

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 24.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO. 20664 OF 2013

AND

M.P. NO. 1 OF 2013

1. R.Sivaprakasam
2. C.Thirumurugan

.. Petitioners

- Vs -

1. The State of Tamil Nadu
rep. By the Inspector of Police
T-12, Poonamallee Police Station
Poonamallee, Chennai - 600 056.

2. M.Shanthi

.. Respondents

Criminal Original Petition under 482 of the Code of Criminal Procedure, to call for the records in C.C. No.121/2013 on the file of the Judicial Magistrate No.II, Poonamallee, and quash the same.

For Petitioners: Mr. S.Subbiah, SC, for
Mr. P.Raja

For Respondent : Mr. C.Iyyapparaj, APP, for R-1
Mr. D.Dhanasekaran for R-2

ORDER

I alone cannot change the world, but I can
cast a stone across the waters to create
many ripples.

.. Mother Theresa

The tentacles of law spreads far and wide with compassion and love, but also with compulsion to adhere to law and within the framework of law, where compulsion encompasses compassion and love. Justice not only in thought, but in action too, is the hallmark of the judicial system predicated upon the entire constitutional edifice.

2. The present revision has been filed to call for the records in C.C. No.121/2013 on the file of the learned Judicial Magistrate No.II, Poonamallee, and quash the same.

3. The 1st petitioner is the builder and the 2nd petitioner is the contractor under the 1st petitioner. One Manikandan, who was employed by the 2nd petitioner for the purpose of carrying out centering works in the building under construction, in the course of his employment, met with unfortunate death by electrocution on 30.11.12, when the iron rod, which the said Manikandan was using for doing the centering work, accidentally touched the live electric wire. Since the deceased was not provided with the necessary safety materials for carrying out his work, which resulted in his untimely death, the 2nd respondent, the wife of the deceased, lodged the complaint with the 1st respondent, which was registered in Crime No.2603/12 for the offence u/s 304-A IPC pursuant to which the petitioners, viz., the builder and the contractor were arrested by the law enforcing agency on 3.12.12 and, later, on the same day, released on bail under judicial process.

4. The law enforcing agency, in pursuance to the abovesaid complaint, conducted further investigation and filed the final report before the learned Judicial Magistrate No.II, Poonamallee.

5. The learned Judicial Magistrate No.II, Poonamallee, upon taking cognizance of the case, issued summons to the petitioners/accused for their appearance on 26.7.13. The petitioners/accused appeared before the court and they were with the relied upon documents u/s 207 Cr.P.C. and the matter stood adjourned to 2.8.13. The petitioners/accused, challenging the said charge sheet and contending that the necessary ingredients as contemplated u/s 304-A IPC have not been satisfied for implicating them in the case, have moved the present petition before this Court for quashment of the said case.

6. Mr.S.Subbiah, learned senior counsel appearing for the petitioners submit that the charge framed u/s 304-A IPC does not stand attracted as the ingredients for an offence to be made out u/s 304-A IPC is that the death should have been caused by the person by doing any rash or negligent act. It is the submission of the learned senior counsel for the petitioners the death had happened not on account of any negligent act of the petitioners, but more due to the negligence of the deceased himself and, therefore, implicating the petitioners for the offence u/s 304-A IPC is not sustainable.

7. It is the further submission of the learned senior counsel for the petitioners that the wife of the deceased, viz., the 2nd respondent herein, had already approached the Labour Commissioner under the Workmen Compensation Act claiming a sum

of Rs.15 Lakhs as compensation. Initially, the Tribunal had ordered notice to the petitioners herein and the petitioners had entered appearance in the said case through counsel. However, the petitioners failed to appear before the Tribunal during the course of further hearing and, therefore, the petitioners were set ex-parte and an award in a sum of Rs.6,26,674/- was passed in favour of the 2nd respondent herein vide order dated 18.12.2014. However, on the petitioners filing a petition to set aside the ex-parte order, the Tribunal had set aside the ex-parte award and restored the case back to file. It is further submitted by the learned senior counsel for the petitioners that pending the case, the 2nd petitioner, as one time compensation, paid a sum of Rs.1,30,000/- to the 2nd respondent, but, however, suppressing the said fact, the claim under the Workmen Compensation Act has been filed. After receiving the one time settlement amount of Rs.1,30,000/-, the 2nd respondent, leaving the children in the care of their paternal uncle, viz., Thiagarajan, has subsequently contracted marriage with another person.

