

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.02.2018  
Date of Verdict : 26.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.14494 of 2014  
and  
M.P.No.1 of 2014 & M.P.No.1 of 2015

Captain Sunil Kumar Rai ...Petitioner

Vs.

The Assistant Commissioner of Police,  
J.5, Shastri Nagar Police Station,  
Adyar Range,  
Chennai - 600 020. ...Respondent

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in P.R.C.No.135 of 2013 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai in Crime No.4592 of 2012, on the file of the respondent and to quash the same.

For Petitioner : Mr.B.Sathish Sundar

For Respondent : Mrs.P.Kritika Kamal  
Government Advocate (Crl. Side)

ORDER

Challenging the proceedings in P.R.C.No.135 of 2013 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai, the present petition has been filed.

2.The brief background leading to filing of charge sheet is as follows:

On 30.10.2017, the Port of Madras raised a signal for a cyclonic storm named "Nilam" with Signal-7 signifying great danger and thereby directed all vessels in the anchorage to move to open sea. On 31.10.2017 at about 10.15 hrs vessel Pratibha Cauvery started to drag on the starboard anchorage. Though the captain of the ship had ordered to lower the shackles and move the vessel full ahead with all its engines operated, the vessel proceeded towards the land shore. When the vessel was close to the shore, the captain ordered the crew to abandon the ship. 22

crew members boarded a life boat. But however, the life boat capsized and six of the crew members therein drowned and died. In connection with this incident, a complaint came to be registered in Cr.No.4592 of 2012 on the file of the first respondent herein which culminated into framing of the impugned charge sheet wherein the petitioner herein has been arrayed as eighth accused.

3.The case of the prosecution is as follows:

On 25.09.2012, the ship named "MT. Pratibha Cauvery" arrived at Chennai Port from Budge Budge Port, Kolkatta under IOC Charter for unloading light diesel oil. After discharging the cargo, the vessel was directed by the Port Authorities at Chennai to move to the outer anchorage and wait for further orders from the shipping authorities and from the management of the Al's Company. On 08.10.2012, the vessel came to inner anchorage for receiving provisions and stores and remained in the inner anchorage till 11.10.2012. On 28.10.2012, the vessel became disabled since the bunker Marine Gas Oil (MGO) was critically lowered. On 30.10.2012, the Port of Madras raised a signal for cyclonic storm and requested all vessels to move the port and go to inner anchorage. Since the vessel was dragging her anchorage, the captain had tried for tug assistance for taking the vessel outside the port limit. However, the vessel drifted to 5 cable distance from the land and grounded. The captain had sought for assistance of boat for towing the ship from Chennai VTS. Since no boat was sent for about 35 minutes, he had ordered for lowering the life boat at 15.00 hrs, with the knowledge that the life boat engine was not working for the past three months. The captain ordered the crew members to abandon the ship and 22 crew members boarded the life boat and when the life boat was lowered to the water level, it capsized and out of the 22 crew members, 16 crew members were rescued and the remaining six died. On receipt of the complaint, the first respondent herein initially registered a case in Cr.No.4592 of 2012 under Section 174 Cr.P.C., on 31.10.2012 at 23.50 hrs. Since the preliminary investigation revealed the case to be one of culpable homicide not amounting to murder causing the death of crew members due to the deliberate failure of the employees of the Al's Company and others, the respondent herein had altered the Section from 174 Cr.P.C., to Section 304(2) of IPC on 26.11.2012.

4.The petitioner herein, who has been arrayed as the eighth accused, was the 'Designated Person Ashore' and the overt act attributed to him was that he had willfully omitted to control and monitor all activities on board as well as in the office for better administration to be carried out at the ship and further the petitioner ought to have liaised the work with other departments of the Company for better administration of the ship and that he was responsible for ensuring safety, prevention and

protection for the operation of the ship and to ensure the activities and resources on shore base support and since there was a dereliction of office responsibilities, he is liable to be punished under Section 304(2) of IPC.

5. Heard Mr.B.Satish Sundar, learned counsel for the petitioner and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) for the respondent.

