



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2019
Delivered on : 22.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P. (MD) .No.14846 of 2014
and
M.P. (MD) Nos.1 and 2 of 2014

1.Sumanth Ramamoorthy
2.Rajendra Kumar
3.Subbu Raj

: Petitioners

Versus

1.The State rep. by the
Inspector of Police,
Velliyanai Police Station,
Karur District.
(In Crime No.74 of 2013).

2.Karthick

: Respondents

Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the charge sheet in C.C.No.138 of 2014 on the file of the Judicial Magistrate Court No.II, Karur and quash the same as illegal.

For Petitioners : Mr.AR.L.Sundaresan,
Senior Counsel,
For Mr.M.Mahaboob Athiff

For Respondent No.1 : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

For Respondent No.2 : Mr.S.Ramasamy

ORDER

This petition has been filed to quash the criminal proceedings in C.C.No.138 of 2014, pending on the file of the Judicial Magistrate Court No.II, Karur.

2. The petitioners are Accused Nos.1 to 3 and they stood charged for the offences punishable under Sections 337 (Three Counts) and 304-A (Two Counts) of the Indian Penal Code r/w Section 149, of the Electricity Act, 2003. Now, to quash the above criminal



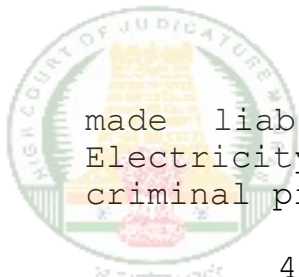
proceedings, the present petition has been filed.

3. The case of the prosecution, in brief, is as follows:

(i) The first petitioner herein, is A-1, the Managing Director of one M/s.Super Spinning Mills Limited, a Public Limited Company, engaged in spinning. The second petitioner is A-2, the Manager -cum- Unit Head, and the third petitioner is A-3, a Senior Engineer of the Company. Earlier, the Company obtained permission for construction of a 11 KV, dedicated electricity line from the Tamil Nadu Generation and Distribution Corporation [for brevity "TANGEDCO"]. The TANGEDCO also permitted the Company to construct the same through its approved Contractor, under the supervision of the TANGEDCO officials. Thereafter, the petitioners engaged one Karthikeyan, who is arrayed as Accused No.4, as a Contractor to carry out the work. Accused No.4, in turn, engaged Accused No.5, as his Sub-Contractor for executing the work. The work was commenced on 03.04.2013, with a team of 12 persons, under the supervision of the officials of the Electricity Department.

(ii) While so, on 14.04.2013, there was a power shut down in that area. On that day, the petitioners, without obtaining necessary permission from the TANGEDCO, permitted the Contractors to carry out the work without following any precaution. On the above date, Accused No.6-Nagarajan, approached Accused No.7-Palanichamy, who was working as the Electrical Inspector, of TANGEDCO, and orally informed him that they intend to carry out the construction work, Accused No.7 also orally permitted the Contractor to carry out the work. When the work was in progress, one of the employees of the TANGEDCO, inadvertently, opened the electricity connection in High Tension (for brevity 'HT') line, due to which, two employees working under the HT line have been electrocuted and three other employees were suffered injuries. Thereafter, based on the complaint given by one Karthick, S/o.Thangasamy, one of the employees, a First Information Report has been registered in Crime No.74 of 2013, for the offences under Sections 337 and 304-A of the Indian Penal Code. After investigation, a final report has been filed against as many as nine accused for the offences under Sections 337 (Three Counts), 304-A (Two Counts) of the Indian Penal Code, and Section 149 of the Electricity Act, 2003.

(iii) The petitioners, being the persons in-charge of and responsible for the affairs of the Company, have been made as Accused Nos.1 to 3. To quash the aforesaid criminal proceedings, the present petition has been filed, on the ground that, the petitioners are no way responsible for the accident and the work has been undertaken by the Accused Nos.4 and 5-the Contractors. The immediate cause for accident is negligent opening of H.T. line by the officials of the Electricity Department, and no vicarious liability could be fixed on the petitioners. That apart, even under Section 149 of the Electricity Act, 2003, persons in-charge of the company, for offence committed under the Electricity Act, 2003, alone can be



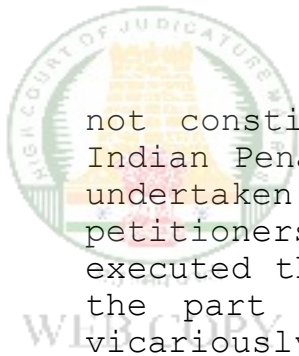
made liable. In absence of any offence committed under the Electricity Act, 2003, the petitioners cannot be made liable in the criminal proceedings.

