

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.02.2021

CORAM :
THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.25936 of 2014
and
M.P.No.1 of 2014

Natarajan,
S/o.Ayyavu Naidu

...Petitioner/3rd Accused

Vs.

1.The Inspector of Police,
K-6, T.P.Chattiram Police Station,
Chennai - 600 010.

Respondent/Complainant

...

2.Muniyamma,
D/o.Late.Israel

...Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, seeking to call for the records and to quash the charge sheet in C.C.No.5656 of 2012 pending on the file of the V Metropolitan Magistrate Court, Egmore, Chennai.

For Petitioner : Mr.R.A.Mardeep

For R-1 : Mr.T.Shunmugarajeswaran,
Government Advocate (Crl.Side)

For R-2 : No appearance

O R D E R

This Criminal Original Petition has been filed by the Petitioner/A3 seeking to call for the records pertaining to the charge sheet in C.C.No.5656 of 2012 pending on the file of the V Metropolitan Magistrate Court, Egmore, Chennai for the offence under Section 304(A) IPC r/w Sub-Section (1) of Section 3 of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

2.The brief facts of the case is that on 09.02.2012, when the Sub Inspector of Police viz. Manimegalai, attached to the respondent police station was on duty, the 2nd respondent/defacto

complainant gave a complaint stating that her brother Munusamy was working as a Sanitary worker in Division 69, Zone -5 of Chennai Corporation and that due to his illness, he was at home on 09.02.2012. While so, at 10.00 a.m., Nagaraj, Munusamy, Nataraj had come to her house stating that there was a block in the drainage and had asked her brother to come and clean it, and that her brother had informed them that he was not feeling well and thereby, he was unable to come to work. While so, at 10.30 a.m., they have come again and compelled him to come to work and later, on their compulsion, her brother had gone to work and on the same day at 4.00 p.m., she was informed by the persons that her brother had fallen into the drainage and died on the spot. Based on the complaint, a case was registered in Crime No.108 of 2012 for offence under Sections 304 (A) IPC r/w Sub-Section (1) of Section 3 of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 (in short EMSCDL Act).

3.The respondent after completing investigation had filed the final report and the case was taken up in C.C.No.5656 of 2012. The respondent had examined / enquired 15 witnesses and cited them as L.W.1 to L.W.15 in the final report. The present petition has been filed seeking to quash the proceedings in C.C.No.5656 of 2012.

4.The learned counsel for the petitioner would submit that the petitioner has been arrayed as A-3 in C.C.No.5656 of 2012. He would submit that the petitioner is the contractor in the Corporation and even taking into consideration the entire evidence on record, no allegation has been made out against the petitioner for making out a case for offence under Section 304 (A) of IPC. He would further submit that as far as the other offence under Section 3(1) of the EMSCDL Act, 1993 is concerned, the case and the final report are illegal since as per the Section 17 (3) of the EMSCDL Act, 1993, no Court shall take cognizance of any offence under this Act except upon a complaint made by a person generally or specially authorised in this behalf by the Executive Authority. As per G.O.Ms.No.4, Adi Dravidar and Tribal Welfare [ADW-6(1)], dated 04.01.2011, The Commissioner, Corporation of Chennai is the officer authorised to exercise powers as an Executive Authority under Section 5(1) of the EMSCDL Act, 1993. He would submit that in this case, no complaint has been given as per Section 17 (3) of the EMSCDL Act, 1993 and thereby, the complaint in respect of the offences under Section 17 (3) of the EMSCDL Act is also liable to be quashed.

5.The learned counsel would submit that to implicate the petitioner, the respondent has examined L.W.1/Muniyamma, the sister of the deceased and L.W.5 and L.W.6 who are the brothers

of the deceased and they have stated that the petitioner had contacted the deceased over phone and asked him to go to the place of work. Even admitting the statement to be true, the allegation against the petitioner is that he had asked the deceased to go to the place of work and it is not the case of the prosecution that the petitioner had asked the deceased to get into the drainage and remove the blockage and there is absolutely no material to pinpoint that the petitioner is the person who had asked the deceased to get into the drainage. In order to attract the ingredients of Section 304 (A) IPC, the act of the person who is alleged of the offence must be the causa causans to the act, whereas there is absolutely no material to prove that the petitioner is directly responsible for the death of the victim and there is also no material to show that the petitioner acted in a rash and negligent manner so as to be the cause and reason for the death of the victim.

6. The learned Additional Public Prosecutor appearing for the 1st respondent would submit that the petitioner is the contractor and the victim who is a sanitary worker was at home on 09.02.2012 and the petitioner had contacted the victim over phone and had directed him to attend the work. He would submit that L.W.1/Muniyamma and L.W.5/Balu, L.W.6/Samsun and L.W.7/Selladurai who are respectively the brother and cousin brothers of the deceased have spoken that the petitioner had compelled the other accused to bring the victim to work. However, he would fairly submit that the petitioner was not present at the scene of occurrence and the specific allegation against the petitioner is that he had compelled the other accused to bring the victim to work.

