



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .No.3620 of 2017

and

Crl.M.P. (MD) No.2702 of 2017

Ganesan

... Petitioner/ Petitioner/
Accused No.1

vs.

1) The State by
The Inspector of Police,
Vadmadurai Police Station,
Vadamadurai, Dindigul District.
(Crime No.62 of 2015)

... R-1/ R-1/ Complainant

2. Muthulakshmi

... R-2/ De facto Complainant/
De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records pertaining to the Charge sheet in S.T.C.No.552 of 2015 on the file of Judicial Magistrate, Veda sandur in Crime No.62 of 2015 on the file of the 1st respondent police and quash the same.

For Petitioner : Mr.J.Lawrance

For R-1 : Mr.S.Chandrasekar
Additional Public Prosecutor

For R-2 : Mr.S.Pugalenth

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.552 of 2015, on the file of Judicial Magistrate, Veda sandur.

2. The respondent police have filed the final report before the Court below as against two accused persons and the petitioner is ranked as A-1. The final report has been filed for offenses under Sections 288 and 338 of I.P.C.

3. The allegations, as found in the final report is to the effect that the husband of the second respondent was engaged to do a construction work and on 05.11.2014, at about 11:00 a.m., due to the



negligence of the accused persons in not providing sufficient safeguards to the victim, the victim Selvaraj fell down and sustained grievous injuries.

4. The learned counsel for the petitioner submitted that, the petitioner is the owner of the property and he had handed over the construction work to A-2, who is the contractor. It is A-2 who had engaged the services of the victim Selvaraj. The learned counsel submitted that this petitioner had nothing to do with the entire incident and if at all there was any deficiency in not providing the safety measures, the same can be only made answerable by A-2 and not by this petitioner.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the victim had died subsequently. The learned counsel further submitted that there are necessary allegations made against the accused persons in the final report and there is absolutely no ground to interfere with the proceedings at this stage.

6. This Court has carefully considered the submissions made on either side and the materials available on record.

7. In order to bring the case within the scope of Section 288 of IPC, it must be shown that the concerned accused person had knowingly or negligently omitted to take necessary safeguards in order to avoid a probable danger from the fall. Section 338 of IPC provides that whoever causes grievous hurt to any person by doing any act so rashly and negligently so as to endanger human life, shall be punished for the said offense.

8. It is clear from both the above said offenses that there is a prior requirement of rashness/negligence and the same has to be done knowingly or intentionally. There must be some material to attribute the negligence on the part of the accused person. In the present case, the petitioner has been made as an accused only on the ground that he is the owner of the property. The owner of the property has handed over the building for repair to the contractor, viz. A-2 and A-2 has engaged the services of the victim and he had sustained grievous injuries at the time of performing the work. The petitioner had no role to play in the entire work that was done by A-2 through his men. The petitioner cannot be made as an accused just because he was the owner of the property.

9. The law on this point is well settled in the order passed by this Court in Crl.O.P.(MD) No.1239 of 2018, dated 20.12.2018 in **Sasikumari and another vs. the State rep. by the Inspector of Police.**



10. In view of the above, this Court is of the considered view that the proceedings as against the petitioner is an abuse of process of Court and the same requires interference. In the result, the proceedings in S.T.C.No.552 of 2015, on the file of Judicial Magistrate, Vendasandur is hereby quashed, insofar as the petitioner is concerned. The amount that has already been deposited by the petitioner, to the tune of Rs.20,000/- as per the interim orders passed by this Court, shall be permitted to be withdrawn by the second respondent.

11. Accordingly, this Criminal Original Petition is allowed and the Court below is directed to proceed further with the case in S.T.C.No.552 of 2015 on the file of Judicial Magistrate, Vendasandur as against A2 and complete the proceedings within a period of three (3) months from the date of receipt of a copy of this order. Consequently, connected Crl.M.P.(MD) No.2702 of 2017 is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate,
Vendasandur
2. The Inspector of Police,
Vadmadurai Police Station,
Vadamadurai, Dindigul District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.J.LAWRANCE, Advocate SR-92753.

Order made in
Crl.O.P. (MD) .No.3620 of 2017

Dated:
17.10.2019

CS(12.11.2019) 3P 5C