



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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| RESERVED ON  | 22.10.2021 |
| DELIVERED ON | 12.11.2021 |

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

Crl.O.P.Nos.7250 & 7251 of 2017

Crl.M.P.Nos.5238 & 5240 of 2017

Ravichandran

..Petitioner in  
Crl.O.P.No.7250 of 2017

Mrs.Sheela Rajendra

..Petitioner in  
Crl.O.P.No.7251 of 2017

Vs.

1. State rep. by its  
Inspector of Police,  
R-7, K.K.Nagar Police Station,  
Chennai-600 078.

2. R.N.R.Manogaran

..Respondents in  
both Crl.O.Ps.

(2<sup>nd</sup> Respondent is impleaded as per order  
of this court dated 318 of 2017 made in  
Crl.M.P.No.9742 of 2017 and 9743 of 2017  
Crl.O.P.Nos.7250, 7251 of 2017)

Prayer:

Criminal Original Petitions are filed under Section 482  
Cr.P.C., seeking to call for the records in P.R.C.No.71 of 2016  
pending on the file of XXIII Metropolitan Magistrate, Saidapet,  
Chennai and quash the same.

For Petitioners: Mr.A.Ramesh, Sr.Counsel  
for M/s.R.Bhagawat Krishna  
in Crl.O.P.No.7250 of 2017  
for Mr.S.Ashok Kumar in  
Crl.O.P.No.7251 of 2017

For Respondents : Mr.R.Shanmugasundaram, A.G.,  
in both Crlo.P.Ps. assisted by Mr.Gokula Krishnan  
for R1  
Mr.V.Karthic, Sr.Counsel  
for Mr.G.R.Deepak - for R2



## COMMON ORDER

These Criminal Original Petitions have been filed by the petitioners, who were arrayed as A1 and A2 in P.R.C.No.71 of 2016 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai, seeking to call for the records pertaining to the said case and quash the same as against the petitioners herein.

2. The Inspector of Police, R-7, K.K.Nagar Police Station, Chennai, 1st respondent herein, based on a complaint lodged by the defacto complainant, namely, Thiru Manohar and after investigation, has laid a charge sheet against the petitioners herein and other accused, alleging that the defacto complainant's son, namely, Master Ranjan, aged about 9 years, studying IV standard in F Section in Padma Seshadri Bala Bhavan Senior Secondary School, Chennai, went to the school as usual on 16.08.2012 at about 09.30 a.m. While so, the defacto complainant's wife received a phone call from a Cell Phone, informing that her son while undergoing the swimming class, had a sudden cough, due to which, he drank the water and drowned and later, he was immediately taken to the hospital. After receipt of the telephonic information, the defacto complainant and his wife went to Vijaya Health Centre, where they were informed that their son had expired. Hence, the defacto complainant lodged the complaint against the accused alleging that they are responsible for the cause of the death of his son.

3. Though initially, an FIR was registered against the accused including the petitioners herein for the offence punishable under Section 304(A) IPC, later based on 161 Cr.P.C. Statements of the witnesses and Post-mortem certificate which opined that the deceased would appear to have died of asphyxia due to drowning, it was altered into offence under Section 304 (ii) IPC.

4. The charge sheet laid by the 1st respondent, was taken on file vide PRC No.71 of 2016 by the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and pending for committal to the Sessions Court. At this stage, the petitioners have come forward with the present petitions, seeking to quash the proceedings as against them.

5. Mr. A.Ramesh, learned Senior counsel appearing for the petitioners would submit that it is a very unfortunate case where a 9 year old boy drowned in a swimming pool while undergoing swimming class in the school, where the petitioner (A1), was acting as Deputy Dean, Director and Correspondent of the School and the petitioner (A6) was working as Physical Education Teacher. While swimming, the boy drank the water due to cough and became breathless and immediately, after noticing



him, his Coach (A3) and Life Guard (A5) took the boy to a nearby hospital where, after giving first aid, they were advised to take him to a better hospital and when the boy was taken to Vijaya Hospital, he was declared as 'brought him dead'. He would submit that the petitioners have not committed any offence and they were not even present at the scene of occurrence and absolutely no prima facie material was available against the petitioners to connect them with the offence.

