



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.15777 of 2018

and

CRL.M.P.No.8072 of 2018

B.Elumalai

... Petitioner

Versus

The State Rep by,
1.The Inspector of Police,
Puzhal Police Station,
Thiruvallur District.

2.Selvi

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records and Quash the final report filed by the first respondent herein in C.C.No.201/2017 on the file of the learned Judicial Magistrate at Thiruvottriyur.

For Petitioner :	Mr.J.Suresh
For R1 :	Mr.A.Damodaran, Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.201 of 2017, pending on the file of the Judicial Magistrate Court, Thiruvottriyur/trial Court.

2.Gist of the case is that late Babu, the husband of 2nd respondent is the deceased in this case. The 2nd respondent is residing at No.69, St.Antony Street, Puzhal, Chennai. Her husband/deceased used to do miscellaneous works in the said area. On 29.03.2016, the petitioner engaged 2nd respondent's husband/deceased for cleaning the sewage tank, he informed that he arranged lorry for cleaning sewage. The 2nd respondent's husband/deceased had gone to the house of the petitioner for cleaning the septic tank. At about 12.45 p.m., she received information that her husband slipped into the septic tank



belongs to the petitioner and she immediately rushed to the scene, where the Fire Service personnels lifted the 2nd respondent's husband from the septic tank in dead condition. When she enquired the co-workers namely Annadurai and Babu, they informed that when the sludge was solid, the petitioner asked her husband to get into the septic tank to stir the sludge, at that time, he was attacked with poisonous gas and he fell down in the septic tank. Hence, she lodged a complaint to the 1st respondent Police and FIR in Crime No.371 of 2016 was registered under Section 174 Cr.P.C. During investigation, the offence was altered to Sections 336, 304(A) and Sections 7 & 9 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. After completion of investigation, charge sheet was filed before the trial Court and it was taken on file as C.C.No.201 of 2017, against which the present criminal original petition.

3.The learned counsel for the petitioner submitted that the petitioner is a retired Sub Inspector of Police, who is residing with his family at Puzhal, Chennai. His minimal works were used to be done by the 2nd respondent's husband/deceased. For cleaning the septic tank, he needed manpower, hence, he engaged two persons along with the deceased to clear the sewage. While cleaning the sewage tank, the petitioner stood on the top of the tank, stirred the sludge and slipped into the septic tank. Immediately, the Fire Service personnels altered and they had come and rescued the deceased from the septic tank and later, he declared died. He further submitted that the petitioner is not the owner of the house, it is duty of the house owner to clean the sewage tank. Despite several requests made, the Municipal authority sent the vehicle to clean the septic tank and the petitioner not engaged any worker. Further, the petitioner did not engage the 2nd respondent's husband to do the cleaning work. The deceased on his own came to the house of the petitioner to clean the septic tank and slipped into the tank. The 1st respondent Police on the pressure of the 2nd respondent's family members, altered the Sections and thereby, falsely implicated the petitioner as accused. He further submitted that LW2 to LW4 are the persons, who were present when the deceased slipped into the septic tank. The statements of LW2 to LW4 clearly reveals that the deceased was not engaged for manual scavenging by the petitioner. The other witnesses are family members of the deceased, who had come to the scene of occurrence, after the deceased slipped into the tank. Thus, the petitioner is falsely implicated in this case. The petitioner only tried to clean the septic tank with the aid of municipality. It is the duty of the Municipal authority to



clean the sewage on payment of charges with regular sewage cleaners mechanically. Hence, he prayed for quashing of proceedings against the petitioner.

