IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.12.2020

PRONOUNCED ON : 23.12.2020

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P. No.16598 of 2015 & M.P. No.1 of 2015

Prabaharan Petitioner

vs.

State represented by its
Sub Inspector of Police
Kangeyam
(Cr. No.830 of 2004) Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.M.P. No.101 of 2014 in C.C. No.127 of 2005 on the file of the Judicial Magistrate Court, Kangeyam dated 06.05.2014 and quash the same.

For petitioner :Mr. V. Raghunathan

For respondent :Mrs. P. Kritika Kamal
Govt. Advocate (Crl. Side)

ORDER

For the sake of convenience, the parties are referred to by their names.

2 The facts in brief leading to the filing of this criminal revision are as under:

2.1 The deceased Vani was the daughter of Dr. Sivabala Krishnamurthy, a medical practitioner in Kangeyam. Vani got married to Prabhakaran (accused) and they were blessed with two children, viz., Priyadarshini and Karthik Raghavan. Prabhakaran was living with his family in Sathyamangalam which is around 78 kms. from Kangeyam.

2.2 On 05.12.2004, there was Iyappan pooja in the house of Dr.Sivabala Krishnamurthy at Kangeyam since he was undertaking a pilgrimage to Sabarimala. Prabhakaran came for the pooja with his wife and children by his Maruti 800 car bearing Regn. No.TN 49 J 0834. After the pooja was over, Prabhakaran and his family left Kangeyam for Sathyamangalam around 8.30 p.m. in their Maruti 800 car. Prabhakaran was on

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the wheels and on his left, Vani was seated. The two children, Priyadarshini, aged 11 years and Karthik Raghavan, aged 8 years, were seated in the rear seat.

2.3 While the car was proceeding through a narrow bridge near Sivagiripudur, a mini lorry was found parked on the bridge. Prabhakaran swerved the wheels right to avoid hitting the lorry, despite which, the left side of the car, hit the rear side of the lorry, resulting in serious damage to the Maruti 800 car and the occupants. Vani who was seated in the front side, died on the spot. Prabhakaran managed to inform his father-in-law Dr.Sivabala Krishnamurthy, about the incident, who rushed to the place of occurrence and took the injured, viz., Prabhakaran, Priyadarshini and Karthik Raghavan to the nearest hospital.

2.4 On a written complaint given by Dr.Sivabala Krishnamurthy, a case in Kangeyam P.S. Cr. No.830 of 2004 was registered on 06.12.2004 under Sections 279,337 and 304-A IPC against Prabhakaran.

2.5 Inquest over the body of Vani was conducted and the body was sent for postmortem. The Maruti 800 car and the lorry were subjected to inspection by the Motor Vehicles Inspector.

2.6 After completing the investigation, the police filed a charge sheet in C.C. No.127 of 2005 on 05.02.2005 in the Court of the Judicial Magistrate, Kangeyam for the offences under Sections 279, 338, 337 and 304-A against Prabhakaran.

2.7 During trial, Dr. Sivabala Krishnamurthy filed C.M.P.No.1380 of 2006 in C.C. No.127 of 2005 under Section 173 (8) Cr.P.C. alleging that Prabhakaran had deliberately caused the accident by ramming the Maruti 800 car behind the lorry to cause the death of his wife and therefore, a further investigation is necessary.

2.8 The said petition was dismissed for default by the trial Court on 02.11.2007. Not content with that, Dr. Sivabalaji Krishnamurthy filed a fresh petition in C.M.P. No.1127 of 2008 in C.C. No.127 of 2005 in the trial Court under Section 173(8) Cr.P.C. on the same allegation and for the same relief. The prosecution filed their counter denying the allegations and contended that the theory that is proffered by Dr.Sivabalaji Krishnamurthy was not stated either in the FIR that was lodged by him or during inquest. The petition in C.M.P. No.1127 of 2008 was also dismissed by the trial Court on 08.11.2010, the relevant portion of which, reads as under:

> "Petitioner wants time. Already sufficient time granted. This petition filed in the year of

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21.11.2007. Counter filed on 12.06.2008. Thereafter, the petitioner has not taken any steps. Today also, the petition not ready. However, the petition is dismissed."

