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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.04.2022

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P.NO.5194 OF 2019

AND

CRL.M.P.NO.2995 OF 2019

1.Babu
2.Venkatesan

... Petitioners/
Accused 1 & 2

Vs.

1. State Rep.by
Inspector of Police
T-5, Thiruverkadu Police Station
Chennai 600
Crime No.973 of 2018.

... 1st Respondent/
Complainant

2. Nandhu

... 2nd Respondent/
Defacto Complainant

PRAYER:

Criminal Original Petition had been filed under Section 482 of Cr.P.C, praying to call for the entire records in respect of FIR in Crime No.973 of 2018 dated 14.09.2018 on the file of the Respondent Police and quash the same against the Petitioners.

For Petitioners : Mr.Kalaivanan
for Mr.P.Karthik

For Respondents : Mr.R.Vinothraja for R1
Government Advocate (Crl.Side)



ORDER

This Petition had been filed to call for the entire records in respect of FIR in Crime No.973 of 2018 dated 14.09.2018 on the file of the Respondent Police and quash the same against the Petitioners.

2. When the case came up for hearing on the previous occasion, the learned Counsel for the Petitioners sought adjournment. Hence, the case was adjourned to 20.04.2022. Today, also the learned Counsel representing the counsel for the Petitioners seeks adjournment.

3. This Court earlier on 08.04.2022 raised the question of maintainability, regarding quashing of FIR. The relevant portion of the said order reads as follows:

"When the case came up for hearing, the learned counsel representing counsel on record sought adjournment.

2. From the records, it is seen that the notice was sent to the defacto complainant on 26.02.2019, at the time of admission had been returned. Subsequently, no notice was taken and the affidavit of service also not filed.

3. On perusal of the records, it is seen that the case is arising out of fatal accident in the construction site in the local limits of Tiruverkadu Police Station. Therefore, the Tiruverkadu Police had registered the FIR in Cr. No.973 of 2018 against the Petitioners who are the Builder and Supervisor of the site. Therefore, the Petitioners had approached this Court to quash the FIR.

4. Notice not served on the defacto complainant. At the same time, if the FIR is quashed, it amounts to miscarriage of justice by denying the compensation to the legal heirs of the deceased. The legal heirs can seek compensation only if there is FIR regarding the accident. If the FIR is quashed, the legal heirs of the deceased cannot claim compensation. If the accident had occurred in the Public Place like Road or parking bay, the Insurance Company is liable to pay compensation. Here, the site of the accident is construction site. Whether the Insurance Company is liable to pay compensation or not and whether the labourers were insured are disputed facts which cannot be gone into at this stage.



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5. Anyhow, for ensuring relief to legal heirs of deceased, FIR is mandatory. Under those circumstances, the maintainability of this petition itself is doubtful. Hence, learned Government Advocate (Crl. Side) is requested to clarify regarding the compensation by 18.04.2022.

Call on 18.04.2022. Interim stay already granted by this Court on 26.02.2019, is extended till then."

4. As per the ruling of the Hon'ble Supreme Court in the Judgment of State of Haryana and Ors. Vs. Ch.Bhajan Lal and Ors, reported in 1992 Supp (1) SCC 335: 1992 SCC (Cri) 426, if this FIR is quashed, the valuable right of the legal heirs of the deceased, who had succumbed to injury due to the accident, will be lost.

5. Considering the right of the legal heirs to claim compensation for the death of the person, who lost his life in the accident, for which, an FIR is mandatory, the request/prayer of the Petitioners herein, cannot be entertained. Therefore, the extraordinary power of the High Court under Section 482 of Cr.P.C., cannot be exercised. Hence, this petition is disposed of with the direction to the Investigating Officer to proceed as per law. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dna

To

1. The Inspector of Police
T-5, Thiruverkadu Police Station
Chennai 600
Crime No.973 of 2018.

2. The Public Prosecutor
High Court, Madras.

Crl.O.P.No.5194 of 2019
and
Crl.M.P.No.2995 of 2019

GSM(CO)
PM/30/05/2022