6. As far as the petitioner (A1) is concerned, the learned Senior counsel would submit that she is the Deputy Dean and Correspondent of the School and she entered into an agreement with M/s.Aquatic Sports Association for imparting and training students in swimming classes and also to maintain swimming pool. The Proprietor of M/s.Aquatic Sports Association, who was arrayed as A2, was possessing Ph.D from Madras University (Swimming, Yoga, Gymnasium, Jacuzzi and Steam) and having more than 25 years of experience in the field of imparting and training swimming classes. He also served as Part-time Lecturer for six years in YMCA college and as Principal of Gnanamani College of Physical Education, Namakkal and further, he had international experience since he worked as Senior Lecturer in the University of Zambia, Central Africa and considering his vast experience and expertise in the field, the petitioner A1 had entered into agreement with his concern, M/s.Aquatic Sports Association and after entering into the agreement, A2 through his concern, has appointed A3 to A5 as Coach, Assistant and Life Guard for the school Swimming Pool. Therefore, the learned Senior counsel would submit that the petitioner A1 is not liable to be prosecuted and she has been unnecessarily implicated since the School entrusted the entire management and maintenance of the school swimming pool to A2 and hence, A2 and his personnel A3 to A5 alone were responsible for the acts of omission or commission with regard to the conducting of swimming classes and maintenance of the swimming pool. He pointed out that at the time of occurrence, the petitioners were not present, but only the personnel appointed by A2 were present and after noticing the boy was drowning inside the pool, immediately, the Life Guard took out the boy from the Pool and provided first aid and later, they took the boy to the hospital. Thus, the 1st petitioner (A1) is no way responsible for the said incident.

7. Further, the learned Senior counsel would point out that in order to attract offence under Section 304(ii) IPC, "the act done with the knowledge of consequence would be attributable to the offender, only if it falls within "the normal behaviour of the person of common prudence" and in the present case, no knowledge could be attributed to the petitioner since the school, based on the representation and assurance made by A2, entrusted the entire management and maintenance of the Swimming



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Pool to the A2's Agency for conducting, training and supervision of the swimming classes and the same is also the admitted case of the prosecution. He also pointed out that as per the agreement between the school and A2, dated 01.06.2002, A2 shall supervise/co-ordinate and conduct the swimming classes including taking attendance of the children and supervising all activities connected with the swimming classes including the safety of the students undergoing the swimming classes or entering the Swimming Pool. Further, it was agreed that as per Clause 11 of the agreement, A2 is solely responsible and liable for any loss/damages or accidents that may occur to its employees or students of the school in the campus of the Swimming Pool, while imparting the training or conducting the swimming classes to students, or rendering services under the agreement and A2 undertakes to indemnify the school for all omissions or commissions, negligence, carelessness or otherwise and damages and costs which the school may incur by such loss/damage or accident or in complying with the terms of the agreement or any statutory requirement required for rendering the services. Therefore, the learned Senior counsel would submit that the 1st petitioner (A1) cannot be made vicariously liable under Section 304(ii) IPC.

8. As far as the petitioner (A6) is concerned, the learned Senior counsel would submit that he was working as a Physical Education Teacher in the School and he was not able to present for the swimming classes as he was engaged with some other class students, however, his presence may not be required as the A2 consultant had taken charge of the entire swimming activities including the supervision of training and other safety measures to be taken while conducting swimming classes to the students. Hence, he would submit that the petitioner (A6) is no way responsible for the incident and he was unnecessarily implicated in the case. He would further submit that it was alleged that the School has not obtained any building permission and also for conducting swimming classes. As far as the planning permission is concerned, the school authorities obtained it on 18.01.2000 towards certain deviations which includes swimming pool as well. However, due to the order passed by the First Bench of this Court, that planning permission was granted for regularizing the deviations from CMDA subsequent to the cut of date mentioned in the order, i.e. 28.2.1999 and since permission was granted on 18.1.2000, they preferred an appeal challenging the withdrawal of the planning permission. Consequent to the order passed by this Court, the appellate authority vide order dated 11.1.2016, allowed the appeal, upholding the planning permission dated 18.1.2000 taking note of the fact that the applications were made as early as in the year 1999 and the construction was also completed prior to the cut of date. Therefore, the approval was granted to the school and it hold good as on date and hence the



question of running the school without building planning permission approval as alleged in the charge sheet, is not based on the correct facts. Further in the charge sheet, it was alleged that no approval to run the Swimming pool was obtained by the school, but as far as this aspect is concerned, there is no need to obtain any separate permission to run the Swimming pool as per the prevailing law as on the date of the occurrence and only subsequent to the occurrence, the Government of Tamil Nadu brought in separate Act to make it compulsory for all Swimming Pools to get prior approval from the Corporation from 16.10.2012 onwards and it will apply prospectively and not retrospectively.