4. The first respondent/Inspector of Police, Velliyanai Police Station, filed a detailed counter-affidavit contending inter alia that, the petitioners' Company applied for dedicated feeder line from the Superintending Engineer, TANGEDCO, Karur. As the TANGEDCO did not have adequate skilled manpower to execute the work, the petitioners' Company was permitted to construct the line through an approved Contractor of TANGEDCO, under the direct supervision of the TANGEDCO officials. Thereafter, work was entrusted to one Karthikeyan (A-4), who is the TANGEDCO approved Contractor. Accused No.4, in turn, gave sub- contract to one Alagarsamy (A-5). On the date of occurrence, there was a general load shedding declared by the TANGEDCO and the Contractor, taking advantage of the same, directed his employees, to commence the work between 09.00 A.M. and 01.00 P.M.

5. The Sub-Contractor has also informed the same to the local TANGEDCO Office. Since it was a Holiday, no written permission was given. Around 12.15 hours, due to opening of electricity connection in Palayam Feeder HT Line, persons working in the dedicated feeder line got electrocuted and also suffered injuries. Hence, the crime has been registered against as many as nine accused for the aforesaid offences.

6. It is further stated that, the Contractor engaged by the petitioners' Company has failed to obtain proper permission to carry out the work, and they assumed that the announced load shedding would go on till the appointed time, but, the opening of electricity connection in the HT line in the midway has resulted in the occurrence. The petitioners, holding the responsible posts in the Company, ought to have exercised care and prudence in selecting the Contractor and ought to have exercised caution in warning the Contractor. Regulation 19 of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, mandates the handling of electric supply lines and apparatus. The petitioners failed to follow the necessary safety measures prescribed under the above Regulation. The investigation also revealed that the Contractor has not taken sufficient care to avert the electrical conduction, and he has commenced the work without any written authorization from the TANGEDCO. In terms of Section 149 of the Electricity Act, 2003, the petitioners have also vicarious liability and all the points raised by the petitioners cannot be decided in a quash petition. These are all matters for trial and hence, the first respondent prayed for dismissal of the present petition.

7. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioners contended that, the materials available on record do



not constitute the offences under Sections 337 and 304-A of the Indian Penal Code. It is an admitted case that the petitioners have undertaken the work only with the permission of the TANGEDCO. The petitioners have engaged a Contractor and the Contractor only executed the work. If at all there is any negligence, it is only on the part of the Contractor and the petitioners cannot be made vicariously liable for the same. The statements of witnesses collected during investigation clearly reveal that on the occurrence date, there was a general power shut down, and the Contractor, after informing the same to the TANGEDCO officials, has commenced the work, only due to negligence on the part of the TANGEDCO officials, the accident in question had occurred, the TANGEDCO officials were also implicated as accused viz. Accused Nos.7 to 9. The petitioners' Company did not commit any offence under the Electricity Act, 2003 and hence, Section 149 of the Electricity Act, 2003, is also not applicable in the instant case. In the above said circumstances, the petitioners cannot be vicariously made liable for the offence committed by the Contractor and the officials of the TANGEDCO. Thus, the criminal proceedings initiated against the petitioners is liable to be quashed.

8. Per contra, the learned Additional Public Prosecutor appearing for the first respondent vehemently contended that, the petitioners are holding the responsible posts in the Company, and they are in-charge of and responsible to the affairs of the Company. Under the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, [hereinafter referred to as "the Regulations"], it is a primordial duty of the petitioners, to provide all safety measures. Especially, they ought to have scrupulously followed Regulations 12 and 19, but, they failed to follow the same. In the above circumstances, the petitioners are also vicariously liable for the alleged act, as they have committed an offence under Section 149 of the Electricity Act, 2003. That apart, the materials available on record clearly show that the petitioners and the Contractors failed to obtain necessary permission from the TANGEDCO before commencing the work, which, ultimately, resulted in the death of two innocent persons and causing injury to three persons. In the above circumstances, the petitioners cannot escape from their liability, merely on the ground that, they have entrusted the work to a Contractor and they are not responsible for the accident in question. That apart, whether the petitioners are in-charge of or responsible to the affairs of the Company, can be decided only during trial and that issue cannot be decided in a quash petition, and he prays for dismissal of the present petition.

9. The learned counsel appearing for the second respondent also reiterated the submissions made by the learned Additional Public Prosecutor appearing for the first respondent and prayed for dismissal of this petition.

<https://hcservices.ecourts.gov.in/hcservices/> have considered the rival submissions and also



perused the records carefully.

