

IN THE HIGH COURT OF JUDICATURE AT MADRAS
[Reserved on : 05.03.2021]
[Pronounced on : 29.03.2021]
CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA
Crl.O.P.No.4130 of 2014
and
M.P.Nos.1 to 3 of 2014

1.K.Jayaraman
S/o.R.Krishnamurthy
Branch Manager
M/s.Seaworld Shipping and Logistics Pvt. Ltd.
Parrys, Chennai

2.Chittibabu
S/o.S.Selvaraj
Operation Assistant
M/s.Seaworld Shipping and Logistics Pvt. Ltd.
Parrys, Chennai

3.Sanjay Sharad Dalvi
S/o.Sharad Shrikrishnan Nath Dalvi
Vice President
M/s.Seaworld Shipping and Logistics Pvt. Ltd.
No.602, Dheeraj Sagar, New Link Road
Malad (West), Mumbai 400 064
... Petitioners / A11 to A13

Vs.

1.State by:
Assistant Commissioner of Police
J5, Shastri Nagar Police Station
Adyar Range
Chennai 600 020

2.Somi Reddy Kotilinga Easwara Reddy
S/o.Somi Reddy Balakoti Reddy
Prasant Nagar, Lansen House, Hyderabad

(R2 is suomotu impleaded as per order in
Crl.O.P.No.4130 of 2014 dt.15.09.2020)

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for the records in P.R.C.No.135 of 2013 from the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai, in Crime No.4592 of 2012 on the file of the respondent and to quash the same.

For Petitioner : Mr.R.Shunmugasundaram
Senior Counsel

For Respondents : Mr.C.Iyyappa Raj
Additional Public Prosecutor
for R1

Mr.R.Sathish Kumar
Legal Aid counsel for R2

O R D E R

Challenging the proceedings in P.R.C.No.135 of 2013 on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai, the present petition has been filed.

2.The brief background leading to filing of charge sheet is as follows: On 30.10.2017, the Port of Madras raised a signal for a cyclonic storm named "Nilam" with Signal-7 signifying great danger and thereby directed all vessels in the anchorage to move to open sea. On 31.10.2017 at about 10.15 hrs vessel Pratibha Cauvery started to drag on the starboard anchorage. Though the captain of the ship had ordered to lower the shackles and move the vessel full ahead with all its engines operated, the vessel proceeded towards the land shore. When the vessel was close to the shore, the captain ordered the crew to abandon the ship. 22 crew members boarded a life boat. But however, the life boat capsized and six of the crew members therein drowned and died. In connection with this incident, a complaint came to be registered in Cr.No.4592 of 2012 on the file of the first respondent herein which culminated into framing of the impugned charge sheet for offence u/s.304(ii) IPC wherein the petitioners herein have been arrayed as A11, A12 and A13.

3.The case of the prosecution is as follows: On 25.09.2012, the ship named "MT. Pratibha Cauvery" arrived at Chennai Port from Budge Budge Port, Kolkatta under IOC Charter for unloading light diesel oil. After discharging the cargo, the vessel was directed by the Port Authorities at Chennai to move to the outer anchorage and wait for further orders from the Authorities of the Shipping Department. On 08.10.2012, the vessel came to inner anchorage for receiving provisions and stores and remained in the inner anchorage till 11.10.2012. On 28.10.2012, the vessel became disabled since the bunker Marine Gas Oil (MGO) was critically lower. On 30.10.2012, the Port of Madras raised a signal for cyclonic storm and requested all vessels to move out of the port and go to outer anchorage. Since the vessel was dragging her anchorage, the captain had tried for tug assistance for taking the vessel outside the port limit. However, the vessel drifted to 5 Nautical mile distance from the land and got

grounded. The captain had sought for assistance of boat for towing the ship from Chennai VTS. Since no boat was sent for about 35 minutes, he had ordered for lowering the life boat at 15.00 hrs, with the knowledge that the life boat engine was not working for the past three months. The captain ordered the crew members to abandon the ship and 22 crew members boarded the life boat and when the life boat was lowered to the water level, it capsized and out of the 22 crew members, 16 crew members were rescued and the remaining six got drowned in the sea and died. On receipt of the complaint, the first respondent herein initially registered a case in Crime No.4592 of 2012 under Section 174 Cr.P.C., on 31.10.2012 at 23.50 hrs. Since the preliminary investigation revealed the case to be one of culpable homicide not amounting to murder causing the death of crew members due to the deliberate failure of the employees of the A1's Company and others, the respondent herein had altered the Section from 174 Cr.P.C., to Section 304(2) of IPC on 26.11.2012.

4.The petitioners herein have been arrayed as A11, A12, A13 respectively. A1 in this case is the Shipping Company. A2 to A7 are the Directors of the Shipping Company. A8 & A9 are the "Designated Persons Ashore" of the Company. A10 is the Technical Superintendent of the Shipping Company. The petitioners are the employees of M/s.Seaworld Shipping and Logistics Pvt. Ltd., Steamer Agents of A1 Company at Chennai and A14 is the Master of the vessel. The charge against the petitioners is that A11 / Jayaraman is the Chennai Branch Manager of M/s.Seaworld Shipping and Logistics Pvt. Limited., and he is also the Power of Attorney and local agent of A1 viz. M/s.Pratibha Shipping Company Limited., at Chennai and whose duty is to fulfil the requirements needed by the Ship Captain, inclusive of food, water and fuel and signage of the crew members. A12 Chittibabu is the Operation Assistant of A11 and working with M/s.Seaworld Shipping and Logistricts Pvt. Limited., at Chennai Branch and whose duty is to fulfil the requests and requirement of the Master of Ship and A13 is the Vice President of M/s.Seaworld Shipping and Logistics Pvt. Limited., at Mumbai and that the allegation against A11 & A12 is that they are criminally liable for their inaction by not providing assistance to the Master of the vessel either to provide fuel, food and fresh water and their inaction to take appropriate steps regarding signage of the crew members at the time of crisis during the Nilam Cyclone on 31.10.2012 in spite of repeated email received from the Master of the Vessel to take arrangement to signage of the crew members expecting the Cyclone. Further, A11 & A12 were instructed by the port authorities on 28.10.2012 about the inability of the ship and to take necessary steps in this regard and thereby A11, A12 & A13 who are the local agents wilfully omitted to initiate steps to

save the lives of the crew members of the Vessel MV Pratibha Cauvery during the Nilam Cyclone and failed to intimate their inability to the port authorities and hence the charge for offence u/s.304(ii) IPC (6 counts).

