



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 12.10.2018
CORAM
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.6997 of 2015
and
M.P(MD).Nos.1 & 2 of 2015

A.Jayapal .. Petitioner/Accused No.1
Vs.

1.State represented by
The Inspector of Police
E1 K.Pudur Police Station (Law and Order)
Madurai ..1st Respondent/Complainant

2.Panju ...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to take note of the records in respect of C.C.No.7 of 2009 pending on the file of the learned Judicial Magistrate No.VI, Madurai and quash the same.

For Petitioner : Mr.K.Samidurai

For R1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.Side)

For R2 : Mr.R.Maheswaran

ORDER

This Criminal Original Petition has been filed to quash the criminal proceedings in C.C.No.7 of 2009 on the file of the learned Judicial Magistrate VI, Madurai and have taken cognizance for the offence punishable under Section 304(A) I.P.C as against the petitioner and another.

2.The case of the prosecution is that on 16.02.2001, the wife of the deceased lodged a complaint alleging that the defacto complainant's husband was working in the petitioner's construction under the supervision of one Subramani, who is arrayed as Accused No.2 in the above case. The said Subramani is a contractor. Further, she alleged that her husband had worked without proper protection made by the Accused No.2 and this petitioner herein. Due to negligence and carelessness of the above petitioner and another, her husband died because of debris of sand fell down on him. Therefore, he died. Hence, the complaint.

concerned,
with the

5. The learned Government Advocate (Crl.Side) appearing for the first respondent would submit the based on the negligence contributed by the petitioner and another, the husband of the defacto complainant is died. Therefore, both are vicariously liable and the offence is made out as against the petitioner and another. Hence, he prays for dismissal of the quash petition.

7. On perusal of documents of the work contract agreement dated 11.02.2008, there is a specific Clause stating that if there is any untoward incident or accidents happened during the construction of work, the contractor is only liable for all the untoward incidents. Therefore, the petitioner is no way liable for anything happened during the construction. The Clause No.4 of the Work Contract Agreement is extracted below:

<https://hcservices.fducourts.gov/intotheservice/>



8. Therefore, there is a specific Clause stated in the contract entered between the petitioner and the accused no.2. Hence, the petitioner is not vicariously liable for an unfortunate occurrence took place on 16.02.2008. The learned counsel for the petitioner has relied upon the Judgment of this Court reported in 2010 CRI.L.J.764 (Geetha Ramesh & others Vs. Sub Inspector of Police, Udagamandalam) which held as follows:

" 18. If the case on hand is considered in the light of the abovesaid decisions, this Court has to necessarily come to the conclusion that the petitioner cannot be prosecuted for the offences punishable under Section 304(A) and 337 I.P.C for the death of one of the workers and injuries caused to six of the workers engaged by the contractor (A1) and Labour Sub Contractor (A2) since the excavation work was not done in the presence of any one of the petitioners or under the supervision of or in accordance with the specific directions issued by the petitioners regarding the dimensions and the matter in which excavation work is to be done. The petitioners have made clear averments that the entire construction work was entrusted to the contractor (A1) and the excavation work for construction of retaining wall was undertaken by the contractor himself engaging the labour sub contractor. It is an admitted fact that the petitioners are residing in Chennai which is more than 500 km away from Udagamandalam. Therefore, it is quite obvious that they could not have directly supervised the work. Further more, the learned counsel for the petitioners had also pointed the fact that there is no legally admissible evidence collected by the Investigating Officer to show that the work was done under their supervision and that there was rashness and negligence on the part of any of the petitioners which resulted in the accident without there being intervention of negligence of any other person. In this case, it is the case of the prosecution that the contractor (A1) and labour sub-contractor (A2) who were directly supervising the work acted in a rash and negligent manner which resulted in the accident. Therefore, even as per the prosecution case, there was intervention of the negligence on the part of A1 and A2. Under such circumstances, applying the ratio decided in the cases cited supra, this Court comes to the conclusion that the petitioners have made out a clear case for quashing the charge sheet filed in Crime No.109 of 2006 a case registered on the file of G-1, Town West Police Station, Udagamandalam which was taken on file by the learned Judicial Magistrate, Udagamandalam on the file of his Court in C.C.No.100 of 2002 so far as the petitioners are concerned".

