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Crl.O.P.No.22407 of 2023
and
Crl.M.P.No.15008 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.11.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.22407 of 2023

S.Gunasekaran

.. Petitioner

/versus/

1.The Inspector of Police,
Chettipalayam P.S., Coimbatore.

2.D. Malar

.. Respondents

Criminal Original Petition has been filed under Section 482 of Cr.P.C.,
praying to call for the records pertaining to C.C.No.16 of 2023 on the file of
the District Munsif cum Judicial Magistrate at Madukkarai and quash the
same.

For Petitioner :Mr.R.John Sathyan,
Senior Counsel for
Mr.G.Anandaraj

For Respondents :Mr.S.Udayakumar, GA for R1



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ORDER

The petition is filed to quash the criminal proceedings pending on the file of the District Munsif-cum-Judicial Magistrate, Madukarai in C.C.No.16 of 2023. The petitioner is facing trial for the offences under Sections 279, 337, 338 and 304 A of IPC.

2. The substance of the charge indicates that on 20.06.2021, intimation received from Abirami Hospital, Coimbatore about admission of the accident victims. The respondent police had recorded the statement of one Malar, wife of Devaraj and registered a case in Crime No. 265 of 2021, dated 20.06.2021. As per her statement, while she along with her sister Jothimani, sister's son Gunasekeran (petitioner herein), his wife, Vidhya Prabha and his son Rohith, travelling in the car driven by Gunaseker bearing Reg.No.TN 12 E 6090, the car near Karivarathan Motors Racing Ground capsized due to rash and negligent driving of Gunaseker. In this regard, the investigation has culminated in filing the final report for the offences mentioned above.



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3. In the quash petition, it is stated that the provision of Section 279 of IPC will not get attracted, even if the entire statement of the witnesses has taken as gospel truth. The rash driving attributed to the petitioner has not caused any injury to the public in the road but to the occupants of the car, who are none other than his own family members. There is no reason to presume any malafide intention or wanton act of negligence to cause injury or death to his own family members more particularly, one of the victim is the mother of the petitioner. Further, the very same logic will also apply to Section 304(A) IPC, since there is no material evidence to infer want of diligence on the part of the petitioner herein.

4. The learned Senior Counsel appearing for the petitioner submitted that due to sudden burst of the tyre, the petitioner lost the control of the steering, so the vehicle got capsized. All the occupants in the car got injured including the petitioner herein, who was on the wheels unfortunately the petitioner's mother succumbed to the injury. The Sections under which the petitioner has now been prosecuted, primarily emphasis on the



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negligence and rashness and the minimum punishment for these offences are not more than two years imprisonment. While there is no material evidence to show that the accident occurred due to lack of diligence or rashness, the prosecution cannot sustain. Therefore, seeks quash of the prosecution culminated in C.C.No.16 of 2023.

5. The learned Government Advocate (Crl.Side) submitted that from the manner in which the accident took place resulting in death of one person and grievous injury to others, the prosecution has proceeded to file the final report. However, he fairly conceded that the defacto complainant also informed the police later that she is not interested in prosecuting the matter. It is obvious that the defacto complainant being a blood relative of the accused and also being a witness to the occurrence know that it was not due to the rash driving or negligence of the petitioner, she therefore had come forward to retract the statement given to the police earlier.



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6. In the light of the above circumstances, while the prime witness to the occurrence being the defacto complainant, who was one of the occupants in the car resiled her earlier statement and retracted his statement by way of filing the affidavit before this Court, this Court is of the view that it will be a futile exercise to proceed the trial in C.C.No.16 of 2023.

7. This Court is inclined to quash the criminal proceeding in C.C.No.16 of 2023 primarily the learned Senior Counsel appearing for the petitioner contents that the petitioner lost control of the steering, due to burst of the tyre, which is probable. The Motor Vehicle Inspector Report is silent about whether the tyre was inflated or deflated to arrive at a conclusive decision that the accident was not occurred due to burst of the tyre.

8. In the above circumstances, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.



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Index:yes/no
Internet:yes/no
Netural Citation:yes/no

To:

- 1.The District Munsif cum Judicial Magistrate at Madukkarai
- 2.The Inspector of Police, Chettipalayam P.S., Coimbatore.
- 3.The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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