

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Cr1.O.P.No.28300 of 2018  
and  
Cr1.M.P.Nos.16447 and 16450 of 2018

Anil Rao

...Petitioners/Accused

Vs.

1. The Assistant Commissioner of Police,  
Traffic Investigation West,  
D-6, Anna Square,  
Traffic Wing, Chennai.

2. Rajesh

...Respondents

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the case in S.C.No.19 of 2014 on the file of the VII Additional Sessions Judge, City Civil Court, Chennai, and quash the charges against the petitioner.

For Petitioners : Mr.S.Ramachandran

For R1 : Mr.C.E.Pratap  
Government Advocate (Cr1.Side)

For R2 : Mr.A.Suresh

O R D E R

This petition has been filed by the petitioner to to call for the entire records pertaining to the case in S.C.No.19 of 2014, on the file of the VII Additional Sessions Judge, City Civil Court, Chennai, and quash the same.

2. Petitioner is A4 in the case. The prosecution case is that on 23.05.2013 at about 1.00 hrs on Pantheon Road, Egmore, near Government Hospital for Women and Children, the driver of a Mercedes Benz Car bearing Registration No.TN-01-X-5959, drove the same in a rash and negligent manner at high speed from South to North in inebriated state, along with three occupants, who

had consumed alcohol and dashed against a Bolero Police vehicle bearing Registration No.TN-21-G-2508, which was approaching from the opposite direction, then dashed against a parked auto bearing registration No.TN-02-U-6913 and motorcycle bearing registration No.TN-22-T9841. During the course of the same transaction three children, who were sleeping on the platform and two persons, who were engaged in fixing a flex board in the nearby bus stop on the road side were run over and they sustained severe injuries. Damage to the stainless steel barricade, Stainless Steel Seats, MS Iron Advertisement frame of bus stand and shelter and other properties to the tune of Rs.43,500/- and to the Corporation footpath valued about 19,000/- was caused. On receipt of a complaint from an eye-witness Rajesh, a case was registered in D6, Anna Square Traffic Investigation PS in Cr.No.354/T2/13 u/s 279, 337 (3 counts), 338 (2 counts) IPC and Section 185(2 counts) and 134(a) (b) r/w 187 of M.V.Act and investigation was taken up by the SSI, Tr.Kathirvel of D6, Anna Square Police Station.

3. The learned counsel appearing for the petitioner submitted that there is no dispute over the fact that the petitioner/A3 was a co-passenger in the offending vehicle. It is not the prosecution case that this petitioner/A3 was either the driver of the vehicle or in-charge thereof. Further similarly placed person like that of the petitioner herein / A3 and the petitioner herein has moved a discharge petition in CrI.M.P.No.9077 of 2014 in S.C.No.19 of 2014 before the learned VII Additional Sessions Judge, Chennai and the same was dismissed on 23.07.2017. Against the said order, A3 has filed the present Revision before this Court and the same was allowed by an order dated 12.01.2018 in CrI.R.C.No.974 of 2014 and thereby A3 was discharged from all charges. Hence the learned counsel prays for extension of the benefit as granted by this Court to the similarly placed person / A3, to the petitioner herein also.

4. This Court has considered the arguments advanced by the learned counsel for the petitioner and also perused the materials placed before it.

5. Considering the facts and circumstances of the case, admittedly the petitioner is co-passenger travelled along with A1. It is not the prosecution case that this petitioner/A3 was the driver of the vehicle and caused the said accident. Further the co-accused / A3 has already filed Discharge Petition before the Trial Court and the same was dismissed. When it was challenged before this Court, in CrI.R.C.No.974 of 2014, the same was ordered on 12.01.2018 and it is relevant to extract the relevant portion of the order:

3. A3 & A4 moved a discharge petition in CrI.M.P.No.9077 of 2014 in S.C.No.19 of 2014 before the learned VII Additional Sessions Judge, Chennai and the same was dismissed on 23.07.2017. There against, petitioner/A3 has filed the present Revision.

4. There is no dispute over the fact that the petitioner/A3 was a co-passenger in the offending vehicle. There is no dispute over the fact that he too was in drunken state. Even so, the offences alleged viz., Section 134(a) (b) r/w 187 of M.V.Act and Section 109 IPC would not be made out against him. Section 134 of M.V.Act casts a duty to seek medical attention for a person injured in an accident. Such duty is cast upon the driver of the vehicle or other person in-charge of the vehicle. It is not the prosecution case that this petitioner/A3 was either the driver of the vehicle or in-charge thereof.

5. As regards offence under Section 109 IPC, we may simply reproduce paragraph 12 of the decision of Supreme Court in Kulwant Singh Alias Kulbansh Sing Vs. State of Bihar [(2007) 15 SCC 670):-

"12.Where a person aids and abets the perpetrator of a crime at the very time the crime is committed, he is a principal of the second degree and Section 109 applies. But mere failure to prevent the commission of an offence is not by itself an abetment of that offence. Considering the definition in Section 109 strictly, the instigation must have reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation. Section 109 is attracted even if the abetter is not present when the offence abetted is committed provided that he had instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to the conspiracy some act or illegal omission takes place or has intentionally induced the commission of an offence by an act or illegal omission. In the absence of direct involvement, conviction for abetment is not sustainable."

6. Since already the case was discharged in respect of A3 and further the petitioner is also similarly placed person like that of A3, this Court is inclined to extend the benefit of order made in Cr1.R.C.No.974 of 2014, to the petitioner also.

7. For the reasons aforesaid, this Criminal Original Petition is allowed and the case in S.C.No.19/2014 on the file of the VII Additional Sessions Judge, City Civil Court, Chennai, is quashed. However, the benefit of this order will not extent to the other accused persons.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The VII Additional Sessions Judge,  
City Civil Court,  
Chennai
2. -do through- The Principal Sessions Judge,  
Chennai.
3. The Assistant Commissioner of Police,  
Traffic Investigation West,  
D-6, Anna Square,  
Traffic Wing, Chennai.
4. The Public Prosecutor,  
Madras High Court.

+1cc to Mr.S.Ramachandran, Advocate, S.R.No.53666

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PVS[co]  
NSK 22/11/2021