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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.02.2022

PRONOUNCED ON : 20.04.2022

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1 OP(MD)No.2225 of 2022

1.Nagasankar
2.Subramanian

...Petitioners/Accused
Nos.3 & 4

vs.

1. The Inspector of Police,
Vilakkuthoon Police Station,
Madurai City,
Madurai.
(Crime No.697/2021).

...1st Respondent/Complainant

2.Kannan

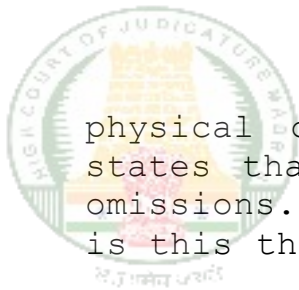
...2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records pertaining to the First Information Report in Crime No.697 of 2021 dated 22.12.2021 on the file of the Respondent No.1 and quash the same as illegal as against the petitioners.

For Petitioners : Mr.T.Lajapathi Roy
For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Cr1. Side)

ORDER

"Not taking any decision is itself a decision", so said Shri.PV.Narasimha Rao, the ninth Prime Minister of India. In law also, "act" would include "omission to act" as well. An omission is sometimes called a negative act. The Hon'ble Supreme Court cautioned in ***P.B.Desai v. State of Maharashtra (2013) 15 SCC 481*** that this seems a dangerous practice for it too easily permits an omission to be substituted for an act without requiring the special requirement for omission liability such as legal duty and



physical capacity to perform the act. Section 32 of the IPC states that words referring to acts done extend also to illegal omissions. The adjective "illegal" is highly significant and it is this that has been emphasized in **P.B.Desai**.

2.The petitioners herein figure as A3 and A4 in Crime No.697 of 2021 registered on the file of the first respondent. They have filed this criminal original petition to quash the F.I.R insofar as they are concerned. The second respondent herein is the defacto complainant.

3.The case of the prosecution is as follows :

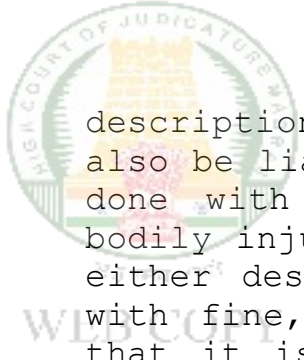
On 21.12.2021 a police patrol team comprising the defacto complainant and one Head Constable by name Saravanan were on their rounds. At about 10.00 p.m they were standing near the occurrence spot. The front portion of a building collapsed. The bricks fell on the defacto complainant and the said Saravanan. Both sustained grievous injuries. Saravanan later succumbed to the same. Initially, the case was registered for the offence under Section 304 A and Section 338 of I.P.C. Later, an alteration report was filed and the offence under Section 304 II of IPC was added in place of Section 304 A.

4.The learned counsel appearing for the petitioners reiterated the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned FIR insofar as the petitioners are concerned. On the other hand, the learned Government counsel appearing for the respondents submitted that the building in question was very old and in a dilapidated condition. The petitioners were in occupation of the said building as tenants. The Madurai Corporation has issued notice calling for demolition of the building. Since the petitioners did not vacate the premises, the demolition could not be carried out. Thus, the petitioners by their act contributed to the occurrence. The case involves death of a Head Constable. The learned Government counsel further submitted that no case for quashing has been made out and that the investigation should be allowed to proceed.

5.The question that falls for consideration is whether the ingredients of the offences under Section 304 II and 338 of IPC are attracted as far as the petitioners are concerned. Section 304 of IPC reads as follows :

"Punishment for culpable homicide not amounting to murder.—

Whoever commits culpable homicide not amounting to murder shall be punished with 1[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."

Section 304 A of IPC is as follows :

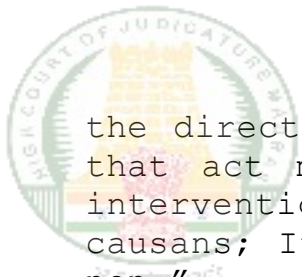
"Causing death by negligence.--Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

6. Section 304 IPC 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."

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 and has had 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."

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'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.

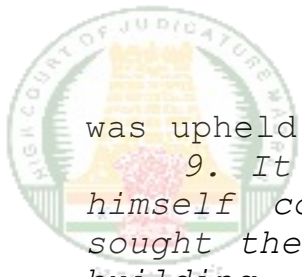
Section 338 of IPC is as follows :

"338. Causing grievous hurt by act endangering life or personal safety of others.—Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both."

I can understand invoking Section 304 A and 338 of IPC in one breath. But Section 304 and Section 338 IPC do not go together. If the case of the prosecution is that the accused caused injuries by rashness or negligence, then, obviously, the element of knowledge or intention gets excluded. In this case, for reasons that are not quite clear, Section 304 II of IPC has been invoked along with Section 338 of IPC.

7. Rustom Sherior Irani v. State of Maharashtra, 1969 ACJ 70, is a case involving death of 11 persons due to collapse of a chimney. The building owner had altered an existing chimney without getting proper permission. He had utilized the services of a person who was not an engineer and who was not qualified. He had also committed certain acts which contributed to the collapse. The Hon'ble Court held that these constituted negligent acts within the meaning of Section 304 A IPC. The Hon'ble Supreme Court approved the principle laid down in **Vishwanath Vishnu Dabholkar vs. The King (AIR 1948 PC 183)** that the negligence which constitutes the offence must be of a higher degree than the negligence which gives rise to a claim for compensation in a Civil Court.