7. Heard the learned counsel on either side and perused the materials placed on record.

8. The final report has been filed for offence under Section 304(A) IPC r/w Sub-Section (1) of Section 3 of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. It is apposite to refer to Section 17 of the EMSCDL Act is thus:

"17. Provision in relation to jurisdiction.

(1) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act.

(2) No prosecution for any offence under this Act shall be instituted except by or with the previous sanction of the Executive Authority.

(3) No Court shall take cognizance of any offence under this Act except upon a complaint made by a person generally or specially authorised in this

behalf by the Executive Authority."

9.As per Section 17 (3) no court shall take cognizance of any offence under this Act except upon a complaint made by a person generally or specially authorised on behalf of the Executive Authority and as per G.O.Ms. No.4 Adi Dravidar and Tribal Welfare [ADW-6(1)], dated 04.01.2011, the Commissioner Corporation of Chennai is the Executive Authority and he is empowered / authorised to make a complaint. Admittedly, in this case, without any complaint being given by the Executive Authority, the case has been registered. Further reading of the entire materials on record shows that there is no direct proximity of the petitioner for commission of offence under Section 304 (A) IPC. Even as per the statement of the witnesses, the other accused had informed them that the petitioner had compelled them to ask the victim to come to work. Further, the petitioner was also not available at the place of occurrence. The act of the petitioner is not the causa causans for the death of the victim.

10.At this juncture, it is apposite to refer to the Judgment of the Hon'ble Apex Court in Kurban Hussein Mohammedali Bangwalla vs. State of Maharashtra reported in 1965 AIR (SC) 1616 is under:

"4.We may in this connection refer to Emperor v. Omkar Rampratap, 4 Bom LR 679, where Sir Lawrence Jenkins had to interpret S. 304-A and observed as follows:-

"To impose criminal liability under Section 304-A, Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's signature. It must be the causa causans; it is not enough that it may have been the causa sine qua non."

This view has been generally followed by High Courts in Indian and is in our opinion the right view to take of the meaning of S.304-A. It is not necessary to refer to other decisions, for as we have already said this view has been generally accepted. Therefore, the mere fact that the fire would not have taken place if the appellant had not allowed burners to be put in the same room in which turpentine and varnish were stored, would not be enough to make him liable under S.304-A, for the fire would not

have taken place, with the result that seven persons were burnt to death, without the negligence of Hatim. The death in this case was, therefore, in our opinion not directly the result of a rash or negligent act on the part of the appellant and was not the proximate and efficient cause without the intervention of another's negligence. The appellant must, therefore, be acquitted of the offence under S.304-A."

11.Further, the Hon'ble Apex Court in the case of *Ambalal D.Bhatt vs. The State of Gujarat* reported in (1972) 3 SCC 525, while dealing the applicability of Section 304(A) has held that

"(i) in a prosecution for an offence under Section 304 (A) IPC, the Court has to examine whether the alleged act of the accused is the direct result of a rash and negligent act and that act was the proximate and efficient cause of the death without intervention of others negligence. The mere fact that an accused contravenes certain rules or regulations in doing of an act does establish an offence under Section 304 (A) IPC. The act causing death must be the causa causans; it is not enough that it may have been the causa sine qua non. The Court has to determine whether the act of the accused is the causa causans or has there been a cause intervening which has broken the chain of causation so as to make the act of the accused, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct."

12.From the above, for an offence u/s.304(A) IPC, the prosecution has to show materials that the alleged act of the accused is the direct result of a rash and negligent act and that the act was the proximate and immediate cause of the death without intervention of others negligence. The mere fact that the accused contravenes certain rules or regulations in doing of an act does not establish an offence u/s.30(A) IPC and there must be proximity between the act of the accused and the death of the victim and the prosecution must prove that the act of the petitioner is the causa causans for the death of the victim.

13.In this case on hand, even if it is accepted that the entire case of the complainant is true, there is no material to show that there is a direct nexus between the death of the victim and the act of the petitioner asking the victim to attend

duty. When there is absolutely no material to connect that the act of the petitioner is the direct cause to the death of the victim, the proceedings have to be necessarily quashed.

14.In view of the above, the proceedings in C.C.No.5656 of 2012 in so far as the petitioner stands quashed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

ssi

To

1.The V Metropolitan Magistrate Court,
Egmore, Chennai.

2.The Inspector of Police,
K-6, T.P.Chattiram Police Station,
Chennai - 600 010.

3.The Public Prosecutor,
High Court of Madras.

+1 cc to M/s.Tamizh Law Firm, Advocate Sr No.12451

Cr1.O.P.No.25936 of 2014

DL (CO)
RG.21.04.2021 (6P/5C)

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