2.9 As time rolled, Priyadarshini and Karthik Raghavan grew. Trial began in C.C. No.127 of 2005 in the Court of the Judicial Magistrate, Kangeyam, with the examination of Dr. Sivabalaji Krishnamurthy on 06.11.2012. In the chief-examination, Dr. Sivabalaji Krishnamurthy (P.W.1) stated that he was told by his grandchildren that while driving, Prabhakaran was abusing his wife and when he saw a lorry in the front, he stated "This is the best opportunity to get rid of you" and saying so, rammed behind the lorry deliberately and caused the death of Vani. Of course, this was a hearsay evidence.

2.10 Priyadarshini who was examined as P.W.5 on 17.05.2013, stated in the examination-in-chief that when they were about to leave Kangeyam, her brother wanted to sit in the front seat, but, her father asked her mother to sit in the front seat and asked her brother to sit behind; accordingly, her mother sat in the front seat and Karthik Raghavan sat along with her in the rear seat; her father was driving the car recklessly and she requested him to go slow; but, he did not give heed to her words; a month ago, her father quarrelled with her mother and assaulted her and at that time, her grandfather advised her mother to divorce her father; but, her father stated that he would behave properly in the future. She further stated in the cross-examination that while going by car, her father told her mother "You are dark in complexion and you want to divorce me?" saying so, he was abusing her mother; while they were thus proceeding, she saw a lorry parked on the road; her father told her mother "this is the opportune moment to get rid of you" and rammed against the lorry; thereafter, he ran away. The above is the rough English translation of the crucial part of the evidence of Priyadarshini.

2.11 Likewise, Karthik Raghavan, who was examined as P.W.6 on 17.05.2013, stated that when he wanted to sit in the front seat, his father asked him to go behind; while they were proceeding towards Sathyamangalam, his father was driving recklessly and was abusing his mother despite his protestation; however, he slept on his sister's lap and when he woke up, he found that he was in a hospital.

2.12 This Court is not adverting to the cross-examination of Priyadarshini (P.W.5) and Karthik Raghavan (P.W.6) for the present.

2.13 Immediately thereafter, the Assistant Public

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Prosecutor filed a petition in C.M.P. No.101 of 2014 in C.C. No.127 of 2005 under Section 323 Cr.P.C. for committing the case to the Court of Session on the ground that from the evidence of P.Ws.1,5 and 6, it appears that the case is triable by that Court. Prabhakaran filed his objections. However, the trial Court, after hearing either side, vide order dated 06.05.2014 in C.M.P. No.101 of 2014 in C.C. No.127 of 2005, committed the case under Section 323 Cr.P.C. to the Court of Session, aggrieved by which, Prabhakaran is before this Court.

3 Heard Mr. V. Raghunathan, learned counsel for Prabhakaran and Mrs. P. Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the respondent/State.

4 Under Section 323 Cr.P.C., a Magistrate can commit a case if it appears to him that the case is one which ought to be tried by the Court of Session. The word "appear" should not be given a pedestrian interpretation by Magistrates for committing cases, just because, someone weaves a story. The trial Court is required to analyse the totality of the facts and circumstances from the standpoint of a prudent man before acting upon the deposition of a witness to commit a case.

5 In this case, the FIR was registered based on the complaint given by Dr. Sivabalaji Krishnamurthy. Dr. Sivabalaji Krishnamurthy received information from Prabhakaran about the incident, went to the place of occurrence and took all the three injured to the Kangeyam Government Hospital for treatment.

6 The accident register relating to Karthik Raghavan (P.W.6) shows that he was brought by Dr.Sivabalaji Krishnamurthy (grandfather) and was examined by the doctor at 10.45 p.m. on 05.12.2004; the accident register relating to Prabhakaran shows that he was brought by Dr.Sivabalaji Krishnamurthy (father-in-law) and was examined by the doctor at 11.00 p.m. on 05.12.2004; and the accident register relating to Priyadarshini shows that she was brought by Dr. Sivabalaji Krishnamurthy (grandfather) and was examined by the doctor at 11.15 p.m. on 05.12.2004.

