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Crl.O.P.No.16788 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P.No.16788 of 2023

and

Crl.M.P.Nos.10797 & 10798 of 2023

S.KiruthigaDevi

... Petitioner

Vs.

1.The Inspector of Police,
Represented by the State,
K-4 Traffic Investigation Wing,
Anna Nagar TIW, Chennai TIW West,
Anna Nagar, Chennai.

2.Sanjeev Gandhi

... Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to P.R.C.No.94 of 2023 on the file of the VI Metropolitan Magistrate, Egmore, Chennai, and quash the same.

For Petitioner : Mr.D.S.Rajasekaran

For R1 : Mr.A.Damodaran
Additional Public Prosecutor

For R2 : M/s.M.Selvam
Mr.M.Senthil Kumar



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in P.R.C.No.94 of 2023 on the file of the VI Metropolitan Magistrate, Egmore, Chennai.

2.The case of the prosecution is that, on 09.10.2022 at about 03.45 a.m., A1 is said to have driven the two wheeler in a rash and negligent manner under the influence of alcohol and the petitioner (A2) was the pillion rider. The two wheeler driven by A1 hit a lady named Poonkuzhali, who was walking in the road from West to East, and as a result, the said Poonkuzhali and the 8 month old child were thrown away. Both of them died due to the accident. A complaint came to be given by the husband of the deceased Poonkuzhali and based on the same, an FIR came to be registered by the respondent Police and it was registered in Crime No.206 of 2022 for the offence under Sections 279, 304(2) of IPC and Sections 185 and 188 of Motor Vehicles Act, 1988.

3.On completion of the investigation, a final report has been filed before the Court below against two accused persons and it has been taken on



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file in P.R.C.No.94 of 2023 for the offence under Sections 279, 304(2) of IPC and Sections 185, 129 of Motor Vehicles Act and under Section 109 of IPC.

Insofar as the petitioner (A2) is concerned, she has been charged for the offence under Sections 279, 304(2) of IPC (2 counts) and under Section 109 of IPC.

4.Heard Mr.D.S.Rajasekaran, learned counsel for the petitioner, Mr.A.Damodaran, learned Additional Public Prosecutor, appearing for the 1st respondent and Mr.M.Selvam, learned counsel appearing for the 2nd respondent.

5.This is a very unfortunate incident where the mother and a small child died in the accident. The only issue to be considered is as to whether the petitioner, who was a pillion rider, can be criminally prosecuted for an accident that happened due to the rash and negligent driving of the rider of the two wheeler (A1).

6.On carefully going through the materials available on record, it is seen that the petitioner was only a pillion rider in the two wheeler. She has been roped in this case on the ground that she was aware that A1 was under



the influence of alcohol and A1 was talking with the petitioner (A2) when he was driving the vehicle and as a result, he was distracted and the same contributed for the accident to take place.

7. In the considered view of this Court, roping in the petitioner as an accused for the offence under Sections 279, 304(2) IPC and Section 109 IPC is too far-fetched. The pillion rider of the motor vehicle cannot be prosecuted for these offences, since the rashness and negligence of A1 cannot be attributed to the petitioner (A2). Similarly, even assuming that A1 was talking with the petitioner (A2) while driving, that by itself will not amount to abatement of A1 in committing the offence. Even for constituting the offence of abatement, the mental element is required and the same is totally absent in this case. The petitioner was hardly aged about 22 years at the time of the incident and she is a student who was undergoing a Law degree in a private College. The continuation of the criminal prosecution against the petitioner (A2) will only result in abuse of process of Court, since none of the offences are made out against the petitioner. In view of the same, the proceedings pending against the petitioner (A2) is liable to be interfered with by this Court.



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WEB COPY 8. In the light of the above discussion, the proceedings in P.R.C.No.94 of 2023 on the file of the VI Metropolitan Magistrate, Egmore, Chennai, is hereby quashed insofar as the petitioner (A2) is concerned. The Court below is directed to proceed further as against A1 and the committal proceedings shall be completed within a period of six weeks from the date of receipt of a copy of this order and the proceedings before the Sessions Court shall be completed within a period of three months thereafter.

9. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

28.08.2023

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To

1. The VI Metropolitan Magistrate,
Egmore, Chennai.
2. The Inspector of Police,
K-4 Traffic Investigation Wing,
Anna Nagar TIW, Chennai TIW West,
Anna Nagar, Chennai.
3. The Public Prosecutor,
High Court, Madras.



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N. ANAND VENKATESH, J.
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