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Crl.O.P No.21528 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2022

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

Crl.O.P No.21528 of 2021
and
Crl.MP.Nos.11648 & 11649 of 2021

1.T.Vincent ... Petitioner/Accused
Vs.
1.Mr.David Prem John Philip
2.Nina Roy Philp ...Respondents/Defacto Complainant
3.The Inspector of Police,
R4 Pondy Bazaar Police,
Traffic Investigation Wing
Chennai (Crime No.213/TN1/2016) ... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records of the case in CC.No.2298/2018 on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.R.Thamaraiselvan for
M/S.Shankar.

For Respondents : Mr. A.Damodaran
Additional Public Prosecutor for R3
: Mr.R.Malarvannan for R2



ORDER

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This Criminal Original Petition has been filed to call for the records of the case in CC.No.2298/2018 on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai and quash the same.

2.It is sad case where the son of respondents 1 and 2, who was a motorcyclist, had died in the road traffic accident occurred on 19.02.2016. The petitioner was a pedestrian who was crossing the road and the deceased was riding his motorcycle at the time of the accident. The petitioner got injured in the accident, whereas the son of respondents 1 and 2 died due to the accident. The son of the petitioner by name one Praveen had given a complaint about the accident and on which a case has been registered in FIR in Crime No.65/TN1/2016 on the file of R4-PondyBazaar Police Station, however, the same was closed as abated after the death of the motorcyclist by name Daniel Shouam John Philip.

2.1. The respondents 1 and 2, who are the parents of the deceased, had also given a complaint with regard to the accident by alleging that the accident had caused due to the negligence on the part of the pedestrian namely the petitioner who had crossed the road suddenly at the time of the



accident.

2.2. Since no case was registered on the complaint given by the respondents 1 and 2, they filed a Crl.MP.No.1779/2016 and got an order to register the complaint. Subsequently, a case has been registered on the complaint given by the respondents 1 and 2 in Cr.No.213/TN1/2016 for the offence under Section 304(A) IPC. However, after the completion of the investigation, the Final Report was filed as 'mistake of fact'. Aggrieved over that, the respondents 1 and 2 had filed a Protest Petition and the same was allowed and the case has been taken on file in CC.No.2298/2018 and summons have been issued to the petitioner and others. Aggrieved over that, the petitioner had filed this petition to quash the proceedings in CC.No.2298/2018.

3. Heard the submissions made by learned counsel on either side and perused the materials available on record.

4. The learned counsel for the petitioner submitted that the learned Magistrate, without applying mind, had accepted the petition without recording the reasons; the investigation was done at length and the statements of the witnesses and video footage available from the scene of occurrence makes it clear that the accident had caused due to the negligence on the part



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of the motorcyclist; in fact, the statement of the lorry driver who was just leading the motorcycle of the deceased would show that the accident had happened only due to the negligence of the motorcyclist, but the learned Magistrate, without appreciating the materials on record, had chosen to take the case on file without any basis; the deceased was riding a race motor bike and he did not control its speed and that had caused the accident.

5. The learned counsel appearing for the respondents 1 and 2 submitted that the Protest Petition has been filed along with video footage received from the American Embassy, Chennai, which had the CCTV footage with regard to the accident captured from their camera fixed at their gate; the accident had taken place near the gate of the American Embassy and hence, it is claimed by the learned counsel that the CCTV footage would show the manner in which the accident had occurred.

6. The CCTV had already been examined by the Investigation Officer and he had stated that the CCTV footage showed that the negligence was on the part of the motorcyclist. Apart from the CCTV footage, the statement of the lorry driver who was proceeding the motorcycle is also very important. He has stated that at the time of the accident he was driving his water tanker lorry and was driving in the same direction, i.e., from East to West on the



Cathedral Road. When he came near Senmozhi Poonga, he saw a person (petitioner) who was seeing both sides with an intention to cross the road; on seeing him, the lorry driver had reduced the speed, however, the motorcyclist who was driving a motorcycle bearing registration number TN 19 Q 6116 (KTM.390), a racing motorcycle, without noticing the speed reduction of the lorry, continued to come in a same speed hit the pedestrians ; hit the meridian; due to that both the pedestrian and the motorist got injured; later, he came to know that the motorcyclist had died.

7. Even if it is presumed that it was the pedestrian who did not mind the rules of the road had attempted to cross the road the motorcyclist could have had the control to reduce the speed on seeing the pedestrian. The learned counsel for the first and second respondents submitted that the motorist was blinded by the lorry which was going in front of him. Had the motorist kept the safe distance between himself and lorry, he could have avoided the pedestrian who was crossing the road and on seeing when the lorry driver reduced the speed.

8. It is further contended by the learned counsel for the respondents 1



and 2 that the deceased was a skillful motorcyclist and he used to have absolute control of the motorcycle. Though it might be true, the motor bike which he was handling at the time of accident would not have been a compatible to the normal road and its traffic.

9. The learned IV Metropolitan Magistrate had raised certain clarifications about his jurisdiction and on that basis, a transfer application in Tr.Crl.MP.No.4594/2017 was taken on file. Though it is submitted by the learned IV Metropolitan Magistrate that the place of occurrence falls under the jurisdiction of XVIII Metropolitan Magistrate, Saidapet and the respondents 1 and 2 also wanted the matter to be transferred to some other Magistrate, the Chief Metropolitan Magistrate had chosen to dismiss the transfer the application. Subsequently, the learned Magistrate has gone with the observation made by the Chief Judicial Magistrate in the order made . The said observation is not relevant to the purpose of the transfer application. The learned Magistrate ought to have applied his mind in the Protest Petition ought to have been appreciated on the materials available on record and recorded his own findings before taking cognizance.

9. The materials are not sufficient enough to show that the accident had caused due to the negligence of the pedestrian or to rule out the negligence or



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error of judgment on the part of the motorist due to the blindness caused to him by the lorry. With these materials on record, if the petitioner is subjected to trial, that would only waste the time of the court and no purpose will be served. Hence, I feel it is appropriate to invoke the powers of this Court under Section 482 Cr.P.C to quash the proceedings.

In the result, this Criminal Original Petition is **allowed** and the proceedings in CC.No.2298/2018 pending on the file of the learned IV Metropolitan Magistrate, Saidapet, Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

15.11.2022

Index : Yes/No
Speaking Order : Yes / No

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R.N.MANJULA, J.,
jrs

To:

1. The IV Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police,
R4 Pondy Bazaar Police,
Traffic Investigation Wing.
3. The Public Prosecutor,
Madras High Court.

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