

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.No.26150 of 2017 &
Crl.M.P.No.15033 of 2017

Jeenesh

... Petitioner

Vs

1.State rep. by
Inspector of Police,
Upper Coonoor,
Nilgiris District.
Crime No.323 of 2016.

2.Perumal

... Respondents

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash all the proceedings in Crime No.323 of 2016 now pending investigation on the file of the 1st respondent.

For Petitioner : Mr.P.Kumaresan

For Respondent 1: Mrs.P.Kritika Kamal,
Government Advocate (Crl. side)

For Respondent 2: No appearance

सत्यमेव जयते
ORDER

This Criminal Original Petition has been filed to quash the proceedings in Crime No.323 of 2016 on the file of first respondent police.

2.The petitioner who has been arrayed as sixth accused has filed the present Criminal Original Petition. In the instant case, the role of the petitioner herein was initially not spelled out in the complaint. In the remand report, an averment was made against this petitioner that he had acted as a mediator for selling the land belonging to the first and second accused. It is further stated in the remand report that the petitioner herein/ sixth accused had also permitted for digging work to be

made in the accident site.

3. The petitioner as well as the other accused have been implicated for the offences under Section 338 and 304(A) of I.P.C.,

Section 338 of I.P.C., reads as follows:

"whoever causes grievous hurt to any person to doing any act so rashly or negligently as to endanger human life, or the personal safety of other, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or both."

Section 304(A) of I.P.C., reads as follows:

"whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

4. In order to constitute an offence under Section 338 of I.P.C., the grievous hurt must have been caused to a person and such hurt ought to have been caused by doing a rash and negligent act and such an act must have endangered the human life or public safety or the others.

5. Two overt acts have been attributed to the petitioner herein in the complaint. Firstly the petitioner had acted as a mediator for selling the land. Secondly, he had permitted for digging work to be made in the accident site. Acting as a mediator can never be said to have attract the ingredients of Section 338 of I.P.C. Likewise, assuming that the petitioner had permitted for digging work to be carried out in the accident site, it cannot be said that the grievous hurt was caused, in view of permission granted by the petitioner. As such, ingredients to constitute an offence under Section 338 of I.P.C. have not been made out.

6. With regard to the other offences under Section 304(A) of I.P.C. is concerned, the person is said to have committed the offence of culpable homicide, when he causes death by doing an act with the intention or without intention and with the knowledge that by his act, death may occur. As observed earlier, the petitioner's role as a mediator in selling the land will not attract the offence under Section 304(A) of I.P.C. Likewise, the allegations that the petitioner had granted permission for digging work in the site also cannot be deemed to be an act, by which, he had the knowledge that by granting such a permission, death could occur. The ingredients to constitute the offences under Sections 338 and 304(A) of I.P.C., are conspicuously absent in the complaint. As a matter of fact, the petitioner who came to be implicated from the remand report has been restricted with overt acts of being a mediator and granting permission for carrying the work of digging soil in the accident site. I do not wish to go into the averments as to how the mediator will have the right or authority to grant permission for carrying on digging of soil work. Nevertheless, from the averments in the complaint, it can only be concluded that the offence under Section 304(A) of I.P.C. has not been made out. There is nothing in the complaint or in the remand report to establish or even suggest that the petitioner herein was involved in supervising or doing any other acts during the contract work. While that being so, it would not be proper to permit the petitioner to undergo the ordeal of facing criminal investigation. In any event, these averments, by no stretch of imagination, can implicate the petitioner for the offences under Section 338 and 304(A) of I.P.C.

7. In the result, the Criminal Original Petition stands allowed. The investigation in Crime No.323 of 2016 on the file of the first respondent, insofar as it relates to the petitioner herein/sixth accused is concerned, stands quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Upper Coonoor,
Nilgiris District.

2.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.P.Kumaresan, Advocate, S.R.No.5018

CrI.O.P.No.26150 of 2017

RRK(07/02/2018)



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