

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.03.2021
CORAM
THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

CrI.O.P.No.15363 of 2017
and
CrI.MP.No.9620 & 9621 of 2017

1.K.Rajendran Babu ...Petitioners/Accused No.4
2.N.Kuppusamy ...Petitioners/Accused No.5

Vs.

1.The State
Rep.by The Inspector of Police,
T-16, Nazarathpet Police Station,
Nazarathpet,
Thiruvallur District. ...Respondent /Complainant
(Crime No.395/2015)

2.J.Pushparaj ... Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to the proceedings in S.C.No.25 of 2017, on the file of the III Additional District and Sessions Court, Thiruvallur at Poonamallee and quash the same as illegal insofar as the petitioners are concerned.

For Petitioners : Mr.A.Padmanabhan
Senior Counsel
for Mr.S.B.Viswanathan

For Respondents : Mr.C.Raghavan
Government Advocate
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O R D E R

This petition has been filed challenging the proceedings pending before the Court below in SC No. 25 of 2017.

2.The case of the prosecution is that on 21.02.2015, children studying in classes 6th to 8th standards in Sri Lakshmi Higher Secondary School, were taken to Queensland Amusement Park. One of the students Master E. Prabhakaran, aged about 11 years drowned in the swimming pool inside the said amusement park. The deceased was rushed to Saveetha Hospital and the doctors declared him as brought dead.

3.The Respondent police registered an FIR in Crime No. 395 of 2015 under Section 174, Code of Criminal Procedure Code, 1973 (hereinafter referred to as "Cr.P.C."). In the course of investigation, A1 to A3 who are the General Manager, the Executive Manager and the person in-charge of the swimming pool, respectively, working for the amusement park, were added as accused, and the FIR was altered for an offence under Section 304-A of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). On completion of the investigation, Final Report was filed as against five accused persons and the Petitioners are ranked as A4 and A5 in the Final Report. The Final Report was filed against the accused persons for an offence under Section 304-II, IPC.

4.The 1st Petitioner is the Correspondent and the 2nd Petitioner is the Principal of Sri Lakshmi Higher Secondary School. They have been roped in as accused persons on the ground that they failed in their responsibilities and duties by not taking proper care of the child, and the same has resulted in the unfortunate death of the child.

5.The learned Judicial Magistrate-I, Poonamallee took cognizance of the Final Report in P.R.C. No. 17 of 2016 and the case was committed to the file of the 3rd Additional District and Sessions Court, Tiruvallur and it was taken on file in S.C. No. 25 of 2017. This proceeding has now been made a subject matter of challenge in the present petition by the Petitioners who have been arrayed as A4 and A5.

6.Mr. A. Padmanabhan, learned senior counsel appearing on behalf of the Petitioners submitted that totally 29 witnesses were examined by the prosecution and not even a single witness has spoken anything against the Petitioners, and the court below has taken cognizance of the offence without there being any materials against the Petitioners. The learned senior counsel further submitted that the prosecution has proceeded against the Petitioners as if they have committed a culpable homicide not amounting to murder and even the basic ingredients under Section

299, IPC has not been satisfied in the present case. The learned senior counsel further submitted that even if the case projected by the prosecution is taken as it is, no offence has been made out to impute criminal liability under Section 304-A, IPC. The learned senior counsel in order to substantiate his submissions relied upon the judgement of the Hon'ble Supreme Court in Richhpal Singh Meena v. Ghasi reported in AIR 2014 SC 3595.

7. Per contra, the learned Government Advocate appearing on behalf of the Respondent police submitted that there are prima facie materials to proceed against the Petitioners and there are no grounds to interfere with the proceedings at this stage.

8. This court has carefully considered the submissions made on either side and the materials available on record.

9. It will be more appropriate to recall the judgement of the Hon'ble Supreme Court in State of Andhra Pradesh v. Rayavarapu Punnayya and Anr. reported in (1976) 4 SCC 382. The relevant portion in the judgement is extracted hereunder:

"21. From the above conspectus, it emerges that whenever a court is confronted with the question whether the offence is "murder" or "culpable homicide not amounting to murder", on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300 of the Penal Code, is reached. This is the stage at which the court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four clauses of the definition of "murder" contained in Section 300. If the answer to this question is in the negative the offence would be "culpable homicide not amounting to murder", punishable under the first or the second part of Section 304, depending, respectively, on whether the second or

the third clause of Section 299 is applicable. If this question is found in the positive, but the case comes within any of the exceptions enumerated in Section 300, the offence would still be "culpable homicide not amounting to murder", punishable under the first part of Section 304, of the Penal Code."