5.Mr.R.Shunmugasundaram, learned Senior counsel would submit that even taking the allegations and overt act attributed to the petitioners viz. A1 to A13 to be true, they do not make out the case against the petitioners for the offence u/s.304(ii) IPC. Admittedly, it is a case where the death of the crew members was on account of a natural calamity which is an Act of God. The petitioners who are the employees of the Steamer Agents of A1 (Owners of the Vessel) cannot even remotely be held responsible and charged for the offence since the accident had happened when the ship had grounded and when the crew members had abandoned the ship and attempted to reach shore, by boarding the life boat. Unfortunately the life boat had capsized and out of the 22 crew members 16 were rescued and 6 crew members had drowned. Just because the petitioners are the employees of the steamer agents and having failed to fulfil certain requirements needed by the Captain of the Ship, they cannot be vicariously held liable along with the other accused for offence u/s.304(ii) IPC. The petitioners, cannot be mulcted with criminal liability when there was no proximity or direct involvement of the petitioners in the offence. The petitioners can neither be collectively nor vicariously held responsible for the acts of the other persons.

6.Further, in order to prove the charges against a person for having committed the offence of culpable homicide, the prosecution should prove that the accused caused the death by doing an act with the intention to cause death or with the intention of causing such bodily injury which is likely to cause death or with the knowledge that by such act the death is likely to be caused. There is absolutely no material to the effect that the petitioners committed any act with the intention to cause death or with the knowledge that by such act, death is likely to be caused. Further the act of the petitioners is not the causa causans of the death of the victims and there is absolutely no proximity between the alleged omissions / commissions on the part of the petitioners and the death of the victims.

7.Learned Senior counsel would further submit that even as per the final report, the prosecution has alleged that there was negligence on the part of the Company, Directors, staff members and agents of the ship based on the following lapses;

- (i) insufficient supply of provisions for stores
- (ii) scarcity of drinking water
- (iii) failure to provide electricity in the vessel
- (iv) insufficient supply of Marine Gas Oil (MGO)
- (v) life boat engine was not proper for the past three

months and they were not in working condition.

(vi) salary was not paid for the crew members for more than four months and that the Shipping Company Directors, Staff members and that the Agents had deliberately omitted to take appropriate steps for saving the lives of the crew members in the Ship.

8. Learned Senior Counsel would further submit that commission of offence of culpable homicide would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. In this case mere allegations of non supplying of essentials and non performing of services in a contract cannot be brought within the ambit of positive action. Taking into consideration the materials on evidence, statements attributing the offences of the petitioners are conspicuously absent and thereby the proceedings against the petitioners are nothing but mere abuse of process of law. He would further submit that in this case A8 a co-accused who had been similarly placed as that of the petitioners had approached this Court in CrI.O.P.No.14494 of 2014 and this Court finding that the incident had happened due to the cyclonic storm and that the vessel had got grounded when the vessel was within 15 meters from the shore and that the captain had ordered the crew to abandon the ship and when 25 crew members boarded the life boat, the life boat had capsized and six (6) crew members drowned and died had quashed the proceedings in respect of A8.

9. He would further submit that this Court in CrI.O.P.No.14494 of 2014 filed by A8 has held that the omissions pointed out by the prosecution in the final report is factually incorrect. This Court had categorically held that the entire incident was due to the cyclonic storm and even as per the prosecution case, the death occurred due to the capsizing of the life boats and this Court has also found that when a huge vessel of such magnitude itself cannot hold ground in spite of the starboard anchorage owing to the heavy storm, the capsizing of the life boat was understandably imminent. This Court also had held that it is not a case of the prosecution that the life boat capsized because its engine was not in a working condition and likewise non availability of the fuel alone was not the reason for which the vessel came to be stranded in the outer anchorage. This Court had also concluded that there was no omission, which could be concluded as an excess and that either the vessel being stranded in the outer anchorage or the capsizing of the life boat can be attributed to the co-accused and as such the offence of "culpable homicide" may not be made out against the particular accused who was similarly placed that of the petitioners. He would reiterate that despite the efforts taken by the fishermen to save the crew members, it could not be done on account of the heavy storm. Further, even as per the