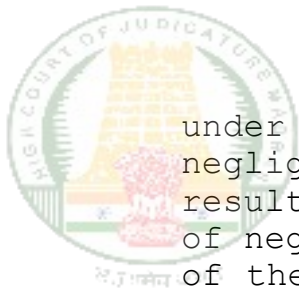
9. He has also relied upon the Judgment reported in (2018) MLJ (Cr1) 707 (S.Vinay Saxena Vs. State, rep. By the Inspector of Police, C-1, Sriperumpudhur Police Station, Kanchipuram District and another) which held as follows;

"9. It is not in dispute that the work of installing and operating the solar power panels in the roof of the factory premises of M/s. Asahi India Glass Ltd., was entrusted under an agreement to M/s. Clean Max Enviro Energy



Solutions Pvt. Ltd., under a power purchase agreement. As such, the responsibility for carrying out the installation work was transferred wholly to the Contractor namely, M/s.Clean Max Enviro Energy solutions Pvt.Ltd., It is also not in dispute that the said contractor had again entered into a sub contract with M/s.Icon Engineering Works, Bangalore for installing the solar power plants in the factory premises. The deceased was not under the direct employment of M/s.Asahi India Glass Ltd., It is seen that the accident had occurred in view of the deceased having failed to hook the safety belt with the life line rope while working on the roof of the plant at the time of accident. The deceased was directly under the supervision of M/s. Icon Engineering Works, Bangalore who were Sub contractor to the main Contractor namely M/s. Clean Max Enviro Energy Solutions Pvt. Ltd., As such, M/s.Asahi India Glass Ltd., has apparently no nexus with either the work of installation of the solar power plants being carried out in their factory premises or the service conditions of the deceased and hence negligence cannot be attributed to the petitioner. 10. The learned counsel for the petitioner by relying on the Judgment of this Court in Geetha Ramesh and others V.Sub Inspector of Police, Udagamandalam 2010 CrI.LJ 762: LNIND 2009 MAD 3610: (2010) 1 MLJ installation work was handed over to the contractor, who in turn had sub contracted it, there cannot be any prosecution against the petitioners herein is concerned, who is neither the contractor nor the Sub Contractor". The relevant portion of the finding of this Court is as follows:

18.If the case on hand is considered in the light of the above said decisions, this Court has to necessarily come to the conclusion that the petitioner cannot be prosecuted for the offences punishable under Sections 304-A and 337 I.P.C for the death of one of the workers and injuries caused to six of the workers engaged by the contractor (A1) and labour sub contractor (A2) since the excavation work was not done in the presence of any one of the petitioners or under the supervision of or in accordance with the specific directions issued by the petitioners regarding the dimensions and the manner in which excavation work is to be done. The petitioners have made clear averments that the entire construction work was entrusted to the contractor (A1) and the excavation work for construction of retaining wall was undertaken by the contractor himself engaging the labour sub contractor. It is an admitted fact that the petitioners are residing in Chennai which is more than 500 km away from Udagamandalam. Therefore, it is quite obvious that they could not have directed supervised the work. Furthermore, the learned counsel for the petitioners has also pointed out that fact that there is no legally admissible evidence collected by the Investigating Officer to show that the work was done



under their supervision and that there was rashness and negligence on the part of any one of the petitioners which resulted in the accident without there being intervention of negligence of any other person. In this case, it is case of the prosecution that the contractor (A1) and labour sub contractor (A2) , who were directly supervising the work acted in a rash and negligent manner which resulted in the accident. Therefore, even as per the prosecution case, there was intervention of the negligence on the part of A1 and A2. Under such circumstances, applying the ratio decided in the cases cited supra, this Court comes to the conclusion that the petitioners have made out a clear case for quashing of the charge sheet filed in Crime No.109 of 2006 a case registered on the file of G-1, Town West Police Station, Udagamandalam which was taken on file by the learned Judicial Magistrate, Udagamandalam on this file of his Court in C.C.No.100 of 2002 so far as the petitioners are concerned.

19. The result, this petition is allowed and the charge sheet filed in Crime No.109 of 2006 for offences under Sections 304-A and 337 I.P.C which has been taken on the file of the learned Judicial Magistrate, Udagamandalam as C.C.No.100 of 2008 is quashed so far as the petitioners shown as accused 3 to 5 in the said case are concerned."

10. The above Judgments are squarely applicable to the case on hand. This Court is of the view that the petitioner herein cannot be held responsible for the accident, since there was neither negligence on his part nor the deceased was under his payroll. As per work contract agreement, the accused no.2 alone is liable, has to be prosecuted for the offence under Section 304(A) I.P.C. The charge sheet does not make out a prima facie case of commission of a cognizable offence by the petitioner herein and there is no chance of conviction as against the petitioner and as such the petitioner no need to undergo an ordeal trial, when there is no prima facie case to prove the charge as against the petitioner.

11. In the result, this Criminal Original Petition is allowed and the case in C.C.No. 7 of 2009 on the file of the Judicial Magistrate No.VI, Madurai is hereby quashed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl.side)

/True Copy/

Sub Assistant Registrar(CS-IV)

To



2.The Inspector of Police
El K.Pudur Police Station (Law and Order)
Madurai

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.M.Gnanagurunathan, Advocate, SR.No. 90700

Crl.O.P. (MD)No.6997 of 2015
and
M.P (MD) .Nos.1 & 2 of 2015
12.10.2018

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