8. It is the submission of the learned senior counsel for the petitioners that the petitioners have all along, with humanitarian consideration, has dealt with the 2nd respondent and have been to her rescue, as she had lost the bread winner in the family. But suppressing many material facts, the claim under the Workmen Compensation Act as also the criminal complaint are being proceeded with. It is therefore submitted by the learned senior counsel for the petitioner that an one time settlement having already been arrived at between the 2nd petitioner and the 2nd respondent, the claim under the Workmen Compensation Act cannot be proceeded with and equally so, the criminal complaint is also liable to be closed for the reason that not only the ingredients of Section 304-A IPC does not stand attracted, but the petitioners have been diligently and with bona fide intention pursuing the issue, which is reflected in the payment of one time compensation to the 2nd respondent.

9. It is the further submission of the learned senior counsel for the petitioners that the 1st petitioner is not liable to pay any compensation as there is no direct employer-employee relationship with the deceased and that the deceased was engaged only by the contractor, viz., the 2nd petitioner and the 2nd petitioner having already entered into an one time settlement with the 2nd respondent, nothing further survives for adjudication.

10. However, it is finally submitted by the learned senior counsel for the petitioners that, as a humanitarian gesture, valuing the life of the individual, which is more precious, on a sympathetic consideration and keeping in mind the welfare of the victim's family, especially the age of the children of the deceased, viz., Jeevitha and Jagan Varshan, and that their

mother having left them in the custody of their paternal uncle and got married to some other person, the petitioners, on their own volition are ready and willing to deposit a sum of Rs.2.5 Lakhs to each of the children for their future, in all, a sum of Rs.5 Lakhs. Therefore, it is submitted by the learned senior counsel for the petitioners that this Court, taking into consideration the stand of the petitioners and the act of the petitioners in voluntarily depositing the said sum, and the bona fide of the petitioners, quash the complaint in C.C. No.121/2013 on the file of the Judicial Magistrate No.II, Poonamallee.

11. On the above contentions, this Court heard the learned Addl. Public Prosecutor appearing for the 1st respondent.

12. Since the petitioners have pleaded quashment of the criminal case and have also raised a plea that already a sum of Rs.1,30,000/- has been paid by way of one time compensation to the 2nd respondent, to know more about the case initiated under the Workmen's Compensation Act, this Court called for the files relating to E.C. No.174/13, pending on the file of the Commissioner for Workmen's Compensation. Pursuant to the said direction, the entire file relating to E.C. No.174/13 has been placed before this Court. Further, this Court, coming to know that the 2nd respondent had relegated the children to the custody of their paternal uncle and had subsequently contracted marriage, had put the law enforcing agency on notice, to produce the paternal uncle and the children before this Court so as to have an understanding on the entire issue before a decision could be taken.

13. Pursuant to the said direction, the children of the deceased, viz., Jeevitha and Jagan Varshan were produced before this Court by their paternal uncle, viz., Thiagarajan. This Court interacted with the children to know about the happenings around them.

14. The painful story that unfolded from the mouth of the tender siblings is that their mother, who is supposed to be their guardian angel, had left them at the hands of their aged paternal uncle, who is the elder brother of their father, who is since dead even at their very tender age, and from that day onwards, their paternal uncle, viz., Thiagarajan has been taking care of the children. First of all, the above interaction makes it painfully clear for this Court that the children, the future pillars of this country, have been left in lurch by their own mother, only to be safeguarded by their paternal uncle, who had partaken the role of a mother in nourishing and bringing up the children, but for whom, the future of the children would not only have been bleak, but they would have been left at the mercy of the society to outgrow themselves for making a decent and disciplined living.