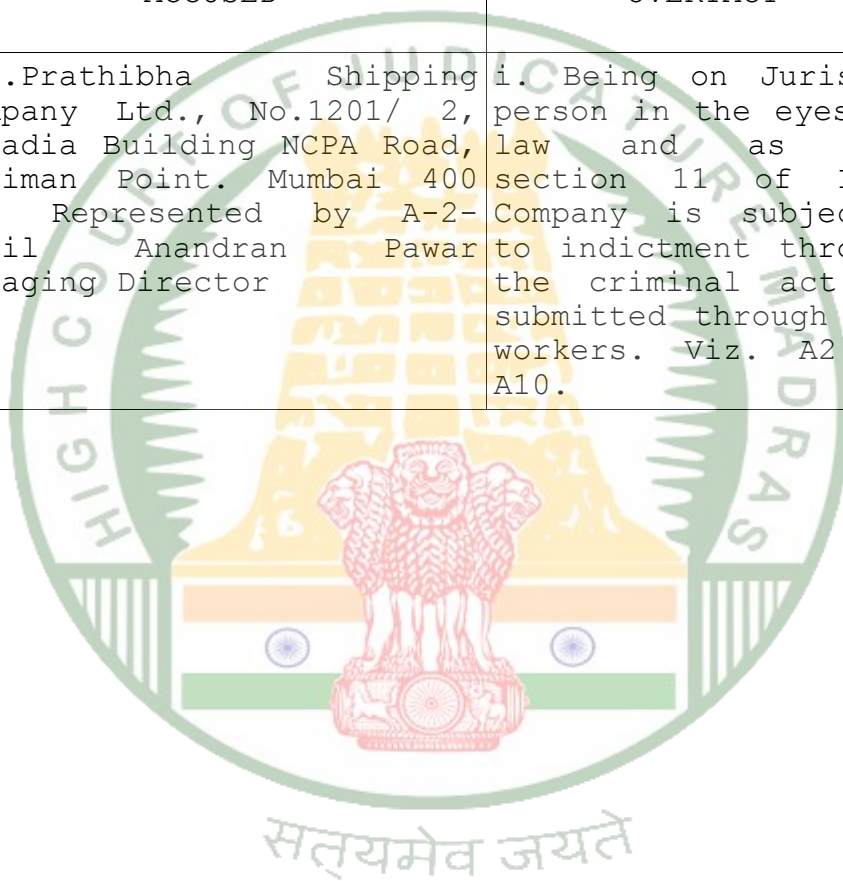
declaration of L.W.41, who is a Dock Master of Chennai Port Trust, the Master of the Ship had declared that he had two tonnes of diesel oil, 350 tonnes of fuel oil on 31.10.2012 when he had tried to pick up his anchor to go out during the cyclone which was totally contrary to the statement that no supplies were made to the vessel. It is also supported by the statement of LW45. Further taking into consideration the statement of LW46, Engineer and Ship Surveyor cum Deputy Director of Technical MMT Department, the negligence could be attributed only to the Master of the vessel who is legally bound to carry out the statutory requirements and further admittedly there was a dispute between the owners of the vessel and the Steamer Agents at Chennai with regard to payments and the petitioners being the employees of the Steamer Agents cannot be vicariously held liable. He would ultimately conclude that taking into consideration the entire materials on record, the criminal liability cannot be fixed on the petitioners. The petitioners are not responsible and they had neither any intention nor knowledge that their acts would result in the occurrence which had happened due to cyclone, which was beyond their control.

10. In support of his contentions, the learned Senior counsel relied upon the judgment of Hon'ble Apex Court in (ShanthiBhai.J.Vaghela & Another V. State of Gujarat & Others), reported in 2012(13) SCC 231. The learned Senior counsel also relied upon the decision of this Court rendered in Crl.O.P.No.14494 of 2014 dated 26.06.2018 (Captain Sunil Kumar Rai V. The Assistant Commissioner of Police) to insist the point that this Court after perusing the materials of the prosecution and the petitioner in Crl.O.P.No.14494 of 2014 had rendered a finding that the case of the prosecution is factually incorrect and that the final report is filed with incorrect allegations for which the petitioners cannot be blamed. The learned Senior counsel would further submit that this Court in respect of A8, who is similarly placed, finding that the charge against him were borne out of incorrect facts had quashed the proceedings in respect of him. In any event, the petitioners' wilful acts or wilful failures allegedly attributed to them cannot be the cause for the death of the victims. The court finding that A8 is not responsible for the non maintenance of the life boat had quashed the proceedings against him.

11. The first respondent had filed a status report. In the status report the averments against the present petitioners is that they along with M/s.Pratibha Shipping Company Ltd., A1 and the authorities concerned failed to take appropriate steps for saving the life of crew members in the Vessel and did the act of not providing fuel resulting in restriction of the movement and to incur the risk of the life of crew members with knowledge of such risk and did not maintain the Vessel in good condition and

the life boat with the knowledge that in the event of life boats were used in crisis in all probability which would cause the death of persons using them, since the engine of the life boat was not working and thus the said accused did the said act with the knowledge of such risk resulting in the death of crew members. Further, since the incident being a maritime casualty the preliminary investigation of the Mercantile Marine Department, Ministry of Shipping, Government of India was conducted and findings were obtained on 30.01.2013 and based on which, the following overtacts were pointed out against the accused including the petitioners:

SL.NO .	ACCUSED	OVERTACT
A1.	M/s.Prathibha Shipping Company Ltd., No.1201/ 2, Arcadia Building NCPA Road, Nariman Point. Mumbai 400 021 Represented by A-2- Sunil Anandran Pawar Managing Director	i. Being on Juristic person in the eyes of law and as per section 11 of IPC, Company is subjected to indictment through the criminal act is submitted through its workers. Viz. A2 to A10.