11. The first petitioner is the Managing Director, the second petitioner is the Manager -cum- Unit Head, and the third petitioner is a Senior Engineer of the Company. The charges levelled against them on the ground that, a permission has been granted to them by the TANGEDCO for constructing a dedicated feeder line to their Spinning Mill, and with the permission of the TANGEDCO, they engaged Accused No.4 as Contractor to carry out the construction work. In turn, Accused No.4 engaged Accused No.5 as his Sub-Contractor. On the fateful day, the employees of the Accused No.5 were engaged in drawing a new electricity line over and above the existing live HT line, which is running two feet below the new line drawn by them. Admittedly, it was a general power shut down day, and Accused No.6 along with one Ettaiyappan went to Velliyanai Sub-Station and informed Accused No.7, that they intend to draw a new service line over the H.T. line. After passing the information, the work has been commenced. Subsequently, some of the TANGEDCO employees, without knowing the same, negligently opened the HT line at about 12.02 hours, at that time, the employees working over the HT line got electrocuted. Now, alleging that the accident has taken place due to the negligent act of all the accused, the criminal proceedings came to be initiated. So far as the petitioners herein are concerned, the allegation is that it is the petitioners' Company only engaged in construction of new service line, and they have not followed the necessary precautions prescribed under Regulations 12 and 19 of the Regulations, before commencing the work. Because of the same, the alleged accident took place. Hence, they are liable to be punished under Sections 337 and 304-A of the Indian Penal Code r/w Section 149 of the Electricity Act, 2003.

12. To bring home the offence under Section 304-A of the Indian Penal Code, the materials available on record would go to show that the death was caused due to rash and negligent act on the part of the accused, and that act does not amount to culpable homicide.

13. To prove the act of negligence, it should be established that a duty exists on the accused and by breach of that duty, the death has been caused, which is due to gross negligence of the accused. The Hon'ble Supreme Court in *Sushil Ansal v. State* reported in 2014(6) SCC 173, has held as follows:

"72. To sum up, negligence signifies the breach of a duty to do something which a reasonably prudent man would under the circumstances have done or doing something which when judged from reasonably prudent standards should not have been done. The essence of negligence whether arising from an act of commission or omission lies in neglect of care towards a person to whom the defendant or the accused as the case may be owes a duty of care to prevent damage or injury to the property or the person of the victim. The existence of a duty to



care is thus the first and most fundamental of ingredients in any civil or criminal action brought on the basis of negligence, breach of such duty and consequences flowing from the same being the other two. It follows that in any forensic exercise aimed at finding out whether there was any negligence on the part of the defendant/accused, the courts will have to address the above three aspects to find a correct answer to the charge."

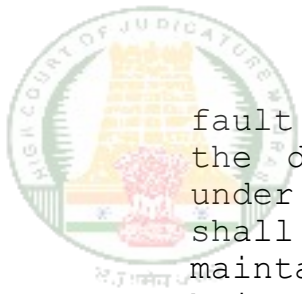
14. But, in the instant case, admittedly, the work has been entrusted to Accused No.4, who, in turn, entrusted the work to Accused No.5, after obtaining necessary permission from the TANGEDCO. Accused Nos.4 and 5, under the supervision of Accused No.6, carried out the work with a team of 12 persons, at the time of accident, only A-6, was actually executing the work. The statement of L.W.6, Ettaiyappan recorded under Section 161(3) of the Code of Criminal Procedure, shows that, he was one of the co-employees, on the date of occurrence, there was a general power shut down in that area, and before commencing the work, it was duly informed to Velliyanai EB office and the work site was also inspected by one Rajdendran, a Wireman of TANGEDCO. But, inadvertently, one of the employees of the TANGEDCO, has opened the HT line, which was running below the newly drawing electricity line, due to which, two persons were electrocuted and three persons were suffered injuries.

15. Alleging that the power line has been opened negligently, while the electricity line was under general shut down, the TANGEDCO officials were also implicated as Accused Nos.7 to 9. A careful perusal of the entire materials collected during investigation clearly reveals that the petitioners are no way responsible for the accident and the occurrence was also not happened due to the negligent act of the petitioners, as there is no breach of duty casts upon them, and the petitioners cannot be charged under Section 337 and 304-A of the Indian Penal Code.

16. So far as the offence under Section 149 of the Electricity Act, 2003 is concerned, it is the case of the prosecution that the Regulations, prescribed so many safety measures for constructing a new service line, which were not followed by the accused, which, ultimately, resulted in the death of two persons and causing injury of three other persons. The prosecution manly relied upon Regulations 12 and 19, of the Central Electricity Authority (Measures Relating to Safety and Electric Supply) Regulations, 2010, which read as follows:

"Regulation 12: General safety requirements, pertaining to construction, installation, protection, operation and maintenance of electric supply lines apparatus:

(1) All electric supply lines and apparatus shall be of sufficient rating for power, insulation and estimated



fault current and of sufficient mechanical strength, for the duty cycle which they may be required to perform under the environmental conditions of installation, and shall be constructed, installed, protected, worked and maintained in such a manner as to ensure safety of human beings, animals and property.

