



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2019

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P.(MD) No.3190 of 2017

and

Crl.M.P.(MD) Nos.2423 and 2424 of 2017

Murugan

: Petitioner

Versus

1.The State rep. by the
Deputy Superintendent of Police,
Mudhukulathur Sub-Division,
Ramanathapuram District.
(In Crime No.58 of 2016).

2.Panju Selvarani

: Respondents

Prayer: Petition is filed under Section 482 of the Criminal Procedure Code praying to call for the records relating to the charge sheet in P.R.C.No.22 of 2016 on the file of the Judicial Magistrate Court, Mudhukulathur and quash the same as illegal.

For Petitioner : Mr.R.Gandhi

For Respondent No.1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.side)

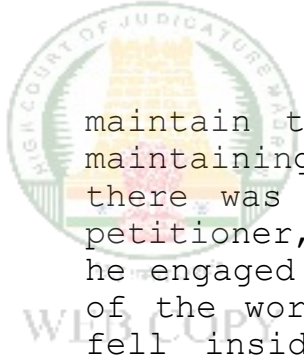
For Respondent No.2 : Mr.I.Robert Chandra Kumar

O R D E R

This petition has been filed to quash the criminal proceedings initiated against the petitioner in P.R.C.No.22 of 2016 on the file of the Judicial Magistrate Court, Mudhukulathur.

2. The petitioner is the sole accused in the above criminal proceedings and he has been charged with for the offences under Section 304 of the Indian Penal Code and Section 3(1)(j) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

3. The case of the prosecution is that the petitioner is the President of Kadaladi Town Panchayat. Originally, the defacto complainant's husband one Balamurugan, was employed by the Town Panchayat for cleaning the toilets in the Kadaladi Bus Stand at the monthly salary of Rs.2,500/-. Thereafter, he was directed to



maintain the toilets and also collect fees. Accordingly, he was maintaining the toilets by collecting the fees. After sometime, there was a blockage in the septic tank, when he approached the petitioner, he directed him to clean the septic tank. On 19.04.2016, he engaged four persons to clean the septic tank. At that time, one of the workers engaged in cleaning, by name Ramasamy, slipped and fell inside the septic tank. In order to rescue the aforesaid Ramasamy, he jumped into the septic tank, and due to suffocation, he died. Thereafter, he was taken to the Government Hospital, Kadaladi, where he was declared dead.

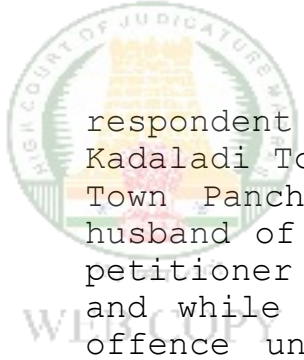
4. Immediately, the defacto complainant filed a complaint before the respondent police alleging that while cleaning the septic tank, one Ramasamy slipped and fell down inside the septic tank and while trying to rescue him, her husband jumped into the septic tank, where he died, due to suffocation. Based on the complaint, initially, a First Information Report has been registered under Section 174 of the Code of Criminal Procedure. After investigation, a final report has been filed for the offences under Section 304 of the Indian Penal Code and Section 3(1)(j) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and final report has also been taken cognizance by the learned Judicial Magistrate, Mudhukulathur, and pending committal in P.R.C.No.22 of 2016. Now, to quash the said proceedings, the present petition has been filed.

5. The learned counsel appearing for the petitioner would submit that from the perusal of the materials collected during investigation, it could be seen that no offence has been made out under Section 304 of the Indian Penal Code. Even from the 161(3) Cr.P.C., statement of the defacto complainant, it could be seen that the Town Panchayat is not maintaining the toilets and it is only her husband who maintained the toilets by collecting the fees and he only engaged workers for cleaning the septic tank. While cleaning, one of the workers slipped and fell down inside the septic tank and while rescuing him, the deceased died inside the septic tank. At no stretch of imagination, it could be considered as a culpable homicide not amounting to murder, inviting an offence under Section 304 of the Indian Penal Code. It is only an accident and the petitioner is no way connected with the offence.

6. So far as the offence relating to Section 3(1)(j) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 is concerned, the petitioner never directed the deceased to manually clean the septic tank. It is only the deceased, on his own, who was maintaining the toilets and cleaning the septic tank with the help of others and in an accident, he died. Hence, the offence under Section 3(1)(j) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, is also not made out.

