



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **14.08.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.O.P.[MD]No.6003 of 2020

and

Crl.M.P(MD) No.3203 of 2020

WEB COPY

K.Gomathi ..Petitioner/Defacto Complainant
Vs.

1.The Superintendent of Police
District Police Office,
Theni District.

2.The Inspector of Police
Bodinayakanur Police Station,
Bodinayakanur
Theni District.

..Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to direct the first respondent for ordering further investigation in C.C.No.344 of 2018 on the file of the learned Judicial Magistrate, Bodinayakanur, Theni District, after transferring the file from the hands of the second respondent to any other competent Investigation Agency

For Petitioners : Mr.J.Selvin Rajesh

For Respondents : Mr.S.Chandrasekar

Additional Public Prosecutor

O R D E R

This petition has been filed seeking direction to the first respondent for ordering further investigation in C.C.No.344 of 2018 on the file of the learned Judicial Magistrate, Bodinayakanur, Theni District, after transferring the file from the hands of the second respondent to any other competent Officer.

2.The case of the petitioner is that on 16.06.2017 at about 7.15 p.m. at Bodi to Thevaram Main road, near Krishnanagar, a bike bearing Registration No.TN 07 CC 3321, dashed against the petitioner's husband Mr.Krishnarajan and thereby, the petitioner's husband sustained multiple injuries. Immediately after the occurrence, the petitioner herein lodged a complaint before the second respondent police and on receipt of the same, a case has been registered in Crime No.392 of 2017 under Sections 279 and 337 of IPC. After registration of the said case, though necessary treatment was given to the petitioner's husband, he was died in the hospital and thereafter, on receipt of the death information, the



second respondent altered the section of law as 304(A) of IPC on the same day itself.

3.During such time, the petitioner herein had filed an application under Section 482 of Cr.P.C in Crl.O.P.(MD) No.10162 of 2017, in which, he prays to transfer the investigation in Crime No.392 of 2017. When at the time, the said petition is came up for hearing, the second respondent had produced one Premkumar before this Court and submitted that he is the owner of the vehicle and at the time of accident his friend one Shanmuga Prasath, drove the vehicle without having any valid licence. Believing the same, the Crl.O.P(MD) No.10162 of 2017 filed by the petitioner was closed. Further, the second respondent after completing the investigation, filed a charge-sheet on 25.07.2017 before the learned Judicial Magistrate, Bodinayakanur, Theni District. However, while at the time of disposing the Crl.O.P.(MD) No.10162 of 2017, this Court directed the second respondent to obtain a statement from Premkumar. But instead of obeying the directions given by this Court, the second respondent herein filed a charge sheet without obtaining a statement from Premkumar, for the reasons best known to him. In this regard, the inaction on the part of the second respondent creates confusion in the minds of the petitioner in claiming compensation for the death of her husband. Though the above referred Premkumar has stated before this Court that he is the owner of the offending vehicle, the particulars available in the Registration Certificate reveals the fact that one M.Karthik, S/o.Mani, No.12, Gangai Nagar 1st Main Road, Velacherry, Chennai, is the registered owner to the said vehicle. Therefore, since there was a large contradictions available in the certificate issued by the Motor Vehicle Inspector and also about the ownership of the vehicle, it is necessary to conduct further investigation, specifically after changing the Investigation Officer.

4.The learned Additional Public Prosecutor appearing on behalf of the respondent police, on instructions, would submit that only as per the available records, the second respondent police came to the conclusion that one Premkumar is the owner of the vehicle and one Shanmuga Prasath had driven the vehicle at the time of accident. Though it was stated in the report given by the Motor Vehicle Inspector that one Shanmuga Prasath is owner cum driver at the time of accident, while at the time of disposing the Crl.OP.(MD)No.10162 of 2017, this Court clearly held that one Mr.Premkumar is the owner of the vehicle. Therefore, the direction for further investigation not at all required in C.C.No.344 of 2018, pending on the file of the learned Judicial Magistrate, Bodinayakanur, Theni District.

5.Heard, the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent police.



6. Upon considering the arguments advanced by either side, it is not in dispute that despite the petition mentioned case registered in Crime No.392 of 2017 under Sections 279, 337 of IPC, after completing the investigation final report has been filed for the offence punishable under Section 279, 304(A) of IPC. Further, based on the final report filed by the second respondent police, the learned Judicial Magistrate, Bodinayakanur, took cognizance and number the final report as C.C.No.344 of 2018.