9. The learned Senior counsel would submit that as many as 117 witnesses were examined and their 161 Cr.P.C. Statements were recorded and filed before this Court, wherein, no specific allegation was made against the petitioners A1 and A6, and only they made bald allegations without any substance. When all the witnesses have not made any specific allegations against the petitioners, nothing can be elicited further in the trail even if they are examined and the prosecution cannot develop anything beyond the statements recorded under Section 161 Cr.P.C. He further submitted that in catena of decisions, under these type of situations, the owner will normally not be held responsible when somebody is authorized to do a particular act. In the present case, A2 has been authorized to maintain the Swimming Pool activities and to take all the precautions, and hence, he submitted that the petitioners are no way responsible and the charges against them are fictitious without any reliable material and therefore they should not be subjected to undergo the ordeal of the trial.

10. In support of his contentions, the learned Senior counsel relied upon the following decisions, viz.,

1. ATB Bose v. State, Crl. O.P.No.4518 of 2007
2. S.Jai Singh v. State, Crl.O.P.No.23120 of 2019
3. K.Rajendran Babu v. State, Crl.O.P.No. 15363 of 2017
4. Dr Jeppiar v. State, 2013 (1) MWN (Cr) 103
5. Captain Sunil Kumar v. Assistant Commissioner of Police, Crl.O.P.No. 14494 of 2014
6. Sasikumari v. State, MANU/TN/7612/2018
7. Melvin Kumar v. K.S. Harisha, MANU/KA/0636/2019
8. Balamurali Krishna v. State, Crl.O.P.No.8427 of 2017
9. K.Jayaraman v. State, MANU/TN/3077/2021
10. Manish Emanwal v. State of MP, 2019 SCC Online MP 2715
11. Dr. Mani Kumar v. State of West Bengal, 2017 SCC Online Cal 8423.
12. Keshub Mahindra v. State of Madhya Pradesh, (1996) 6



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SCC 129.

13. Shamsheer Khan v. State (NCT of Delhi), (2000) 8 SCC 568.

14. Vijayan v. State, Crl.O.P.No. 6481 of 2018.

15. Srinivas Gopal Vs. Union Territory of Arunachal Pradesh

11. On behalf of the prosecution, Mr.R.Shanmugasundaram, learned Advocate General appeared and he submitted that in the present case the petitioners were responsible for the cause of death of a nine year old school boy. He pointed out that the petitioner A1, being the Deputy Dean, Director and Correspondent of the school, is supposed to have appointed duly approved personnel who are expert in the field of undertaking swimming classes to the students and to maintain the swimming pool activities. Only the National Institute of Sports is authorized to issue Certificate/Diploma in coaching of swimming and the Pool Lifeguard Certificates issued by Rhasriya Life Saving Society (RLSS) India are valid and genuine. But in the present case, M/s.Aquatic Sports Association run by A2, has issued the certificates, which is not an approved authority to issue certificates in coaching of swimming and the Pool Lifeguard certificates. This Association was formed by one Mr.Ranga Reddy, who is arrayed as A2. When the petitioner A1 engaged A2 as their consultant in regard to the maintenance of the swimming pool and undertaking coaching classes by entering into an agreement dated 01.06.2002, it is incumbent upon the petitioner A1 to verify as to whether their consultant (A2) was a qualified and authorized association to engage their services for maintaining the Swimming pool and for undertaking coaching classes. Had the 1st petitioner (A1) been vigilant enough in verification of these matters, the occurrence would not have taken place since during verification itself, the 1st petitioner (A1) might have come to know that their consultant, M/s.Aquatic Sports Association is not a genuine and authorized one and immediately, the 1st petitioner (A1) would have terminated the contract.