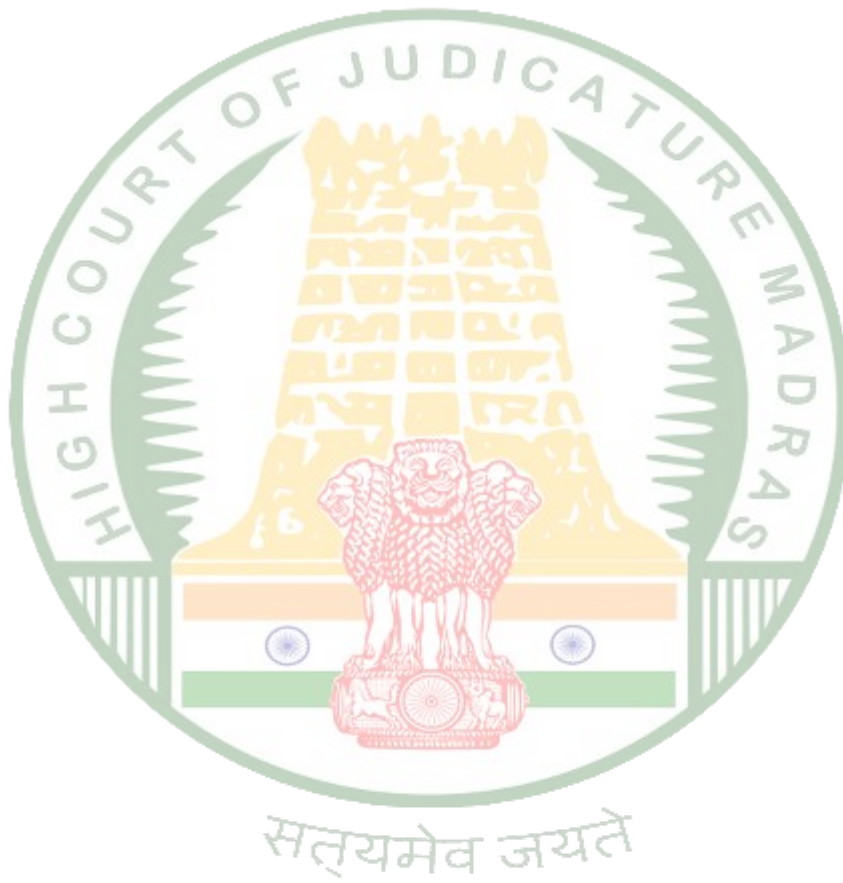


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SL.NO .	ACCUSED	OVERTACT
A2.	Sunil Anandarao Pawar (Managing Director), M/s.Prathibha Shipping Company Ltd., Mumbai	ii. Willfully failed to implement the company's Safety and Environmental Protection Policy which resulted in the death of 6 crew members.
A3.	Madan A.Pawar (Director), M/s.Prathibha Shipping Company Ltd., Mumbai	iii. Willfully failed to provide the essential fuel to run the generators so as to operate the main engines and thus the vessel was declared disabled and later grounded which resulted in the death of 6 crew members.
A4.	Suhas A. Pawar (Director), M/s.Prathibha Shipping Company Ltd., Mumbai	iv. Willfully failed to provide food and water and that made the crews in an unhealthy condition which resulted in the death of 6 crew members.
A5.	Suresh A.Pawar (Director), M/s.Prathibha Shipping Company Ltd., Mumbai	v. Willfully failed to provide spares and repairs of life boat engines and that made the vessel unseaworthy and endangered the life of crew members which resulted in the death of 6 of them.
A6.	Nilkanth B Vidwans (Director / Financial Advisor) M/s.Prathibha Shipping Company Ltd., Mumbai	vi. Willfully failed to replace / repair the essential machineries of the vessel which made the
A7.	Sachin Keshav Chavan, (Director / Chartered Accountant) M/s.Prathibha	

SL.NO .	ACCUSED	OVERTACT
A10.	Mr.Ved Prakash Sharma (Technical Superintendent) M/s.Prathibha Shipping Company Ltd., Mumbai	x. Willfully failed in his duties by not providing spares and repairs of life boat engines resulting to treat the vessel unseaworthy inspite of request made by Master of the Vessel the willful omission accelerated the course of death of he 6 crew members of the time of moving out from the vessel during the Nilam Cyclone which endangered the life of the crew members as the engine of the life boat were not functioning. Willfully failed to performing vessels condition survives, and failed to inspect the vessel and accessories to keep them in good condition. Because of this failure of the technical fault which occurred in the lifeboat resulting the non performance of the engine ultimately endangering the life of the crew members who boarded the same on 31.10.2012.

SL.NO	ACCUSED	OVERTACT
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A11	Jayaraman, Branch Manager, Sea World Shipping and Logistics Pvt. Ltd., Chennai Branch.	(xi) Willfully failed to provide the essential fuel to run the generators so as to operate the main engine and thus the vessel was declared disabled and later grounded which resulted in the death of 6 crew members
A12	Chitti Babu, S/o.Selvarajan, Operation Assistant, M/s.Seaworld Shipping And Logistics Pvt. Ltd., Parrys, Chennai	(xii) Willfully failed to provide food and water and that made the crew in a unhealthy condition which resulted in the death of 6 crew members.
A13	Sanjay Sharad Dalvi, S/o.Sharad Shrikrishna Nath Devi, Vice President, M/s.Seaworld Shipping and Logistics Pvt. Ltd., No.602, Dheeraj Sagar, New Link Road, Malad (West), Mumbai 400 064	(xiii) Willfully failed to provide a boat for signing off the crew members in the distress situation and thus resulted in the death of 6 crew members
A14	Captain Carl Fernandez, S/o.Jaochini Fernandez, Master of the M/T.Prathibha Cauvery Vessel, Residing at No.3-D, 101, CJM, Varca, Margoa, Goa	xiv.Willfully omitted the weather warning report was not shared with the Chief Engineer Tr.Jeevan Prakash of the Prathibha Cauvery Vessel even though the vessel was in cold and black out condition and with low fuel reserve and various serious ongoing issues so as to resolve them. Further, failure to declare the Prathibha Cauvery Vessel as abandoned as soon as it grounded at Chennai Elliots Beach

12.Mr.C.Iyyappa Raj, the learned Additional Public Prosecutor, would submit that the petitioners are A11, A12 & A13 and the petitioners are the employees of the local steamer agent viz. M/s.Seaworld Shipping and Logistics Pvt. Ltd. A11 is the Chennai Branch Manager and he is also the Power of Attorney and the local agent of A1 viz. M/s.Pratibha Shipping Company Limited, which is the owner of the vessel and his duty is to fulfil the requirements needed by the Ship Captain, inclusive of providing food, water and fuel for the ship and assisting the signage of the crew members. A12 is the Operation Assistant of A11, who has to fulfil the requests and requirement of the Master of the Ship, A13 is the Vice President of M/s.Seaworld Shipping and Logistics Pvt. Ltd. They have deliberately failed to provide assistance to the Master of the Vessel and due to their omission / inaction to take appropriate steps of signage of crew members when the crew members were stuck to the vessel during the time of crisis of "Nilam Cyclone" on 31.10.2012 and in spite of repeated e-mails sent by the Master of the Vessel to take steps to arrange for signage of crew members, they did not take action and due to the wilful omission, six crew members have lost their precious lives. He would further submit that due to the deliberate act with knowledge of causing the death of the crew and whether the death of the victims was due to the omission or commission of acts by the petitioners with knowledge or intention could be established only during the trial at the time of letting in evidence and the proceedings cannot be quashed at this stage.

