



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.Nos.23743 & 23748 of 2018 and
CRL.M.P.Nos.13363 & 13369 of 2018

Dr.Suresh ... Petitioner in Crl.O.P.No.23743 of 2018
Arul @ Arul Pandyan ... Petitioner in Crl.O.P.No.23748 of 2018

Versus

1. State rep by its,
The Inspector of Police,
E-1, Mylapore Police Station, Law & Order,
Mylapore, Chennai-4,
Crime No.1865/2012.

2.Premila ... Respondents in both cases

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to call for the entire records comprised in C.C.No.737 of 2014 pending on the file of Learned 18th Metropolitan Magistrate Court at Saidapet, Chennai and quash the same.

For Petitioner : Mr.Vimal B.Crimson
For R1 : Mr.A.Damodaran,
Additional Public Prosecutor

COMMON ORDER

Criminal Original Petitions have been filed to quash the proceedings in C.C.No.737 of 2014, on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai.

2.The gist of the case is that on 16.10.2012, at about 03.00 p.m., the 1st respondent Police received a complaint from the 2nd respondent stating that she is running Mens Hostel in the building situated at No.14 Vallalar Eswaran Kovil Street, Mylapore, Chennai. The 1st petitioner is the owner of the said building, who is in abroad. Due to which, the building was managed and maintained by the 2nd petitioner and A3. There was necessity to build up toilet and bathroom in the second floor of the building, for which A3 engaged one Mani for doing mason work. At about 12.00 noon, when Mani climbed and was plastering the outer wall in the second floor, he slipped and fell down



since the scaffolding was not properly placed. Due to which, Mani sustained injury on his head, hands and legs, thereafter, he was taken to the Government Hospital, Chennai by 108 Ambulance for treatment. Initially, a case in Crime No.1865 of 2012 was registered against the petitioners/A1 & A2 and A3 by the 1st respondent Police for offence under Section 288 and 337 of IPC at about 12.00 p.m. On coming to know about the death of Mani, Section was altered to Section 304(a) IPC. After registration of case, the Investigating Officer/LW10 visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch, examined the witnesses present in the scene of occurrence, arrested the accused and after completion of postmortem, obtained the postmortem certificate, examined the Doctor, who conducted postmortem on the body of the deceased and filed the final report listing LW1 to LW10 and annexing documents. The trial Court finding prima facie materials to proceed against the accused had taken the case on file in C.C.No.737 of 2014, against which, the petitioners/A1 & A2 are before this Court.

3.The learned counsel for the petitioners submitted that the property was let out on rent to LW1, who was running Mens Hostel in second floor. The 1st petitioner, who is a Doctor was busy and he was often visiting foreign countries. Due to which, the 1st petitioner entrusted the management and maintenance of the property to A2. The 1st petitioner's wife and the 2nd petitioner's wife are friends, since they were classmate. The 2nd petitioner engaged A3 to oversee the construction work at No.14 Vallalar Eswaran Kovil Street, Mylapore, Chennai. The scaffolding was put by Mani with his workers and after satisfying the stability of scaffolding, he started the construction work. For plastering the outer wall, he climbed on scaffolding and started the same. At that time, he slipped and fell down and he was taken to hospital for treatment.

4.He further submitted that admittedly, the 1st petitioner did not engage Mani for construction work. The 2nd petitioner entrusted the work to A3, who independently entrusted the work to Mani on contract basis, Mani was looking after the entire construction work. It was Mani, who made arrangements in putting up the scaffolding. The said Mani slipped and fell down and sustained injuries in an accident, for which, the petitioners or other accused cannot be held responsible. The 2nd respondent admitted that she is running Mens Hostel and for her requirement, the bathroom and toilet was built up. At the time of occurrence, LW2-Balu was working in ground floor, he had not seen the fall, only after hearing the sound, he came there to help Mani. LW3-Shanthi is the wife of Mani, who after seeing the hand bill of her husband's death, had gone to the Police Station, received the body. LW4 and LW5 are witnesses to the Observation Mahazar. LW6 and LW7 are witnesses for arrest and



confession of the accused. He further submitted that from the confession of the accused, nothing was recovered in this case. LW8 is the Doctor, who conducted Postmortem on the body of the deceased. LW8 confirmed that the death was due to multiple injuries sustained by Mani. LW9 is the Sub Inspector of Police, who registered FIR. LW10 is the Investigating Officer. From the statement of witnesses and materials produced, it is clear that the petitioners and other accused cannot be held responsible for the accidental fall of Mani, who is an independent contractor, took the work on himself. He further submitted that without prejudice to his contention on merits, the petitioners voluntarily came forward to pay a sum of Rs.1,50,000/- each (Rupees one lakh fifty thousand only) to the wives of Mani viz., Shanthi/LW3 and one Rasathi on humanitarian consideration. The petitioners and the wives of Mani filed joint compromise affidavit stating that they are willing to compound the offence and not inclined to proceed against the petitioners. Hence, he prayed for quashing of the proceedings.

5.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that in this case, Mani had two wives, one is Shanthi/LW2 and another one is Rasathi. Due to incident, which took place on 16.10.2012, both of them lost their husband Mani. LW1 was running Mens Hostel in the building of the 1st petitioner/A1. The 2nd petitioner and A3 were managing and maintaining the property, since the 1st petitioner, a Doctor often travelled to foreign countries. On receipt of the complaint from the 2nd respondent, a case in Crime No.1865 of 2012 was registered by LW9, thereafter, LW10 took up the investigation, visited the scene of occurrence, enquired the witnesses and on completion of investigation, filed charge sheet before the trial Court. Initially, a case under Sections 288 and 337 of IPC was registered and after getting information of the death of Mani, Section was altered to 304-A IPC. He further submitted that both LW3-Shanthi and Rasathi were summoned and they agreed for compromise and to receive Rs.1,50,000/- each as compensation. Further, they expressed their inclination not to prosecute the petitioners in C.C.No.737 of 2014.

6.This Court considered the rival submissions and perused the materials available on record.

7.On enquiry with Shanthi/LW3 and Rasathi, they confirmed the receipt of amount of Rs.1,50,000/- each, in total Rs.3,00,000/- from the petitioners. Apart from this, they have also filed joint compromise affidavit before this Court.

8.On perusal of the materials, it is seen that Mani employed as independent contractor, who was entrusted with the work of constructing bathroom and toilet in second floor of the building



situated at No.14 Vallalar Eswaran Kovil Street, Mylapore, Chennai. The scaffolding was made ready by Mani along with his workers and after satisfying its stability of scaffolding, he started the construction work. For plastering the outer wall, he climbed on scaffolding and started the same. At that time, he slipped and fell down, due to which he sustained injuries and later, died. From perusal of the evidence and materials, it could be seen that it is an accidental slip and fall, nothing to do with the petitioners and other accused.

9.In view of the same, this Court finds that the continuation of proceedings would amount to abuse of process of law and this Court is inclined to quash the proceedings against the petitioners/A1 & A2 and also against the other accused/A3, who is similarly placed.

10.In the result, the proceedings in C.C.No.737 of 2014, on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai is hereby quashed against all the accused/A1 to A3. Accordingly, Criminal Original Petitions are allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The XVIII Metropolitan Magistrate Court,
Saidapet, Chennai.
2. The Inspector of Police,
E-1, Mylapore Police Station, Law & Order,
Mylapore, Chennai-4.
3. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.Vimal B.Crimson, Advocate, S.R.No.24801,24802

CRL.O.P.Nos.23743 & 23748 of 2018

RK(CO)
CT 05/05/2022