



Crl.O.P.No.34710 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No.34710 of 2019

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Crl. M.P.No. 19255 of 2019

Karanaboopathy

... Petitioner

Vs.

1. The Inspector of Police
E – 2, Peelamedu Police Station,
Coimbatore.

2. S.P.Balasubramanian

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the case in C.C.No.218 of 2018 on the file of the learned Judicial Magistrate II, Coimbatore, in so far as the petitioner is concerned and quash the same.



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For Petitioner : Mr. A.E.Ravichandran

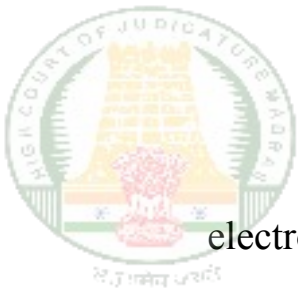
For Respondent 1 : Mr. A.Damodaran
Additional Public Prosecutor

For Respondent 2 : Mr. N.Manoharan.

ORDER

The petition is to quash the final report for the alleged offences under Section 338 r/w 304 - A IPC.

2. It is alleged in the final report that the defacto complainant was a resident of Flat, namely, RR Dharshan Apartment in Sowripalayam at Coimbatore, which was constructed by the Company, in which the petitioner is a Director; that on 19.03.2018 at about 8 p.m., when the defacto complainant's son and the son of L.W.10 were playing in the park in the said residential complex, they touched the electric pole and suffered electrocution and the defacto complainant's son succumbed to the same; that the son of L.W.10 suffered injuries; that the



electrocution happened since the wires in the said pole were not maintained properly and in damaged condition and were touching the pole; that the petitioner and A2 who was maintaining the said complex, acted negligently in maintaining the park and thus were guilty of the aforesaid offences.

3. The learned counsel for the petitioner would submit that even if the allegations are accepted to be true, the offences of either 304 – A or 338 IPC is not made out. The petitioner who is the Director of the Company which had constructed the building cannot be held liable for the accident, which took place after he had handed over the premises to the residential association. In any case, the accident cannot be said to have occurred due to the act of the petitioner. In order to attract the offences under Section 304 -A IPC, the act of accused must be a causa causans and the accused must be guilty of gross negligence and not mere negligence. Hence, the learned counsel prayed for the quashing of the final report.



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4. The learned Additional Public Prosecutor would submit that there are allegations in the impugned final report and can be adjudicated only before the Trial Court. The learned Additional Public Prosecutor would submit that the question as to whether the petitioner was guilty of negligence or gross negligence cannot be decided in a quash petition and hence prayed for dismissal of the petition.

5. (a) Mr. N.Manokaran, learned counsel for the 2nd respondent / defacto complainant would submit that though the petitioner, who was running the Company which had constructed the residential complex had handed over possession to the residents, he had entered into a maintenance contract with the residents and hence the petitioner is responsible for maintaining the park. Since the petitioner had not taken care in maintaining the park, he is guilty of negligence.

5. (b) The learned counsel relied upon the Judgement of the Hon'ble Supreme Court in *Sushil Ansal Vs. State through Central*



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Bureau of Investigation – 2014 (6) SCC 173, in support of his submission.

5. (c) The learned counsel submitted that the Hon'ble Supreme Court considered the question of gross negligence in a case where the owners of the Theatre had violated the statutory requirements and committed gross deviation from the sanctioned plan, as a result of which the persons who attended the cinema on the fateful day could not exit from the cinema hall. The learned counsel submitted that in that case causa causans for the unfortunate incident was the closure of the exit and the failure to provide emergency alarm and emergency lights and exit signs. The learned counsel therefore submitted that in the instant case since the petitioner was responsible for maintaining the park, had not taken due care and action in maintaining it properly which had resulted in the accident is guilty of gross negligence as held by the Hon'ble Supreme Court in the above case.



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6. It is trite that in order to prosecute a person for the offence under Section 304 – A of IPC, his act must be a causa causans for the resultant act and he must also be guilty of gross negligence. It is also well settled that whether the particular act would amount to negligence or gross negligence will depend on the facts in that case. In the instant case, admittedly the children were playing in the park. While so, the electric wire which was in damaged condition had touched the pole from inside. The children unaware of the said fact seemed to have come in contact with the pole and the unfortunate accident took place, where the defacto complainant's son died due to electrocution and the son of L.W.10 got injured.

7. The question that arises in the instant case is whether the petitioner who is the Director of the Construction Company which is said to have built the residential complex can be held to be guilty of gross negligence. As observed by the Hon'ble Supreme Court whether an act amounts to negligence or gross negligence would depend on the facts and circumstances of the case. On the undisputed facts, this Court



is of the view that the action of the petitioner may amount to negligence for which he may be liable civilly. However, the said act would not amount to gross negligence. In order to bring a case within gross negligence, there must be a higher degree of culpability. In the ***Sushil Ansal*** case supra, the Hon'ble Supreme Court had held that the accused therein had deliberately violated the sanctioned plan and were conscious of danger incurred. In that case, the Hon'ble Supreme Court had held that the accused therein were guilty of gross negligence since in view of the gross deviation in the sanctioned plan, the persons who attended cinema were unable to exit the hall immediately and were trapped in the fire.

8. In the instant case, however, no such knowledge or awareness can be attributed to the petitioner. It is not as if that the petitioner was aware of the damaged wire and thereafter not repaired it. At best it would be a case of negligence for which the petitioner would be liable civilly. Further, it cannot be said that the act of the petitioner was the causa causans for the unfortunate accident. Hence, this Court is of the



view that the impugned prosecution against the petitioner cannot be sustained and the proceedings are liable to be quashed against the petitioner.

9. During the course of hearing, the learned counsel for the petitioner offered to pay a sum of Rs.8,00,000/- as compensation to the defacto complainant and Rs.3,00,000/- as compensation to L.W.10's son. However, the learned counsel for the 2nd respondent / defacto complainant submitted that the 2nd respondent was not interested in receiving the compensation. However, this Court is of the view that the petitioner shall be directed to deposit the said amounts to the credit of Crime No.218 of 2018. On such deposit the learned Magistrate may deposit the same in two interest bearing Fixed Deposits, in any one of the Nationalised Banks. It is open to the defacto complainant and L.W.10 to approach the learned Judicial Magistrate II, Coimbatore and seek return of the deposit made by the petitioner. It is also made clear that this is without prejudice to the right of the 2nd respondent, the father of the victim, to file a suit for compensation. The petitioner shall



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deposit the said amounts by 01.08.2023.

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10. In the result, the petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

11. The case may be listed for Reporting Compliance of the directions on 01.08.2023.

23.06.2023

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Index : Yes/No

Internet : Yes/No

Neutral Citation :Yes/No

To

1.The Judicial Magistrate II,
Coimbatore.

2. The Inspector of Police
E – 2, Peelamedu Police Station,
Coimbatore.



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SUNDER MOHAN. J,

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