7. In the said circumstances, it is relevant and necessary to decide firstly, as to whether the order for further investigation has to be issued, secondly, under Section 2(30) of Motor Vehicle Act, 1988, who is the competent person liable to pay compensation.

8. To resolve the first question, it is necessary to see the judgment of our Hon'ble Apex Court in **Athul Rao Vs. State of Karnataka** reported in **2018(1) L.W. (Crl.) 287**, wherein, our Hon'ble Apex Court has held as follows :

".... After analysing earlier decisions on the point, it has been held that neither the Magistrate suo motu nor on an application filed by the complainant / informant can direct further investigation. Further investigation in a given case may be ordered only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of adjudication in hand.

The respondent No. 2 is not the complainant. The complaint in question was instituted by the mother of respondent no.2. She was not the applicant. In any case, at the instance of respondent no.2, it was not open to the Court to direct further investigation as the Trial Court had already framed charges and taken cognizance of the case against the appellant who appeared before it in the said proceedings."

Therefore, the judgment of our Hon'ble Apex Court is very clear as only the Investigation Officer is having the power to file a petition for further investigation. In this case, as already observed, though the name of the driver and the owner varies from the document which have been created at the time of accident and at the time of registration of the vehicle, the said contradiction was clarified by this Court at the time of disposing the Crl.O.P(MD) No.10162 of 2017. However, as per the order passed by this Court, one Premkumar is the owner of the vehicle. In this regard, on going through the Judgment of **Naveen Kumar Vs. Vijay Kumar and others**,

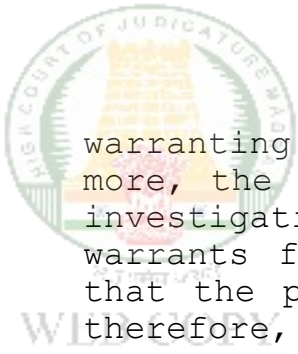


reported in **Civil Appeal No.1427 of 2018 (Manu/SC/0077/2018)**, our Hon'ble Apex Court has held as follows :

"(i) The definition of the expression 'owner' in Section 2(30), it is the person in whose name the motor vehicle stands registered who, for the purposed of the Act, would be treated as the 'owner'. Where a motor vehicle is subject to an agreement of hire purchase, lease or hypothecation, the person in possession of the vehicle under the agreement is treated as the owner. In a situation where the registered owner had purported to transfer the vehicle but continues to be reflected in the records of the registering authority as the owner of the vehicle, he would not stand absolved of liability. The principle underlying the provisions of Section 2(30) is that the victim of a motor accident or, in the case of a death, the legal heirs of the deceased victim should not be left in a state of uncertainty. A claimant for compensation ought not to be burdened with following a trail of successive transfers, which are not registered with the registering authority. The present Court noted that in the present case, the First respondent was the owner of the vehicle involved in the accident within the meaning of Section 2(30). The liability to pay compensation stands fastened upon him."

Here it is a case that the Registration Certificate Book of the offending vehicle was recovered by the Investigating Agency, during the time of investigation. As per the Registration Certificate, one M.Karthik, S/o.Mani, No.12, Gangai Nagar 1st Main Road, Velacherry, Chennai, is the owner of the vehicle.

9.Applying the above referred decision, it is necessary to held that one M.Karthik, S/o.Mani, No.12, Gangai Nagar 1st Main Road, Velacherry, Chennai, being a registered owner at the time of accident, he is liable to pay compensation to the victim in a Motor Vehicle Accident Case. Though it was alleged as before three days from the date of accident, the vehicle was sold to some other person, without placing its relevant materials and also until the name has been changed in the Registration Certificate by the Registration Authority, we cannot come to the conclusion that the person who purchased the vehicle before the accident become the owner of the vehicle. So in all aspects, now the contradictions elucidated by the petitioner does not create a circumstances



warranting further investigation on the material evidence. Further more, the Investigation Officer is not asking the relief of further investigation based on the detection of material evidence which warrants further investigation. Accordingly, I am of the opinion that the petition filed by the petitioner is devoid of merits and therefore, this petition is liable to be dismissed.

10. In the result, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (ADII)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

- 1.The Judicial Magistrate,
Bodinayakkanur,
Theni District.
- 2.The Superintendent of Police
District Police Office,
Theni District.
- 3.The Inspector of Police
Bodinayakanur Police Station,
Bodinayakanur
Theni District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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