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Crl.O.P No.17358 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.17358 of 2023 &
Crl.M.P.Nos.11242 & 11243 of 2023

1.ShibanBhan

2.Ponraj

Petitioners

vs.

1.State Rep by

The Inspector of Police,
T16, Nazarathpet Police Station,
Ambattur, Chennai.
Cr.No.395/2015

2.J.Pushparaj

Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to S.C.No.25 of 2017 pending on the file of the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee and quash the same.

For Petitioners : Mr.M.Mohamed Riyaz,

for M/s. P.Gunaraj

For Respondent 1 :Mr. A. Gopinath,

Government Advocate (Crl. Side)



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ORDER

This quash petition has been filed to quash the proceedings pending in S.C.No.25 of 2017 on the file of the III Additional District and Sessions Judge, Tiruvallur.

2. The case of the prosecution is that on 21.02.2015, children studying in classes 6th to 8th standard in Sri Lakshmi Higher Secondary School, were taken to Queensland Amusement Park. One of the students Master E.Prabhakaran, aged about 11 years drowned in the swimming pool inside the said amusement park. The deceased was rushed to Saveetha Hospital and the doctors declared him as brought dead.

3. The Respondent police registered an FIR in Crime No.395 of 2015 under section 174, Code of Criminal Procedure Code 1973 (hereinafter referred to as “Cr.P.C.”). In the course of investigation, A1 to A3 who are the General Manager, the Executive Engineer and the person in-charge of the swimming pool, respectively, working for the amusement park, were added as accused, and the FIR was altered for an offence under



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section 304-A of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”). On completion of the investigation, Final Report was filed as against five accused persons and the petitioners are ranked as A1 and A2 in the final report.

4. This Court has already quashed the proceedings insofar as A4 and A5 are concerned in Crl.O.P.No.15363 of 2017 by order dated 23.03.2021. A3 died during the pendency of the case and hence, charge abates against A3.

5. When the matter came up for hearing on 08.08.2023, the learned counsel for the petitioners submitted that even if the allegations made in the FIR read with materials filed along with the Final report are taken as it is, no offence has made out under section 304(ii) of IPC. Learned counsel also submitted that even offence under section 304A of IPC is not made out and the earlier reasoning that was given by this Court in Criminal Original Petition No.15363 of 2017 will equally apply to this case also.

6. Learned counsel for the petitioners fairly submitted that LW2 has



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lost his son and hence, some moral responsibility must be taken by the first and second petitioners and therefore, the learned counsel sought for some time to get instructions.

7. LW2 is the father of the deceased and notice was issued to him and he is present before this Court today. The second respondent was the teacher of the school and it was the second respondent who had set the law in motion by giving a complaint. Therefore, the person who is actually aggrieved by the entire incident is only LW2. The name of LW2 is D.Eswaran. He stated that his son Prabhakaran had died, due to a mishap that happened in the amusement park. He further stated that he has another son namely Saran and that, he is studying in twelfth standard. This Court asked the second respondent as to whether he is willing to receive the compensation that is paid by the petitioners and he expressed his willingness to receive the same. Accordingly, this Court handed over a demand draft bearing No.914535 to D.Eswaran that was taken in the name of D.Eswaran by the petitioners for a sum of Rs.10,00,000/- drawn at Tamilnad Merchantile Bank Ltd, Mount Road, Chennai. He further stated that he is leaving it to the Court to pass further orders in this petition.



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8. This is a case where the deceased D.Prabhakaran is said to have died due to drowning in the swimming pool, that is maintained by the Queens land Amusement Park. The petitioners are the General Manager and Executive Manager of the Queens Land Amusement Park. To constitute such an offence, there must be material to show that they had the knowledge that the bodily injury suffered by the deceased is such that it is likely to cause death. Considering the facts of the case, the said ingredient has not been satisfied. In view of the same, charge under section 304(ii) of IPC is not made out.

9. This Court must next see, if the petitioners can be proceeded with the charge for offence under section 304-A of IPC. To constitute the offence under section 304-A of IPC, there must be material to show that rash and negligent act on the part of the petitioners had resulted in the death of the boy. On careful perusal of the materials available on record, it is seen that at the best, the petitioners can be attributed only with lack of care in their capacity as General Manager and Executive Manager. Hence, even the offence under section 304-A of IPC is not made out.



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10. In the light of the above discussion, no offence is made out against the petitioners, even if the final report read with the materials filed along with the final report are taken as it is. That apart, the petitioners had also paid a compensation of Rs.10,00,000/- to LW2 who is the father of the deceased by taking moral responsibility. The same is also taken into consideration by this Court. Hence, the proceedings in S.C.No.25 of 2017 on the file of the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee is hereby quashed and the criminal original petition stands allowed. Consequently, connected miscellaneous petitions are closed.

13.09.2023

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Index : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation: Yes/No



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To

- 1.The Inspector of Police,
T16, Nazarathpet Police Station,
Ambattur, Chennai.
2. The III Additional District and Sessions Judge, Tiruvallur at
Poonamallee
3. The Public Prosecutor,
High Court, Madras



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N. ANAND VENKATESH, J.

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