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CRL.O.P.No. 31024 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 31024 of 2019

and

Crl.M.P.Nos. 16889 and 16890 of 2019

Faisul Mamooty

... Petitioner

Vs.

1. The State,
Rep. By the Inspector of Police,
Tiruvanmiyur Police Station,
Chennai – 600 041.

2. Abbas

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to C.C.No.3998 of 2018 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same.

For Petitioner : Mr.M.Palanivel

For Respondents

For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)

For R2 : No appearance

ORDER



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This petition has been filed to call for the records relating to C.C.No.3998 of 2018 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai and quash the same as against the petitioner.

2. The case of the prosecution is that the deceased Ruban and injured Ganesh Babu were engaged for painting works in the building owned by the petitioner herein at No.25, 3rd Avenue, Tiruvalluvar Nagar, Tiruvanmiyur, Chennai. They went to third floor for having food. Thereafter, both had fell down in a whole, which was left for erecting the lift. One person by name Ruban died and another person by name Ganesh Babu sustained injuries. Hence, the complaint. On the said complaint, the first respondent registered the First Information Report in Crime No.2801 of 2017 for the offence under Section 174 of Cr.P.C subsequently FIR was altered into sections 338 and 304(A) of I.P.C. After completion of investigation, final report was filed and the same has been taken cognizance by the learned XVIII Metropolitan Magistrate, Saidapet. Totally, there are two accused. The site engineer is arrayed as first accused and the petitioner, who is the owner of the building is arrayed as second accused.

3. Heard both sides and perused the records. The perusal of the statement of the victim revealed that, both the injured and deceased were engaged for



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painting works. On the date of occurrence, both the deceased and the injured were under the influence of alcohol and therefore, they were not in control and fell down from the open terrace and sustained grievous injuries. The doctor conducted autopsy and deposed that the deceased would appear to have died of multiple injuries and alcohol was deducted in the body of deceased. That apart, other witnesses had categorically deposed that both the injured and the deceased went out of the building and after some time, they came to the building in a drunken mode with food parcels. They were also quarrelled with each other and went to the top of the building. Both fell from the open terrace due to influence of Alcohol. Therefore, there is no question of safety measures which was failed to follow by the petitioner, since both fell down from the open terrace in the building under construction. Further, no offence is made out as against the petitioner for the offences under Sections 338, 304(A) of I.P.C.

4. While dealing with Section 304 (A) of I.P.C., **Hon'ble Supreme Court in Ambalal D.Bhatt -vs- The State of Gujarat reported in (1972) 3 SCC 525** , has held as below:-

“In a prosecution for an offence under Section 304-A IPC, the court has to examine whether the alleged act of the accused is the direct result of a rash and negligent act and that act was the proximate and



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efficient cause of the death without intervention of other's negligence.

The mere fact that an accused contravenes certain rules or regulations in doing of an act does not establish an offence under Section 304-A IPC.

The act causing deaths must be the causa causans; it is not enough that it may have been the causa sine qua non. The court has to determine whether the act of the accused is the causa causans or has there been a cause intervening which has broken the chain of causation so as to make the act of the accused, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct. The fact that twelve lives have been lost, however shocking and regrettable it may be, ought not to allow the mind boggle while appreciating the evidence.”

5. In the case on hand, at the time of accident, petitioner was not present.

The cause of death should be a direct consequence of the act of the accused and that should be an act. Since, the petitioner is the owner of the building, who is remotely responsible for the Company but not responsible for the accident occurred in the Company cannot be held vicariously liable. That apart, deceased and injured person had consumed liquor and went to the open terrace and thereby they fell into the whole. Due to which, one Ruban died and one Ganesh Babu sustained injuries. Therefore, the accident had happened only due to the negligence of the deceased and the injured person. Hence, no offence is made out as against the petitioner as well as the first accused. Though, the first accused did not file any petition to quash, this Court is inclined to quash the



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proceedings as against the petitioner as well as against the first accused.

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6. Accordingly, this Criminal Original Petition stands allowed and the charge sheet in C.C.No.3998 of 2018 on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai is hereby quashed as against the petitioner herein as well as against the first accused. Consequently, connected miscellaneous petitions are closed. **However, the family members of the deceased and the injured person are at liberty to approach the petitioner for monetary compensation in accordance with law.**

06.10.2023

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order
Sma/Apd

To

1. XVIII Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police,
Tiruvanmiyur Police Station,
Chennai – 600 041.
3. The Public Prosecutor
Madras High Court.

G.K.ILANTHIRAIYAN, J.
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