10. It will also be relevant to place reliance upon the judgement of the Hon'ble Supreme Court in Richhpal Singh Meena (cited supra). The relevant portions of the judgement is extracted hereunder:

"35. Having considered all the decisions cited before us (and perhaps there are many more on the subject but not cited), in our opinion, a five-step inquiry is necessary: (i) Is there a homicide? (ii) If yes, is it a culpable homicide or a "not-culpable homicide"? (iii) If it is a culpable homicide, is the offence one of culpable homicide amounting to murder (Section 300 IPC) or is it a culpable homicide not amounting to murder (Section 304 IPC)? (iv) If it is a "not-culpable homicide" then a case under Section 304-A IPC is made out. (v) If it is not possible to identify the person who has committed the homicide, the provisions of Section 72 IPC may be invoked. Since this five-pronged exercise has apparently been missed out in the first category of decisions, the learned amicus was of the opinion that those decisions require reconsideration.

36. In our view none of the decisions require any reconsideration. The position in law is as we have culled out from the cases cited before us making it clear that in most cases the person who has committed homicide (culpable or not culpable) can be identified. But it is quite possible in some cases, such as in *Ninaji Raoji Boudha* [(1976) 2 SCC 117 : 1976 SCC (Cri) 227] and *Ram Lal* [(1973) 3 SCC 466 : 1973 SCC (Cri) 366] that conclusive or specific evidence is lacking to actually pin down the person who has committed homicide (culpable or not culpable). In such cases, the accused would have to be given the benefit of Section 72 IPC. Such cases arise if the investigation is defective or if the evidence is insufficient. But where it is possible to ascertain who is responsible for the homicide, the five-step

inquiry can easily be carried out."

11. In the present case, the charge against the Petitioners is for an offence punishable under Section 304-II, IPC. A punishment under this provision, will get attracted only if there is a culpable homicide not amounting to murder. Taking the cue from the above judgements, it must be seen if there is a homicide in the first place. Homicide involves the killing of one human being by another. If this ingredient is satisfied, the court has to thereafter, see if such a homicide is culpable or not culpable. In other words, the Court has to see if the facts relied upon by the prosecution brings the case within any one of the four limbs of Section 300, IPC. If it falls within any one of the four limbs, it will be a culpable homicide amounting to murder punishable under Section 302, IPC. If it does not fall within any of the four limbs under Section 300, IPC, it will be a culpable homicide not amounting to murder. The punishment under Section 304-I, IPC or 304-II, IPC will depend upon the limb within which the case falls under Section 299, IPC. It must also be stated here that where the act falls within any one of the four limbs under Section 300, IPC, but however, comes within any one of the exceptions enumerated under Section 300, IPC, it will again be treated as a culpable homicide not amounting to murder, punishable under Section 304-I, IPC. In a case which does not fall within the term 'culpable homicide', it has to be seen if the facts will satisfy the requirements under Section 304-A, IPC. These are the broad parameters that must be kept in mind by a court in case of homicide.

12. In the present case, there is an unfortunate and untimely death of a young boy aged about 11 years. This boy went on a school tour to an amusement park along with his schoolmates, and he is said to have fallen into a swimming pool and drowned to death. The Petitioners who are the Correspondent and Principal of the school are sought to be charged for an offence of culpable homicide not amounting to murder. Admittedly, the Petitioners were not present in the scene of occurrence and not a single witness speaks about the involvement of the Petitioners in the alleged crime.

13. By no stretch, the facts of the present case can be brought within the term 'homicide'. If there is no homicide, a case can never be prosecuted for an offence of culpable homicide amounting to murder or not amounting to murder, as the case may be. The court below ought not to have taken cognizance against the Petitioners for an offence punishable under Section 304-II, IPC. This charge is totally unsustainable.

