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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.06.2022

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THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.O.P.No.21430 of 2021
and
Crl.M.P.No.11581 of 2021

Giftson Chandrasekaran

... Petitioner

Vs.

1.The Sub-Inspector of Police,
Kelambakkam Police Station,
Chengalpattu, Chennai - 603 103.

2.Hema Kalyanasundaram.

... Respondents

Prayer: This Criminal Original Petition had been filed under Section 482 of Criminal Procedure Code to call for entire records of the FIR No.837 of 2021 on the file of Kelambakkam Police Station and quash the same.

For petitioner : Mrs.Nalini Chidambaram
Senior Counsel,
for M/s.V.Revathy

For Respondents: Mr.L.Baskaran (for R.1)
Government Advocate (Crl. Side)
Mr.E.Manohar (for R.2)

ORDER

This Criminal Original Petition had been filed to quash the FIR No.837 of 2021 on the file of the first respondent.

2. The learned Senior Counsel Mrs.Nalini Chidambaram appearing for the Petitioner submitted that the case was registered under Section 279 of I.P.C. She invited the attention of this Court to the ingredients of Section 279 of I.P.C and also to the contents of the First Information Report.

3. The learned Senior Counsel submits that a stray dog was killed by the Petitioner in the course of the accident. Based on which, a member of the Animal Welfare Board had filed the First



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the language of Section 279 of the Indian penal Code, 1860. That is why the legislature in its wisdom has used the words 'manner so rash or negligent as to endanger human life'. The preliminary conditions, thus, are that (a) it is the manner in which the vehicle is driven; (b) it be driven either rashly or negligently; and (c) such rash or negligent driving should be such as to endanger human life. Once these ingredients are satisfied, the penalty contemplated under Section 279 of the Indian Penal Code is attracted.

In Ravi Kapur, the Apex Court held that 'negligence' means omission to do something which a reasonable and prudent person guided by the considerations which ordinarily regulate human affairs would do or doing something which a prudent and reasonable person guided by similar considerations would not do. Negligence is not an absolute term but is a relative one; it is rather a comparative term. It is difficult to state with precision any mathematically exact formula by which negligence or lack of it can be infallibly measured in a given case. Whether there exists negligence per se or the course of conduct amounts to negligence will normally depend upon the attending and surrounding facts and circumstances which have to be taken into consideration by the Court. In a given case, even not doing what one was ought to do can constitute negligence. The Court has to adopt another parameter, i.e., 'reasonable care' in determining the question of negligence or contributory negligence. The doctrine of reasonable care imposes an obligation or a duty upon a person (for example a driver) to care for the pedestrian on the road and this duty attains a higher degree when the pedestrian happen to be children of tender years. It is axiomatic to say that while driving a vehicle on a public way, there is an implicit duty cast on the drivers to see that their driving does not endanger the life of the right users of the road, may be either vehicular users or pedestrians. They are expected to take sufficient care to avoid danger to others."

8. The learned Counsel for the second Respondent/De-facto Complainant also submitted that the FIR is registered under Section 279 of IPC only. But only after collecting sufficient materials, either dropping the investigation or filing final report of the investigation can be done. Based on the materials collected by the Investigation Officer regarding the death of a Dog, the Dog is maintained by the gated community members, which



is not a street dog which had been taken care of by providing medicine and food just like the Pet dog. Therefore, they have aggrieved by the indifferent attitude of the Petitioner in knocking down the dog maintained by the members of the gated community. Hence, the submission of the learned Senior Counsel for the Petitioner that it was a street dog which was objected by the learned Counsel for the second Respondent/De-facto complainant. On those materials, if the Investigation Officer concludes the investigation that the rash and negligent driving of the Petitioner resulted in the death of the dog maintained by the members of the gated community attracting the Provisions of Prevention of Cruelty of Animals Act. Suppressing all those facts, the Petitioner had approached this Court within two days after registration of the FIR to scuttle the investigation. It is found to be against the guidelines issued by the Hon'ble Supreme Court in the case of Animal Welfare Board of India -vs- A.Nagaraja and Others [(2014) 7 SCC 547] and the death of the animals due to human interference in the forest as well as in the Jallikattu case wherein the Hon'ble Supreme Court held that the animals also has right and is to be protected just like the rights of the Human beings in this country. Ignoring these guidelines, the submission of the learned Senior Counsel for the Petitioner seeking to quash the FIR immediately after registration of the case amounts to violation of the guidelines in Bajanlal Vs. State wherein the Hon'ble Supreme Court had issued guidelines that the extraordinary powers available to the Hon'ble High Court under Section 482 of Cr.P.C. The learned Counsel for the second Respondent vehemently objected to the submission of the learned Senior Counsel for the Petitioner seeking to quash the FIR on the ground that the alleged rash and negligent driving attracting the Provision of Section 279 of IPC where it is mentioned as causing danger to human beings. Here, the street dog was alleged to have been killed. Therefore, the learned Senior Counsel for the Petitioner sought to quash the FIR which is vehemently objected by the learned Counsel for the second Respondent/De-facto Complainant stating that the members of the gated community were agitated by the rash and negligent driving of the Petitioner resulting in the death of the pet dog owned by the members of the gated community. Therefore, the Provisions of the Prevention of Cruelty of Animals Act is also involved in this case. Only at the stage of further investigation, the Police can file final report including offences against cruelty to the animals. Therefore, at the initial stage finding out the defect in the FIR and seeking to quash the FIR amounts to violation of the guidelines issued by the Hon'ble Supreme Court in Bhajanlal Vs. State.

9. The learned Counsel for the second Respondent also submitted that had the Petitioner apologized, the matter could have ended in compromise. Instead he has approached this Court



straight away to quash the First Information Report.

10. The learned Government Advocate (Crl.Side) vehemently objected to quash the First Information Report stating that even if there is a compromise between the parties, the investigation cannot be curtailed, the investigation has to be proceeded.

11. Considering the exchange of messages between the members of the gated community, the apprehension expressed by the learned counsel for the second Respondent/De-facto complainant regarding the rash and negligent driving within the gated community is found acceptable. Therefore, in the light of the rulings cited by the learned Counsel for the second Respondent and also the reasons stated by the learned Government Advocate (Crl.Side), this Criminal Original Petition is dismissed. At this stage, it is for the investigating agency to proceed further or to file a closure report if in case of absence of materials. No costs. Consequently, connected miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Sub-Inspector of Police,
Kelambakkam Police Station,
Chengalpattu, Chennai - 603 103.

2. The Public Prosecutor,
High Court, Madras.

+2cc to M/s.V.Revathy, Advocate, S.R.No.36617

Crl.O.P.No.21430 of 2021 and
Crl.M.P.No.11581 of 2021

KK(CO)
SB(24/06/2022)