



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.11.2019

PRONOUNCED ON : 25.02.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.15229 of 2015 and

M.P.(MD)Nos.1 and 2 of 2015

1. G.Muralidhar

2. Karthik

3. Ramasamy

... Petitioners/Accused Nos.1,2&4

Vs.

1. The State rep. by,
The Inspector of Police,
Kulathur police station,
Thoothukudi.

(Crime No.113 of 2014)

... 1st Respondent/Complainant

2. Anthonisamy

... 2nd Respondent/Defacto complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records relating to the charge sheet in P.R.C.No.22 of 2015 on the file of the Judicial Magistrate Court, Vilathikulam and quash the same as illegal.

For Petitioners

: Mr.Ajmal Khan,
for M/s.Ajmal Associates.

For R-1

: Mr.A.Robinson,
Government Advocate(Crl. Side).

For R-2

: M/s.Yasmin Begum.

O R D E R

This criminal original petition has been filed to quash the proceedings in P.R.C.No.22 of 2015 on the file of the Judicial Magistrate, Vilathikulam.

2. The case on hand is a very tragic one. On 13.08.2014, there was a temple festival at Vedanatham Village. To take part in the said festival, the relatives of the defact complainant had come. The children, namely, Muthazhagi, Isakkiyammal, Adhisivan and Moses were playing in the land belonging to one Bhuvaneswari. The said land had been leased out for parking vehicles. Since the children were playing the game of hide and seek, they had got into a parked car bearing registration No.TN 69-L-1967(Hyundai Accent). The doors



of the car got locked automatically and the children did not know to open the same. They suffered asphyxiation and died due to suffocation. The children had died around 01.15 p.m. on the said date. The car in question belongs to one Gunasekar. He had purchased it in the year 2007, after availing loan from the Bazaar Branch of State Bank of India, Thoothukudi. He had availed the loan to the tune of Rs.7,25,000/-. Since the loan amount was not repaid properly, the car was repossessed. After repossession, the car was parked in the land belonging to the said Bhuvaneshwari.

3. After the death of the children were noticed, Crime No.113 of 2014 was registered on the file of Kulathur police station for the offences under Section 174 of Cr.P.C. Alteration report was later filed and the offences under Sections 304(Part-II) of I.P.C. were added. The case was investigated and final report came to be filed before the Judicial Magistrate, Vilathikulam. The learned Judicial Magistrate took cognizance of the offence under Section 304 (Part-II) of I.P.C. At this stage, three of the accused moved this Court for quashing the impugned proceedings.

4. Heard the learned senior counsel appearing for the petitioner and the learned Government Advocate(Crl. Side) appearing for the first respondent and the learned counsel appearing for the defacto complainant.

5. The learned senior counsel at the outset submitted that irrespective of the outcome of this criminal original petition, a sum of Rs.1,00,000/- will be paid by the appellants to each of the parents of the deceased children.

6. The appellants and the parents of the deceased children appeared before me and admitted the receipt of a sum of Rs.1,00,000/- each.

7. The learned senior counsel pointed out that even if the entire case of the prosecution is taken as true, still the offences set out against them are not really attracted.

8. The petitioners/accused in this case of course would not have thought that such a tragic accident will ever happen. Accused No.1 Muralidhar and accused No.2 Karthick are recovery agents who repossessed the vehicle on the instructions of the State Bank of India. Accused Nos.3 and 4, namely, Anandh and Ramasamy are supervisors of the parking yard in question. Accused No.5 Shankarrajan is the Bank Manager.

9. It is not in dispute that the place in question is a private land of Bhuvaneshwari. It is not a public land. In any event, the petitioners cannot be imputed with any intention. The offence under Section 304(Part-II) of I.P.C. is patently not made out. The offence under Section 304(A) of I.P.C. will be



attracted only if the accused can be imputed with the element of rashness or negligence.

10. I am of the view that both the ingredients are absent in this case. Therefore, continuance of the impugned prosecution will only be an abuse of legal process. Therefore, the impugned prosecution stands quashed. The criminal original petition stands allowed.

11. The benefit of this order will enure in favour of the non-petitioning accused also. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

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Sub Assistant Registrar(CS)

Pmu

To:

1. The Judicial Magistrate,
Vilathikulam.
2. The Inspector of Police,
Kulathur police station,
Thoothukudi.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+4 CC to M/s.P.YASMIN BEGAM, Advocate (SR-8313[F] dated 26/02/2020)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-8346[F] dated 26/02/2020)

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25.02.2020

MK (13.03.2020) 3P 9C