Magistrate,
Egmore, Chennai.

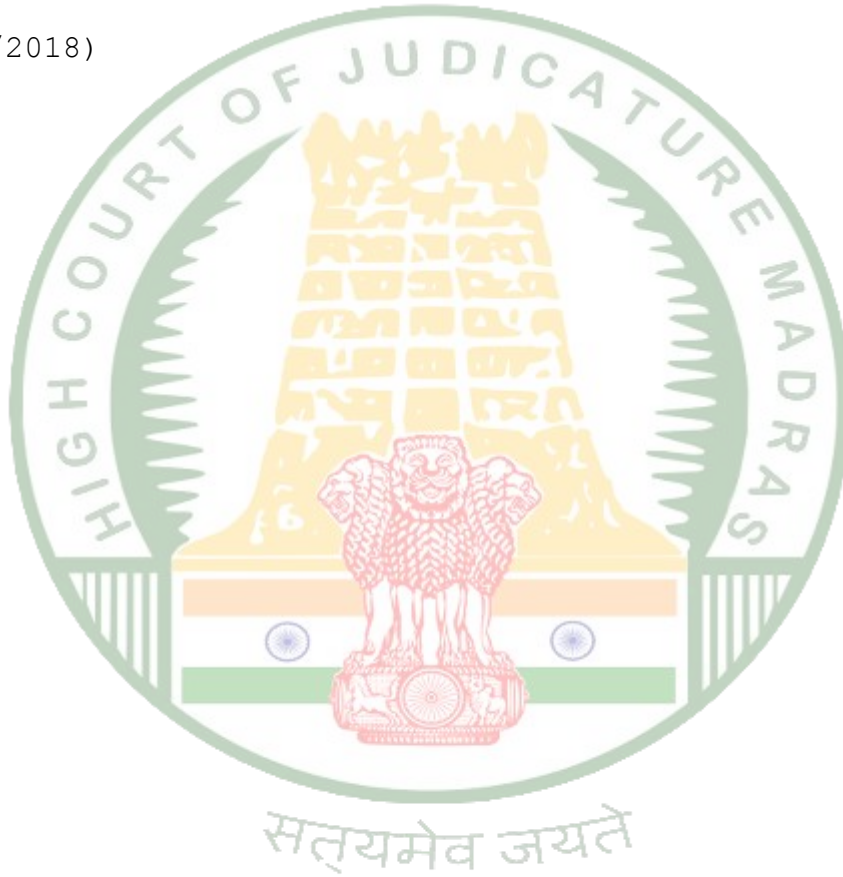
4.The Public Prosecutor,
High Court Madras.

+1cc to Mr.R.Vivekananthan Advocate, S.R.No.2941

Cr1.R.C.No.974 of 2014

KJI (CO)

RRK (26/03/2018)



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