6. Mr.B.Satish Sundar, learned counsel for the petitioner submitted that the overt acts attributed to this petitioner/A8, if taken on the face of it, cannot mean that the petitioner had committed certain willful acts or omissions which had probably caused the death of crew members, which was on account of natural calamity and not the wrong decision of the captain of the ship, who was in-charge of the vessel at this time. According to the learned counsel, there cannot be any vicarious liability on persons charged for offences under the Indian Penal Code, as there are no provisions in the Code itself to mulct such criminal liability and in support of his contention, he relied on three judgments of the Hon'ble Apex Court reported in 1) Maksud Saiyed V. State of Gujarat and others [2008 (5) SCC 668]; 2) S.K.Alagh V. State of U.P. & others [2008 (5) SCC 62] and 3) Dr.Jeepair & Another V. State of Tamil Nadu [2013 (1) Law Weekly Crl. 45]. He further contended that the petitioner had resigned his position as a Designated Person Ashore on 30.08.2012 which was acknowledged by the management on the same day and the petitioner was advised by the management to continue his position till 15.10.2012. His resignation was recognised by this Court while considering his anticipatory bail petition, since this Court had accepted the material and found a prima facie in favour of the petitioner, such finding cannot be disputed and disregarded while the charges were framed. Since the petitioner do not have any role in the alleged incident, the prosecution ought not to have arrayed the petitioner as an accused in the final report. In support of his submission, the learned counsel for the petitioner relied upon the judgments reported in AIR 1955 SC 481 [Sahu Madho Das and others V. Pandit Mukand Ram and another]; 1995 (2) SCC 531 [Virupakshayya Shankarayya V. Neelakanta Shivacharya Pattadadevaru] and Crl.R.C.No.1094 of 2010 [A.N.Dyaneswaran V. The Assistant Director, Directorate of Enforcement, III Floor, III Block, Shastri Bhavan, Haddows Road, Chennai-600 006] dated 07.02.2012. Further, by placing reliance on the judgment in Rukmini Narvekar V. Vijaya Satardekar & others reported in 2008 (14) SCC 1, the learned counsel submitted that these undisputed documents of the defence can be taken into consideration while this Court exercises its powers under Section 482 Cr.P.C. for quashing the charge sheet.

7. Mrs. P. Kritika Kamal, learned Government Advocate, by controverting the submissions, contended that the resignation letters and the audit report relied upon by the petitioner are not the documents relied by the prosecution while the charges were framed and the same cannot be relied at the stage of quashing of the proceedings. In support of her contentions, she relied upon the judgment reported in 2013 (3) SCC 330 [Rajiv Thapar and others V. Madan Lal Kapoor]. She would submit that the documents relied upon by the petitioner is disputed by the prosecution and it cannot be said to be an impeccable documents. The prosecution should have the benefit of cross examining the author of the resignation letter and its recipient, in case, the petitioner chooses to mark the same during the course of trial. Even otherwise, since the petitioner was not relieved till 15.10.2012, the status of the life boat was communicated atleast three months prior to the occurrence and the certificate of class of the ship lapsed on 02.10.2012 and as such, the petitioner cannot be absolved of his liability. Insofar as the petitioner's status which came up for consideration before this Court in the anticipatory bail application is concerned, she contended that in view of the factual situation and in the background of Sections 41 and 42 of the Indian Evidence Act, the observations of this Code cannot be taken as conclusive proof. Merely because the petitioner claims to have left the company on 30.08.2012 on the basis of objective evidence, it cannot have a bearing in a criminal case in view of the principle laid down by the Hon'ble Apex Court in State V. Ajay Kumar Tyagi reported in 2012 (9) SCC 685. The learned Government Advocate further submitted that the issue involved in the present case is one of collective liability and not a case of vicarious liability. Since the petitioner herein was collectively responsible along with other accused for the shortcoming in the ship inter-alia bunker and life boat, it cannot be said that there was no proximity in between the act of the petitioner herein and the death of the crew members of the ship. Under Section 32 of the Indian Penal Code, 'Act' includes illegal omissions as well and there is a presumption that the petitioner herein was aware of the natural consequences of his legal omissions in not responding to the repairs of the life boat over three months and the untimely death of the crew members of the ship was due to the collective liability of all the accused, including the petitioner herein and as such, the present petitioner does not deserve any consideration.

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

9. The cyclonic storm "Nilam" that had a land fall near Mahabalipuram, Tamil Nadu on 31.10.2012 was one of the deadliest tropical cyclone to have directly affected the South India in Chennai's Marina Beach in the recent past. The cyclone largely