12. The learned Advocate General would further submit that after the incident, the respondent police conducted an inspection, wherein, they found that there were no oxygen cylinders, breathing equipments, Life jackets for beginners, Life belts, Stretcher, Lifesaving hook, CPR pocket Mast, Rescue tubes, Lifeguard stand etc. and if these were available at the Swimming pool on the date of occurrence, there was every possibility to save the life of the boy. Since the 1st petitioner (A1) had appointed A2 M/s.Aquatic Sports Association, which is an unapproved and unauthorized association, the personnel appointed by A2 were not aware of the basic needs to be complied with in case of any untoward incident is about to take place while giving coaching in swimming to the students.



During coaching, it is must that every student/beginner should wear life jacket/life belt and it appears that the deceased boy was allowed to swim without providing life jacket/life belt. This would prima facie prove that A2 is not authorized in providing well trained coach/personnel to conduct the swimming coaching classes and to carryout the maintenance of the Swimming pool in the school where about 8800 students were studying and it is the basic duty of the 1st petitioner (A1) who is the Correspondent of the school to be very diligent enough in engaging a qualified consultant or atleast could have verified the genuinity of M/s.Aquatic Sports Association whether it is authorized and whether its personnel were well trained in the field of conducting coaching classes for swimming and maintenance of swimming pool. He also pointed out that the 1st petitioner (A1) at no point of time, had inspected the premises of swimming pool and verified as to whether all the equipments, viz., First Aid box Oxgen cylinder, breathing equipments, life jackets, etc, were made available at the Swimming pool and in fact, in the absence of these equipments, the Life guards who were present at the scene of occurrence, failed to rescue the boy out of danger, who drowned in swimming pool though they noticed and brought him out of the swimming pool. Therefore, he would submit that the incident had taken place only due to sheer negligence and carelessness of the 1st petitioner (A1), as the same is clear from the fact that the students were allowed to swim without life jackets.

13. The learned Advocate General would further submit that the petitioner (A6) is working as Physical Education Teacher and he is supposed to be present while the young students were undergoing swimming classes and to be very diligent enough to see whether life jackets were provided to all the students, especially, to the beginners before they were entering the swimming pool and ought to have given top priority to be present there, especially, when the students who were below 10 years were taking swimming classes so that no untoward incident would have taken place. But he was not present when the unfortunate incident had taken place since he was engaged in some other activities with other students. This improper and recklessness in discharging his duty by the petitioner (A6) had lead to the incident where an innocent boy had met with untimely death. Further, he submitted that the Management of the school has to be blamed for not having recruited sufficient Physical Education Teachers in the school where more than 8800 students were studying and if sufficient staff are available, the petitioner (A6) would have certainly attended and supervised the swimming activities undergone by the students and thereby, he could have averted the incident. Therefore, the learned Advocate General would submit that the unfortunate incident had taken place only due to sheer negligence on the part of the petitioners A1 and



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A6, who are careless in their acts, in engaging an unapproved and unauthorized agency in respect of maintaining the swimming pool and conducting swimming coaching classes without even verifying relevant documents and certificates furnished by M/s.Aquatic Sports Association (A2) and failed to inspect the swimming pool premises to verify whether all precautionary equipments were made available there. He pointed out that according to the Management of the school, the swimming pool was only about 2 1/2 feet depth and if that is so, anybody would have gone and pulled up the boy, but it was alleged that due to cough, the boy drank the water, while so, since the staff and Lifeguard who were appointed by A2 Association, were not well trained in handling the untoward situation were not aware of what kind of first aid should be given in such circumstances and due to lack of their basic knowledge, they failed to rescue the boy. Therefore, he would submit that the 1st petitioner (A1) had every knowledge that if proper trained persons were not appointed, there is every likelihood of incidents keep happening like the present one and though there was no intention to cause death of the boy, but being the Correspondent and Physical Education Teacher, the petitioners (A1) and (A6) had every knowledge in not engaging the duly authorized Association and failure to inspect and verify whether all precautionary equipments were made available at the swimming pool and to be present at the time when students below 10 years were undergoing the swimming coaching classes and further having knowledge of about occurring untoward incident in case of engaging with an Association which is unapproved and not expertise in the field of conducting swimming classes and maintenance of swimming pool, is sufficient to fulfill the ingredients of Sections 299 and 304 (ii) IPC and therefore, the petitioners are liable to be prosecuted.

