



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.10.2021

Delivered on : 12.11.2021

CORAM

The Hon'ble Mr. Justice Krishnan Ramasamy

Crl.O.P.No.4067 of 2017

and

Crl.M.P.Nos.3032 & 3033 of 2017

John K.Churian

...Petitioner

vs.

1.The State of Tamilnadu represented
by the Superintendent of Police,
Karumathampatti Post,
Coimbatore.

2.The Inspector of Polcie,
District Crime Branch,
Coimbatore District.

3.The Inspector of Police,
Thudiyalur Police Station,
Coimbatore District.

4.C.Krishnakumar

...Respondents

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records on the file of the Learned Judicial Magistrate No.I, Coimbatore pertaining to C.C.No.841 of 2016 and quash the same.

For Petitioner : Mr.S.Selva Thirumurugan

For R1 - R2 : Mr.L.Baskaran,
Government Advocate (Crl.Side)

For R4 : Mr.P.M.Duraiswamy



WEB COPY

ORDER

This Criminal Original Petition has been filed, seeking to quash the proceedings in C.C.No.841/2016 pending on the file of the learned Judicial Magistrate No.I, Coimbatore.

2. The case of the defacto complainant/R4 is that the petitioner's vehicle bearing registration No.TN 37 AZ 0532 was involved in the accident occurred on 25.07.2008 at 08.30 p.m. in front of Kokkarako Restaurant on Coimbatore to Mettupalayam Main Road. In the said accident, the defacto complainant's co-brother had sustained injuries and he was admitted in a private hospital and after getting first aid, he was taken to Coimbatore General Hospital for further treatment, where he was declared as "brought him dead".

3. According to the defacto complainant, this accident had occurred due to sheer negligence on the part of the driver who drove the car bearing registration No. TN 37 AZ 0532 and in the FIR, the registration number of the car and its involvement in the accident has been clearly mentioned and further in the hospital records also, the vehicle involved in the accident was mentioned as TN 37 AZ 0532. After the above complaint was lodged by the defacto complainant, an FIR was filed by the first respondent police under sections 279 and 304(A) IPC in Crime No.816 of 2008 on 26.07.2008.

4. However, after the investigation, a closure report was filed by the first respondent police on 10.01.2010. As against the closure report, a protest petition was filed by the fourth respondent on 14.05.2010. In the said protest petition, by order, dated 03.10.2013, the learned Judicial Magistrate No.I, Coimbatore, handed over the case to the District Crime Branch for further investigation. The District Crime Branch, after investigation, has also filed a final report dated 20.07.2015 stating that the petitioner's vehicle was not involved in the accident.

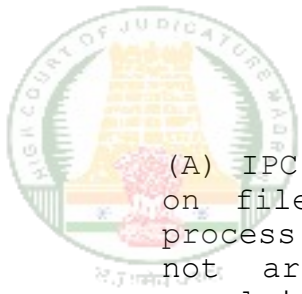
5. As against the said final report, the defacto complainant/R4 once again filed a protest petition in Crime No.816 of 2008 in R.C.S.No.79 of 2009. Thereafter, the learned Magistrate has passed a detailed order in C.M.P.No.5291 of 2015 dated 13.05.2016 and consequently, the learned Magistrate has taken the cognizance of the offence under Section 304(A) IPC and taken on file vide C.C.No.841 of 2016 and issued summons to the petitioner/accused. Aggrieved by the same, the petitioner has come forward with the present petition, seeking to quash the proceedings in C.C.No.841 of 2016.



6. The learned counsel appearing for the petitioner would submit that the petitioner's vehicle has not been involved in the accident which had occurred on 25.07.2008 and his vehicle particulars were wrongly provided by the passerby at the scene of occurrence and subsequently, they also stated that they were not aware of the vehicle. He would point out that after thorough investigation, the first respondent police have filed the closure report on 10.01.2010. As against the closure report, a protest petition was filed by the defacto complainant/R4 and in the said protest petition, the learned Magistrate, Coimbatore passed an order dated 03.10.2013 whereby the case was handed over to the District Crime Branch/R2 herein, which also after investigation, filed a closure report on 21.11.2014. Against the said closure report, the defacto complainant/R4 has filed a protest petition which was wrongly taken on file by the learned Magistrate ignoring the fact that after thorough investigation made by the concerned jurisdictional police/R1 and later by the District Crime Branch/R2, respective closure reports have been filed.

7. Further, he learned counsel would submit that in the claim petition filed in M.C.O.P.No.103 of 2012 filed by the claimants of the deceased, it has been stated that the car was driven by the driver and not by the petitioner and he pointed out that the petitioner was unnecessarily implicated and tagged to the clutches of law and this would amount to abuse of process of law and hence, the proceedings in C.C.No.841 of 2016 are liable to be quashed.