13.Mr.R.Sathish Kumar, the Legal Aid counsel, appearing for the defacto complainant would submit that due to the willful omission of the petitioners in not providing food, fuel and other supplies and failure to arrange for signage of the crew members, the crew members were stuck to the vessel and that they died during the cyclonic storm. If the petitioners had arranged for the signage of the crew members, the crew would have left the ship and such incident would not have happened. He would submit that the trial Court had taken cognizance and found that prima facie case has been made out against the accused persons and at this stage, this Court has to only look into whether from the available materials placed before it, the offence alleged against the accused is made out or not with a view to proceed further in this case. In this case, materials are made out against the accused and thereby the petition cannot be allowed. In support of his submission, he relied upon the judgment of the Hon'ble Apex Court in Amanullah and another V. State of Bihar and Others, reported in (2016) 6 SCC 699.

14.At this juncture, learned Senior Counsel would submit that even taking into consideration the entire materials on

record, there is absolutely no proximity to establish that the death of the crew members of the Vessel was due to the omission on the part of the petitioners herein and in such consideration, no useful purpose would be served in directing the petitioners to face the criminal prosecution for the Act which they are not responsible for. He would submit that the case of the petitioners will fall within clause 3 & 5 of para 102 the decision rendered by the Hon'ble Apex Court in State of Haryana Vs. Bajanlal reported in [1992 (1) SUPP (SCC) 426] and would pray for quashing the proceedings.

15. Heard Mr.R.Shunmugasundaram, learned Senior Counsel, Mr.C.Iyyappa Raj, learned Additional Public Prosecutor appearing for the respondents and Mr.R.Sathish Kumar, learned Legal Aid counsel for the 2nd respondent / defacto complainant. Perused the materials placed on record in consonance with the judgment relied on by the counsels.

16. At this juncture, though it may be lengthy, this Court deems it necessary and relevant to extract the following paragraphs of the judgment of this Court in Crl.O.P.No.14494 of 2014 dated 26.06.2018 wherein this Court had dealt with the facts in detail and pointed out the factual errors in the prosecution case.

"8. I have given careful consideration to the submissions made by the respective counsels.

9. The cyclonic storm Nilam that had a land fall near Mahabalipuram, Tamil Nadu on 31.10.2012 was one of the deadliest tropical cyclone to have directly affected the South India in Chennai's Marina Beach in the recent past. The cyclone largely affected the coastal areas causing huge loss to people and properties. Among other destructions, the oil tanker MT Pratibha Kauvery landed aground near Chennai after drifting into the storm. On the date of the cyclone, the petitioner herein, who has been arrayed as A8, held the post of Designated Person Ashore. His duties were to liaison between the captain of the ship and the authorities of A1 company. While the captain of the ship who has been arrayed as A14 was the person in-charge of the vessel at the relevant time, the petitioner herein was in charge of the off shore duties. When the cyclone struck, the vessel started to drag on the starboard anchor at 10.15 hours which prompted the captain of the ship to lower the shackles and heave up the starboard anchor and the vessel was directed to move full ahead with all its engines in operation. However, during the heavy winds and rough sea, the vessel drifted towards the land shore. The captain's request for tug assistance was in vain. In view of the intensity of the cyclone, the starboard anchorage could not

hold the vessel, which ran aground at about 14.10 hours. When the vessel was within 50 mts from the shore, the captain ordered the crew to abandon the ship. When 25 crew members boarded the life boat, the life boat capsized and six crew members drowned and died. In this background, an FIR in Cr.No.459 of 2012 under Section 174 Cr.P.C., came to be registered which was subsequently altered on 27.11.2012 for offence under Section 304(2) (6 counts) IPC.

10. Before analysing as to whether the charges against the petitioner of having committed an offence under Section 304(2) (6 counts) IPC has been properly laid or not, it would be appropriate to have a glance as to the definition of 'culpable homicide'. Section 299 of IPC defines 'culpable homicide' as follows:

299. Culpable homicide Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

11. The ingredients for charging a person of having committed the offence of 'culpable homicide' would be as follows:-

- a) doing an act with an intention of causing death;
- b) doing an act with an intention of causing bodily injury as likely to cause death and
- c) with the knowledge that such an act is likely to cause death.

Thus, 'intention' and 'knowledge' are the essential ingredients for constituting the offence. While intention would require a person to have deliberate plan or aim to do a certain act, 'knowledge', in its restricted meaning would include the information, understanding and a skill which a person gains to experience on education.

12. According to the case of the prosecution, the petitioner herein had knowledge of the consequence of his illegal omission to communicate the status of the life boat and lack of bunker, as a result of the repairs not being carried out in the life boat and non provision of the bunker owing to which the vessel became stranded and the life boat non functional. As such, it is not the case of the prosecution that the occurrence was intentional vis-a-vis the petitioner's overt acts and that he had the knowledge of the consequences for his omissions in performing his duties. 'Knowledge' as such contemplates knowledge of the likelihood of causing a death of a person. Hence in order to establish a charge under Section

304 (2) IPC, the prosecution has to adduce positive overt acts which has a proximity to the incident. In other words, the final report has to necessarily reveal through the overt acts of the accused that the petitioner had full knowledge that such overt acts would endanger the life of the crew members.

13. It is not in dispute that the decision to abandon the ship was given by the captain of the ship. The overt acts attributed to the petitioner is that he had prior knowledge that the motors in the life boat was non functional and had omitted to take corrective measures.