15. It further transpired on interaction with the children that their paternal uncle had admitted them in Nethaji Vidhyalaya Nursery and Primary School and that as of the academic year 2018-2019, the children, viz., Jeevitha and Jagan Varshan are studying in 5th standard and 1st standard respectively in the said school, as is evident from the bona fide certificate issued by the Principal of the said school. Therefore, for all purposes, to say, the case pending before the Commissioner for Workmen's Compensation, is more of a case that will determine the destiny of the children rather than the destiny of the 2nd respondent, who, by now, would have settled in her new life oblivious of the fact that she had begotten two children, who are at the mercy of the society. The facts, as narrated above, places a heavy burden on this Court to render substantial justice to all the concerned parties, rather than looking at the case from a mere legal perspective.

16. Coming to the factual matrix of the issue before this Court, it is evident from the record that E.C. No.174/13 was filed by the 2nd respondent herein, before the Commissioner for Workmen's Compensation, claiming a sum of Rs.15 Lakhs as compensation for the untimely death of her spouse. Initially, after summons, on appearance of the petitioners herein, the case was dismissed for default on 16.6.14, but thereafter, on the same day, it was restored back to file by granting adjournment, which was not brought to the knowledge of the petitioners herein and the case was later taken up, and since the petitioners herein were not present, they were set ex-parte, and an award in a sum of Rs.6,26,674/- was passed in favour of the 2nd respondent only to be set aside on the petition in I.A. No.128/15, filed by the petitioners herein. However, by filing an affidavit, the 2nd respondent had indeed reserved her right to file counter and contest the order passed in the set aside application, inter alia contending that the said order was obtained behind her back. However, as evident from the records, no order seems to have been passed on her contention till date and the order passed in I.A. No.128/15 still subsists, meaning thereby, that E.C. No.174/13 has been revived back to file. However, it is not clear as to what the status of the case is from the file as placed before this Court.

17. Be that as it may. It now transpires from the materials that the 2nd respondent has not shown any inclination to contest the matter in E.C. No.174/13, except filing the affidavit reserving her right. Further, it should not be lost sight of that with scant regard to the love and affection that her children would be craving for, she left them at lurch and has remarried. It would not be out of place to point out here that on the date when the deceased breathed his last, i.e., on 30.11.12, he was survived by his wife, who has since remarried, his daughter, viz., the first child, Jeevitha (DOB - 1.9.09 - 3 years old at that time) and his son, viz., the second child,

Jagan Varshan (DOB - 22.7.13), who was in the womb of his mother, not having seen the face of his father and more cruelly, before the child could even realise what motherly love and affection would mean, the 2nd respondent had abandoned them for her welfare only to be taken care of by their paternal uncle, which only strengthens the belief that not all love is lost in this world.

18. Coming to the issue on hand, the workmen's compensation case was instituted by the 2nd respondent on 25.4.13. Though on the said date, the deceased was survived by his wife, his daughter and his son to be born, in the womb, however, the spouse alone had filed the workmen's compensation case and the children have not been shown as petitioners therein. However, on the said date, the mother, as the natural guardian, had taken up the issue and filed the said case. As evident from the materials the Tribunal proceeded with the case, initially by setting aside the petitioners ex-parte, on their non-appearance and passed the award, which was later set aside on the application by the petitioners and, thereafter, the fate of the workmen's compensation case is not known. The only reason for the case relegated to the said fate was the fact that the petitioner therein, viz., the spouse of the deceased, had remarried and had settled and had not shown any inclination to pursue the matter. In the above backdrop, the present petition has been moved at this point of time, for quashment of the criminal case, as it is stated before the court that investigation is over and charge sheet has been filed.