<https://hcservices.ecourts.gov.in/hcservices/>

7. Per contra, the learned counsel appearing for the second



respondent would contend that the petitioner is the President of the Kadaladi Town Panchayat and the toilet and septic tank belong to the Town Panchayat, only on the instructions of the petitioner, the husband of the defacto complainant was maintaining the toilets, the petitioner only directed him for manual scavenging of septic tank and while cleaning the same, he died, which clearly attracts the offence under Section 304 of the Indian Penal Code as well as Section 3(1)(j) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. That apart, manual cleaning is also now prohibited. Despite the same, the petitioner directed the husband of the defacto complainant to manually clean the septic tank, which, ultimately, caused the death of the husband of the defacto complainant. Hence, the materials collected during investigation prima facie make out an offence against the petitioner and there is no reason to quash the criminal proceedings.

8. The learned Government Advocate (Criminal side) appearing for the first respondent submitted that the materials collected during investigation clearly make out the offences referred to above and there is no reason to quash the criminal proceedings.

9. I have considered the rival submissions and also perused the records carefully.

10. The petitioner has been charged with for the offences under Section 304 of the Indian Penal Code and Section 3(1)(j) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. The case of the prosecution is that the deceased Balamurugan was originally employed by the Kadaladi Town Panchayat, for which, the petitioner was the President, on monthly salary of Rs.2,500/-. Thereafter, the Panchayat has directed the deceased Balamurugan to maintain the toilets on his own and also collect the fees from the general public using the toilets, as such, he was collecting fees and also maintaining the toilets. Subsequently, when there was some blockage in the septic tank, the deceased alone engaged some persons to clean the septic tank. At that time, one of the workers, by name Ramasamy slipped and fell inside the septic tank. To rescue the said Ramasamy, the deceased jumped into the septic tank, where he died due to suffocation. In the above circumstances, since the toilets belong to the Kadaladi Town Panchayat and the petitioner being the President of the said Town Panchayat, and only, on the direction of the petitioner, the deceased was engaged in cleaning the septic tank manually, he is liable to be punished for the aforesaid offences.

11. Section 304 of the Indian Penal Code speaks about the punishment for culpable homicide not amounting to murder, which reads as follows:

"Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may



extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

12. The aforesaid Section provides punishment for culpable homicide not amounting to murder. Under Section 304 of the Indian Penal Code, there are two kinds of punishments contemplated for two different circumstances. The first part of Section 304 of the Indian Penal Code, deals with an act by which death is caused, which is done with intention of causing death or such bodily injury as is likely to cause death. The second part deals with an act which is done with knowledge that it is likely to cause death, but, without any intention to cause death or such bodily injury as is likely to cause death. If the act is done with an intention and knowledge, then it will fall under the first part of Section 304, and if the act is done only with a knowledge and not the intention to cause murder or bodily injury, then it will fall under part II of Section 304 of the Indian Penal Code.

13. In the instant case, from the materials collected during investigation, it could be seen that nothing is available on record to show that either the petitioner has caused the death of the deceased Balamurugan with an intention to cause death. Even from the statement of the defacto complainant under Section 161(3) of the Code of Criminal Procedure, it is very clear that at the time of the incident, it is only the deceased Balamurugan who maintained the toilets and also collecting fees from the general public using the toilets. On the date of occurrence, the deceased only engaged some other persons to clean the septic tank, at that time, one of the employees, by name Ramasamy slipped and fell down in the septic tank and in order to rescue him, the deceased Balamurugan jumped into the septic tank, where he died due to suffocation. Absolutely, there is no material available on record to show that the petitioner has played any role in the death of the deceased Balamurugan. It is only the deceased Balamurugan who maintained the toilets, and on his own engaged some third parties to clean the septic tank and in an accident, he died. In the above circumstances, none of the ingredients of Section 304 of the Indian Penal Code is made out against the petitioner herein.

14. So far as the offence under Section 3(1)(j) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, is concerned, to bring home the offence under the above provision, it should be established that, whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, makes a



member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose. But, in the instant case, it is not the petitioner who directed the deceased to do manual scavenging, employed or permitted the employment of manual scavenging. From the available materials, it could be seen that the deceased Balamurugan did not clean the toilets and he only engaged some employees to manually clean the septic tank, where, in an accident, he died due to suffocation. Hence, the aforesaid offence is also not made out against the petitioner.

15. In the above circumstances, I am of the considered view that the entire materials collected during investigation did not make out a prima facie offence against the petitioner herein. Hence, the criminal proceedings initiated against the petitioner in P.R.C.No.22 of 2016 on the file of the learned Judicial Magistrate, Mudhukulathur, is liable to be quashed.

16. In the result, the Criminal Original Petition is allowed and the criminal proceedings initiated against the petitioner in P.R.C.No.22 of 2016 on the file of the learned Judicial Magistrate, Mudhukulathur, is, hereby, set aside. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate, Mudhukulathur.

2.The Deputy Superintendent of Police,
Mudhukulathur Sub-Division,
Ramanathapuram District.

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

Order made in
Crl.O.P.(MD) No.3190 of 2017
Dated: 04.07.2019

akv/SML

JMN(20.08.2019) 5P : 4C