

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.03.2019

CORAM:
THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.2836 of 2019

P.Udayakumar

... Petitioner

Vs.

1.The State rep by
The Inspector of Police,
Vellavedu Police Station,
Thiruvallur District.

2.S.Nethaji

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Crime No.11 of 2019 on the file of the respondent police, Vellavedu Police Station, Thiruvallur District and quash the same.

For Petitioner : Mr.P.Ayyaswamy

For Respondents

For R1 : Mr.Mohammed Riyaz
Additional Public Prosecutor.

For R2 : Mr.Shailappan

O R D E R

This Petition has been filed to quash the FIR in Crime No.11 of 2019 on the file of the first respondent, registered for the offences under Section 304(2) of IPC and Section 9 Prohibition of Employment as Manual Scavenger & their Rehabilitation Act 2013 and Section 3(2)(v) of SC/ST (POA) Amendment Act 2015, against the petitioner.

2. The learned counsel appearing for the petitioner submitted that the petitioner is working as Human Resource Manager at the B.N.A. Automative Private Limited Company. While being so, on 06.01.2019, K.S. Water Supply has sent two persons to the said company in order to clear the drainage water. At that juncture, the petitioner was not at all present at the place of occurrence and he had been in his house, since his daughter was writing entrance exam in the Velammal Vidhyashram School. Only after the occurrence, he received a phone call from office. The first respondent without any basis registered a case as against the petitioner.

2.1. The learned counsel appearing for the petitioner raised plea of alibi, since the petitioner was not physically present at the time of occurrence. Only to harass the petitioner, the case has been initiated for the offence under Section 304(2) of IPC and Section 9(7) Prohibition of Employment as Manual Scavenger & their Rehabilitation Act 2013. Thereafter by alteration report the offences are altered into Section 304 (2) of IPC and Section 9 Prohibition of Employment as Manual Scavenger & their Rehabilitation Act 2013 and Section 3(2)(v) of SC/ST (POA) Amendment Act 2015. Therefore, he prayed to quash the FIR.

3. Per contra, the learned Additional Public Prosecutor submitted that the petitioner is the sole accused. While he was working as Human Resource Manager in the B.N.A. Automative Private Limited, on 06.01.2019, at the request made by the petitioner, two person had sent from K.S.Water Supply to clean the drainage. When the two persons were cleaning the drainage, due to leakage of drainage gas, they fell unconscious and died. The petitioner without taking any safety measures, directed the workers to clean the drainage. Therefore, initially the case has been registered for the offences under Section 304(2) of IPC and Section 9(7) Prohibition of Employment as Manual Scavenger & their Rehabilitation Act 2013. Since the deceased are belonging to SC/ST community, they were not provided with any safety measures by the petitioner, as such subsequently the offences have been altered into Section 304(2) of IPC and Section 9 Prohibition of Employment as Manual Scavenger & their Rehabilitation Act 2013 and Section 3(2)(v) of SC/ST (POA) Amendment Act 2015. Therefore, there are specific allegations as against the petitioner and as such the FIR cannot be quashed in its threshold. Hence he prayed for dismissal of this quash petition.

4. The learned counsel appearing for the second respondent concedes the submission made by the learned Additional Public Prosecutor.

5. Heard Mr.P.Ayyaswamy, learned counsel appearing for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the first respondent and Mr.Shailappan, learned counsel appearing for the second respondent.

6. On perusal of FIR, it is seen that when the petitioner was working as a Human Resource Manager in the B.N.A. Automative Private Limited, on 06.01.2019, on their request two persons were sent by K.S. Water Supply to clean the drainage. When they were cleaning the drainage, due to leakage of drainage gas, they fell unconscious and died. Admittedly, there was no safety measures taken by the petitioner, while cleaning the drainage. Therefore, the case has been registered for the offences under

Section 304(2) of IPC and Section 9(7) Prohibition of Employment as Manual Scavenger & their Rehabilitation Act 2013. It is curious to note that thereafter the offences have been altered into under Section 304(2) of IPC and Section 9 Prohibition of Employment as Manual Scavenger & their Rehabilitation Act 2013 and Section 3(2)(v) of SC/ST (POA) Amendment Act 2015, only for the reason that the deceased belonging to SC/ST community. There is absolutely no averments to attract the offence under Section SC/ST Act as against the petitioner. On what reason and circumstances, the first respondent included the offence under Section SC/ST is only best known to the first respondent. Therefore, though the FIR cannot be quashed on its threshold, the offence under Section SC/ST Act is not attracted as against the petitioner. Insofar as the other offences are concerned, there are averments to attract the said offence as against the petitioners.

7. Considering the above facts and circumstances, this Court is not inclined to quash the entire FIR. However, insofar as the offence under Section SC/ST Act is concerned, the first respondent is directed to delete the offence under Section 3(2)(v) of SC/ST (POA) Amendment Act 2015 in the FIR and conduct enquiry insofar as other offences are concerned against the petitioner and complete the enquiry and file final report in Crime No.11 of 2019 within a period of three months from the date of receipt of a copy of this Order.

8. With the above observations, this Criminal Original Petition stands disposed of.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

rts

To

- 1.The Inspector of Police,
Vellavedu Police Station,
Thiruvallur District.
- 2.The Public Prosecutor,
High Court of Madras, Chennai.

+1cc to Mr.P.Ayyaswamy, Advocate, S.R.No.22479

CRL.O.P.No.2836 of 2019

GP (CO)

RRS (02/04/2019)