

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM :

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Cr1.O.P.No.31073 of 2019
and Cr1.M.P.No.16909 of 2019

S.Karruppasamy,
S/o.Swamikannau Gounder.

... Petitioner

Versus

K.Arumugam,
S/o.Kaliyan,
Rep.by Power Agent Chinnayettu,
Middle Street, Sathiyam Village,
Vepur Taluk, Cuddalore District.

... Respondent

Criminal Revision Case filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings in C.C.No.119 of 2018 on the file of the Judicial Magistrate No.1, Vridhachalam, Cuddalore District and quash the same.

For Petitioner : Mr.S.Senthilnathan.

For Respondents : No Appearance

O R D E R

This Criminal Original Petition has been filed by the accused in a private complaint given by one K.Arumugam, Power Agent of Chinnayettu. It was taken on file by the learned Judicial Magistrate No.I, Vridhachalam, in C.C.No.119 of 2018.

2. The case relates to death of one Mummoorthy, S/o.Arumugam in the road accident on 26.09.2012. The pillion rider one Mani is the first informant. Based on his statement initially a case under Sections 279, 337 of IPC was registered, which was later altered to 304A of IPC and taken for investigation. In the complaint, the informant had stated that the offending vehicle is TATA AC, four wheeler. Since the identity of the offending vehicle and its driver could not be tracked, the police completed the investigation and filed closure report. The de facto complainant Mani has left to abroad. Thereafter, the protest petition was filed by Chinnayettu, who is brother of the deceased father. The protest petition was closed observing that from the statement of witnesses recorded, there is no disclosure

of fact regarding the driver of the offending vehicle. The informant, who was happened to be eye witness was also not available to give his further statement. In such circumstances, the negative report filed by the police was accepted and the liberty was given to the petitioner Chinnayettu to file private complaint.

3. Thereafter, Chinnayettu as Power Agent of Arumugam has filed the private complaint, in which, he has specifically alleged that the offending vehicle number was given to the police by said Mani but to save the accused, the police has not mentioned it in the FIR, at the interference of the Advocate practicing in High Court. Stating that father of the deceased, Arumugam is his elder brother and since Arumugam suffers physical incapacity, Chinnayettu has been authorized to file the private complaint. After recording the statements of the complainants Chinnayettu, Munian, Selvaraju, the Court below had taken cognizance of the complaint, since the material was available to show that the offending vehicle is TATA AC four wheeler bearing registered No.TN 31 AQ 3195. The petitioner herein Karuppusamy, is shown as accused in the complaint.

4. The learned counsel for the petitioner submits that private complaint filed through Power Agent is not maintainable. After closure of the complaint, the learned Magistrate ought not have taken the private complaint on file in the absence of material evidence. The negative report has been filed by the Inspector of Police stating "Action Dropped". The learned counsel appearing for the petitioner would also stated that the Power Agent has no locus to file a private complaint, after the closure of the complaint by the police on due investigation.

5. Per contra, the learned counsel for the respondent stated that aggrieved by police report "Action Dropped" Chinnayettu preferred an application for further investigation under Section 173(8) of CrPC. While disposing the said application, the learned District Magistrate passed order dated 26.03.2018 giving liberty to the petitioner to file private complaint against the accused. Thereafter, Arumugam through his Power Agent Chinnayettu, who is none other than his own brother, has filed a complaint stating that the present investigation of the police has not mentioned the identity of the offending vehicle, which lead to closure report. In fact, Hon'ble High Court earlier in CrI.O.P.No.17218 of 2013 had observed that the aggrieved person has right to file a private complaint.

6. The learned Public Prosecutor submits that filing of private complaint through Power Agent is permissible in law and Hon'ble Supreme Court by the order dated 13.09.2013 in

CrI.A.No.73 of 2007 [A.C.Narayanan Vs State of Maharashtra] has clearly held that Power of Attorney can file a private complaint and also laid down the principle and circumstances under which such complaint is sustainable.

7. The sum and substance of the respondent case is that Mummoorthy died due to the rash and negligent driving of the offending Van TATA AC bearing registered No.TN 31 AQ 3195 whereas, the police Inspector, suppressing the information, filed a closure report. The deceased is the brother's son of the complainant. He is given authorization to represent the father of the deceased. In said circumstances, there is no law which prevents the person interested or authorized to set criminal law into motion by way of private complaint. Whether the authorization is valid or not is to be tested in the course of the Trial and whether the contents of the complaint prove beyond doubt is also matter for trial.

8. In the light of the above consideration, the petition, to quash the private complaint, therefore, deserves to be dismissed. Accordingly this Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS-II)

//True copy//

Sub Assistant Registrar

nsa

To

1. The Judicial Magistrate No.I,
Vridhachalam,
Cuddalore District.
2. - do-Chief Judicial Magistrate,
Cuddalore.

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and
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SKM(CO)
GMY(13/07/2022)