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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP (MD) No.630 of 2023

and

Crl.MP (MD) No.578 of 2023

R.Gokul : Petitioner/Sole Accused

Vs.

1.The State rep. by
The Deputy Superintendent of Police,
Kodaikanal Sub Division,
Dindigul District,
(In Crime No.662 of 2021)

2.P.Karthikeyan : Respondents

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.365 No.365 of 2022 on the of the Judicial Magistrate No.II, Kodaikanal and quash the same as against the petitioners.

For Petitioner : Mr.M.Maran

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

For 2nd Respondent : Mr.N.Pragalathan

**ORDER**

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This criminal original petition is filed seeking quashment of the case in CC No.365 No.365 of 2022 on the of the Judicial Magistrate No.II, Kodaikanal.

2.The case of the prosecution in brief:-

On 05/11/2021 at about 11.00 am, the complainant along with his family members and relatives were travelling in a Car bearing registration No.TN-59-CK-2761 to Kodaikanal. After the visit, they were returning to their home town in Kodaikanal to Periyakulam route. At about 08.45 pm, the accused Gokul, who was the driver of the Car driving the same in a rash and negligent manner, lost control of the Car, as a result of which, it fell down in the ditch causing injuries to several persons and causing death of three persons on the spot itself. On the basis of the above said occurrence, a case in Crime No. 662 of 2021 was registered for the offences under sections 279, 337 and 304(A) IPC. After completing the formalities of investigation, charge sheet was filed and it was taken cognizance in CC No.365 of 2022 by the Judicial Magistrate No.II, Kodaikanal, Dindigul District.



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3. Seeking quashment of the same, this petition has been filed by the petitioner stating that it is purely an accidental one; Since there was heavy mist covering, he could not drive the Car and what happened was beyond his control; The situation at the time of the above said occurrence, was mentioned in the FIR itself and later, it was deleted in the final report.

4. Heard both sides.

5. This court completely is not in a position to understand the grievance of the petitioner. It has been simply stated in the grounds that because of the sudden mist covering, at the time of the occurrence, he could not see the road and what happened is only the accident and not the alleged negligent driving.

6. Whether the occurrence had taken place because of the rash and negligent driving of the petitioner is purely a factual issue, depending upon the evidence to be adduced by the witnesses as well as the factual circumstances of the case. It is a matter for consideration by the trial court. On the basis of the



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evidence, even if we consider that there was mist covering in the place of occurrence that will not support the case of the petitioner at this stage. As mentioned above, it is purely a factual issue. so without any proper material or ground, this petition has been filed by the petitioner.

7. When this was pointed out by this court to the learned counsel appearing for the petitioner, he was strict in his stand that because of the cloud overcast only, the above said occurrence had taken place. But for the reasons stated above, this factual aspect cannot be taken into account, while exercising the jurisdiction under section 482 Cr.P.C.

8. The learned counsel appearing for the petitioner would rely upon the judgments reported in the case of S.Varadhan Vs. State [(2012)2 MLJ (Criminal) 585]; and Kurban Hussein Mohammedali Rangwalla Vs. State of Maharashtra [(1965) AIR (SC) 1616]. But those two cases are quite contrary to the factual circumstances of this case. In S.Varadhan Vs. State [(2012)2 MLJ (Criminal) 585], the vehicle where the deceased were travelling by



following the lorry, the lorry suddenly stopped causing the car to dash the rear side of the lorry. Here absolutely, we are not facing such a situation. That case was decided on its own facts and circumstances. Similarly, Kurban Hussein Mohammedali Rangwalla's case was decided in the criminal appeal. The factual circumstances are also entirely different. So, the petitioner cannot gain any support. Whether it is a merely an accident or the rash and negligent driving of the petitioner is a matter for consideration by the trial court at the conclusion of the trial. I find no merit in this petition.

9. In the result, this criminal original petition is **dismissed**. Consequently, connected Miscellaneous Petition is closed.

26/04/2023

Index: Yes/No
Internet: Yes/No
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- 1.The Judicial Magistrate No.II,
Kodaikanal,
Dindigul District.
- 2.The Deputy Superintendent of Police,
Kodaikanal Sub Division,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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