



Crl.O.P.No.5417 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No. 5417 of 2021

and

Crl.M.P. Nos. 3502 & 3504 of 2021

D.Victor Paul

... Petitioner

Vs.

1.The State, rep. by
Inspector of Police,
S-5, Pallavaram Police Station,
Pallavaram,
Chennai – 600 043.

2.M.Paul Jayaraj

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in connection with C.C.No.270 of 2017 dated 19.08.2017 on the file of the learned Judicial Magistrate, Tambaram, Chennai and quash the same as illegal.



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For Petitioner : Mr. S.Kingston Jerold
For Respondent 1 : Mr. A.Damodaran
Additional Public Prosecutor
For Respondent 2 : No Appearance.

ORDER

The petition is to quash the final report for the alleged offence under Section 304 (A) of IPC.

2. It is alleged in the final report that on 28.01.2016 at about 4.45 p.m when the deceased was doing painting work in the house of the 1st accused, he accidentally fell from a height of 15 feet and sustained injuries. Consequently, he succumbed to the injuries on the same day. It is alleged that the 2nd accused, who is an Engineer, asked the deceased to do the painting work on behalf of the owner of the property, namely, the 1st accused.

3. The learned counsel for the petitioner / 2nd accused would submit that the allegation, even if accepted to be true, would not attract



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the offence under Section 304 (A) of IPC. There is no allegation on the final report as to how the petitioner is guilty of gross negligence so as to attract the offence under Section 304 (A) of IPC. Admittedly, the worker fell down accidentally, and the unfortunate death occurred. The petitioner cannot be made liable for the accident that took place in the work spot. There is no allegation as to what were the safety measures that were allegedly not taken by the petitioner in the work spot. The materials filed along with the final report are silent on the alleged violations said to have been committed by the petitioner. That apart, there is nothing in the impugned final report to show that the petitioner was engaged by the 1st accused to undertake painting work and that the petitioner had employed the deceased.

4. The learned Additional Public Prosecutor would submit that the points raised by the petitioner are factual in nature and have to be adjudicated only before the Trial and pray for the dismissal of the quash petition.



5. Considering the nature of the allegation and the submission made by the petitioner and the learned Additional Public Prosecutor, the notice to the second respondent who is the brother of the deceased, is dispensed with.

6. This Court on perusal of the impugned final report finds that there is absolutely no evidence that the petitioner had engaged the deceased for the painting work in the house of the 1st accused. That apart, the impugned final report also does not contain the alleged violations said to have been committed by the 2nd accused / petitioner herein. It is an unfortunate death of the worker, and even assuming that the petitioner is liable for negligence, he would not be liable for gross negligence for the offence under Section 304 (A) of IPC.

7. Further, there is nothing in the impugned final report, to show that the petitioner's act was the causa causans (i.e.,) immediate cause for the occurrence. In this regard, the observation of the Hon'ble Supreme Court in ***Sushil Ansal Vs. State through Central Bureau of Investigation – 2014 (6) SCC 173*** is extracted below for better



understanding:

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“81. Suffice it to say that this Court has in Kurban Husseins case accepted in unequivocal terms the correctness of the proposition that criminal liability under Section 304-A of the IPC shall arise only if the prosecution proves that the death of the victim was the result of a rash or negligent act of the accused and that such act was the proximate and efficient cause without the intervention of another persons negligence. A subsequent decision of this Court in Suleman Rahiman Mulani v. State of Maharashtra AIR 1968 SC 829 has once again approved the view taken in Omkar Rampratap case that the act of the accused must be proved to be the causa causans and not simply a causa sine qua non for the death of the victim in a case under Section 304-A of the IPC. To the same effect are the decisions of this Court in Rustom Sherior Irani v. State of Maharashtra 1969 ACJ 70; Balchandra v. State of Maharashtra AIR 1968 SC



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1319; *Kishan Chand v. State of Haryana* (1970) 3 SCC 904; *S.N Hussain v. State of A.P.* (1972) 3 SCC 18; *Ambalal D. Bhatt v. State of Gujarat* (1972) 3 SCC 525 and *Jacob Mathew's case*.

82. *To sum up: for an offence under Section 304-A to be proved it is not only necessary to establish that the accused was either rash or grossly negligent but also that such rashness or gross negligence was the causa causans that resulted in the death of the victim.*

83. *As to what is meant by causa causans we may gainfully refer to Blacks Law Dictionary (Fifth Edition) which defines that expression as under: “Causa causans-The immediate cause; the last link in the chain of causation.*

The Advance Law Lexicon edited by Justice Chandrachud, former Chief Justice of India defines Causa Causans as follows: “Causa causans-The immediate cause as opposed to a remote cause; the last link in the chain of causation;



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the real effective cause of damage.

84. *The expression proximate cause is defined in the 5th edition of Blacks Law Dictionary as under: “Proximate cause-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. Wisniewski vs. Great Atlantic & Pac. Tea Company., A2d at p. 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to*



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act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission.”

8. For the above reasons, this Court finds that the impugned proceedings against the petitioner is liable to be quashed. Accordingly, the petition is allowed. Consequently, the connected miscellaneous petitions are closed. No costs. The learned counsel for the petitioner has filed a memo stating that the case has now been transferred to the learned Judicial Magistrate, Keelkattalai and numbered as C.C.No.16 of 2022. Hence, a copy of this order may be sent to the learned Judicial Magistrate, Keelkattalai.

9. It is brought to the notice of the Court that the 1st accused has paid the family members of the deceased a sum of Rs.4,50,000/- by



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way of compensation, which is recorded by the Commissioner for Workmen's Compensation - II, Deputy Commissioner of Labour – II, Chennai, in W.C.No.343 of 2016. The learned counsel for the petitioner would submit that there are three legal heirs of the deceased, and the petitioner would, on humanitarian grounds, pay a sum of Rs.1,00,000/- to the victims, namely, (i) Shobana, (ii) Delphin Shakinal and (iii) Rani Priscilla. The said sum of Rs.1,00,000/- may be divided into three parts and paid to the legal heirs of the deceased as aforesaid. The petitioner also offered to make the payment within a period of 3 weeks from the date of receipt of a copy of this order.

10. Post the matter under the caption “For Reporting Compliance” on 05.06.2023.

26.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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SUNDER MOHAN. J,

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To

1.The Judicial Magistrate,
Tambaram,
Chennai.

2.The Inspector of Police,
S-5, Pallavaram Police Station,
Pallavaram,
Chennai

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