

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. No.20461 of 2017

and Crl.M.P.No.12246 of 2017

C.Illanseliyan ... Petitioner/Accused

Vs.

1.The State by
Inspector of Police,
Mallor Police Station,
Salem District, (Crime NO.320/2017)

2.Govindaraj ... Respondents/Complainants

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in crime No.320/2017 on the file of the 1st respondent and Quash the same.

For Petitioner : Mr.G.Murugendran

For R1 : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For R2 : Mr.T.Karunakaran

ORDER

This Criminal Original Petition has been filed to call for the records in crime No.320/2017 on the file of the 1st respondent and quash the same.

2. The learned counsel for the petitioner would submit that on 21.08.2017 when the petitioner was driving a vehicle (sago) bearing Reg.No.TN 28 5985 in the Namakkal to Salem National Highway, suddenly pedestrians were trying to cross the said road as such they had to be hit and thereby died. He further submits that pedestrians are not allowed to cross the said Highway as such the accident did not happen on the negligence of the petitioner, however the first respondent has registered a case in Crime No.320 of 2017. Hence, he prayed for quashment of the same.

3. The learned counsel for the second respondent would submit that the first respondent only after conducting enquiry, has registered the case against the petitioner as such he sought for dismissal of this quash petition.

4. Heard, the learned counsel for the petitioner and the learned counsel for the respondents.

5. It is seen that admittedly, the petitioner has valid licence and also at the time of accident took place, there was no intoxication by the petitioner. Without considering the same, the first respondent registered the case under Section 304 (ii) I.P.C. It is relevant to extract Section 304 (ii) I.P.C. as follows:

"304(ii) Out of the three accused persons, one of the accused person gave a fatal blow on the head of the deceased, the other accused person injured the deceased by spear on his knee and arm. First accused person is liable to be convicted under part I of section 304. The other accused person is liable to be convicted under section 324 as section 34 has not been applied after setting aside conviction under section 147 of the Indian Penal Code."

6. Therefore, when there is no ingredients to attract Section 304(ii) I.P.C., the FIR is not at all sustainable. However, in the accident the second respondent's mother died. Therefore, at the worst, 304(a) only would attract against the petitioner. Accordingly, the first respondent is directed to alter the offence into Section 304(a) I.P.C. and complete the investigation and file final report within a period of three months from the date of receipt of a copy of this Order.

7. With the above direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Inspector of Police,
Mallor Police Station,
Salem District.

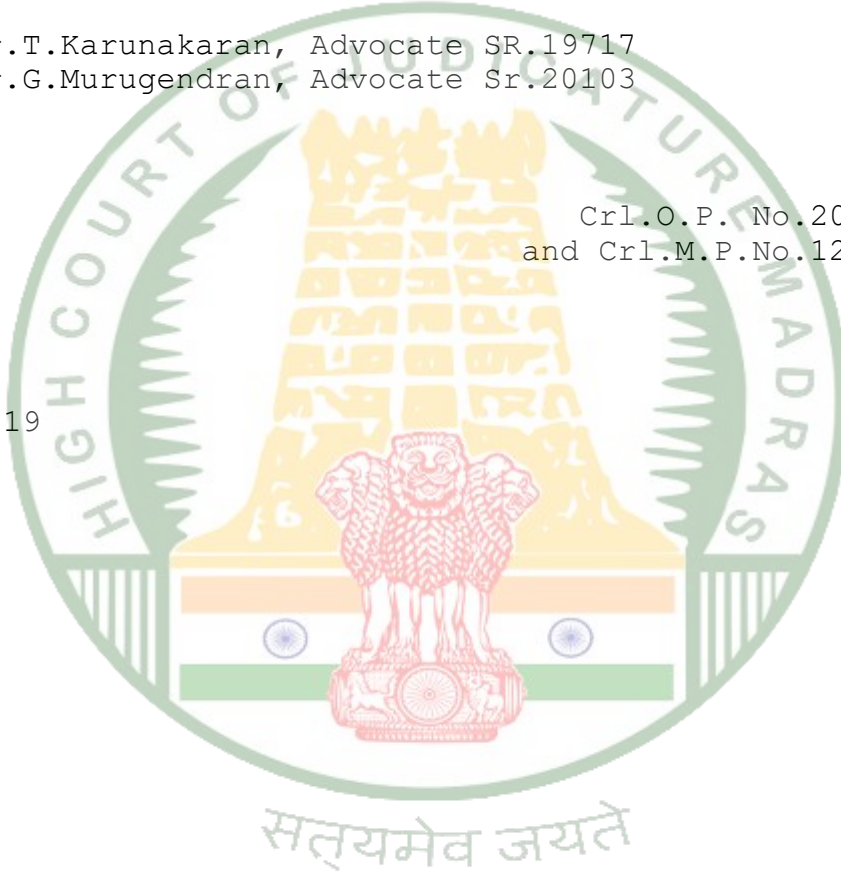
2.The Additional Public Prosecutor,
High Court of Madras.

+1cc to Mr.T.Karunakaran, Advocate SR.19717

+1cc to Mr.G.Murugendran, Advocate Sr.20103

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mr[co]
srg 8/5/2019



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