



Crl.O.P.No.32867 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.32867 of 2019
and
Crl.M.P. No. 18129 of 2019

Devadhas

... Petitioner

Vs.

1.The State represented by
Sub-Inspector of
Upper Coonoor Police Station
Coonoor, Nilgiri District.

2.Perumal

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the entire records in pursuant to the criminal proceeding in C.C.No.58 of 2018 pending on the file of the Court of Judicial Magistrate, Coonoor and quash the same.



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For Petitioner : Mr. T.P.Prabakaran
For Respondent 1 : Mr. A.Damodaran
Additional Public Prosecutor
For Respondent 2 : No Appearance

ORDER

The quash petition has been filed challenging the final report in C.C.No.58 of 2018 filed for the offences under Section 304 (A) and 338 of the IPC.

2. It is alleged in the final report that the petitioner is the proprietor of a concern called '*Alpha Contract Company*'; that on 22.02.2016, the petitioner had engaged his employees for the construction of revetment in the Nilgri Hills and at that time, due to a land slide four of his employees were buried in the sand and consequently died. It is alleged that the petitioner and his employees did not take necessary precautions to prevent such accident and hence



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they were liable to be punished for the offences under Section 304 (A) and 338 of the IPC.

3. The learned counsel for the petitioner would submit that though the contract was awarded in favour of the petitioner's concern, the petitioner had engaged a contractor who is the 7th accused and the deceased are his employees. As per the terms of the contract, the 7th accused was responsible for the safety of his employees. In any case, the learned counsel for the petitioner submitted that the petitioner is not liable since admittedly there was a land slide which was not anticipated and it was beyond the petitioner's control.

4. The learned Additional Public Prosecutor submitted that the allegation in the final report constitute the offences alleged and the points raised by the petitioner can be only agitated before the Trial Court and prayed for the dismissal of the quash petition.



5. Though notice was served on the 2nd respondent / defacto complainant and received by him, none has entered appearance on behalf of him when the matter is called.

6. This Court on a reading of the impugned final report finds that admittedly the deceased who were digging the land died due to the land slide. There is nothing in the impugned final report which suggests as to what precautionary steps could have been taken by the petitioner to prevent such an accident. The petitioner is not the immediate cause for the alleged occurrence and the intervening factor is the land slide. Unless the petitioner's act is the causa causans (i.e.,) immediate cause for the occurrence, he cannot be made liable for the offences alleged. The following observation of the Hon'ble Supreme Court in ***Sushil Ansal Vs. State through Central Bureau of Investigation – 2014 (6) SCC 173*** would make that clear:

“81. Suffice it to say that this Court has in Kurban Husseins case accepted in unequivocal terms the correctness of the proposition that criminal liability under



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Section 304-A of the IPC 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 persons negligence. A subsequent decision of this Court in Suleman Rahiman Mulani v. State of Maharashtra AIR 1968 SC 829 has once again approved the view taken in Omkar Rampratap 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 of the IPC. To the same effect are the decisions of this Court in Rustom Sherior Irani v. State of Maharashtra 1969 ACJ 70; Balchandra v. State of Maharashtra AIR 1968 SC 1319; Kishan Chand v. State of Haryana (1970) 3 SCC 904; S.N Hussain v. State of A.P. (1972) 3 SCC 18; Ambalal D. Bhatt v. State of Gujarat (1972) 3 SCC 525 and Jacob Mathew's case.



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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 (Fifth 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*



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sequence unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred. Wisniewski vs. Great Atlantic & Pac. Tea Company., 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



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a reasonably probable consequence of the act or omission.”

7. That apart, there is nothing in the impugned final report to show that he was guilty of gross negligence, in order to invoke Section 304 (A) and 338 of the IPC. Therefore, the impugned final report is liable to be quashed.

8. However, the petitioner in order to show his *bona fides* undertook to pay a sum of Rs.2,00,000/- to the family members of each of the deceased and Rs.1,00,000/- each to the injured, within a period of 4 weeks from the date of receipt of a copy of this order. This compensation would be in addition to the compensation that the family members of the deceased and the injured would be entitled under the other enactments. Accordingly, the impugned final report is quashed. In the result, the petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.



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9. Post the matter under the caption “*For Reporting Compliance*”

WEB COPY on 25.04.2023.

28.03.2023

Index : Yes/No

Internet : Yes/No

Neutral Citation : Yes/No

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Note: Issue order copy by 03.04.2023



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1. The Judicial Magistrate,
Coonoor.
2. The Sub-Inspector of Police,
Upper Coonoor Police Station
Coonoor, Nilgiri District.



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SUNDER MOHAN. J,

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