(2) Save as otherwise provided in these regulations, the relevant code of practice of the Bureau of Indian Standards or National Electrical Code, if any, may be followed to carry out the purposes of this regulation and in the event of any inconsistency, the provisions of these regulations shall prevail.

(3) The material and apparatus used shall conform to the relevant specifications of the Bureau of Indian Standards or International Electro-Technical Commission when such specifications have already been laid down.

(4) All electrical equipment shall be installed above the Mean Sea Level (MSL) as declared by local Municipal Authorities and where such equipment is to be installed in the basement, consumer shall ensure that the design of the basement should be such that there is no seepage or leakage or logging of water in the basement.

Regulation 19.- Handling of electric supply lines and apparatus

(1) Before any conductor or apparatus is handled, adequate precautions shall be taken, by earthing or other suitable means, to discharge electrically such conductor or apparatus, and any adjacent conductor or apparatus if there is danger therefrom, and to prevent any conductor or apparatus from being accidentally or inadvertently electrically charged when persons are working thereon.

(2) Every person who is working on an electric supply line or apparatus or both shall be provided with tools and devices such as gloves, rubber shoes, safety belts, ladders, earthing devices, helmets, line testers, hand lines and the like for protecting him from mechanical and electrical injury and such tools and devices shall always be maintained in sound and efficient working condition.

(3) No person shall work on any live electric supply line or apparatus and no person shall assist such person on such work, unless he is designated in that behalf, and takes the safety precautions given in Schedule - III.

(4) Every telecommunication line on supports carrying a line of voltage exceeding 650V but not exceeding 33kV shall, for the purpose of working thereon, be deemed to be a line of voltage exceeding 650V.

(5) All non-current carrying metal parts of switchgear and control panels shall be properly earthed and insulating floors or mat conforming to IS-15652:

2006, of appropriate voltage level shall be provided in



front of the panels for the safety of operating personnel.

(6) All panels shall be painted with the description of its identification at front and at the rear."

17. The above two Regulations only prescribe some safety requirements relating to construction, installation, protection, operation and maintenance of electric supply lines. Now, according to the prosecution, the above safety Regulations were not followed by the petitioners, hence, that would amount to an offence under Section 149 of the Electricity Act, 2003, and the petitioners are also vicariously made liable for the offence.

18. It is an admitted case that the petitioners did not carry out the construction work and with the permission of the TANGEDCO, they have engaged a TANGEDCO authorised Contractor, again, admittedly, it was only the Contractor carried out the work. The Central Electricity Authority (Safety Requirements For Construction, Operation and Maintenance of Electrical Plants and Electric Lines) Regulations, 2011, permits the construction of electric lines through a Contractor or Sub-Contractor, under Regulation 4(1), the owners shall ensure the safety of the employees including the employees of Contractor, Sub-Contractor as well as visitors. Regulation 4(1) reads as follows:

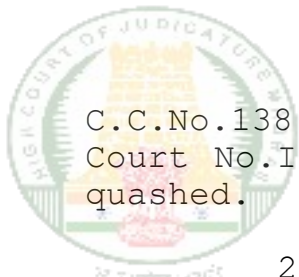
"The owner shall make safety an integral part of work processes to ensure safety for employees including employees of contractor, sub-contractor as well as visitors."

But, under Regulation 7 of the above Regulations, it is only the Contractor who shall be responsible for non-compliance of the safety measures, implications, injuries, fatalities and compensation arising out of any incident. The relevant portion of the Regulation reads as follows:

"7(4) The contractor shall be responsible for non-compliance of the safety measures, implications, injuries, fatalities and compensation arising out of such situations or incidents."

19. In view of the Regulation 7 of the above Regulations, the responsibility is only on the Contractor for non-compliance of safety measures. Even assuming there was a non-compliance of safety measures, the Contractor alone is liable and the petitioners cannot be fixed with any criminal liability vicariously. Hence, the offence under Section 149 of the Electricity Act, 2003 is also not made out against the petitioners.

20. Considering all those circumstances, I am of the considered view that the materials collected during investigation do not constitute any offence against the petitioners herein. Hence, the criminal proceedings initiated against the petitioners in



C.C.No.138 of 2014, pending on the file of the Judicial Magistrate Court No.II, Karur, is liable to be quashed and accordingly, it is quashed.

21. In fine, the Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate Court No.II,
Karur.

2.The Inspector of Police,
Velliyani Police Station,
Karur District.

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

Order made in
Crl.O.P.(MD).No.14846 of 2014
Delivered on: 22.08.2019

SML

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