14. The learned Advocate General would also submit that in quash proceedings, 161 Cr.P.C. statements of the witnesses cannot be relied upon and therefore, the contention raised on behalf of the petitioners that on perusal of 161 Cr.P.C. statements, no case is made out against the petitioners cannot be sustained. In this regard, he relied upon a decision reported in "Rajeev Kourave versus Baisahab and others" (2020) 3 SCC 317. He pointed that in his 161 Cr.P.C. statement, the father of the deceased has categorically alleged that his son had died due to sheer negligence on the part of the petitioners and other accused. Further, during the investigation, it revealed that due to the appointment of unqualified personnel by unapproved Association run by A2 with whom, the 1st petitioner (A1) had entered into agreement without proper verification and due to improper supervision of the petitioner (A6), the incident had taken place and the negligence on the part of the petitioners has been specifically narrated in the charge sheet



vis-a-vis how their acts of negligence led to the occurrence of the incident.

15. The learned Advocate General would also submit that the school cannot absolve from its responsibility by stating that they have appointed the Consultant and they are only responsible for the incident. If the school appointed any Association to do a particular job entrusted to it, the Management has to be very diligent and supervise whether the entrusted job is being carried properly by the Association and if any untoward incident is taken place, the school will be held responsible. In the present case, the petitioner A1 was not prompt in taking due care while engaging the services of the Association run by A2. Finally, the learned Advocate General would submit that the unfortunate incident had occurred only due to sheer negligence on the part of the 1st petitioner (A1), being Deputy Dean and Correspondent of the school, in engaging the services of the Association-A2 which is admittedly unapproved one and the personnel appointed by A2 were not well trained in the field of swimming and no precautionary equipments were made available at the swimming pool and due to improper supervision of the petitioner (A6) , being Physical Education Teacher at the time when the students were undergoing swimming coaching classes and therefore, there are sufficient prima facie materials available to proceed against the petitioners, which cannot be probed into by this Court in quash proceedings and unless the petitioners are subjected to trial, it cannot be decided that they are nothing to do with the incident and no offence is made out against them. With these submissions, the learned Advocate General prays for dismissal of the present petitions.

16. Mr.V.Karthic, learned counsel appearing for the defacto complainant/R2, while adopting the arguments advanced by the learned Advocate General, would submit that statement of the witnesses recorded under Section 161 Cr.P.C. cannot be taken into consideration by this Court while adjudicating a petition under Section 482 Cr.P.C. as they are wholly inadmissible in evidence. He submitted that some of the witnesses have made specific allegations against the petitioners. He pointed out that in the charge sheet which was laid after completion of the investigation, the negligence on the part of the petitioners has been clearly set out and when such being the case, the petitioners cannot be let scot-free from the clutches of law without even being subjected to the ordeal of trial.

17. Heard Mr.A.Ramesh, learned Senior Counsel appearing for the petitioners and Mr.R.Shanmugasundaram, learned Advocate General assisted by Mr.Gokula Krishnan for State/R1 and Mr.V.Karthic, learned counsel appearing for defacto complainant/R2 and perused the entire materials available on



record.

18. Having heard the learned Senior counsel appearing for the petitioners and the learned Advocate General and other counsel appearing for the respective parties and on perusal of the entire materials available on record, this Court finds considerable force in the submissions made by the learned Advocate General. No doubt, there was absolutely no intention on the part of the petitioners to cause injury to the boy and thereby resulting to his death, but the prosecution case against the petitioners is that the acts of the petitioners as specifically narrated in the charge sheet, were done by the petitioners with knowledge which caused death of a tender aged boy and thereby, they committed culpable homicide not amounting to murder, punishable under Section 304 (ii) IPC. The term "Culpable homicide" as defined under Section 299 IPC, reads as under:

"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."

19. There are three parts contained in the above said provision, viz., i) whoever causes death by doing an act with intention, ii) with intention of causing such bodily injury as is likely to cause death; and iii) if act is done with knowledge that it is likely to cause death, but without any intention to cause death.

20. Obviously, the first two parts will not apply to the case on hand, but the third part needs to be examined as to whether the petitioners had done the alleged acts with knowledge that it is likely to cause death of a student, though they had no intention to cause death.