8. Public Prosecutor v. Pitchaiah Moopanar (AIR 1970 Mad 198) is a case involving collapse of a school building resulting in the death of 35 girl students and a middle aged woman. The correspondent was prosecuted but he was acquitted. The acquittal



was upheld by the Madras High Court in the following terms :

9. It is not the case of the prosecution that the respondent himself constructed the building. It is not disputed that he sought the assistance of the masons and the masons constructed the building. If the masons had not done the work properly and if they had been negligent in not mixing the lime mortar in proper proportions, the respondent could not be made liable for the negligence of those persons who actually constructed the building, who are supposed to be skilled. The respondent is a layman. He, therefore, cannot be held liable for the negligence of the persons who actually constructed the building which negligence is the cause causans for the collapse of the building.

10. In *Mohd, Rangawalla v. Maharashtra State*, it is held that death must be direct result of the rash or negligent act of accused and the act must be efficient cause without intervention of another's negligence, and it must be the cause causans, and it is not enough that it may have been the cause sine qua non.

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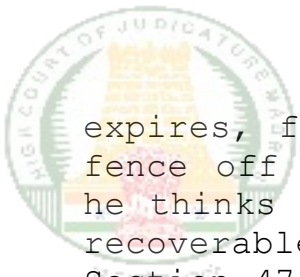
12.12. It is of course unfortunate that several school children died as a result of the collapse. If the Municipal authorities had taken care to inspect the building periodically being a public institution, this unfortunate incident could have been probably avoided. It is gratifying to note that immediately after this incident, the State has brought a legislation to control and regulate the construction, upkeep and maintenance of the public buildings. It is at least expected in future that the authorities concerned would be vigilant and take that much of the care expected of them to inspect the buildings, wherein public institutions are housed, and, if they find such buildings are unsafe, to take immediate appropriate action as they deem fit."

L.Ashok Kumar v. State, 2021 SCC Online Mad 2772 is another important decision in which the principles governing invocation of Sections 338 and 304 A of IPC have been accurately summarized.

9. It has been brought to my notice that the Madurai Corporation had issued notice under Section 327 of Madurai City Municipal Corporation Act, 1971 as early as on 30.11.2020 calling upon the building owner to take down the building. Section 327 of the Madurai City Municipal Corporation Act, 1971 is as follows:

"327. Precaution in case of dangerous structures.- (1) If any structure be deemed by the Commissioner to be in a ruinous state or dangerous to passers-by or to the occupiers of neighbouring structures, the Commissioner may, by notice, require the owner or occupier to fence off, take down, secure or repair such structure so as to prevent any danger therefrom.

(2) If immediate action is necessary, the Commissioner may himself, before giving such notice or before the period of notice

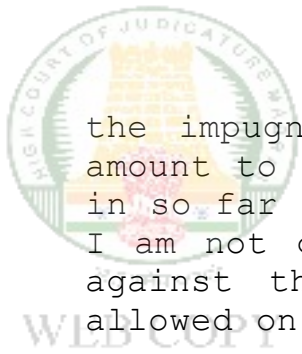


expires, fence off, take down, secure or repair such structure or fence off a part of any street or take such temporary measures as he thinks fit to prevent danger and the cost of doing so shall be recoverable from the owner or occupier in the manner provided in Section 479.

(3) If, in the Commissioner's opinion, the said structure is imminently dangerous to the inmates thereof, the Commissioner shall order the immediate evacuation thereof and any person disobeying may be removed by any police officer."

The petitioners are only tenants occupying the ground floor portion. It was a portion of the first floor which collapsed. The legal duty to pull down the building was only on the owner. If under Section 327 (3) of the Madurai City Municipal Corporation Act, 1971, the Commissioner had ordered the petitioners to vacate from the building and they had not complied with the said order, that would constitute an illegal omission. There is nothing on record to show that the petitioners were served with notice under Section 327(3) of the Madurai City Municipal Corporation Act, 1971. The corporation officials need not have waited beyond the notice period. Even according to them, the notice was served in November 2020. The building owner was given 14 days time to demolish the building. When the building owner did not take down the structure on his own, the corporation could have stepped in and after giving notice to the occupiers under Section 327 (3) of the said Act, the corporation could have taken action on its own. The Madurai Corporation failed to do so. The petitioners' omission to vacate the premises cannot by any stretch of imagination would constitute the direct cause for the occurrence. The non-demolition of the old building was the direct and proximate cause for the occurrence. The petitioners could not have demolished the building on their own. The building owner did not issue any eviction notice. The petitioners cannot be imputed with any knowledge that their omission to vacate the building would lead to the subject occurrence. The petitioners can be morally blamed for having been in occupation of a dilapidated building even after the local body served demolition notice. But this conduct does not meet the standards of criminal liability as laid down in the aforesaid decisions.

10. The building owner was obviously under a legal duty to demolish the building pursuant to the notice issued by the corporation. The tenants who were in occupation of the ground floor portion cannot be prosecuted for the unfortunate occurrence. The petitioners did not have any culpable knowledge or intention. None of the ingredients set out in Sections 304 II, 304 A and 338 of I.P.C are present in this case. Even if we take the prosecution case at its face value, no offence is made out. Continuance of



the impugned prosecution against the petitioners would certainly amount to an abuse of legal process. The impugned F.I.R is quashed in so far as the petitioners are concerned. I make it clear that I am not quashing the F.I.R as such. The prosecution will go on against the main accused. This Criminal Original Petition is allowed on these terms.

// True Copy //

Sd/-
Assistant Registrar(Cril.Side)

/ /2022
Sub Assistant Registrar(CS)

skm

To

1. THE INSPECTOR OF POLICE,
VILAKKUTHOON POLICE STATION,
MADURAI CITY, MADURAI.
2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate
(SR-20005[F] dated 21/04/2022)

Cr1 O.P(MD)No.2225 of 2022
20.04.2022

SP/29/04/2022/7P/4C