



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

CrI.O.P. (MD) No.11812 of 2018
and
CrI.M.P (MD) No.5361 of 2018

Dhas ... Petitioner/Accused No.1

Vs.

1. The State Rep. by
Sub-Inspector of Police,
Arumanai Police Station,
Kanyakumari.
(Crime No.84 of 2018). ... Respondent/Complainant
2. Ganeshan ... Respondent/Defacto
Complainant

PRAYER: This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.84 of 2018 on the file of the first respondent police and quash the same as against this petitioner.

For Petitioners : Mr.S.C.Herold Singh,
For R1 : Mr.Prabhu Ramachandran,
Government Advocate (CrI.side)

O R D E R

This application has been filed to quash the FIR in Crime No.84 of 2018 on the file of the first respondent police.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate(CrI. Side) appearing for the first respondent and also perused the materials available on record.

3.According to the petitioner, the defacto complainant's son one Vijumon, aged 35 years has his own Hitachi Excavator and doing the job of operating the said Hitachi. On 28.04.2018 the said Vijumon was called to Excavate earth around a large rock in the property at Thundadharavilai. As per the FIR, at the request of one Sam Daniel, the defacto complainant's son Vijumon went to the place and excavating the earth by the Hitachi. The accident has taken place due to rock broken and the large rock accidentally rolled over



the Hitachi machine and the deceased was trapped inside the Hitachi and was severely injured and his leg caught struck between the rock and the Hitachi machine and he was rescued by the defacto complainant and taken to the Asaripallam Government Medical College Hospital through Ambulance. He was critically injured and he succumbed to the injuries.

4.Initially, the case was registered in Cr.No.84 of 2018 on 29.04.2018 for an offence punishable under Section 174 Cr.P.C., and later it was altered into 304 of IPC and in the altered FIR Dhas and Sundarraaj were arrayed as accused. The petitioner has no role in the said incident. The said FIR does not discloses any commission of offence against the petitioner and therefore, the petitioner has filed the present Criminal Original Petition to quash the FIR in Cr.No.84 of 2018.

5.According to the petitioner, the deceased was engaged for work belongs to property of one Sam Daniel. The said person was engaged the deceased Vijumon. Therefore, the petitioner has not committed any offence and hence, it is not a culpable homicide for altering the case under Section 304 of IPC. Therefore, the impugned FIR is liable to be quashed.

6.On a perusal of the FIR would shows that without obtaining any permission from the authorities, the aforesaid machine has been used for removal of earth unauthorizedly. Initially, the case has been registered under Section 174 Cr.P.C., and later altered into 304 of IPC. At this stage, the petitioner has filed this present Criminal Original Petition, the same cannot be gone into. The investigating officer has to investigate the matter as to whether any ingredient materials has been involved in the said offence. Therefore, at this stage, this Court cannot interfere with the FIR.

7. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent and perused the materials placed on record.

8. After hearing both side and perusing the materials placed on record, it is seen that the proceedings in Crime No.84 of 2018, on the file of the first respondent - Police, are at the stage of investigation. In **State of Haryana and Others vs. Bhajan Lal**, reported in **[1992 Supp (1) SCC 335]**, the Honourable Supreme Court has laid down certain parameters for quashing an F.I.R. Following the same, in **the State of Andhra Pradesh vs. Vangaveeti Nagaiah**, reported in **AIR 2009 SC 2646**, the Honourable Supreme Court has held that while exercising powers under Section 482 Cr.P.C., the Court should not function as a court of appeal or revision. Inherent jurisdiction under Section 482 Cr.P.C., though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the Section itself. The facts of the present case do not pass muster the law laid down in the above cited Judgments. In such view of



the matter, this Court is of the view that this is not a fit case, wherein the F.I.R., can be quashed.

9. In the result, the criminal original petition is disposed of with a direction to the respondent to complete the investigation within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Sub-Inspector of Police,
Arumanai Police Station,
Kanyakumari.

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

+ 1 CC TO Mr.S.C.HEROLD SINGH, ADVOCATE IN SR No. 73631

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TE/RP/SAR-1 : 01/08/2018 : 3P/4C

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