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Crl OP No.21717 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.21717 of 2019

and

Crl.M.P. No.11264 of 2019

Mr.S.Shahul

... Petitioner

Versus

1. The State Rep., by
The Inspector of Police
H-6, R.K.Nagar Police Station,
Chennai – 600 021.

2. Mr.Mohammad Harriz
(Cr.No.631 of 2017)

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records and quash the proceedings as against the petitioner in C.C.No.1803 of 2017 pending on the file of the XV – Metropolitan Magistrate, George Town, Chennai.

For Petitioner	: Mr.I.Abdul Basith
For R1	: Mr. S. Balaji, Government Advocate (Crl.Side).
For R2	: No Appearance



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ORDER

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This Criminal Original Petition has been filed to call for the records and quash the proceedings as against the petitioner in C.C.No.1803 of 2017 for the offence under Section 304-A of I.P.C., pending on the file of the XV – Metropolitan Magistrate, George Town, Chennai.

2.The allegation in the charge sheet is that on 07.04.2017 at about 1 P.M., the defacto complainant's six year old daughter had fallen into an open water sump in the flat premises at No.28/88, 3rd Street, Nethaji Nagar, Tondiarpet, Chennai. The petitioner is the house owner of the building wherein, the de-facto complainant and his family members resided as tenants.

3.It is the case of the prosecution that because of the rash and negligent act of the petitioner in not closing the water sump, the occurrence took place in which, the de-facto complainant's six year old daughter had passed away.



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4.The learned counsel for the petitioner would submit that merely because the petitioner is the owner of the premises, he cannot be made liable for the offence under Section 304-A of I.P.C., as in order to constitute the said offence, the act of the accused should be the *causa causans* (i.e.,) immediate cause for the occurrence and not the remote cause. The learned counsel further submitted that even assuming that the act of the petitioner amounts to negligence, it does not amount to “gross” negligence within the meaning of Section 304-A of I.P.C.,.

5.The learned Additional Public Prosecutor appearing for the first respondent submits that the Defacto Complainant's daughter had fallen into the water sump which was not closed and the petitioner being the responsible person and owner of the premises is liable for the rash act in not closing the water sump. Hence, he prayed for dismissal of the Quash Proceedings.

6.Heard learned counsel for the petitioner and learned Government Advocate (Crl.Side) appearing for the first respondent. Though the notice was served to the second respondent, none has appeared on behalf of the second respondent.



7.This Court finds the charge against the petitioner is that he is the owner of the premises in which, the de-facto complainant resided as tenant. He acted in a negligent manner in not closing the water sump which is situated in the ground floor, as a result of which, the defacto complainant's daughter fell into the sump and died. This Court finds that the allegations in the charge sheet do not indicate as to how the acts of the petitioner is the *causa causans* for the death of the deceased girl. It is certainly an unfortunate incident but unless, there is a clear evidence to show that the act of the petitioner was the *causa causans* (i.e.,) immediate cause for the accident, he cannot be charged for the offence under Section 304-A of I.P.C.,. In this regard, the Judgment of the Hon'ble Apex Court in ***Sushil Ansal vs. State Through Central Bureau of Investigation*** reported in ***(2014) 6 SCC 173*** would directly apply to the facts of the case. The relevant portions of the said Judgment are extracted below:

“81.Suffice it to say that this Court has in Kurban Hussein's case accepted in unequivocal terms the correctness of the proposition that criminal liability under Section 304 – A of the I.P.C., 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 person's negligence. A subsequent decision of this Court in Suleman Rahiman Mulani vs. State of Maharashtra has once again approved the view taken in Omkar Ramprathap 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 I.P.C.,. To the same effect are the decisions of this Court in Rustom Sherior Irani v.State of Maharashtra, Bhalchandra v.State of Mahrashtra, Kishan Chan v.State of Haryana, S.N.Hussain v.State of A.P., Ambalal D.Bhatt v.State of Gujarat and Jacob Mathew 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 Black's Law Dictionary (5th 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 Black's 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. Wisiniewski v.Great Atlantic & Pacific Tea Co., 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 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.That apart, this Court finds that even assuming that the conduct of the petitioner amounts to negligence but, in order to constitute the offence under Section 304-A of I.P.C., the act must be 'gross' in nature. The Judgment of the Hon'ble Supreme Court in ***Jacob Mathew vs. State of Punjab and Another*** reported in ***(2005) 6 SCC 1*** wherein, the Hon'ble Supreme Court held that mere negligence is not sufficient to prosecute for an offence under Section 304-A of I.P.C., is extracted below:

“48...(6).The word “gross” has not been used in Section 304 - A I.P.C., yet it settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be “gross”. The expression “rash or negligent act” as occurring in Section 304 – A I.P.C., has to be read as qualified by the word “grossly”.

9.In the facts of this case, this Court is of the view that the act of the petitioner cannot be said to be the immediate or the proximate cause



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for the occurrence. It may be a *causa sine qua non*, but that is not sufficient to prosecute a person for offence under Section 304 – A of I.P.C. That apart, the act of keeping the water sump open cannot be attributed to the petitioner alone. In any event, this cannot be termed as gross negligence. In order to bring it within the meaning of the word “gross” it must be shown that there was highest degree of negligence.

10.For all the above reasons, this Court is of the view that no offence under Section 304 – A of I.P.C., has not been made out against the petitioner.

11.Hence, the impugned charge sheet is quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

06.03.2023

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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
H-6, R.K.Nagar Police Station,
Chennai – 600 021.

2.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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SUNDER MOHAN, J

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