14.If the case does not fall within the ambit of culpable homicide, this Court has to see if the Final Report and the materials collected by the prosecution makes out an offence of criminal negligence to attract the provisions of Section 304-A, IPC. In order to bring a case within the ambit of Section 304-A, IPC, there must be some material to show that it is the rash or negligent act of the Petitioners that has resulted in the death of the boy. In other words, the Petitioners, must have acted with such recklessness or total disregard for the possible consequences which must be the causa causans for the death. Simple lack of care, howsoever bad the consequences are, will not constitute criminal negligence.

15.In the present case, it is not even the case of the prosecution that the lack of care on the part of the Petitioners resulted in the death of the boy. Therefore, on the given facts, even an offence under Section 304-A, IPC has not been made out against the Petitioners.

16.In view of the above discussion, this Court finds that there are absolutely no materials to proceed further against the Petitioners, and the continuation of the criminal proceedings against the Petitioners will be an abuse of process of Court which requires the interference of this Court in exercise of its jurisdiction under Section 482, Cr.P.C.

17. In the result, the criminal proceedings against the Petitioners in S.C. No. 25 of 2017 on the file of the 3rd Additional District and Sessions Court, Tiruvallur is hereby quashed and this Criminal Original Petition is accordingly allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS VII)

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Sub Asst. Registrar

KP

To

1.The Judicial Magistrate No.I,
Poonamallee

2. III Additional District and Sessions Court,
Thiruvallur, Poonamallee

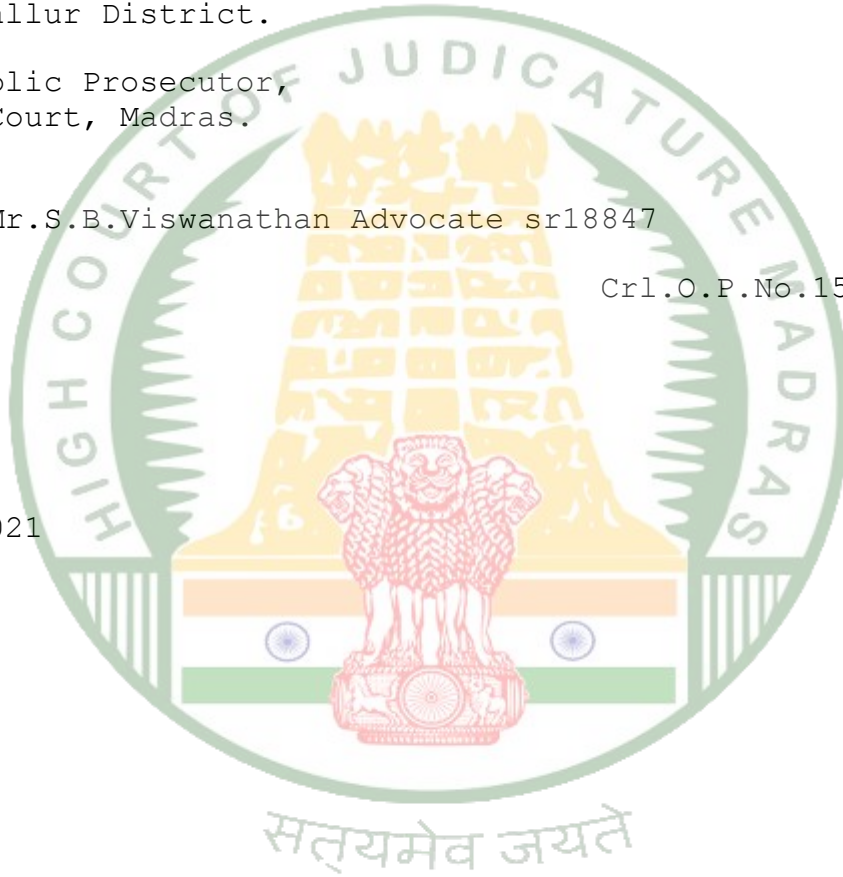
3.The Inspector of Police,
T-16, Nazarathpet Police Station,
Nazarathpet,
Thiruvallur District.

4. The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.S.B.Viswanathan Advocate sr18847

Crl.O.P.No.15363 of 2017

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