8. On the other hand, the learned counsel appearing for the defacto complainant/R4 would submit that involvement of the petitioner's vehicle was true and that is the reason why, the vehicle was secured at once, after the accident and taken to the police station. However, the police instead of taking action, allowed the petitioner to drive out the vehicle as if it was not involved in the accident. In the accident report, the hospital authorities mentioned the vehicle number as TN 37 AZ 0532. But, in spite of this, the concerned Investigating Officer, without proper investigation, has filed the closure report. He pointed out that in his statement, the petitioner has not stated anything about the driving of the vehicle by his driver. Having not taken any stand as regards who drove the vehicle, at this stage, as an afterthought to escape from the clutches of law, now the petitioner cannot take a stand that the vehicle was driven by his driver. Inasmuch as the closure report filed by the District Crime Branch was found not satisfactory while considering the protest petition filed by the defacto complainant/R4, the learned Magistrate has rightly taken the complaint filed by the defacto complainant on file and proceeded with the case taking cognizance of the offence under Section 304



(A) IPC. Therefore, he would submit that the complaint was taken on file by the learned Magistrate after duly following due process of law and the question of abuse of process of law does not arise. He would submit that all along, the defacto complainant is knocking the doors of the Court for justice and therefore, he prayed for dismissal of the present petition.

9. Heard the learned counsel for the petitioner and the defacto complainant/R4 and perused the entire materials available on records.

10. A perusal of the entire record would clearly reveal that the accident had occurred on 25.07.2008 at about 08.30 p.m. in front of Kokkarako Restaurant on Coimbatore to Mettupalayam Main Road, wherein the defacto complainant's co-brother met with an accident. It was alleged by the defacto complainant that only the vehicle bearing Registration No. TN 37 AZ 0532 was involved in the accident which was subsequently secured by the first respondent police. However, without conducting proper enquiry, the vehicle was released. In the accident report, number of the vehicle which was involved in the accident was mentioned as TN 37 AZ 0532. Further, the petitioner does not disclose anything about the vehicle that which was not driven by him, but by his driver. However, after a very long time, the petitioner has stated that his vehicle was driven by his driver only. Therefore, it prima facie appears that the petitioner's vehicle bearing TN 37 AZ 0532 might have been involved in the accident, but it has to be established who drove the vehicle and caused the accident. This can be ascertained only after examining the parties during the trial.

11. In fact, in the first two closure reports filed by the first respondent police and fourth respondent/District Crime Branch, no details as regards the vehicle involved in the accident were stated and it was not reflected therein about the driver, one Shanthakumar. But, in the third final report, it was stated that the said Shanthakumar was enquired. Therefore, prima facie it appears that the respondents 1 and 2 have not conducted the investigation properly and hence, the learned Magistrate was not satisfied with the final report filed by the respondent police and has rightly taken the complaint on file filed by the defacto complainant under section 200 Cr.P.C. and registered the case vide C.C.No.841 of 2016.

12. An argument was made by the learned counsel for the petitioner by referring certain statements of the witnesses, that according to the prosecution, the vehicle involved in the accident was Quallis bearing No.TN 37 AZ 0532, but, subsequently, in the third final report, it was stated that the vehicle bearing Registration No. TN 37 AZ 0532 is pertaining to



Tavera. Therefore, the learned counsel for the petitioner pointed out that there is no clarity in regard to the vehicle involved in the accident. May be the vehicle either Quallis or Tavera, but it is to be noted that in appearance, both vehicles are one and the same. This is the hit and run case and somebody standing nearby at the scene of occurrence, noted down the number of the vehicle correctly and informed to the police. Therefore, when the registration number of the vehicle was correctly noted and mentioned in Accident Report and in hospital records, merely because the brand of the vehicle is different, the respondent police ought not to have filed the closure reports. All the aspects as regards the vehicle and the driver who drove the vehicle and the involvement of the petitioner, etc., will be probed and established only during the full-fledged trial. Further, in the present case, according to the petitioner, the car was driven by his driver, but the details of the driver have not been revealed in the statement of the petitioner recorded by the police. Therefore, this Court is of the view that at this stage all the above issues cannot be decided even before the trial and the learned Judicial Magistrate has rightly taken the complaint on record. Hence, this Court does not find any abuse of process of law in taking the complaint on file by the learned Judicial Magistrate, who, in fact thoroughly examined all the aspects and taken the cognizance of the offence. In fact, the learned Magistrate was not satisfied with the closure reports filed by the first and second respondents on different dates. Since the learned Magistrate found prima facie material against the petitioner to proceed with the case, he has rightly taken the complaint on file. Therefore, this Court does not find any merit or substance in the contentions raised by the learned counsel for the petitioner.

13. For the foregoing reasons, this Criminal Original Petition is dismissed. Since, the matter has been pending for many years, the learned counsel for the defacto complainant/R4, requested this Court to direct the trial Court to expedite the trial at the earliest. Considering the same, the Court below is directed to complete the trial within a period of six months from the date of a receipt of a copy of this order.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

suk



To

1.The Judicial Magistrate No.I,
Coimbatore

2.The Superintendent of Police,
Karumathampatti Post,
Coimbatore.

3.The Inspector of Polcie,
District Crime Branch,
Coimbatore District.

4.The Inspector of Police,
Thudiyalur Police Station,
Coimbatore District.

5.The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.P.M.Duraiswamy, Advocate SR. No.58736

Cr1.O.P.No.4067 of 2017

AJS (CO)
PR (13/12/2021)