21. Now, the point for consideration is whether the prosecution has made out a prima facie case to proceed against the petitioners under Section 304(ii) IPC for the acts alleged to have been done by the petitioners (A1) and (A6) with knowledge which led to the death of the nine years old boy.

22. It is relevant to extract Section 304 (ii) IPC, which reads as under:

"304. Punishment for culpable homicide not amounting to murder:

Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may



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extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

Or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

23. To constitute the offence of culpable homicide not amounting to murder, the death must be caused by doing an act, with the knowledge that the doer is likely by such act to cause death. This aspect needs to be considered in the present matter. If no material is available even in the charge sheet, in 161 Cr.P.C statement or in the complaint, there is absolutely no impediment for this Court to entertain the present petitions for quashment of the proceedings against the petitioners.

24. A perusal of the charge sheet and 161 Cr.P.C. statements filed before this Court, particularly, the statement of the father of the deceased boy and the complaint lodged by him, would reveal that specific allegations were made against the petitioners (A1) and (A6) that they are responsible for the cause of death of the deceased boy since their negligent act only led to the occurrence of the incident.

25. This Court has taken pains of reading 161 Cr.P.C. statements though they are wholly inadmissible in evidence while adjudicating the proceedings under Section 482 Cr.P.C., wherein, specific averments were made against the petitioners alleging that due to negligence act on the part of the petitioners, the incident had occurred since the 1st petitioner (A1) being Deputy Dean and Correspondent of the school, engaged the services of M/s.Aquatic Sports Association (A2) which is an unapproved association and the personnel appointed by A2 were not well trained in the field of swimming and no precautionary equipments were made available at the swimming pool and due to improper supervision of the petitioner (A6), being Physical Education Teacher at the time when the students were undergoing swimming coaching classes, the incident had happened. It is also relevant to mention here that the charges levelled against the petitioners in the charge sheet which are as follows:

i) that only the National Institution of Sports is authorized organization to issue Certificate/Diploma in coaching swimming and the Pool Lifeguard Certificate issued by Rhastriya Life Sving Society (RLSS) India is genuine, while so, the 1st petitioner (A1) being Deputy



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Dean and Correspondent of the school, without proper verification, engaged the services of M/s. Aquatic Sports Association (A2) which was not an approved association and its staff were not well trained, who allowed the boy to swim even without providing life jacket and failed to rescue the boy by providing necessary first aid at the spot;

ii) that the petitioners had not inspected the premises of swimming pool and verified as to whether all the equipments, viz., First Aid box Oxygen cylinder, breathing equipments, life jackets, etc, were made available at the Swimming pool;

iii) that the petitioner (A6), being Physical Education Teacher failed to be present at the spot while the students were undergoing swimming classes and also failed to verify whether the students were provided life jacket before they were entering the swimming pool and he had not given priority to attend and supervise when the students who were below 10 years, were undergoing swimming classes;

iv) that the 1st petitioner (A1) has failed to appoint sufficient Physical Education Teachers to supervise the students who were 8800 in number studying in the school;

v) that the 1st petitioner (A1) had every knowledge that if proper trained persons were not appointed and approved by the Rhastriya Live Saving Society (RLSS), there is every possibility of occurring an untoward incident, like the present one, though the petitioner does not have any intention to cause death of the student.

26. Therefore, a perusal of the entire materials available on record, prima facie, would reveal that the allegations made in the charge sheet constitute the ingredients of the offences alleged to have been committed by the petitioners and once such prima facie case is made out disclosing the ingredients of the offences alleged against the petitioners, this Court cannot embark upon the appreciation of the contentions raised on behalf of the petitioners in order to quash the criminal proceedings. In fact, the Hon'ble Supreme Court has cautioned that the jurisdiction under Section 482 Cr.P.C. by the High Court has to be exercised sparingly and with circumspection and that while exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations stated in the complaint are likely to be established by evidence or not. That is the function of the trial Court when the evidence comes before it.