4. The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that in this case, on the complaint of the 2nd respondent, a case was registered under Section 174 Cr.P.C. On investigation, Section was altered to Sections 336 & 304(A) and Sections 7 and 9 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013. He further submitted that the Government of Tamil Nadu, vide G.O.Ms.40, Municipal Administration and Water Supply, dated 05.03.2015, prohibited the employment of manual scavengers. As per Section 7 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, no person, local authority or any agency, shall engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or a septic tank. In this case, as per the contention of the petitioner, the petitioner employed the 2nd respondent's husband/deceased Babu for cleaning the septic tank. Following the guidelines of the Hon'ble Apex Court in the case of "Safai Karamchari Andolan & Ors., Versus Union of India & Ors., reported in 2014 (3) CTC 177" the Corporation Authority paid compensation of Rs.10,00,000/- to the family of the deceased. He further submitted that LW1 is the defacto complainant/2nd respondent and she is the wife of the deceased. LW1 clearly stated about her husband was employed by the petitioner for sewage work. LW2 to LW4 are co-workers, who were employed along with the deceased. LW6 and LW7 are witnesses to the Observation Mahazar. LW8 and LW9 are witnesses for arrest and confession of the petitioner. LW10 is the Postmortem Doctor, who confirmed the deceased died due to falling down in sewage tank. LW11 is the Scientific Officer from the Forensic Department. LW12 is the Sub Inspector of Police, who registered the FIR against the petitioner. LW13 is the Inspector of Police, who conducted a part of investigation and LW14 is the another Inspector of Police, who conducted further investigation and filed the charge sheet before the Court. Due to the pendency of the above petition, the case has been pending for four years without any progress. Hence, he prayed for dismissal and sought direction for speedy trial.

5. On perusal of the affidavit filed by the 2nd respondent in W.P.No.41039 of 2016, it is seen that the 2nd respondent's husband/deceased used to do manual works in and around Puzhal area. On the date of occurrence, her husband was employed by the petitioner to clean the septic tank. Since there was no



direct sewage connection, the sewage was stored in a septic tank. For cleaning the same, the 2nd respondent's husband/deceased along with two others were engaged by the petitioner. Since there was slush in the septic tank, the deceased was asked to stir the septic, at that time, he was attacked with poisonous gas and he slipped into the tank and later, he died. Thereafter, the 2nd respondent lodged a complaint against the petitioner to the 1st respondent Police, which was registered in Crime No.371 of 2016. Since the Municipal Authority failed to pay any compensation to the 2nd respondent, filed a Writ Petition before this Court in W.P.No.41039 of 2016. After filing the same, compensation amount was paid to the 2nd respondent on 24.03.2017 following the guidelines issued by the Hon'ble Apex Court in the case of "Safai Karamchari Andolan & Ors., Versus Union of India & Ors., reported in 2014 (3) CTC 177". Recording the same, the Writ Petition was disposed on 02.08.2017.

6.The 2nd respondent lost her husband, who is the only earning member in the family and now, she is helpless. The 2nd respondent has four children, in which three male and one female. The first son is pursuing graduation and others are going to school.

7.This Court considered the rival submissions and perused the materials available on record.

8.As per Section 7 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013, no person, local authority or any agency, shall engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or a septic tank. On the date of occurrence, the deceased was employed by the petitioner for hazardous cleaning of sewage, which is clearly spoken by the 2nd respondent and the co-workers (LW1 to LW4). The Doctor LW10 confirms that the death of deceased occurred due to fall into the septic tank.

9.In this case, the Government following the guidelines issued in the case of "Safai Karamchari Andolan & Ors., Versus Union of India & Ors., reported in 2014 (3) CTC 177" paid compensation to the 2nd respondent for Rs.10,00,000/-.

10.From the statement of witnesses and materials produced, it is seen that prima facie case is made out against the petitioner and therefore, the points raised by the petitioner are to be decided only during the trial and not in this Quash Petition and the same is liable to be dismissed and, is dismissed.



11.The trial Court is directed to complete the trial in C.C.No.201 of 2017, within a period of four months, from the date of receipt of a copy of this order. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

vv2

To

- 1.The Judicial Magistrate,
Thiruvotriyur.
- 2.The Inspector of Police,
Puzhal Police Station,
Thiruvallur District.
- 3.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.15777 of 2018

PMK(CO)
GN(11/03/2022)