affected the coastal areas causing huge loss to people and properties. Among other destructions, the oil tanker MT Pratibha Kauvery landed aground near Chennai after drifting into the storm. On the date of the cyclone, the petitioner herein, who has been arrayed as A8, held the post of Designated Person Ashore. His duties were to liaison between the captain of the ship and the authorities of A1 company. While the captain of the ship who has been arrayed as A14 was the person in-charge of the vessel at the relevant time, the petitioner herein was in charge of the off shore duties. When the cyclone struck, the vessel started to drag on the starboard anchor at 10.15 hours which prompted the captain of the ship to lower the shackles and heave up the starboard anchor and the vessel was directed to move full ahead with all its engines in operation. However, during the heavy winds and rough sea, the vessel drifted towards the land shore. The captain's request for tug assistance was in vain. In view of the intensity of the cyclone, the starboard anchorage could not hold the vessel, which ran aground at about 14.10 hours. When the vessel was within 50 mts from the shore, the captain ordered the crew to abandon the ship. When 25 crew members boarded the life boat, the life boat capsized and six crew members drowned and died. In this background, an FIR in Cr.No.459 of 2012 under Section 174 Cr.P.C., came to be registered which was subsequently altered on 27.11.2012 for offence under Section 304(2) (6 counts) IPC.

10. Before analysing as to whether the charges against the petitioner of having committed an offence under Section 304(2) (6 counts) IPC has been properly laid or not, it would be appropriate to have a glance as to the definition of 'culpable homicide'. Section 299 of IPC defines 'culpable homicide' as follows:

"299. Culpable homicide — Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

11. The ingredients for charging a person of having committed the offence of 'culpable homicide' would be as follows:-

- a) doing an act with an intention of causing death;
- b) doing an act with an intention of causing bodily injury as likely to cause death and
- c) with the knowledge that such an act is likely to cause death.

Thus, 'intention' and 'knowledge' are the essential ingredients for constituting the offence. While intention would require a person to have deliberate plan or aim to do a certain act, 'knowledge', in its restricted meaning would include the

information, understanding and a skill which a person gains to experience on education.

12. According to the case of the prosecution, the petitioner herein had knowledge of the consequence of his illegal omission to communicate the status of the life boat and lack of bunker, as a result of the repairs not being carried out in the life boat and non provision of the bunker owing to which the vessel became stranded and the life boat non functional. As such, it is not the case of the prosecution that the occurrence was intentional vis-a-vis the petitioner's overt acts and that he had the knowledge of the consequences for his omissions in performing his duties. 'Knowledge' as such contemplates knowledge of the likelihood of causing a death of a person. Hence in order to establish a charge under Section 304 (2) IPC, the prosecution has to adduce positive overt acts which has a proximity to the incident. In other words, the final report has to necessarily reveal through the overt acts of the accused that the petitioner had full knowledge that such overt acts would endanger the life of the crew members.

13. It is not in dispute that the decision to abandon the ship was given by the captain of the ship. The overt acts attributed to the petitioner is that he had prior knowledge that the motors in the life boat was non functional and had omitted to take corrective measures.

14. By relying upon various judgments produced before this Court, the learned counsel for the petitioner submitted that the omissions pointed out by the prosecution is factually in correct. On a perusal of these documents, it is seen that the vessel, went for unloading at Kolkatta Sea Port in May 2012, it was subjected to a survey by the Indian Registrar of Shipping and certain defects were detected. Nevertheless, the ship was allowed to sail to Mangalore where another inspection came to be carried out in June 2012 by the authorities. Thereafter, the ship was permitted to sail to Vishakapatnam wherein certain routine inspections were carried out by the Mercantile Marine Department and certain repairs were carried out and on 20.08.2012, the Technical Superintendent of AI Company reported that the deficiencies pointed out have been rectified and consequently, the Mercantile Marine Department had allowed the ship to sail to Kolkatta where again flag state inspection of the vessel was carried out by the Principal Officer, Mercantile Marine Department, Kolkatta. After due survey, the inspection authorities recommended for up-lifting the detention of the vessel on 09.09.2012 and she was permitted to sail on the condition certain deficiencies, out of the 15 which were not rectified, would be attended to and complied within 30 days. It is in this background, that the vessel had arrived at Chennai Port on 25.09.2012 for unloading 10,000 MTs of light diesel oil.

After discharging the cargo, the management had sought permission to take the ship to dry dock for carrying out the repairs/deficiencies pointed out by the Indian Register of Shipping to which the port authorities directed the vessel to move to the outer anchorage and wait for further orders. In the meantime, the certificate of class of the vessel came to be suspended with effect from 02.10.2012 and hence the vessel could not sail and had to wait for further orders from the authorities. From an overall perusal of the aforesaid facts, it is seen that there was no illegal sailing of the ship and that its movements from Kolkotta to Chennai was under due permission from the shipping authorities and as the ship was awaiting at the outer anchorage for repairs to be carried out, the occurrence took place. While that being so, I am unable to comprehend as to how these acts could have any proximity to the overt acts attributed to the petitioner. The learned Government Advocate had submitted that the knowledge of the consequences of the petitioner's illegal omission had resulted in the occurrence and as such, it cannot be said that there is no proximity between the act of the petitioner herein which accentuated the death of the crew members of the vessel. As observed above, the vessel had sailed under the proper authority from Kolkatta to Chennai and while it was berthed awaiting repairs, permission for repairs from the Port Authorities, Chennai its certificate of class came to be suspended. This would only go to show that there was no omissions on the part of the petitioner herein which allegedly led to the occurrence.