14. By relying upon various judgments produced before this Court, the learned counsel for the petitioner submitted that the omissions pointed out by the prosecution is factually in correct. On a perusal of these documents, it is seen that the vessel, went for unloading at Kolkatta Sea Port in May 2012, it was subjected to a survey by the Indian Registrar of Shipping and certain defects were detected. Nevertheless, the ship was allowed to sail to Mangalore where another inspection came to be carried out in June 2012 by the authorities. Thereafter, the ship was permitted to sail to Vishakapatnam wherein certain routine inspections were carried out by the Mercantile Marine Department and certain repairs were carried out and on 20.08.2012, the Technical Superintendent of AI Company reported that the deficiencies pointed out have been rectified and consequently, the Mercantile Marine Department had allowed the ship to sail to Kolkatta where again flag state inspection of the vessel was carried out by the Principal Officer, Mercantile Marine Department, Kolkatta. After due survey, the inspection authorities recommended for up-lifting the detention of the vessel on 09.09.2012 and she was permitted to sail on the condition certain deficiencies, out of the 15 which were not rectified, would be attended to and complied within 30 days. It is in this background, that the vessel had arrived at Chennai Port on 25.09.2012 for unloading 10,000 MTs of light diesel oil. After discharging the cargo, the management had sought permission to take the ship to dry dock for carrying out the repairs/deficiencies pointed out by the Indian Register of Shipping to which the port authorities directed the vessel to move to the outer anchorage and wait for further orders. In the meantime, the certificate of class of the vessel came to be suspended with effect from 02.10.2012 and hence the vessel could not sail and had to wait for further orders from the authorities. From an overall perusal of the aforesaid facts, it is seen that there was no illegal sailing of the

ship and that its movements from Kolkotta to Chennai was under due permission from the shipping authorities and as the ship was awaiting at the outer anchorage for repairs to be carried out, the occurrence took place. While that being so, I am unable to comprehend as to how these acts could have any proximity to the overt acts attributed to the petitioner. The learned Government Advocate had submitted that the knowledge of the consequences of the petitioner's illegal omission had resulted in the occurrence and as such, it cannot be said that there is no proximity between the act of the petitioner herein which accentuated the death of the crew members of the vessel. As observed above, the vessel had sailed under the proper authority from Kolkatta to Chennai and while it was berthed awaiting repairs, permission for repairs from the Port Authorities, Chennai its certificate of class came to be suspended. This would only go to show that there was no omissions on the part of the petitioner herein which allegedly led to the occurrence.

15. It needs to be borne in mind that the entire incident was during the cyclonic storm and even as per the prosecution's case, the life boat capsized due to the heavy storm. When the huge vessel of such magnitude itself could not hold ground inspite of the starboard anchor owing to the heavy storm, the capsizing of the life boat was understandably imminent. It is not the case of the prosecution that the life boat capsized because its engine was not in a working condition. Likewise, non availability of the fuel alone was not the reason for which the vessel came to be stranded in the outer anchorage. As such, it can only be concluded that there was no omission on the part of the petitioner herein which could be concluded as a nexus either to the ship being stranded in the anchorage or capsizing of the life boat and as such, the offence of 'culpable homicide' may not be made out as against this petitioner. In the light of the above observations, it would be relevant to refer to the judgment of the Hon'ble Apex Court in Shankar Narayan Bhadolkar V. State of Maharashtra reported in 2005 (9) SCC 71. The relevant observations made therein are as follows:

23. This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of the IPC culpable homicide is genus and 'murder' its specie. All 'murder' is 'culpable homicide' but not vice-versa. Speaking generally, 'culpable homicide' sans 'special characteristics of murder is culpable homicide not amounting to murder'. For the purpose of fixing punishment, proportionate to the gravity of the generic offence,

the IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, 'culpable homicide of the first degree'. This is the gravest form of culpable homicide, which is defined in Section 300 as 'murder'. The second may be termed as 'culpable homicide of the second degree'. This is punishable under the first part of Section 304. Then, there is 'culpable homicide of the third degree'. This is the lowest type of culpable homicide and the punishment provided for it is, also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

24. The academic distinction between 'murder' and 'culpable homicide not amounting to murder' has always vexed the Courts. The confusion is caused, if Courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences.

Section 299	Section 300
A person commits culpable homicide if the act by which the death is caused is done by which the death is caused	Subject to certain exceptions culpable homicide is murder if the act is done
INTENTION	
(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3) With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or

INTENTION	
KNOWLEDGE	
(c)with the knowledge that the act is likely to cause death.	(4)the act is so imminently dangerous that it must in all probability causes death or such bodily injury as is likely to cause death, and without any excuse for incurring the risk of causing death or such injury as is mentioned above

25.Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the mens rea requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the 'intention to cause death' is not an essential requirement of clause (2). Only the intention of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by illustration (b) appended to Section 300.

26.Clause (b) of Section 299 does not postulate any such knowledge on the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words 'likely to cause death' occurring in the corresponding clause (b) of Section 299, the words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause

death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300 is one of the degrees of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word 'likely' in clause (b) of Section 299 conveys the sense of probable as distinguished from a mere possibility. The words "bodily injury.....sufficient in the ordinary course of nature to cause death" mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

27. For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of nature. *Rajwant and Anr. v. State of Kerala*, (AIR 1966 SC 1874) is an apt illustration of this point.

28. In *Virsa Singh v. State of Punjab*, (AIR 1958 SC 465), Vivian Bose, J. speaking for the Court, explained the meaning and scope of clause (3). It was observed that the prosecution must prove the following facts before it can bring a case under Section 300, "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly the nature of the injury must be proved. These are purely objective investigations. Thirdly, It must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

29. The ingredients of clause "Thirdly" of Section 300, IPC were brought out by the illustrious Judge in his terse language as follows:

"12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300, "thirdly".

First, it must establish, quite objectively, that a bodily injury is present.

