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CrI.O.P.No. 9672 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:04.05.2023

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CrI.O.P.No.9672 of 2023

K.Palanisamy

... Petitioner

Vs.

1. The State represented by
The Inspector of Police,
Ooty Town Central Police Station,
Udhagamandalam,
The Nilgiris.

2. Deepthi

...Respondents

Prayer: Criminal Original Petition filed under section 482 of Criminal Procedure Code, to quash the First Information Report under Section 308 of Indian Penal Code bearing Crime No.1129 of 2020 dated 18.12.2020 pending on the file of the first respondent police station.

For Petitioner : Mr.V.Ranjayani
For Respondents : Mr.N.S.Suganthan
For R1 : Mr.N.S.Suganthan
Government Advocate (CrI. Side)



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ORDER

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This petition has been filed to quash the FIR in Crime No.1129 of 2020 dated 18.12.2020, registered for the offences under Section 308 of IPC on the file of the first respondent, as against the petitioner.

2. The case of the prosecution is that on 18.12.2020 around 6.10 p.m., while the defacto complainant viz., the second respondent herein was returning from her work with her friend Menaka in her two wheeler bearing No.TN99H0185 (Dio), the petitioner drew his car bearing No.TN66W7216 in a negligent manner and hit the defacto complainant's two wheeler from behind. The de-facto complainant who was riding her two wheeler along with her friend fell down and got hurt. While talking to the petitioner, they came to know that the petitioner was intoxicated. The defacto complainant and her friend were taken for first aid to the SM Hospital at Ooty. After getting information from the Hospital, the respondent police visited the hospital and recorded the statement of the defacto complainant and registered the present FIR in Crime No.1129 of 2020 for the offence under Section 308 of IPC.



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3. The learned counsel appearing for the petitioner submits that there is absolutely no allegations to attract the offence under Section 308 of IPC. The defacto complainant and the pillion rider are stranger to the petitioner as such, the offence under Section 308 of IPC would not arise as against the petitioner and it would attract the offence 337 of IPC only. Hence, he prayed for quashment of the present FIR.

4. On perusal of FIR revealed that the second respondent and one Menaka as a pillion rider travelled in a two wheeler bearing registration No.TN99H0185 (Dio). The petitioner had driven his car in a rash and negligence manner and hit the two wheeler on its behind and caused injury to the victims. The petitioner was also under the influence of alcohol and under the inebriated stage, he hit the two wheeler and cause injury.

5. If at all no ingredient made out to attract the offence under Section 308 of IPC, during the investigation, the first respondent may altered the section into proper offence. Therefore, it is not a ground to quash the FIR, since admittedly, the petitioner drove his car under the influence of alcohol and hit the second respondent and caused injury to the victims.



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6. Further, it is seen from the First Information Report that there are specific allegations as against the petitioner, which has to be investigated in depth. Further the FIR is not an encyclopedia and it need not contain all facts and it cannot be quashed in the threshold. This Court finds that the FIR discloses prima facie commission of cognizable offence and as such this Court cannot interfere with the investigation. The investigating machinery has to step in to investigate, grab and unearth the crime in accordance with the procedures prescribed in the Code.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.255 of 2019*** dated ***12.02.2019*** in the case of ***Sau. Kamal Shivaji Pokarnekhar vs. the State of Maharashtra & ors.***, as follows:-

"4. The only point that arises for our consideration in this case is whether the High Court was right in setting aside the order by which process was issued. It is settled law that the Magistrate, at the stage of taking cognizance and summoning, is required to apply his judicial mind only with a view to taking cognizance of the offence, or in other words, to find out whether a prima facie case has been made out for summoning the accused



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persons. *The learned Magistrate is not required to evaluate the merits of the material or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to a conviction or not.*

5. Quashing the criminal proceedings is called for only in a case where the complaint does not disclose any offence, or is frivolous, vexatious, or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same. It is not necessary that a meticulous analysis of the case should be done before the Trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification for the High Court to interfere.

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9. Having heard the learned Senior Counsel and examined the material on record, we are of the considered view that the High Court ought not to have set aside the order passed by the Trial Court issuing summons to the Respondents. A perusal of the complaint discloses that



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- To
1. The Inspector of Police,
Ooty Town Central Police Station,
Udhagamandalam,
The Nilgiris.
 2. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

rts

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