19. True it is that the spouse of the deceased, having settled in her life, had taken little efforts to take the case to its logical end. The only reason that could be attributed to her said conduct is that having received some money from the 2nd petitioner and having remarried, she might have lost interest in proceeding with the case any further. But that cannot be put against the children, who are equally entitled to the compensation due to them. The Workmen's Compensation Act, providing for compensation for the workmen who meet with calamities in the course of their employment, is a benevolent piece of legislation, which takes care of the workmen/his family in times of calamity. The said enactment is a social welfare legislation and the affected party is entitled to the benefit as prescribed under the said Act. It is certainly not a bounty that is given to the affected party, but it is a social guarantee against any untimely catastrophe that befalls the workman. Therefore, in the above backdrop, once the spouse of the deceased, has not evinced further interest to proceed with the workmen's compensation claim, the children of the deceased cannot be made to suffer for the act of their mother, as the benefit of the said legislation should definitely accrue to them.

20. The present petition relates to quashment of the criminal case against the petitioners on the file of the Judicial Magistrate No.II, Poonamallee. When such is the prayer, would this Court be clothed with the jurisdiction and power to pass orders concerning both the criminal prosecution as well as the workmen's compensation is a crucial question that falls before this Court.

21. In Pepsi Foods Ltd. & Anr. - Vs - Special Judicial Magistrate & Ors. (1998 (5) SCC 749), the Hon'ble Supreme Court had occasion to consider the power of judicial review of the High Court in criminal matters. In that context, the Hon'ble Supreme Court held as under :-

"22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the

provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

* * * * *

26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution."

(Emphasis Supplied)

22. From the above proposition of law laid down by the Hon'ble Apex Court, the power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 Cr.P.C. have no limits but more the power, more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 Cr.P.C., it may not be necessary to invoke the provisions under Article 226. The Apex Court further held that it is within the power of the High Court to treat a petition under a different nomenclature, even though the same is filed under a different nomenclature. Therefore, it is clear from the above that the High Court has unfettered power under Article 482 to deal with matters, though not criminal, in the interest of securing the ends of justice and it is not estopped from entertaining the petition. In view of the ratio laid down by this Hon'ble Apex Court supra, this Court, in exercise of its inherent jurisdiction, to secure the ends of justice and to render substantial justice to all the parties concerned, is clothed with wide and unfettered powers to pass orders within the four corners of law protecting the interest and welfare of the children.

23. Though it is submitted by the learned senior counsel for the petitioners that the private settlement was arrived at prior to the claim made under the Workmen's Compensation Act,

however, it appears that at the time of death of the deceased, the 2nd child, viz., Jagan Varshan was in the womb and the first child, viz., Jeevitha, was not added as a party in the said petition. Further, the ex-parte order was passed on 18.12.14, however, the petition in I.A. No.128/15 to set aside the said order was filed only on 23.3.15 after a lapse of three months, but curiously, no application to condone the delay has been filed. However, the Tribunal has accepted the said application and, behind the back of the spouse, had set aside the ex-parte award dated 18.12.14. Further, it is seen that almost six years have passed since the passing of the ex-parte award, the workmen's compensation claim is yet to see the light of the day. The mother having abandoned not only the children, but equally the case, now the children, who were thrown at the mercy of the society, have been under the foster care of their paternal uncle, Thiagarajan. Initially, the children have not been added as party to the petition, only on the ground, as already stated, that they would be taken care of by their mother. However, in the present scenario, the mother having deserted her children, definitely interest of justice warrants that the children should be represented in the workmen's compensation petition so that they receive their lawful share in the said case. In the above circumstances, this Court is of the considered view that the children should be made as party applicants in the said case, to be represented by their guardian/paternal uncle, Thiagarajan, under whose foster care the children are at present.