Secondly, the nature of the injury must be proved. These are purely objective investigations.

Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say that it was not accidental or unintentional, or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

30. The learned Judge explained the third ingredient in the following words (at AIR p.468, para 16):

"The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here or there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

31. These observations of Vivian Bose, J. have become locus classicus. The test laid down by Virsa Singh's case (supra) for the applicability of clause "Thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied: i.e. (a) that the act which causes death is done with the intention of causing death or is done with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death, viz., that the injury found to be present was the injury that was intended to be inflicted.

32. Thus, according to the rule laid down in Virsa Singh's case, even if the intention of accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration (c) appended to Section 300 clearly brings out this point.

33. Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been committed by the offender without any excuse for incurring the risk of causing death or such injury as aforesaid.

15. The learned Government Advocate had pointed out that the documents referred to by the learned counsel for the petitioner for the purpose of establishing that there was no proximity between the acts of the petitioner and the death to the crew members are not the documents relied on by the prosecution and as such, they are subject to deliberations during the time of trial. In other words, the learned Government Advocate submitted that by looking into certain independent documents for the purpose of quashing the charges, the High Court, exercising its powers under Section 482 Cr.P.C., may not be justified.

16. In normal circumstances, this Court would generally not look into such documents that are not relied upon by the prosecution while framing the charges and would direct the persons to establish the same during trial. But, it cannot be said that there is a total bar for the High Court while exercising its powers under Section 482 Cr.P.C., to look into certain incriminating and relevant documents to scrutinize the legality of the charges framed. On an overall approach of the facts of the present case, the petitioner herein is being mulcted with a charge for having allegedly committed an offence under Section 304(2) IPC, when during a heavy storm which could not contain the vessel to hold its anchor, the captain, orders the crew to abandon the ship. While the crew were in the life boat, it capsized due to heavy storm and rough sea conditions and

the petitioner, who was the person ashore, is made liable for certain acts of alleged omissions. The documents produced before this Court are to establish that the vessel was sailing under proper authority from Kolkatta to Chennai and came to be stranded while awaiting further orders for repairs from the port authorities. These documents obtained from the concerned authorities cannot be discarded or ignored. When such documents reveal that the petitioner herein did not have any overt act to mulct him with a charge, this Court would be well within its powers in looking into such documents. The language of Section 482 Cr.P.C. are explicitly clear to give powers to this Court to look into such documents for the purpose of securing the ends of justice. In this background, it would be appropriate to refer to the observations of the Hon'ble Apex Court in the judgment in Rukmini Narvekar v. Vijaya Satardekar and others reported in 2008 (14) SCC 1 which are as follows:

22. Thus in our opinion while it is true that ordinarily defence material cannot be looked into by the Court while framing of the charge in view of D.N. Padhi's case (supra), there may be some very rare and exceptional cases where some defence material when shown to the trial court would convincingly demonstrate that the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the Court at the time of framing of the charges or taking cognizance.¹⁸ In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted.

37. The larger Bench did not leave any scope for a different interpretation of the provisions of Section 227 as is now being made. Incidentally, the very same arguments which have been advanced by Mr. Lalit before us on behalf of the accused, were also advanced by learned counsel before the larger Bench and the same were negated as far as Section 227 Cr.P.C. is concerned. However, in paragraphs 21 and 29 of the judgment the larger Bench did indicate that the width of the powers of the High Court under Section 482 Cr.P.C. and Article 226 of the Constitution is unlimited whereunder in the interest of justice the High Court could make such order as may be required to secure the ends of justice and to prevent abuse of the process of any court.

38. In my view, therefore, there is no scope for the accused to produce any evidence in support of the submissions made on his behalf at the stage of framing of charge and only such material as are indicated in Section 227 Cr.P.C. can be taken into consideration by the learned magistrate at that stage. However, in a proceeding taken therefrom under Section 482 Cr.P.C. the Court is free to consider material that may be produced on behalf of the accused to arrive at a decision whether the charge as framed could be maintained. This, in my view, appears to be the intention of the legislature in wording Sections 227 and 228 the way in which they have been worded and as explained in Debendra Nath Padhi's case (supra) by the larger Bench to which the very same question had been referred.

18. Though the learned counsel for the petitioner had raised various other grounds stating that the petitioner herein had relieved from his position on the date of occurrence and that there cannot be any vicarious liability on the persons charged for offences under Indian Penal Code, I do not intend to go into all those aspects since the very base for framing of charges under IPC against the petitioner itself has not been clearly established. Unless and until the prosecution clearly establishes that there was a proximity between the acts of the petitioner herein and the death of the crew members of the vessel and such an act was due to the omissions on the part of the petitioner herein, no useful purpose would be served in rendering a finding on the other aspects."

17. In this case, as stated above, the allegations against the petitioners who are the employees of the local steamer agents of the 1st Accused Shipping Company which owns the Vessel is that, it is the duty of the petitioners to fulfil the requirements needed by the Ship Captain to supply food, water, fuel and arrange for signage of the crew members. Further allegation is that they wilfully failed to provide assistance to the Master of Vessel by not providing fuel food and fresh water and their inaction to take appropriate steps for the signage of crew members during the relevant time in spite of repeatedly receiving e-mail from the Master of the Vessel to take arrangement expecting the cyclone and the further allegation is that the petitioners who are the local agents wilfully omitted to initiate steps to save the lives of the crew members in the Vessel, Pratibha Cauvery owned by the 1st accused and along with other accused failed to intimate their inability to the Port authorities and hence the charge. As per the legal principles, commission of the offence "culpable homicide" would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. Perusal of materials show

that such averments are conspicuously absent in the charge sheet. It is true in *Amanullah and another V. State of Bihar and Others* reported in (2016) 6 SCC 699, the Hon'ble Apex Court has held that at the stage of cognizance of offence, the Court has to see only if offence is made out against the accused from the materials on record to proceed further and that the Court cannot interdict the proceedings at that stage, but in this case, the perusal of materials do not make out a case against the petitioner as alleged by the prosecution.

