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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl. OP (MD)No.19718 of 2013

and

MP(MD)Nos.1 and 2 of 2013

K.Sekar

... Petitioner

Vs.

1.Sub Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District.

2.R.Ramasubu

... Respondents

Prayer : This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for the records relating to the Charge sheet in C.C.No.113 of 2013 dated 31.03.2012 on the file of the learned Judicial Magistrate, Rajapalayam and quash the same as illegal.

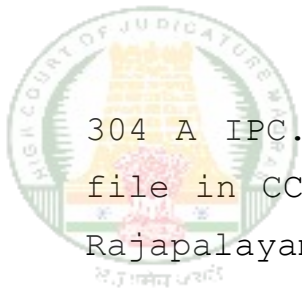
For Petitioner : Mr.M.E.Ilango

For Respondent 1 : Mr.A.Robinson,
Govt Advocate (Crl.Side)

For Respondent 2 : MR.A.BALAJI

ORDER

The petitioner was employed in Shri Karpagambal Mills as an Engineer (Mechanical). One Boopesh Kannan who was a mill employee died in an accident during the course of his employment. The allegation is that the said accident occurred on account of the negligence on the part of the petitioner herein. He was therefore made an accused in Crime No.200 of 2012 under Section



304 A IPC. Final report has been filed. It has been taken on file in CC No.113 of 2013 on the file of the Judicial Magistrate, Rajapalayam. To quash the same, this petition has been filed.

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2.The learned counsel appearing for the petitioner contended that there was prosecution under the Factories Act earlier and that therefore, the second prosecution for the offences under Section 304 A IPC will not lie. He invoked Section 300 of Cr.PC.

3.This Court finds no force in the said submission. This is because, it is an admitted fact that the petitioner was not the person who was arrayed as an accused in the earlier prosecution. In any event, if there has been a prosecution under the Factories Act, the same will not come in the way of a fresh prosecution under Section 304 A IPC.

4.The learned counsel appearing for the second respondent/defacto complainant as well as the learned Government Advocate (Crl.Side) would place reliance on the decision of the Hon'ble Division Bench of the Allahabad High Court reported in **CDJ 1987 All HC 280 (Y.P.Mehrotra vs. State of U.P).**

5.This Court is in respectful concurrence with the aforesaid decision. The learned counsel for the petitioner would also point out that there are discrepancies between the report of the Inspector of Factories and the report filed by the police. These are all the factual matters and they have to be necessarily urged only in the Trial. They are not grounds on which a quash the petition can allowed. It is needless to state that all the defences raised in this petition can very well be urged by the petitioner before the trial magistrate. The Trial magistrate is directed to dispose of the said C.C.No.113 of 2013 within a period of four months from the date of receipt of a copy of this order.



6. With this observation and direction, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar (Crl. side)

/True copy/

Sub Assistant Registrar

To

- 1 The Judicial Magistrate,
Rajapalayam
- 2 The Sub Inspector of Police,
Thalavaipuram Police Station,
Virudhunagar District
- 3 The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai

+1 cc to MR.A.BALAJI, Advocate SR.No.61537

+1 cc to MR.M.E.ILANGO, Advocate SR.No.62010

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SMA/JC/SAR-2/30.05.2018:3P/6C