7 The accident register relating to Prabhakaran further shows the following injuries on him:

"List of injuries:

6 x 6 cm contusion left forehead with an overlying 4 x 1 cm laceration over it.
Impression: RTA C injury"

The accident register of Prabhakaran also shows that he was referred to Coimbatore Medical College and Hospital for further treatment and that he was found to be conscious,

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oriented and confused.

8 Thereafter, in the inquest proceedings over the body of the deceased Vani, none of the witnesses stated that Prabhakaran had deliberately caused the accident. Dr. Sivabalaji Krishnamurthy invented this theory only subsequently after the charge sheet was filed by the police. It may be necessary to reiterate that the two children of Prabhakaran, viz., Priyadarshini and Karthik Raghavan were 11 years and 8 years old respectively at the time of the accident in the year 2004. Dr.Sivabalaji Krishnamurthy, by filing petitions after petitions, ensured that the trial in the case never began before the Magistrate.

9 Priyadarshini, in the cross-examination, admitted that at the time of the incident, she was studying in VI standard in Sarathy Matriculation School in Sathyamangalam and after the incident, she was shifted to Jaycees Matriculation in Kangeyam. She stated that after the incident, she was not with her father and was with her grandfather. Thus, when she gave evidence on 17.05.2013, she was 18 years old and was studying B.Sc. (II year). Likewise, Karthik Raghavan was studying in IV standard at the time of the incident and when he gave evidence on 17.05.2013, he was 16 years old and was studying in XII standard. Both the children admitted that they were being brought up by their grandfather after the incident. They have stated a totally different version in their Section 161(3) statements to the police, which has been confronted to them by the defence in their cross-examination. Of course, the Investigating Officer is yet to be examined in this case.

10 Priyadarshini, in the chief-examination, stated that after her father deliberately rammed behind the lorry, he broke the windscreen of the car, jumped out of the car, saw her mother unconscious and absconded thereafter. In the opinion of this Court, this is a rank lie, inasmuch as, it was her father who had informed her grandfather about the incident, on coming to know of which, her grandfather rushed to the place and admitted all the three of them in the Kangeyam Government Hospital from where Prabhakaran was sent to Coimbatore Medical College and Hospital. In the cross-examination, Priyadarshini admitted that while the car was going through a narrow bridge, the lorry was found parked on the left side. She also admitted that the parking lights of the lorry were not on. She also admitted that there were no streetlights in that place. She stated in the cross-examination that stones were placed around the lorry. Apart from that, there was no other indication as to the presence of the lorry on the bridge in the dark night. It must also be borne in mind that the family was travelling not in a high-end SUV car but in an ordinary Maruti 800 car. If Prabhakaran had wanted to get rid of his wife, he would not have dared to risk

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his life as well and also put his children in peril. He would have had differences of opinion with his wife but there was no iota of material on record to show that he was having animosity towards his children too.

11 From the narration of Priyadarshini, this Court is able to discern that Prabhakaran must have suddenly noticed the parked lorry on the narrow bridge only on nearing it and in order to avoid head-on collision, he had attempted to swerve the car to the right, but, the bonnet of the car had hit the lorry resulting in Vani getting crushed in the impact.

12 On the flip side, the learned counsel for Prabhakaran submitted that all was well until Prabhakaran remarried several years after Vani's death and that is the reason for the bad blood and animosity. This Court cannot take judicial notice of this aspect.

13 Be that as it may, in view of the aforemade discussion, this is not a fit case in which the Magistrate should have exercised his powers under Section 323 Cr.P.C. to commit the case to the Court of Session and accordingly, the impugned order dated 06.05.2014 passed by the trial Court in C.M.P. No.101 of 2014 in C.C. No.127 of 2005 is quashed. The case in C.C. No.127 of 2005 shall be tried by the Judicial Magistrate, Kangeyam. The Judicial Magistrate, Kangeyam, shall proceed with the trial in C.C. No.127 of 2005 without, in any manner, being influenced by what is stated in this order.

In the result, this criminal original petition is allowed. Connected M.P. stands closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//
Sub Assistant Registrar

cad

To

1.The Sub Inspector of Police
Kangeyam

2.The Judicial Magistrate
Kangeyam

3.The Public Prosecutor
Madras High Court
Chennai 600 104.

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+1cc to Mr.V.Raghunathan, Advocate SR.42949

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