

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2020

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THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

CRL.O.P.No.8427 of 2017
and
Crl.M.P.No.6029 of 2017

Balamurali Krishnan

.....Petitioner

Vs.

1.State Rep.by Inspector of Police
Katpadi Police Station
Crime No.159/2017 dated 13.04.2017.

2.Vijay

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the case in Crime No.159/2017 pending on the file of Katpadi Police Station, Vellore and to quash the same.

For Petitioner : Mr.Karthick
Senior Counsel

For Respondent : Mr.C.Ragavan for R1
Government Advocate (Crl.Side)

For R2 : No appearance

ORDER

This petition has been filed by the accused No.2 to quash the First Information Report in Cr.No.159/2017 on the file of the first respondent.

2. Though private notice which was sent to the second respondent by RPAD was served and his name also printed in the cause-list, the second respondent has not appeared either in person or through counsel. Hence, after hearing the arguments of

Mr.Karthick, the learned Senior Counsel for the petitioner and Mr.C.Ragavan, learned Government Advocate (Crl.Side) for the first respondent and on perusing the materials produced before this Court, the following order is being passed in this petition.

3. The case of the prosecution is that on 13.04.2017 during laying of the portico roof slab of the petitioner's building, the centering caved in which 12 persons sustained injuries and 1 person succumbed to his injuries. The second respondent had lodged a complaint before the first respondent stating that he was doing molding work at the time of laying concrete for the portico roof slab and the said portico collapsed and few persons sustained injuries and one person died, that the said building belongs to the petitioner herein and the contractor is accused No.12 and that both of them are liable to be punished. Based on the said complaint, the first respondent has registered an FIR in Cr.No.159 of 2017 under Sections 304(ii) and 308 IPC.

4. The learned Senior Counsel for the petitioner has submitted that even as per the First Information Report, the petitioner was not physically present at the place of occurrence. He further submitted that the second respondent has categorically admitted in his complaint that the accused No.1 was the contractor and only under him, he was working and therefore, the petitioner cannot be prosecuted for the alleged offences.

5. In support of the aforesaid contentions, the learned Senior Counsel has relied upon the following decisions:-

- 1) Geetha Ramesh and Ors Vs. Sub-Inspector of Police, Udagamandalam, 2010 CRI.J.762.
- 2) Dr.Jeppiar & anr. Vs. State of Tamil Nadu rep by its Inspector of Police and another, 2013-1-L.W.(Crl.) 45.
- 3) ATB Bose Vs. State, by Inspector of Police, Triplicane, 2014(3) MWN (Cr.) 544.

6. Per contra, the learned Government Advocate (Crl.Side) who is appearing for the first respondent has submitted that in the First Information Report, it is stated that the laying of concrete was done only in the petitioner's portico and in such a case, the petitioner should have taken precautionary measures to prevent the collapsing of the said roof of the portico. He further submitted that the reports submitted by the Executive Engineer and the Superintending Engineer of PWD would clearly show that failure of frame work is the reason for sudden collapse of structures while concrete is being laid. He further submitted that since the wet weight of concrete is much more than its dry weight adequate number of props of required size should be provided carefully. Further, the props should be

supported on firm and hard surface or on plain lean concrete after consolidating the soil. Props resting on improperly consolidated soil might have yielded during concreting resulting in the collapse of portico. He further submitted that the burden is upon the petitioner to show that he has taken precautionary measures to prevent the collapsing of the said portico and therefore, he prayed to allow the first respondent to complete the investigation and to file a final report.

7. In the First Information Report, the second respondent has clearly stated that he has worked under the contractor (A1) nowhere he has stated that he worked under the correspondent of the said school (A2). Further he has not stated that at the time of laying concrete in the roof of the portico the petitioner herein was also present and only on his supervision, the said concrete laying work was done.

8. In Geetha Ramesh and Ors. Vs. Sub-Inspector of Police, Udagamandalam, (cited supra), this Court in para No.8 has held as follows:-

"9. It is not in dispute that the petitioners were not present in the place of occurrence when the accident took place. It is not the case of the prosecution that either the contractor (A1) or labour sub-contractor (A2) or the workers were under the direct supervision of any one of the petitioners at the time of accident. It is also not the definite case of the prosecution that the petitioners prescribed the dimensions of the earth to be excavated. On the other hand, it is the specific contention of the petitioners that after the purchase of land in the names of the first and second petitioners, the contractor (A1) was entrusted with the job of getting for the building plan from the competent authority for constructing a building therein; that the contractor (A1) informed the petitioners that no permission need be obtained for construction of a retaining wall and that the contractor (A1) himself started doing the earth work engaging the labour sub-contractor (A2). It is the contention of the petitioners that, if at all there was any negligence which lead to the unfortunate accident, the same could be attributed to the contractor and sub-contractor alone and the petitioners cannot be held liable under the criminal law vicariously."