27. In this regard, it is worthwhile to refer a decision reported in 1989 SCC 1 (State of Bihar versus Murad Ali Khan and



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others), wherein, the Hon'ble Supreme Court has held as follows:

"It is trite that jurisdiction under Section 482 Cr.P.C., which saves the inherent power of the High Court, to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice, has to be exercised sparingly and with circumspection. In exercising that jurisdiction the High Court would not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not. That is the function of the trial Magistrate when the evidence comes before him. Though it is neither possible nor advisable to lay down any inflexible rules to regulate that jurisdiction, one thing, however, appears clear and it is that when the High Court is called upon to exercise this jurisdiction to quash a proceeding at the stage of the Magistrate taking cognizance of an offence the High court is guided by the allegations, whether those allegations, set out in the complaint or the charge-sheet, do not in law constitute or spell out any offence and that resort to criminal proceedings, would, in the circumstances, amount to an abuse of the process of the court or not."

28. Further, as rightly pointed out by the learned Advocate General that the petitioners had every knowledge that if unapproved Association is appointed for the purpose of undertaking swimming coaching classes and the maintenance of the swimming pool and if untrained personnel are appointed as swimming coaches and Life guards, there is every likelihood of happening untoward incident like the present one, though there was no intention on the part of the petitioners to cause the death of the boy. This was one of the charges levelled against the petitioners. Here what is to be decided by the trial Court is whether the Association run by A2, namely, M/s.Aquatic Sports Association is an approved association and whether A2 engaged trained personnel or not? Therefore, this Court cannot probe into the said aspect of the matter in the present petitions and this charge would be sufficient to proceed against the petitioners. This Court can only find out to the extent that the charge levelled against the petitioners would be sufficient to proceed against them. Further, a charge was also levelled against the petitioners that they have not made any inspection and verified whether all precautionary equipments were made available at the swimming pool and failure on the part of the petitioner (A6) to be present at the time when the students below 10 years were undergoing swimming coaching classes. This



charge also needs to be proved by the prosecution. Further, it has been alleged that in the event of sufficient number of Physical Education Teachers are available in the school, the incident might not have taken place. The prosecution has to prove whether there was negligence on the part of the 1st petitioner (A1) in not appointing sufficient number of Physical Education Teachers which resulted in the death of the student. Therefore, this Court is of the view that there are sufficient prima facie materials available against the petitioners and the ingredients of the offences were also made out to proceed with the petitioners.

29. On behalf of the respondents, reliance was also placed by the learned Advocate General reported in "(2020) 3 SCC 317 (Rajeev Kourav versus Baisahab and others)", wherein, the Hon'ble Supreme Court has held in para 8 as under:

"8. It is no more res integra that exercise of power under Section 482 Cr.P.C. to quash a criminal proceeding is only when an allegation made in the FIR or the charge sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any Court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the Court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding."

30. Though the learned Senior counsel tried to project that the petitioners are nothing to do with the offence by relying upon the statements of the witnesses recorded under Section 161 Cr.P.C., this Court cannot entertain the same since the Hon'ble Supreme Court very clearly held that statements of the witnesses recorded under Section 161 Cr.P.C. are wholly inadmissible in evidence and the same cannot be taken into consideration by the Court while adjudicating a petition filed under Section 482 Cr.P.C. Further, as held by the Hon'ble Supreme Court that once a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash the criminal proceedings pending against them.



31. The learned Senior counsel appearing for the petitioners has referred several case laws to support his contentions. On perusal of the same, this Court is of the view that the said case laws will not apply to the facts of the present case as this Court finds that prima facie case has been made out against the petitioners, disclosing the ingredients of the offences alleged against the petitioners.

32. Thus, all the contentions and defence taken by the petitioners can be adjudicated only after full-fledged trial, in which, the petitioners would have a fair opportunity to prove their innocence.

33. For the aforementioned reasons, this Court does not find any merit or substance to entertain the present petitions. Accordingly, these Criminal Original Petitions are dismissed.

Sd/-  
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

suk

To

1. The Inspector of Police,  
R-7, K.K.Nagar Police Station,  
Chennai-600 078.
2. The XXIII Metropolitan Magistrate,  
Saidapet, Chennai.
3. The Chief Metropolitan Magistrate,  
Egmore, Chennai-8
4. The Public Prosecutor,  
Madras High Court.

+2cc to Mr.S.Ashok Kumar, Advocate, S.R.No.58446

CrI.O.P.Nos.7250 & 7251 of 2017

SSI (CO)  
RGA (07/12/2021)