



Crl.O.P.No.29749 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.29749 of 2019

and

Crl.M.P.Nos.16065 & 16066 of 2019

1.R.Vinothkumar
2.A.Manikandan

... Petitioners

Vs.

1. The State rep. by
The Inspector of Police (L&O)
V-1, Villivakkam Police Station,
Chennai-600049

2.P.Suresh

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking call for the records and quash the charge sheet in C.C.No.5746/2019 against the petitioners/accused-1 and 2 on the file of the XIII MM Court, Egmore.



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For Petitioners : Mr.R.Dhinesh Kumar
For Respondents : Mr.A,Damoharan, Addl. Public
Prosecutor, [R.1]
: No Appearance [R.2]

ORDER

The petition is to quash the final report for the alleged offences under Section 304 A IPC.

2. It is alleged in the final report that A.1, the 1st petitioner is the proprietor of a gym and A.2, the 2nd petitioner is a trainer; that on 29.05.2018 at about 7:30 pm one Mohana Sundharam was doing exercise in the gym had fainted and fell on dumbbell as a result of which he suffered a head injury and died.

3. The learned counsel for the petitioner would submit that the allegations in the impugned final report would not constitute the offence under Section 304A IPC. Admittedly, the deceased Mohana Sundharam fell unconscious while doing exercise in the gym and because of his fall he suffered a head injury and was taken to the hospital immediately. He was



declared dead at the hospital. There is nothing in the impugned final report to show as to how the petitioners were liable for the offence under Section 304A IPC. Even if, the entire allegation is accepted to be true the offence is not made out.

4. The learned Additional Public Prosecutor submits that there are allegations and the points raised by the petitioners has to be adjudicated only before the Trial Court; that the petitioners have not made out any ground for quashing the impugned final report and prayed for dismissal of the quash petition.

5. Though notice was served on the 2nd respondent and a learned counsel had entered appearance, there was no representation when the matter was called on 03.04.2023. Even today there is no representation for the 2nd respondent.

6. This Court on reading of the impugned final report finds that the only allegation against the petitioners is that while doing exercise the deceased fell unconscious and since he fell on dumbbell he sustained head



injuries. Thereafter, the petitioners had taken him to the hospital where he was declared dead. The allegation would not in any manner attract the offence under Section 304A IPC. It is well settled that in order to prosecute a person for the offence under Section 304A IPC, the act committed should be the causa causans. Further, the negligence must be of gross. Neither of it has been alleged in the instant case.

7. In this regard, the judgement of the Hon'ble Supreme 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



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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 Maharashtra, 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.



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“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., 42d 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. In the instant case, there is no negligence, much less gross negligence, in order to prosecute the petitioners for the offence under Section 304 – A IPC. The tendency to fix criminal liability on some person for accidents of this nature cannot be encouraged. The allegation in the final



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report shows that the impugned proceeding is clearly an abuse of the process of law.

9. For the above reasons, the impugned final report against the petitioners is liable to be quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

06.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

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V-1, Villivakkam Police Station,
Chennai-600049.
2. The XIII MM Court Egmore.



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SUNDER MOHAN. J,

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