18. It is apposite to refer to the relevant paragraphs in the decision of the Hon'ble Apex Court (*ShanthiBhai.J.Vaghela & Another V. State of Gujarat & Others*) :reported in 2012(13) SCC 231:

"24. Section 299 IPC defines culpable homicide as causing of death by doing an act with the intention of causing of death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that by such act death is likely to be caused. Under Section 300 IPC all acts of culpable homicide amount to murder except what is specifically covered by the exceptions to the said Section 300. Section 304 of Indian Penal Code provides for punishment for the offence of culpable homicide not amounting to murder.

25. Commission of the offence of culpable homicide would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. Allegations of not carrying out a prompt search of the missing children; of delay in the lodging of formal complaint with the police and failure to take adequate measures to guard the access from the ashram to the river, which are the principal allegations made in the FIR, cannot make out a case of culpable homicide not amounting to murder punishable under Section 304 IPC. To attract the ingredients of the said offence something more positive than a mere omission, lapse or negligence on the part of the named accused will have to be present. Such statements are conspicuously absent in the FIR filed in the present case.

19. This Court in the earlier quash petition filed in CrI.O.P.No.14494 of 2014 had referred to the facts leading to the unfortunate incident and found that the incident had happened when the Vessel was grounded 15 meters before the shore and when the Captain had lowered the lifeboat to save the lives of the crew members. When the incident had happened due to the grounding of the Vessel and capsizing of the lifeboat, the petitioners cannot even be remotely expected to have intention and knowledge that such an incident will happen due to which the

victims will loose their lives. The death cannot be attributed to the act of non supply of provisions by them and non compliance of the terms of agreement between A1, the owners of the Vessel and the petitioners' employer M/s.Seaworld Shipping & Logistics Pvt. Ltd., at Mumbai. The petitioners cannot be remotely made liable for the incident. The prosecution has not brought in any material to establish that there was proximity between the acts of the commission / omission of the petitioners herein and the death of the crew members of the Vessel, that is to say that the acts of the petitioners are the causa causans for the death of the victims.

20.Now, it is apposite to refer to the decision of the Hon'ble Apex Court in State of Haryana Vs. Bajanlal reported in [1992 (1) SUPP (SCC) 426]

"The proposition of law relating to Section 482 of the CrPC has been elaborately dealt with by this Court in Bhajan Lal's case (supra). The relevant paras 102 which reads thus:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

21. This Court is of the opinion that the case of the petitioners fall within clause (3) & (5) of Bajanlal's case referred above. In such circumstances, no useful purpose would be served by allowing the petitioners to face the prosecution.

22. In the result, this Criminal Original Petition stands allowed in respect of the petitioners alone. The charge against the petitioners alone in P.R.C.No.135 of 2013, pending committal on the file of the learned IX Metropolitan Magistrate, Saidapet, Chennai is hereby quashed. Consequently the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

kas

1.Assistant Commissioner of Police
J5, Shastri Nagar Police Station
Adyar Range
Chennai 600 020

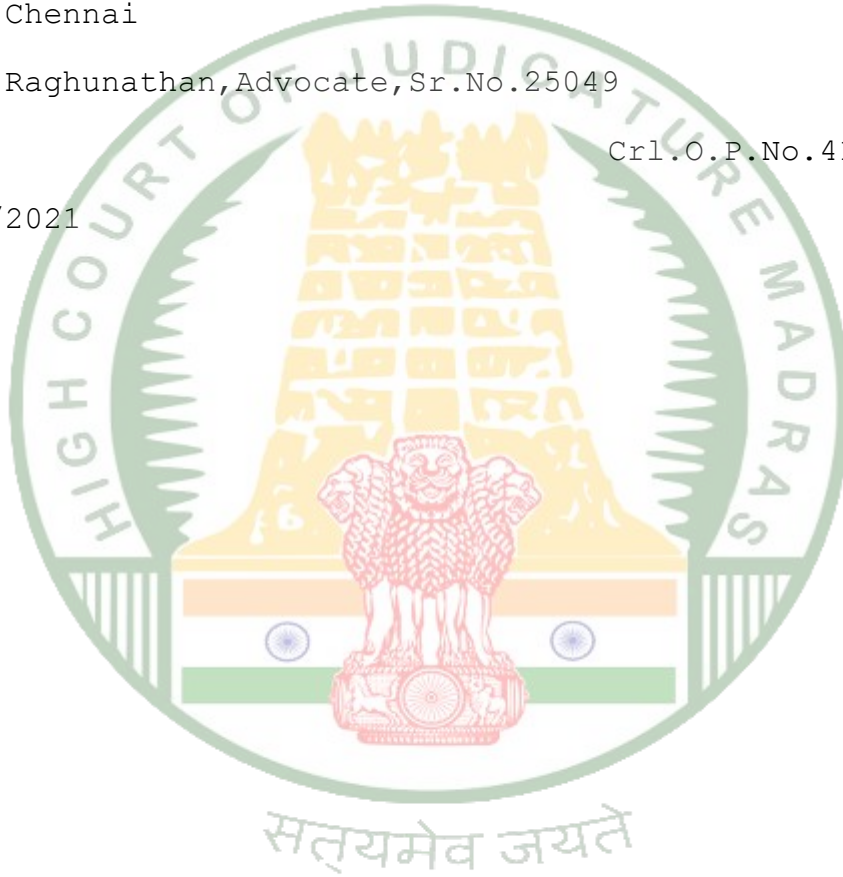
2.The Public Prosecutor
High Court of Madras
Chennai 600 104

3.The IX Metroplitan Magistrate,
Saidapet, Chennai

+2cc to S.Raghunathan, Advocate, Sr.No.25049

Crl.O.P.No.4130 of 2014

JP(CO)
baf 07/05/2021



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