9. In Dr.Jeppiar & anr. Vs. State of Tamil Nadu rep.by its Inspector of Police and others, (cited supra), this Court in para No.19 has held as follows:-

"19. In the instant case, there is no materials even prima facie to show that the petitioners participated in any manner in the construction of alleged crime they can be prosecuted for the alleged offence committed by the Trust. In this case the petitioners are only trustees and the trustees alone. Therefore, I am of the view that the vicarious liability against the petitioners cannot be maintainable in law."

10. In *ATB Bose Vs. State*, by Inspector of Police, Triplicane, Chennai, (cited supra) in this Court in para Nos.15 and 16 has held as follows:-

"15. Here, in this case, the second respondent would submit that the act of the petitioner in allowing the deceased to go near the swimming pool without life jacket attributes knowledge on the part of the petitioner that death is likely. If that is so, question of prosecuting the petitioner under Section 304(A) I.P.C., does not arise at all. But, the learned Counsel for the petitioner would submit that what is lacking in this case, so far as the petitioner is concerned, is the fundamental requirement of causing death by the act of the accused. The so called allowing the deceased to go near the swimming pool without life jacket, according to the learned Senior Counsel is not the direct or proximate cause for the death of the deceased. He would further add that if the act of the accused cannot be even the remote cause for the death of the deceased. Thus, according to him, the fundamental requirement of "causing death" by an act on the part of the petitioner is completely lacking.

16. I fully concur with the said submission of the learned Counsel for the petitioner. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in *Suleman Rahiman Mulani and another v. State of Maharashtra* (cited supra) upon which, the learned Senior Counsel has placed reliance. The petitioner therein was the owner of the Jeep which met with an accident killing a person. The Driver was prosecuted for offence under Section 304(A) I.P.C. The Driver had no valid driving licence to drive the vehicle. Therefore, the owner of the vehicle was also prosecuted for offence under Section 304(A) I.P.C. While dealing with the said case, the Hon'ble Supreme Court has held as follows:-

".....What S.304-A requires is causing of death by doing any rash or negligent act and this means that death must be the direct or proximate result of the rash or negligent act. On the basis of the facts of that case, this Court held that the direct and proximate

cause of the fire which resulted in seven deaths was the act of one of the workmen in pouring the turpentine too early and not the appellant's act in allowing the burners to burn in the particular room. In the present case, we do not know what was the proximate cause of the accident. We cannot rule out the possibility of the accident having been caused due to the fault of the deceased. The question whether appellant No.1 was proficient in driving a jeep or does conclude the issue. His proficiency in driving might furnish a defence, which a learner could not have, but the absence of proficiency did not make him guilty. The only question was whether, in point of fact he was not competent to drive and his incompetence was the cause of death of the person concerned."

11. In this case also, as already pointed out that it is not the case of the prosecution that the petitioner herein was present at the time of occurrence. It is also not the case of the prosecution that the said concrete laying work was done under the direct supervision of the petitioner herein. Under the said circumstances, in view of the aforesaid decisions, the vicarious liability cannot be fastened against the petitioner.

12. It appears that since the petitioner is the correspondent of the concerned School, he has been arrayed as accused in this case. There is no material to implicate the petitioner in the aforesaid case. Therefore, this Court is of the view that even if the allegations made in the First Information Report are taken as true on the face value, the petitioner cannot be convicted for the offence under Sections 304(2) and 308 IPC. Hence, this Court is inclined to quash the First Information Report, insofar as the petitioner herein is concerned.

13. In the result, this petition is allowed. The First Information Report in Cr.No.159/2017 on the file of the first respondent is quashed against the petitioner alone. The first respondent is directed to investigate the matter against the accused No.1 and to file a final report at an early date uninfluenced by the observations made by this Court in this order. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS-IV)

// True Copy//

Sub Assistant Registrar

dna

To

1.The Inspector of Police
Katpadi Police Station
Crime No.159/2017
dated 13.04.2017.

2.The Additional Public Prosecutor,
High Court, Madras.

+2 CCS M/s.Law Firm, Advocate, SR.No.17268.

CRL.O.P.No.8427 of 2017
and
Crl.M.P.No.6029 of 2017

RR(CO)
CSR: 10.03.2020

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