

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1665 of 2016
and
Crl.M.P.No.5273 of 2017

P.Sanmugam

... Petitioner

Vs.

The State Rep. By
The Inspector of Police,
J-2, Adyar Police Station.

... Respondent

Prayer: The Criminal Revision filed under Section 397(1) of Code of Criminal Procedure to call for the entire records in Crl.MP.No.1912/2016 in C.C.No.3721/2006 dated 05.10.2016 by the IX Metropolitan Magistrate Court, Saidapet, Chennai.

For Petitioner : Mr.M.Kempuraj

For Respondent : Mr.R.Ravichandran
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision has been filed against the order dated 05.10.2016 in Crl.MP.No.1912/2016 in C.C.No.3721/2006 passed by the learned IX Metropolitan Magistrate Court, Saidapet, Chennai.

2. The case of the prosecution is that the respondent filed a case against the revision petitioner and other two accused in C.C.No.3721/2006, on the file of the learned IX Metropolitan Magistrate Court, Saidapet, Chennai. During the pendency of the case, the revision petitioner filed the petition under Section 239 Cr.P.C. to discharge him from the case. After considering the facts of case, the learned Metropolitan Magistrate has dismissed the petition. Challenging the same, petitioner herein has filed the present revision.

3. The learned counsel for the revision petitioner would submit that the revision petitioner is not the owner, but he is only a builder. Due to the negligence of maintaining the lift in a good condition, the accident occurred. The builder had constructed the building and handed over the same in the year of

2001 itself. The accident took place only in the year of 2005. At the time of the accident, he was not holding any responsibility either to maintain the lift or building in question and therefore, he is not liable for any charges leveled against him under Section 304(A) I.P.C. read with 4, 5, 6 read with Section 15 of Tamil Nadu Lifts Act 1997. The learned counsel would submit that only an investigation officer can file the complaint and not a third party. Materials does not shows any prima facie against this revision petitioner. The learned Metropolitan Magistrate failed to consider these aspects. Therefore, the order of the trial Court warrants interference.

4. The learned Government Advocate (Crl. Side) would submit that there are prima facie allegations against the revision petitioner as well as the other accused. The Court while considering a petition to discharge the accused, is required only to see, whether prima facie allegation is made out and merits of the case need not be gone into at that stage. The statement of the prosecution witnesses clearly shows that the revision petitioner is the owner of the building and there are prima facie materials against the revision petitioner. Therefore, order passed by the learned Metropolitan Magistrate does not warrant any interference of this Court.

5. Heard both sides and perused the materials available on record.

6. The case of the prosecution is that due to the non maintenance of the lift, the accident has happened, resulting in the death of the victim. The petitioner was responsible for maintaining the lift in a good condition. Since he failed in his duty, he was rightly shown as an accused. It is well settled proposition of law that while considering the petition to discharge the accused, the Court has to see the allegations leveled in the complaint. Further, the Court has to consider the documents filed by the prosecution under Section 173 Cr.P.C. and not the defence taken by the accused. Therefore under these circumstances, this Court finds that prima facie case made out against the revision petitioner.

7. A perusal of the records under Section 173(2) Cr.P.C. filed by the prosecution would reveal prima facie material available against the revision petitioner. The question as to whether the petitioner was the owner of the building or he was a builder will be decided only after conducting the trial. The accused has full liberty to put forth his defence during the trial.

8. Therefore under these circumstances, there is no merit in this revision. Due to the age of the revision petitioner his personal appearance before the learned Metropolitan Magistrate

is dispensed with. The revision petitioner shall appear before the learned Magistrate, as and when required. Hence, the Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Rli

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The IX Metropolitan Magistrate Court,
Saidapet, Chennai.
2. -do- thro the Chief Metropolitan Magistrate,
Egmore, Chennai.
3. The Public Prosecutor,
High Court, Madras.
4. The Inspector of Police,
J-2, Adyar Police Station.

+2ccs to Mr.M.Kempuraj, Advocate S.R.No.63288

KR/25/10/18

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