15. It needs to be borne in mind that the entire incident was during the cyclonic storm and even as per the prosecution's case, the life boat capsized due to the heavy storm. When the huge vessel of such magnitude itself could not hold ground inspite of the starboard anchor owing to the heavy storm, the capsizing of the life boat was understandably imminent. It is not the case of the prosecution that the life boat capsized because its engine was not in a working condition. Likewise, non availability of the fuel alone was not the reason for which the vessel came to be stranded in the outer anchorage. As such, it can only be concluded that there was no omission on the part of the petitioner herein which could be concluded as a nexus either to the ship being stranded in the anchorage or capsizing of the life boat and as such, the offence of 'culpable homicide' may not be made out as against this petitioner. In the light of the above observations, it would be relevant to refer to the judgment of the Hon'ble Apex Court in Shankar Narayan Bhadolkar V. State of Maharashtra reported in 2005 (9) SCC 71. The relevant observations made therein are as follows:

"23. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide

is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence, the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

24. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

#### Section 299

#### Section 300

A person commits culpable homicide Subject to certain

if the act by which the death is exceptions culpable is caused is done-homicide is murder if the act by which the death is caused is done-

#### INTENTION

(a) with the intention of causing (1) with the intention of death; or causing death; or

(b) with the intention of causing (2) with the intention of such bodily injury as is likely causing such bodily injury to cause death; or as the offender knows to be

likely to cause the death of the person to whom the harm is caused; or

(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

#### KNOWLEDGE

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(c) with the knowledge that the act

(4) with the knowledge that is likely to cause death. the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above.

25. Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by illustration (b) appended to Section 300.

26. Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no

such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degrees of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury.....sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

27. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant and Anr. v. State of Kerala*, (AIR 1966 SC 1874) is an apt illustration of this point.

28. In *Virsa Singh v. State of Punjab*, (AIR 1958 SC 465), Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300, "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. Thirdly, It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental

or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

29.The ingredients of clause "Thirdly" of Section 300, IPC were brought out by the illustrious Judge in his terse language as follows:

"12.To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, "thirdly".

First, it must establish, quite objectively, that a bodily injury is present.

Secondly, the nature of the injury must be proved. These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

30.The learned Judge explained the third ingredient in the following words (at AIR p.468, para 16):

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only

possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here or there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

31. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh's case (supra) for the applicability of clause "Thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death, viz., that the injury found to be present was the injury that was intended to be inflicted.

32. Thus, according to the rule laid down in Virsa Singh's case, even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

33. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons

being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

15. The learned Government Advocate had pointed out that the documents referred to by the learned counsel for the petitioner for the purpose of establishing that there was no proximity between the acts of the petitioner and the death to the crew members are not the documents relied on by the prosecution and as such, they are subject to deliberations during the time of trial. In other words, the learned Government Advocate submitted that by looking into certain independent documents for the purpose of quashing the charges, the High Court, exercising its powers under Section 482 Cr.P.C., may not be justified.

16. In normal circumstances, this Court would generally not look into such documents that are not relied upon by the prosecution while framing the charges and would direct the persons to establish the same during trial. But, it cannot be said that there is a total bar for the High Court while exercising its powers under Section 482 Cr.P.C., to look into certain incriminating and relevant documents to scrutinize the legality of the charges framed. On an overall approach of the facts of the present case, the petitioner herein is being mulcted with a charge for having allegedly committed an offence under Section 304(2) IPC, when during a heavy storm which could not contain the vessel to hold its anchor, the captain, orders the crew to abandon the ship. While the crew were in the life boat, it capsized due to heavy storm and rough sea conditions and the petitioner, who was the person ashore, is made liable for certain acts of alleged omissions. The documents produced before this Court are to establish that the vessel was sailing under proper authority from Kolkatta to Chennai and came to be stranded while awaiting further orders for repairs from the port authorities. These documents obtained from the concerned authorities cannot be discarded or ignored. When such documents reveal that the petitioner herein did not have any overt act to mulct him with a charge, this Court would be well within its powers in looking into such documents. The language of Section 482 Cr.P.C. are explicitly clear to give powers to this Court to look into such documents for the purpose of securing the ends of justice. In this background, it would be appropriate to refer to the observations of the Hon'ble Apex Court in the judgment in Rukmini Narvekar v. Vijaya Satardekar and others reported in 2008 (14) SCC 1 which are as follows:

"22. Thus in our opinion while it is

true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. Padhi's case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance.<sup>18</sup> In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted.

