



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2022

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.O.P (MD) Nos.1041 and 1568 of 2022
and
Cr1.M.P. (MD) Nos.746 and 1134 of 2022

Selvakumar ... Petitioner in Cr1.O.P. (MD) No.1041 of 2022
Persis Gnanaselvi ... Petitioner in Cr1.O.P. (MD) No.1568 of 2022

Vs.

1.State through
The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City.
(Crime No.529 of 2021)
...1st Respondent/Complainant
in both Cr1.O.Ps

2.Maridurai,
Revenue Inspector,
Tirunelveli Circle,
Tirunelveli. ... 2nd Respondent/Defacto Complainant
in both Cr1.O.Ps

Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records of the impugned FIR in Crime No.529 of 2021 dated 17.12.2021 on the file of the 1st respondent police and to quash the same.

(In both Cr1.O.Ps)

For Petitioner : Mr.V.Karthirvelu,
Senior Counsel,
for Mr.K.Prabhu
(In Cr1.O.P. (MD) No.1041 of 2022)

For Petitioner : Mr.G.Prabhu Rajadurai
(In Cr1.O.P. (MD) No.1568 of 2022)

For Respondents : Mr.M.Sakthi Kumar,
Government Advocate (Cr1. Side).

For Intervenor : Mr.Ayiram K.Selvakumar



C O M M O N O R D E R

Heard the learned Senior Counsel for the petitioner in Cr1.O.P.(MD)No.1041 of 2022, the learned counsel for the petitioner in Cr1.O.P.(MD)No.1568 of 2022, the learned Government Advocate (Cr1. Side) for the respondents and Mr.Ayiram K.Selvakumar, learned counsel for the father of one of the victims.

2. On 17.12.2021, the toilet wall of Schaffter Higher Secondary School collapsed leading to the unfortunate deaths of three boys. Few others suffered injuries. Crime No.529 of 2021 was registered on the file of Tirunelveli Junction Police Station for the offence under Section 304 Part II of IPC. The Headmistress and the Correspondent of the school were arrested and shown as accused in the FIR. They have filed these petitions to quash the said FIR.

3. The learned Senior Counsel appearing for the petitioner in Cr1.O.P.(MD)No.1041 of 2022 and the learned counsel appearing for the petitioner in Cr1.O.P.(MD)No.1568 of 2022 reiterated the contentions set out in the memoranda of grounds and called upon this Court to quash the impugned FIR insofar as they are concerned.

4. Per contra, the learned Government Advocate (Cr1. Side) for the State submitted that the petitioners herein as persons in-charge of the institution cannot wash away their responsibilities and that they were rightly implicated as accused. He would further contend that the FIR was registered only on 17.12.2021 and that it is too early to interfere with the investigation. The learned counsel for the intervenor strongly endorsed the aforesaid stand of the State. He would point out that as many as three enquiries are going on and that it would be appropriate for this Court to wait till the investigation is over. He pointed out that there is absolutely no urgency since the accused have been granted bail. He pointed out that the inspection by the Government civil engineer indicated that even without a proper foundation, the compound wall had been erected. He called upon this Court to dismiss the quash petitions.

5. I carefully considered the rival contentions and went through the materials on record. The incident is tragic and heart-rending. Three young children have lost their lives for no fault of theirs. The materials unearthed so far indicate that the toilet wall was constructed without proper foundation. The question is whether for this occurrence the petitioners deserve to be prosecuted. The school in question is a very old institution. The toilet wall which collapsed was constructed by a contractor in the year 2007. During the relevant time, the petitioners were nowhere in the scene. Ms.Persis Gnanaselvi assumed charge as Headmistress hardly a month prior to the occurrence. Mr.Selvakumar became the Correspondent of the institution only in June 2021. I take judicial notice of the



fact that during the entire period, schools all over Tamil Nadu were closed due to pandemic. Neither of the accused can be imputed with knowledge regarding the structural stability of the toilet wall.

6. The FIR has been registered against the petitioners for the offence under Part II of 304 of I.P.C. Sections 304 and 304A of I.P.C. read as under :-

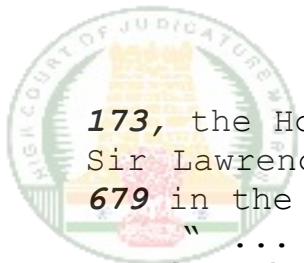
304. Punishment for culpable homicide not amounting to murder - Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which 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.

304A. Causing death by negligence - Whoever causes the death of any person by doing any rash or 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.

7. Section 304 can be invoked only if the accused commits culpable homicide not amounting to murder. If the act is intentional, it will fall under Part I. If knowledge alone can be attributed and there is no intention, then the offence will fall under Part II. Section 299 of I.P.C. defines culpable homicide as follows:-

Culpable homicide -Whoever causes death by doing an act with the intention of 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.

8. Section 300 of I.P.C. defines 'murder'. It also sets out five exceptions. If culpable homicide falls within the exceptions, then the act does not amount to murder. Section 304 can be pressed into service only where the accused causes bodily injury; he must have either intention or knowledge. Of course, failure to act when there is a legal duty could also be a cause for death and in that event also, the penal provision can kick in. The condition precedent is that the act or omission must be the proximate cause for the death. If the act is committed intentionally or with knowledge of the consequences, Section 304 of IPC will come into play. If criminal homicide is caused recklessly or negligently, then Section 304A of IPC will be attracted. In **Sushil Ansal V. State (2014) 6 SCC**



173, the Hon'ble Supreme Court approved the proposition laid down by Sir Lawrence Jenkins in **Emperor V. Omkar Rampratap (1902) 4 Bom LR 679** in the following terms:-

"... to impose criminal liability under Section 304A of the Penal Code, 1860, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must have been the causa causans; It is not enough that it may have been the causa sine quo non."

' Causa causans ' has been defined in Black's Law Dictionary as the immediate cause; the last link in the chain of causation. ' Proximate cause ' has been defined as that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred. The injury or damage was either a direct result or a reasonably probable consequence of the act or omission.

9. By no stretch of imagination, the petitioners herein could be imputed with the knowledge that there was reasonable possibility of the toilet wall collapsing and causing the deaths in question. The petitioners would definitely not have had any culpable intention. The offence under Section 304 Part II of IPC is clearly not made out. The petitioners had assumed charge as Headmistress and Correspondent respectively, virtually on the eve of the occurrence. Of course, the school management was clearly negligent. Whether the negligence would amount to criminal negligence is a matter for investigation. The petitioners for the reasons already set out cannot be fastened with any personal liability. The impugned FIR is quashed only as regards the petitioners herein and not in *toto*. The investigation shall go on. The contractor, who constructed the wall and the persons who ought to have verified the structural stability will have to face the consequences. Grant of relief to the petitioners herein shall not be construed as casting any cloud on the ongoing investigation. These criminal original petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To:

1.The Inspector of Police,
Tirunelveli Junction Police Station,
Tirunelveli City.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-4281[F] dated 04/02/2022)

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-4300[F] dated
04/02/2022)

Cr1.O.P(MD)Nos.1041 and 1568 of 2022
03.02.2022

RK(17/03/2022) 5P 5C