



Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :10.11.2022

Pronounced on :.....11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019

S.Mariadoss

.. Petitioner

/versus/

1.State through
The Inspector of Police,
Velankanni Police Station,
Nagapattinam District.
(Crime No.230 of 2017)

2.Pakkirisamy

.. Respondents



WEB COPY



Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for records pass an quashing the proceedings in P.R.C.No.12 of 2019 now pending on the file of the learned Judicial Magistrate No.1 at Nagapattinam in so far as it relates to the petitioner herein.

For Petitioner :Mr.R.Ganesh Kumar
For Respondents :Mr.N.S.Suganthan,
Govt.Advocate (Crl.Side) for R1
Service awaited for R2

ORDER

In this petition to quash, an interesting question of law has been raised, whether Charge under Section 304 (ii) of IPC can be framed against the accused, who is the employer of the deceased, who fell from the casuarina scaffold, while erecting electrical flood light for the day and night cricket match.



WEB COPY



Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019

2. The petitioner herein took electrical contract to fix flood lights for the cricket match organised by one Appanu (A-3) and Settu @ Rameshkumar (A-4). Earlier, the contract for erecting the casuarina scaffold was given to one Shagul Hameed (A-1). However, later, the electrical contract was given to Mariyadoss (A-4)/the petitioner herein. It is alleged that the scaffold of 50 feet height was erected engaging persons not expert in erecting scaffolds. No permission for erecting scaffold was obtained from the authorities. The scaffold without proper foundation was put up by A-1, the scaffold contractor. At the request of A-1, A-2 sent his workers namely, Danapalan, Ramaiah and Arumainathan to fix the flood lights (Imax light). While they were fixing the lights, due to improper erection of the scaffold, the scaffold collapsed to ground on the blow of heavy wind. All these three workers engaged in fixing the light fell down. Dhanapalan died. Ramaiah got his right leg fractured and his right leg got mutilated. Arumainathan sustained grievous injuries.



WEB COPY



CrI.O.P.No.16831 of 2019
and
CrI.M.P.No.8468 of 2019

3. This incident occurred on 22/06/2017. First Information Report in Crime No.230/2017 registered on the same day, on the complaint received from one Pakkirisamy. On completion of investigation, Final Report filed against the above named 4 persons for the offences under Sections 304 (ii) and 338 IPC.

4. In this quash petition filed by the second accused, it is contended that from the statements of LW-1 and others, it is evident that at the time of the accident, the petitioner was not present. The scaffold was erected by the first accused and not by him. If the scaffold alleged to have been erected without taking any caution of safety, it is the responsibility of A-1 and not this petitioner. The scaffold in fact fell down due to unexpected heavy wind blow and the same is found place in the FIR itself. The petitioner was the Electrical Contractor engaged the deceased and injured persons for fixing flood lights. He was admittedly not at the scene of



Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019

WEB COPY

occurrence, when the accident had occurred. He was neither negligent nor cause for the accident. Therefore, charges under Sections 304(ii) and 338 IPC are liable to be quashed.

5. The learned Government Advocate (Crl.Side) appearing for the first respondent/State submitted that on completion of investigation, Final Report filed and taken on file by the Learned Judicial Magistrate No.1, Nagapattinam in P.R.C.No:12/2019. The offence being exclusively triable by the Court of Sessions, committal proceedings is pending. The defacto complainant in his statement recorded under Section 161 Cr.P.C during the course of investigation has informed the Investigating Officer that on the fateful day, while three of his colleagues were working on the top of the scaffold fixing the light, they expressed fear of falling due to unstable scaffold oscillating due to heavy wind. He called the petitioner, who is the Electrical Contractor and informed about this. The petitioner requested to somehow complete the work. The organisers of the match (A-3) and (A-4),



Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019

WEB COPY

who were present assured nothing will happen and encouraged them to continue the work. Thereafter, the scaffold collapsed due to improper erection by the first accused. This accused though informed about the danger, ignoring it and without taking any safety precaution, put his employees into danger of death and grievous injuries. A2 knowing fully well, forcing them to continue the work will endanger their lives. Hence, he is liable for prosecution under Sections 304(ii) and 338 of IPC.

6. Section 338 of IPC reads as below:-

“338.Causing grievous hurt by act endangering life or personal safety of others- Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.”

7. Section 304 (ii) IPC reads as below:-



WEB COPY



CrI.O.P.No.16831 of 2019
and
CrI.M.P.No.8468 of 2019

“304.Punishment for culpable homicide not amounting to murder:- Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

8. Admittedly, it is an accident. Initially, the case was registered as accident and probed in accordance with law. In the same transaction and for same reason viz, improper erection of the scaffold, when there was heavy wind, it could not withstand and collapse. Out of three persons, who



Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019

WEB COPY

fell along with the scaffold materials, one died and two sustained injuries.

For the death of the person, due to negligence, the appropriate penal provision is Section 304 A IPC which reads as below:-

“304(A)-Causing death by negligence:
Whoever causes the death of any person by doing any rash and negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

9. To convict an accused for offence under Section 304 (ii) IPC, ‘culpable homicide’ is the essential ingredient. Section 299 of IPC defines as below:-

“299.Culpable homicide:- Whoever causes death by doing an act with the intention causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”



WEB COPY



Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019

10. Section 33 of IPC defines the word 'Act' and the word 'omission' separately. These two words are not interchangeable. The material collected against this petitioner does not alleged knowingly it will likely to cause death or to cause such bodily injuries as is likely to cause death. Apparently it is an accident caused due to heavy wind and due to unsafe erection of the scaffold. The petitioner has no role in erection of scaffold. He was not even present at the scene of occurrence while the scaffold collapsed. The statement of LW-1 that the petitioner requested to continue the work and complete, in spite of heavy wind is fact to be tested and proved during the trial. This said utterance, at the most be an omission to take necessary precaution, which is more likely an act of negligence and will not fall within the meaning of culpable homicide.

11. Therefore, clarifying the legal position, this Criminal Original



Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019

WEB COPY

Petition is disposed of with a direction to the Court below, to take note of the clarification made above and take appropriate decision regarding the penal provision made out against this petitioner for framing charges and try him in accordance to law. Consequently, connected Miscellaneous Petition is closed.

.....11.2022

Index:yes/no
speaking order/non speaking order
ari
To :

- 1.The Judicial Magistrate No.1, Nagapattinam.
- 2.The Inspector of Police,
Velankanni Police Station, Nagapattinam District.
- 3.The Public Prosecutor, High Court, Madras.



WEB COPY



Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019

DR.G.JAYACHANDRAN,J.

ari

Pre-Delivery Order made in
Crl.O.P.No.16831 of 2019
and
Crl.M.P.No.8468 of 2019



WEB COPY



CrI.O.P.No.16831 of 2019
and
CrI.M.P.No.8468 of 2019

....11.2022