24. In the above circumstances, this Court, exercising its inherent powers under Section 482 Cr.P.C., with a view to rendering complete and substantial justice in the interest of the rule of law and justice, while dismissing the above petition, is constrained to pass the following order :-

"i) The petitioners are directed to deposit a sum of Rs.3,50,000/= (Rupees Three Lakhs Fifty Thousand only) in the name of each of the children, viz., Jeevitha and Jagan Varshan, to the credit of E.C. No.174/2013, totalling to Rs.7,00,000/= (Rupees Seven Lakhs only) as interim compensation within a period of six weeks from the date of receipt of a copy of this order;

ii) On such deposit being made, the Deputy Commissioner of Labour, Workmen's Compensation Tribunal, is directed to invest the same in an interest bearing fixed deposit till the children attain majority;

iii) This Court, in exercise of its inherent powers, impleads the children, viz., Jeevitha (DOB - 1.9.09) and Jagan Varshan (DOB - 22.7.13), as petitioners in E.C. No.174/2013, to be represented by their paternal uncle, Thiagarajan, in the place of M.Shanthi, the then wife of the deceased and the mother of the children above;

iv) The name of M.Shanthi, shall stand deleted as petitioner from E.C. No.174/2013 ;

v) If E.C. No.174/2013 has already been disposed of for default, the said order would stand set aside and the said case would stand restored back to file by impleading the children of the deceased, as aforesaid, represented by their paternal uncle, Thiagarajan;

vi) Since it is placed on record that claim petition has already been filed, the Deputy Commissioner of Labour, Workmen's Compensation, is directed to take up the matter on board and allow the parties to adduce additional evidence, by providing them necessary opportunity and dispose of the claim petition within a period of six months from the date of receipt of a copy of this order;

vii) The Deputy Commissioner of Labour shall keep in mind the interim compensation awarded by this Court above, and, therefore, shall deal with the claim of compensation without in any way influenced by the above interim compensation awarded by this Court. It is further made clear that the compensation awarded above is only an interim compensation and would in no way be a bar for the Deputy Commissioner of Labour to award any compensation less or over and above the amount, in the facts and circumstances of the claim;

viii) The District Legal Services Authority, Kancheepuram District, is directed to provide necessary and efficient legal assistance to the impleaded applicants to pursue their claim before the Deputy Commissioner of Labour in E.C. No.174/13;

ix) The District Legal Services Authority, Kancheepuram District, is further directed to monitor the progress of the case before the Deputy Commissioner of Labour in E.C. No.174/13 so that necessary legal assistance to the impleaded applicants in E.C. No.174/13 are provided to them at all stages of the proceedings, till it reaches a logical conclusion;

x) C.C. No.121/2013 on the file of the Judicial Magistrate No.II, shall proceed in accordance with law and the trial court shall dispose of C.C. No.121/2013 as expeditiously as possible as per seniority of the case. The parties to the said lis are directed to co-operate with the trial court for the early completion of trial. Further, taking into consideration the request as made by the learned counsel for the petitioners, their appearance before the trial court is dispensed with except for their appearance for the purpose of receiving the copy of the proceedings u/s 207 Cr.P.C., framing of charges, questioning under Section 313 Cr.P.C. and on the day on which judgment is to be pronounced. However, if for any particular reason, the presence of the petitioners is necessary,

the trial court, at its wisdom, shall direct their appearance on those days."

25. Accordingly, this criminal original petition is dismissed with the aforesaid observations and directions. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

GLN

To

- 1) The Judicial Magistrate No.II
Poonamallee.
- 2) The Deputy Commissioner of Labour
DMS Compound, Anna Salai
Teynampet, Chennai.
- 3) The Public Prosecutor
High Court, Madras.
- 4) The Chairman
District Legal Services Authority
Kancheepuram District @ Chengalpet.
- 5) The Inspector of Police,
T-12, Poonamallee Police Station,
Chennai-56

Copy To
The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.P.Raja, Advocate SR.No.15907

CRL. O.P. NO. 20664 OF 2013

VSN(CO)
GMY(04/03/2020)