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Crl.O.P.No.14216 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2022

CORAM

THE HON'BLE Dr.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.14216 of 2019

G.Balaji

... Petitioner/Accused 1

-Vs.-

1. State rep by Inspector of Police,
Puzhal Police Station,
Puzhal, Chennai

.. Respondent/Complainant

2. K.Subbalakshmi

..2nd Respondent/ Defacto Complainant

Prayer :- Criminal Original Petition filed under Section 482 of Code of Criminal Procedure to call for the records in Crime No.119 of 2019 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.H.Adaikala Arokiaraj

For Respondent : Mr.N.S.Suganthan
Government Advocate for R1
Mr.R.Thamaraiselvan for
Mr.A.Jayaseelan for R2



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ORDER

The petitioner being the proprietor of the construction company which engaged Ramu and Raja, Labour contractors for the purpose of painting work has been arrayed as accused, since one of the person employed by name Kumaravel for painting work fell down from the scaffolding and died. Hence, case under Section 304(a) was registered and investigated by the respondent police. This petitioner is arrayed as 1st accused sought for quashing the complaint relying upon the judgement rendered in ***[Dr.Suresh Gupta Vs. Government of NCT, Delhi and another]*** reported in 2004 6 SCC 422 wherein the Hon'ble Supreme Court dealing with medical negligence has observed that “a high degree of morally blame worthy conduct must be established to prosecute a doctor for gross negligence” and so far as the present case is concerned, since there is no element to show that rashness or gross negligence attributable to the petitioner herein, criminal complaint has been quashed. However, the learned Government Advocate appearing for the state relying upon ***[Ambalal D.Bhat Vs. The state of Gujarat]*** in



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1972 3 SCC 525 submitted that while considering the petition to quash a complaint registered under Section 304(a), this Court has to look into the proximity and efficient cause for the Causa Causans and insofar as the negligence in construction work cannot be equated with medical negligence. The very fact that the victim in this case has not been provided with sufficient safety guards while engaging in hazardous work indicates that the construction company has engaged him through the contractor is liable for the negligence and also stated that the matter was tried by the Labour Commissioner and compensation has been awarded to the victim family payable by this petitioner holding that the accident has occurred due to the negligence of the petitioner herein and therefore, sought for dismissal of this petition on the ground that disputed facts are involved in this case and can be decided only after full trial.

2. The learned Government Advocate submitted that on completion of the investigation, final report has been filed including the petitioner herein in C.C.No.2 of 2021 on the file of learned Judicial Magistrate, Alandur.



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3. This Court after considering the evidence available and the fact that the petitioner herein is the proprietor of the Construction company which has engaged the deceased Kumaravel through the contractor and therefore, on the face of the documents collected during the course of the investigation indicates the vicarious liability of the construction company not severed by engaging a contractor as an intermediary. However, the fact to be tested before the Trial Court. Therefore, this petition to quash is dismissed with a liberty to the petitioner herein to place all his defence during the course of the trial to get exonerated from the liability.

26.09.2022

Speaking/Non-speaking order

Index: Yes/No

Internet : Yes/No

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To

1. State rep by Inspector of Police,
Puzhal Police Station,
Puzhal, Chennai

2. The Public Prosecutor,
High Court, Madras.



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Dr.G.JAYACHANDRAN.J.,

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