

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 04.12.2018
CORAM:
THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH
Crl.O.P.No.8317 of 2014 and
M.P.No.1 of 2014

A.Khader Basha

...Petitioner

Vs.

1. State Rep. by

The Inspector of Police Station,
G-4, Uthiramerur Police Station,
Uthiramerur.

2. A.Adam

...Respondents

(Impleaded as per order in Crl. MP.12985/18
and made in herein)

Criminal Original Petition filed under Section 482 Cr.P.C.
praying to call for the records and papers relating to C.C.No.60
of 2012 on the files of the learned Judicial Magistrate,
Uthiramerur and quash the same.

For Petitioner : Mr.K.M.Ramesh

For Respondents : Mr.Mohamed Riyaz,
Additional Public Prosecutor for R1
Mr.K.G.Senthilkumar for R2

ORDER

This criminal original petition has been filed seeking to
quash the proceedings in C.C.No.60 of 2012, pending on the file
of learned Judicial magistrate, Uthiramerur.

2 The Court below has taken cognizance of the final
report filed by the first respondent police for offences under
Sections 279 and 304(A) of IPC.

3 The case of the prosecution is that this petitioner was
employed as a Driver in the Tamil Nadu State Transport
Corporation. On 27.06.2012, while this petitioner was driving
the vehicle at about 9.30 a.m. and was proceeding in the main
road, some goats crossed the road and in order to avoid hitting
those goats, the petitioner applied breaks. At that time, the
Conductor of the bus, namely, Farooq Ahamed, who was issuing
tickets to the passengers, and was standing near the rear side
entrance, lost control and fell down through the rear side
entrance on the road and he sustained head injury. Thereafter,

the said Farooq Ahamed was taken to the Hospital, but however, he died in the Hospital.

4 Based on the complaint given by the son of the deceased, the second respondent herein, an FIR came to be registered by the first respondent police and on completion of the investigation, final report was filed before the Court below, which is a subject matter of challenge before this Court.

5 The learned counsel appearing for the petitioner would submit that even if the allegations made in the report are taken as it is, no offence under Sections 279 and 304(A) of IPC has been made out in this case. The learned counsel would submit that the petitioner was forced to apply breaks, in order to avoid hitting the goats, which were crossing the road and the deceased, who was standing near the rear side entrance, unfortunately lost control and fell down from the bus. The learned counsel would further submit that the act of the petitioner is neither rash nor negligent and therefore, it does not attract the provisions of Section 304(A) IPC. The learned counsel also relied upon the decision of the Hon'ble Supreme Court reported in AIR 2000 SC 2511 (Mohammed Aynuddin Alias Miyam vs. State of Andhra Pradesh), in order to substantiate his submissions.

6 The learned Additional Public Prosecutor appearing for the first respondent police would submit that only because of the speed in which the bus was driven, by applying sudden break, the conductor was thrown out of the bus and therefore there is prima facie material for rash and negligent driving on the part of the petitioner. The learned Additional Public Prosecutor would also submit that this Court should not interfere with the proceedings at this stage. The learned counsel appearing for the second respondent also reiterated the very same stand taken by the learned Additional Public Prosecutor.

7 This Court has carefully considered the submissions made on either side.

8 The facts as projected in the FIR would show that the petitioner, as a Bus Driver, was driving the bus and in order to avoid hitting the goats, which crossed the road, was forced to apply breaks. The deceased, who was standing near the rear side door entrance lost control and fell down on the road and sustained head injury. There is only one witness, who speaks about this incident. One Munusamy, who was travelling in the said bus. He has merely reiterated the same words that were used in the FIR by the respondent police. He has stated that the petitioner had applied breaks without blowing the horn. It has to be seen as to whether this act of the petitioner will constitute an offence under Sections 279 & 304(A) of IPC. In

order to constitute an offence under both these provisions, there must be a culpable negligence on the part of the petitioner. It is relevant to rely upon the judgment that has been cited by the learned counsel for the petitioner in this regard. The relevant portion of the decision is extracted hereunder.

6. "What is the culpable negligence on the part of the bus driver in the above accident? A passenger might fall down from a moving vehicle due to one of the following causes : it could be accidental; it could be due to the negligence of the passenger himself; it could be due to the negligent taking off the bus by the driver. However, to fasten the liability with the driver for negligent driving in such a situation there should be the evidence that he moved the bus suddenly before the passenger could get into the vehicle or that the driver moved the vehicle even before getting any signal from the rear side.
7. A driver who moves the bus forward can be expected to keep his eyes ahead and possibility on the sides also. A driver can take the reverse motion when that driver assures himself that the vehicle can safely be taken backward.
8. It is a wrong proposition that for any motor accident negligence of the driver should be presumed. An accident of such a nature as would prima facie show that it cannot be accounted to anything other than the negligence of the driver of the vehicle may create a presumption and in such a case the driver has to explain how the accident happened without negligence on his part. Merely because a passenger fell down from the bus while boarding the bus no presumption of negligence can be drawn against the driver of the bus.
9. The principles of *res ipsa loquitur* is only a rule of evidence to determine the onus of proof in actions relating to negligence. The said principles has application only when the nature of the accident and the attending circumstances would reasonably lead to the belief that in the absence of negligence the accident would not have occurred and that the thing which caused injury is shown to have been under the management and control of the alleged wrong doer.
10. A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still a rash act can be deliberate act in the sense that it was

done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular. It is the imperative duty of the driver of a vehicle to adopt such reasonable and proper care and precaution."

