



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.07.2020

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Cr1.OP.No.1939 of 2020 and
Cr1.MP.Nos.1189 & 1190 of 2020

1.Gopi,
2.Venkadachalam,

...Petitioners/Accused 2 & 3

Vs.

1.State Represented by,
The Inspector of Police,
Mangalam Police Station,
Tiruppur District

...Respondent/Complainant

2.Surendran,

...Respondent 2/Defacto
Complainant

Prayer :- This Criminal Original Petition is filed under Section 482 of Cr.P.C. praying to call for the records and quash the proceedings in STC.No.532 of 2017 pending on the file of Judicial Magistrate-IV, Tiruppur against the petitioners.

For Petitioners : Mr.L.Sharadh Kumar

For Respondents

For R1 : Mr.S.Karthikeyan,
Additional Public Prosecutor

For R2 : No Appearance

ORDER

This criminal original petition has been filed to quash the proceedings in STC.No.532 of 2017 on the file of the learned Judicial Magistrate-IV, Tiruppur having been taken cognizance for the offences under Sections 288 and 337 of IPC in respect of Crime No.202 of 2017 on the file of the first respondent.



2. The case of the prosecution is that A2 and A3 are being the members of the Sangam was allotted with the work of renovating the building which is owned by the Sangam. The construction work was given to one Mr.Parthasarathy on contract basis. In turn, he allotted the same to the first accused, who is a Sub contractor under the said Parthasarathy for constructing the roof and walls. The first accused recruited employees who had skill in constructing roof and the works were also proceeded further. The first accused started work without providing adequate safety measures equipment, which in turn lead to an accident of the defacto complainant. Due to the accident, the defacto complainant sustained injury and therefore a complaint was lodged .

3. The learned counsel for the petitioners would submit that there are totally three accused, in which the petitioners are arrayed as A2 and A3. The petitioners were charged for the offences under Sections 288 and 337 of IPC in STC.No.532 of 2017 on the file of the Judicial Magistrate-IV, Tiruppur. Even according to the case of the prosecution, the petitioners were members of the Sangam and they owned the building. The said building was entrusted with the petitioners for renovation. Accordingly, the entire work was given to one, Mr.Parthasarathy on contract basis. He in turn gave the work to the first accused who is a sub contractor for constructing the roof and walls of the building. On the said contract, the first accused engaged labourers for construction of other consequential work. Unfortunately the first accused did not provide any adequate safety measures to the labourers and the untoward incident happened, due to which the defacto complainant sustained injuries. The ingredient of the offence under Sections 288 and 337 of IPC are not at all attracted as against the petitioners, since the essential and primary ingredient to constitute offence is that one who is constructing the building has to take adequate protection while constructing the same. Even according to the case of the prosecution, the petitioners were not doing any construction work. Further to attract the offences under Section 337 IPC, there must be a rash and negligent act. Even according to the case of the prosecution, the accident took place only because of the negligence of the first accused. Therefore, the petitioners are not at all liable for any charge as alleged by the prosecution. Hence, he sought for quashment of entire proceedings as against the petitioners.

4. Per contra, the learned Additional Public Prosecutor submitted that the entire construction work of the building was handed over to the petitioners, namely A2 and A3. They only allotted the work to one, Parthasarathy on contract basis. In



turn, the said Parthasarathy had given the sub contract work to the first accused. The first accused engaged the defacto complainant for construction work. Therefore, all the accused persons had failed to provide adequate safe measures to the labourers and as such due to their negligence, the accident took place and as such the defacto complainant sustained injuries. Therefore, offence under Sections 288 and 337 of IPC are clearly made out as against the petitioners and prayed for dismissal of the quash petition.

5. Heard Mr.L.Sharadh Kumar, learned counsel for the petitioners and Mr.S.Karthikeyan, learned Additional Public Prosecutor for the first respondent. Though notice was served to the second respondent, no one appeared on behalf of the second respondent.

6. There are totally three accused, in which the petitioners are arrayed as A2 and A3. The petitioners are members of the Maha Kaliyamman Temple and owned Marriage hall. In order to renovate the marriage hall, the petitioners are being the members of the said society were allotted the said work. They appointed one, Parthasarathy as contractor and allotted the entire work. In turn, the said Parthasarathy allotted the sub contract work to the first accused for renovation of the marriage hall. The first accused engaged labourers. While being so, on 09.05.2017, when the second respondent was doing renovation work at the height of 18 feet, unfortunately he fell down and sustained injuries on his spinal cord. Immediately he was taken to hospital and given treatment. In order to attract the charge for the offences punishable under Section 288 IPC, the accused should have knowingly or negligently omitted to take necessary steps to avoid probable danger from the fall.

7. In the case on hand, even according to the case of the prosecution, the work was allotted to one, Parthasarathy and in turn he allotted to sub contractor, the first accused herein for renovation work. Therefore, the petitioners never engaged the second respondent to do the renovation work. They are being the members of Maha Kaliyamman Society, they were also impleaded as accused. As such the prosecution failed to prove charge for the offence punishable under Section 288 IPC as against the petitioners.

8. Insofar as the offences under Section 338 of IPC, it provides that whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished for the said offence. To attract those offences, there is a prior



requirement of rashness and negligence and the same has to be done knowingly or intentionally. Further there must be some material to attract the negligence on the part of the accused. In the case on hand, the petitioners have been added as accused only on the ground that they are owners of the property. They were allotted renovation work by the society and in turn they allotted the work to the contractor one, Parthasarathy. As such, the petitioners absolutely have no role to play in the entire work that was done by the first accused who engaged the labourers. Therefore, both the charges under Sections 288 and 337 IPC are not at all attracted as against the petitioners.

9. In view of the above discussion, the entire proceedings as against the petitioners are abuse of process of court and the petitioners need not go for ordeal trial. Accordingly, this Criminal Original Petition is allowed and the entire proceedings in STC.No.532 of 2017 on the file of the learned Judicial Magistrate-IV, Tiruppur is quashed as against the petitioners alone.

10. Further, since the case is of the year 2017, the learned Judicial Magistrate-IV, Tiruppur is directed to proceed with the trial as against the first accused and complete the same within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate-IV,
Tiruppur
 2. The Inspector of Police,
Mangalam Police Station,
Tiruppur District
 3. The Public Prosecutor,
High Court of Madras.
- +lcc to Mr Deepan Uday, Advocate, Sr.No.25455

Cr1.OP.No.1939 of 2020

MG(CO)
GS(21/08/2020)