



Crl.O.P.No.22933 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.O.P.No.22933 of 2019

and

Crl.M.P.No.11982 of 2019

B.Benphilip

...Petitioner

-Vs-

1.The State rep. by
The Inspector of Police,
Thiruvannainallur Police Station,
Villupuram District,
Tamil Nadu – 607 203.

2.S.Padmavathy

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the proceedings in P.R.C.No.10 of 2019 pending on the file of the Judicial Magistrate Court – II and to quash the same.

For Petitioner

: Mr.R.Syed Mustafa

For R1

: Mr.A.Damodaran,
Additional Public Prosecutor

For R2

: Mr.T.Mohan, Senior Counsel,
For Ms.V.Jothi Lakshmi



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ORDER

This Criminal Original Petition has been filed to quash the final report filed for the offences under Sections 279, 337 and 304-A of IPC on the file of the Judicial Magistrate Court – II, Ulundurpet.

2.It is to be noted that, after further enquiry, the FIR was altered and instead of Section 304-A IPC, Section 304(ii) IPC was inserted by the 1st respondent on 17.10.2018. Now, the impugned final report charged the petitioner for the offences under Sections 279, 337 and 304(ii) of IPC.

3.It is alleged in the final report that the petitioner who was working as a part-time lecturer in a college, had taken one of his girl student in his bike for picnic; that he had booked train tickets for the other students to go to the same place; that he rode his bike in a rash and negligent manner; that the girl student who had accompanied him, did not wear any helmet. He had rode the bike on the wrong side and collided with the bullock card, as a result of which, the pillion rider died.



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4.The learned counsel for the petitioner submitted that even assuming the allegations in the impugned final report are accepted to be true, the offence under Section 304-A IPC, namely, culpable homicide not amount to murder, could not be made out. There is no allegation to infer that any of the ingredients of culpable homicide should not amount to murder is made out in the case of an accident, which is sought to be projected as the case of culpable homicide.

5.The learned counsel for the de-facto complainant submitted that the allegations prima-facie establish the offence against the petitioner, and the points raised by the petitioner, cannot be adjudicated in a quash petition.

6.The learned Additional Public Prosecutor appearing for the 1st respondent reiterated the submissions of the learned counsel for the de-facto complainant and stated that the points raised by the learned counsel for the petitioner can only be adjudicated before the Trial Court and prayed for dismissal of the Criminal Original Petition.



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7.This Court finds that the allegations would not constitute the offence of culpable homicide not amounting to murder. A reading of the final report only suggests that it at best is a case of rash or negligent riding by the petitioner herein. Since there is a specific provision under Section 304-A IPC to punish such acts, the prosecution under Section 304(ii) of IPC is unwarranted. The petitioner can be prosecuted only for the offence under Section 304-A IPC and not under Section 304(ii) of IPC.

8.The further submission made by the learned counsel for the petitioner that even for the offence under Section 304 IPC, there is no material and the petitioner is not guilty has to be adjudicated only before the trial Court.

9.For the above reasons, this Court is inclined to quash the final report insofar as the offence under Section 304(ii) of IPC and holding that *prima facie* an offence under Section 304-A IPC is made out.



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WEB COPY 10. With the above observations, this Criminal Original Petition is partly allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

11. The learned Judicial Magistrate No.II, Ulundurpet, may conclude the trial in P.R.C.No.10 of 2019 expeditiously and preferably within a period of six months from the date of receipt of a copy of this order, without being influenced by any of the observations made in this order.

29.03.2023

smv

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

To,

1. The Inspector of Police,
Thiruvannainallur Police Station,
Villupuram District,
Tamil Nadu – 607 203.

2. The Public Prosecutor,
High Court of Madras.



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SUNDER MOHAN,J.
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