

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 31.07.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.3952 of 2020
and Crl.MP.Nos. 2290 & 2291 of 2020

K.Gunasekaran
S/o.Krishnan,
5/3-25, Nirmala Garden,
Bodinaickenpatti,
Vellandivalasu Post,
Edappadi Taluk,
Salem District. Petitioner/ Accused

Vs.

1. The State rep. By
The Inspector of Police,
Edappadi Police Station,
Salem District.
Crime No.476 of 2018.
2. P.Santhi,
W/o.Parameswaran Raja,
Adi Dravidar Street,
Bodinaickenpatti,
Avaniperur Melmugam Village,
Edappadi Taluk,
Salem District. Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to the criminal case in S.C.No.204 of 2019 on the file of the learned Assistant Sessions Judge/Sub Court, Sankari, and quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.S.Manoharan
For Respondents
For R1 : Mr.S.Karthikeyan
Additional Public Prosecutor.
For R2 : No appearance.

ORDER

This petition has been filed to quash the proceeding in S.C. No.204 of 2019 on the file of the learned Assistant Sessions Judge/Sub Court, Sankari, thereby taken cognizance for the offences under Sections 379 and 304(ii) of IPC and Section 180 of the Motor Vehicle Act, as against the petitioner.

2. The learned counsel appearing for the petitioner would submit that the petitioner is a sole accused. On the complaint lodged by the second respondent, the first respondent registered a case in Crime No.476 of 2018 for the offences under Sections 379, 109 and 304(ii) of IPC and Section 180 of the Motor Vehicles Act, 1988, alleging that the petitioner is being a contractor had entrusted his tractor to the deceased to commit theft of sand from the river Sarabanga. The deceased drove the tractor without any valid licence and fell into a pit and died on the spot. Further alleged that the petitioner being the owner of the tractor had engaged the service of the deceased for attempting to commit theft of sand and thereby he has been held responsible for the death of the deceased.

2.1. He further submitted that even according to the case of the prosecution, the petitioner is the owner of the vehicle which was involved in the accident. The deceased is being a driver of the said tractor, he had taken the tractor towards the river Sarabanga. Even according to the case of the prosecution, he attempted to commit the theft of sand from the river Sarabanga. When the deceased was drove the tractor, he met with an accident and died. Therefore no offence is made out as against the petitioner. He further submitted that the deceased was aged about 18 years at the time of the accident and he was not a minor on the date of accident. Therefore, the offence is not made out as against the petitioner as alleged by the prosecution. To attract the offence under Section 304 (ii) of IPC, there is absolutely no prima facie made out as against the petitioner, since the petitioner absolutely had no intention or knowledge to cause death. Further no evidence to show that the petitioner only instructed the deceased to take the tractor for committing the theft river sand. Further the petitioner never abetted or instigated the deceased to end his life by committing the offence. To constitute abetment, the intention and involvement of the accused to aid or instigate the act is imperative. Therefore there is absolutely no offence is made out.

2.2. Further he submitted that there is absolutely no ingredients to attract the offence under Section 379 of IPC. Even according to the case of the prosecution, the offending vehicle was not loaded with river sand. Further while the deceased was proceeding to the river, he met with an accident, as such there is no essential ingredients of theft, as such the offence under Section 379 of IPC is not made out as against the petitioner. Therefore the entire proceedings is liable to be quashed and sought for quashment of the entire proceedings.

3. The learned Additional Public Prosecutor appearing for the first respondent Police submitted that the petitioner is the sole accused and he is the owner of the tractor. He further submitted that the petitioner is a government

contractor and he did illegal mining of sand from the Sarabanga river running nearby house for his contract work. The petitioner has often ask the deceased to drive his tractor and to do illegal mining of sand from Sarabanga river bounds. But the defacto complainant refused to send his son to drive the tractor, since the deceased not even completed 18 years and not even had license. Even then, the petitioner abetted him to commit the offence and due to the action of the petitioner, her son attempted to commit the theft of river sand and also died. Only on his instruction, the deceased had taken the tractor to the bounds of Sarabanga river to commit the offence of illegal mining of river sand. When the deceased went to Sarabanga river to commit theft of sand, he met with an accident and died. Therefore, there are specific allegations as against the petitioner to attract the offences under Sections 379 and 304(ii) of IPC and Section 180 of the Motor Vehicles Act. Therefore, he sought for dismissal of the quash petition.

4. Heard Mr.N.Manoharan, learned counsel appearing for the petitioner, and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent police. No one is appeared on behalf of the second respondent.

5. The petitioner is the sole accused and charged for the offences under Section 379 and 304(ii) of IPC and Section 180 of the Motor Vehicles Act, 1988. The case of the prosecution is that the petitioner is the owner of the tractor bearing No.TN 29 AV 2900 and the said tractor was taken by the deceased on the instruction given by the petitioner to commit the offence of illegal mining from Sarabanga river bounds. Accordingly on 18.11.2018 at about 06.15 p.m., the deceased while had taken the tractor to the Sarabanga river, he met with an accident and died. Now it has to see whether the offences are made out as against the petitioner or not.

6. Even according to the prosecution, while the deceased was proceeding to the bounds of Sarabanga river, he met with an accident and died. Therefore, while the deceased was proceeded to Sarabanga river, the accident took place and no sand was found in the tractor and he did not commit any offence to attract the offence under Section 379 of IPC. Therefore, there is no question of abetment to attract the offence under Section 379 of IPC. In respect of offence under Section 304(ii) of IPC, the petitioner never handed over the tractor to the deceased to commit the offence of illegal mining. Further he had also no knowledge about the act committed by the deceased. Without the knowledge of the petitioner herein, the deceased had taken the tractor and met with an accident and died. Except the ownership of the vehicle, which was involved in the accident, the petitioner is nothing to do with the accident. Further the petitioner has no previous case in respect of illegal mining. Therefore, the

offence under Section 304(ii) of IPC is not at all attracted as against the petitioner. Therefore the entire proceedings is nothing but clear abuse of process of law, as such the petitioner need not go for the ordeal of trial.

7. In view of the above discussion, this Criminal Original Petition is allowed and the proceeding in S.C.No.204 of 2019 on the file of the learned Assistant Sessions Judge/Sub Court, Sankari, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rts
To

1. The Assistant Sessions Judge
Sub Court, Sankari,
2. The Inspector of Police,
Edappadi Police Station,
Salem District.
3. The Public Prosecutor,
Madras High Court,
Chennai.

+lcc to Mr.N.Manokaran , Advocate SR.No. 25795

CRL.O.P.No.3952 of 2020 and
Crl.MP.Nos. 2290 & 2291 of 2020

A.SK(26/08/2020)

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