9 It is clear from the above judgment that merely because a person falls down from the bus, due to break applied by the petitioner, the same will not give rise to a presumption that the bus was driven in a rash and negligent manner. Culpable rashness or negligence lies in doing an act in a reckless manner and with utter indifference to the consequences. Criminal negligence will arise only in a case, where, there is fault on the part of the petitioner to exercise a reasonable and proper care while acting.

10 In this case, the petitioner had applied breaks only to avoid hitting certain goats, which were crossing the road. Unfortunately, the deceased, who was the conductor and who was standing near the rear entrance lost his balance and fell down. His falling down through the rear entrance and sustaining head injury by itself will not give rise to a presumption that the petitioner had driven the bus in a rash and negligent manner. From the materials collected on the side of the prosecution, there is no proof to indicate that the petitioner had driven the bus in a rash and negligent manner. The ratio that has been stated in the judgment referred supra, will directly apply to the facts of the present case. This Court is not able to find either rash or negligent act on the part of the petitioner. Therefore, the petitioner need not undergo the ordeal of facing the trial before the Court below.

11 In the result, the proceedings in C.C.No.60 of 2012 on the file of the learned Judicial Magistrate, Uthiramerur, is hereby quashed. Accordingly, the criminal original petition stands allowed. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

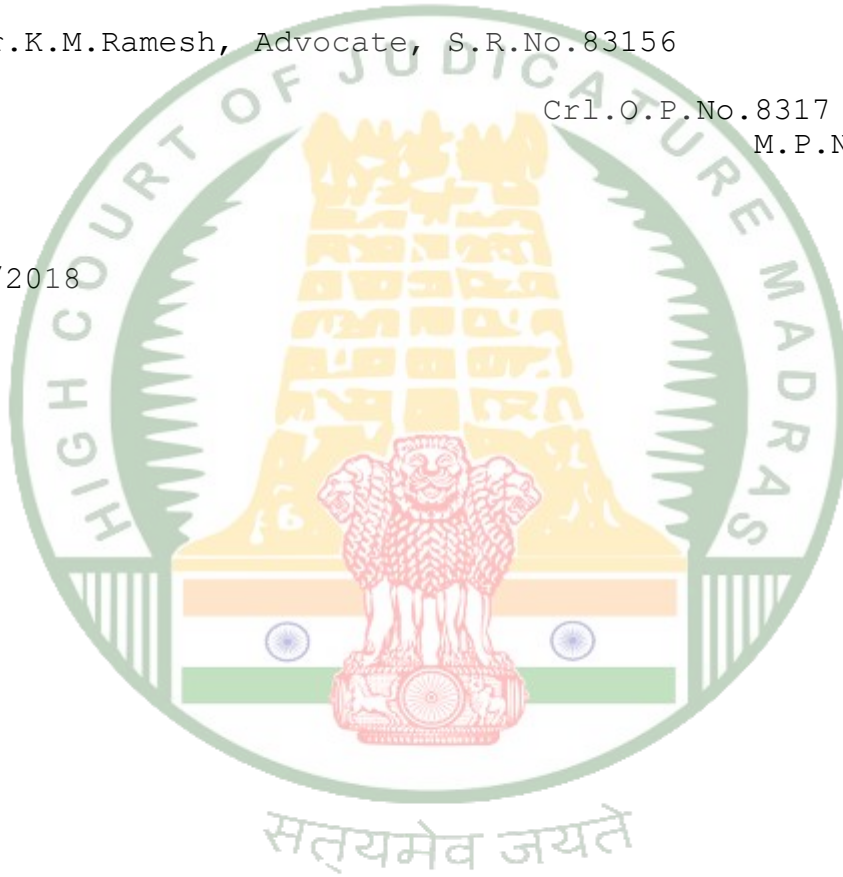
1. The Judicial Magistrate,
Uthiramerur.
2. -do- Thro' The Chief Judicial Magistrate
Tiruvannamalai.
3. The Additional Public Prosecutor,
High Court, Madras.

+lcc to Mr.K.M.Ramesh, Advocate, S.R.No.83156

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M.P.No.1 of 2014

VD(CO)

rrs 27/12/2018



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