



WEB COPY



Crl.O.P.No.4106 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No. 4106 of 2021

and

Crl.M.P. Nos. 2643 & 2645 of 2021

1.Tamilselvan

2.Sakthivel

... Petitioners

Vs.

1.The State Rep. by Inspector of Police
Sendamangalam Police Station
Nammakal.

2.Alamelu

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records and quash the proceedings in STC No.502 of 2020 on the file of the Judicial Magistrate II, Namakkal for offences under Section 338 IPC.



WEB COPY



Crl.O.P.No.4106 of 2021

For Petitioners : Mr. S.Sheik Ismail
For Respondent 1 : Mr. A.Damodaran
Additional Public Prosecutor
For Respondent 2 : Mr. K.Balaji

ORDER

The petition is filed to quash the final report for the alleged offences under Section 338 IPC.

2. It is alleged in the final report that the petitioners are in the management of Oil Mill, in which the 2nd respondent was working. It is alleged that the 2nd respondent had without any safety measures was asked to operate the machine; that her hand got stuck in the machine and had to be amputated.

3. The learned counsel for the petitioners would submit that there is nothing in the impugned final report to show that the alleged



accident took place due to the negligent act of the petitioners. There is also nothing stated in the final report as to what were the safety measures that the petitioners ought to have taken to prevent such accidents. The learned counsel would submit that the case of an accident is projected as a case of negligent act by the petitioners.

4. The learned Additional Public Prosecutor would submit that there are allegations in the impugned final report and the question as to whether it was an accident or whether the victim was injured on account of the negligent act of the petitioners is a matter to be adjudicated only before the Trial Court and hence prayed for the dismissal of the quash petition.

5. The learned counsel for the 2nd respondent reiterated the submissions made by the learned Additional Public Prosecutor and prayed for the dismissal of the quash petition.



6. This Court on a perusal of the impugned final report finds that there is nothing in the impugned final report to show that the alleged accident took place on account of either rash or negligent act of the petitioners. This Court had time and again held that the act of accused must be the causa causans (i.e.,) immediate cause for the occurrence. In the instant case, there is no allegation that the act of the petitioners was the immediate cause for the accident. Admittedly, the hand of the 2nd respondent accidentally got stuck in the machine, which resulted in amputation. The following observation of the Hon'ble Supreme Court in ***Sushil Ansal Vs. State through Central Bureau of Investigation – 2014 (6) SCC 173*** would make that clear:

“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



WEB COPY

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 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



WEB COPY

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; 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*



WEB COPY

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 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.”



Crl.O.P.No.4106 of 2021

7. That apart, there is no allegation in the impugned final report as to the safety measures which were allegedly not taken by the petitioners due to which the accident took place. For the above said reasons, the impugned final report is liable to be quashed.

8. Accordingly, the petition is allowed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

11.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
kan

To

The Judicial Magistrate II,
Namakkal.



WEB COPY



Crl.O.P.No.4106 of 2021

SUNDER MOHAN. J,

kan

Crl.O.P.No. 4106 of 2021

11.04.2023