37. The larger Bench did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. Incidentally, the very same arguments which have been advanced by Mr. Lalit before us on behalf of the accused, were also advanced by learned counsel before the larger Bench and the same were negated as far as Section 227 Cr.P.C. is concerned. However, in paragraphs 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court under Section 482 Cr.P.C. and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.

38. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227 Cr.P.C. can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom under Section 482 Cr.P.C. the Court is free to consider

material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred."

18. Though the learned counsel for the petitioner had raised various other grounds stating that the petitioner herein had relieved from his position on the date of occurrence and that there cannot be any vicarious liability on the persons charged for offences under Indian Penal Code, I do not intend to go into all those aspects since the very base for framing of charges under IPC against the petitioner itself has not been clearly established. Unless and until the prosecution clearly establishes that there was a proximity between the acts of the petitioner herein and the death of the crew members of the vessel and such an act was due to the omissions on the part of the petitioner herein, no useful purpose would be served in rendering a finding on the other aspects.

19. In the result, I do not find any justification on the part of the prosecution for having implicated the petitioner herein/A8 of having committed the offence under Section 304(2) (6 counts) IPC .

20. Resultantly, the charges as against the petitioner/A8 in PRC.No.135 of 2013 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai stands quashed. The trial Court is at liberty to proceed with the case as against the other accused. The Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

DP

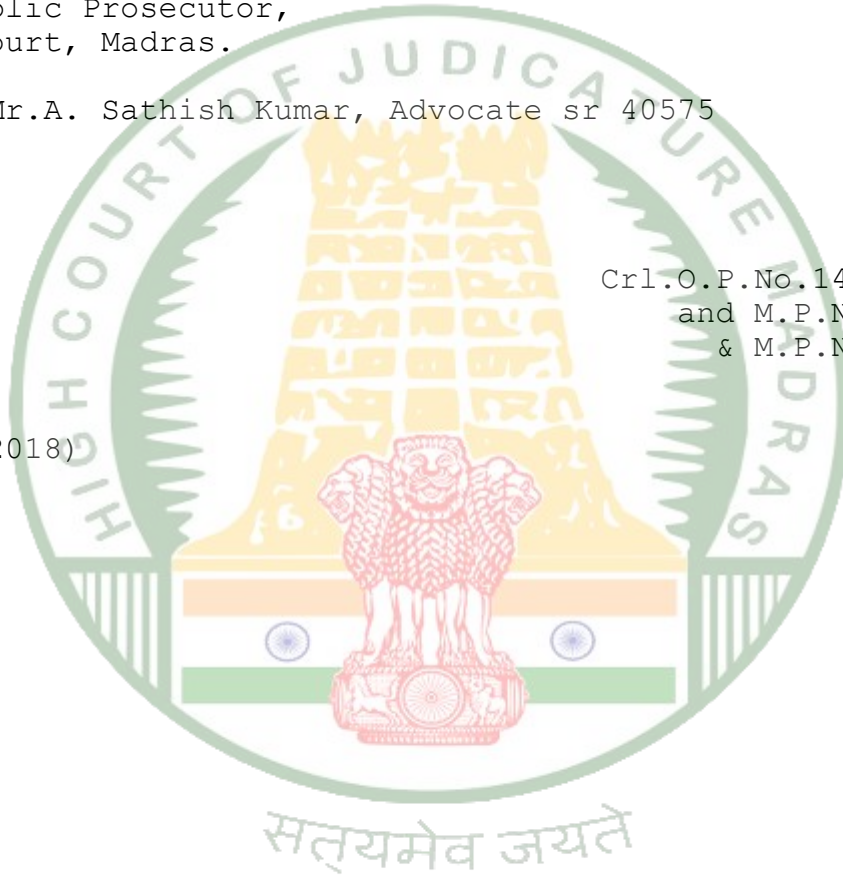
To

1. The IX Metropolitan Magistrate Court,  
Saidapet, Chennai.
2. The Assistant Commissioner of Police,  
J.5, Shastri Nagar Police Station,  
Adyar Range,  
Chennai - 600 020.
3. The Public Prosecutor,  
High Court, Madras.

+1 CC to Mr.A. Sathish Kumar, Advocate sr 40575

Crl.O.P.No.14494 of 2014  
and M.P.No.1 of 2014  
& M.P.No.1 of 2015

GP(CO)  
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