

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2022

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

CRL.O.P (MD) No.14280 of 2022

and

Crl.M.P(MD) Nos.9219 & 9222 of 2022

Rajasekaran

... Petitioner

Vs

1. The State Represented by
The Inspector of Police,
Sengipatti Police Station,
Thanjavur,
Thanjavur District.

... 1st Respondent / Complainant

2. Marimuthu

... 2nd Respondent/ Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C,
praying to call for the records relating to S.C.No.144 of 2022, on the file of
the Principal Sub Court, Thanjavur and quash the same.

For Petitioner : Mr.A.Arun Prasad

For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the Charge Sheet in S.C.No.144 of 2022, on the file of the Principal Sub Court, Thanjavur.

2. The case of the prosecution is that on 23.07.2021, at about 09.00 a.m., the defacto complainant along with 11 others went to the school to get rice, dhal and other things from the school. While they were returning to their house, they saw a Ashok Leyland Dost four wheeler vehicle bearing Registration No.PY-02-M-1568 near Killukottai Indian Bank. At that time, the persons who were returning from temple has blocked the vehicle and asked the defacto complainant and others to get into the vehicle and they asked the driver to drop them near their village. When the vehicle reached the spot where the defacto complainant and others has to get down, the driver did not stop the vehicle. So, some of the children started to jump from the vehicle before it stops, assuming that the driver is trying to kidnap them. In the above incident some of the children were injured and one of the children died. Hence the complaint was preferred against the petitioner.

3. The learned counsel for the petitioner submitted that the petitioner is prosecuted by the respondent police for having offence punishable under Sections 279, 308, 304(A) and 338 I.P.C. He further submitted that the complainant gave a statement before the respondent police is that the Petitioner did not invite the victim to get into the vehicle. The defacto complainant along with the others voluntarily get in to the vehicle and jumped down, when the vehicle was in motion before stopping the vehicle stops thereby sustained injuries and one of the children died. The petitioner is no way responsible for the accident as well as the death of the child viz., Sasirega. Therefore, he pleaded to quash the criminal proceedings against the petitioner.

4. The learned Additional Public Prosecutor appearing for the first respondent submitted that, admittedly, the injured and the deceased children travel in the vehicle bearing Registration No. PY-02-M-1568 Ashok Leyland Dost, which was driven by the petitioner with bad intention, to kidnap the children. The petitioner drove the vehicle in a rash and negligent manner. To escape from the hands of the petitioner, the children jumped out

of the vehicle. In these circumstances, before the commencement of trial, it is not proper to quash the criminal proceedings against the petitioner. Therefore, the criminal proceedings cannot be quashed and hence pleaded to dismiss the petition.

5. The Hon'ble Supreme Court in **Indian Oil Corporation vs. NEPC India Limited and others [(2006)6 SCC 736]** laid down the principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings, which are relevant for the present purpose are:-

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the

mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

6. I have considered the submissions of the learned counsel appearing for the petitioner and the learned Additional Public prosecutor appearing for the respondent police.

7. On a perusal of the records would show that the petitioner is an accused in S.C.No.144 of 2022, on the file of the Principal Sub Court, Thanjavur. The petitioner is prosecuted by the respondent police for having committed offences punishable under Sections 279, 308, 304 (A) and 338 I.P.C. According to the prosecution, on 23.07.2021, at about 09.00 a.m, when the defacto complainant along with 11 others went to the school to get rice and other things from the school and while they are returning to their house they saw a Ashok Leyland Dost four wheeler vehicle bearing Registration No.PY-02-M-1568 near Killukottai Indian Bank. In that vehicle injured persons viz., Saranya, Kalaivani, Sasirega and others

traveled. Though the place where the children get down was reached and the petitioner did not stop the vehicle, the children jumped out from the vehicle. Therefore, in that incident, Sasirega, Marimuthu, Saranya, Kalaivani and Ramya had jumped out of the vehicle and out of them, Sasirega died and others got serious injuries. Hence, the above said offence. The petitioner's negligent manner has to be decided by letting evidence before the trial Court. Therefore, before the commencement of trial and letting prosecution evidence, it is inappropriate to quash the criminal proceedings against the petitioner and hence, I do not find any merit in this petition.

8. A perusal of the charge sheet and the statement of witnesses reveals that *prima facie* allegations are made therein and it will have to be taken on the face value. If it could not be said that their prosecution would amount to an abuse of process of the Court, invoking inherent power, prior to the commencement of trial and letting of evidence, to quash prosecution, is not desirable. Power should be exercised only in exceptional cases. Hence, I find no merits in the Criminal Original Petition to quash the alleged charge sheet and the same is liable to be dismissed.

9. Accordingly, this Criminal Original Petition is dismissed.
Consequently, the connected Miscellaneous Petitions are closed.

Internet: Yes./No
Index: Yes/no
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10.08.2022

To

1. The Inspector of Police,
Sengipatti Police Station,
Thanjavur,
Thanjavur District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P.(MD) No.14280 of 2022

V.SIVAGNANAM, J.

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ORDER IN
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