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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 15/06/2023

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.OP(MD)No.2504 of 2023

and

Cr1.MP(MD)No.2240 of 2023

Ramachandran : Petitioner/Sole Accused

Vs.

1.State represented by
The Inspector of Police,
Nilakottai Police Station,
Dindigul District.
(In Crime No.387 of 2015) : R1/Complainant

2.Perumal : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records of the Charge Sheet in CC No.50 of 2017 on the file of the Judicial Magistrate, Nilakottai and quash the same as illegal and pass such further or other orders.

For Petitioner : Mr.S.M.A.Jinnah

For 1st Respondent : Mr.R.Sureshkumar
Government Advocate
(Criminal side)

For 2nd Respondent : Mr.K.Althaf Sheriff
(Legal Aid Counsel)



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ORDER

This criminal original petition has been filed seeking quashment of the the case in CC No.50 of 2017 on the file of the Judicial Magistrate, Nilakottai.

2.The case of the prosecution in brief:-

On 23/10/2015 at about 04.15 pm on the Nilakottai-Annaipatti main road near Musuvanuthu, the de-facto complainant and another person were taking their cattle worth about Rs.30,000/- for grazing. At that time, the accused drove the vehicle bearing registration No.TN-59-BF-6399 in a rash and negligent manner, hit against the above said cattle and caused severe injuries making the cattle unfit for any purpose. On the basis of the above said occurrence, a case in Crime No.387 of 2015 was registered for the offences under sections 279 and 429 IPC. After completing the investigation, final report was filed and it was taken cognizance in CC No.50 of 2017 by the Judicial Magistrate, Nilakottai.



3. Seeking quashment of the same, this petition has been filed mainly on the ground that section 429 IPC is not attracted to the facts and circumstances of the case. For that purpose, he would rely upon number of judgments. One of the main ingredients under section 429 IPC is that the accused should have been made a mischief by killing, poisoning, maiming or rendering useless the mule.

4. Mischief is defined in section 425 IPC, which reads as follows:-

"425. Mischief-Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

Explanation.1.-It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is



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likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation.2-Mischief may be committed by an act affecting property belonging to the person, who commits the act, or to that person and others jointly.

5. Section 429 IPC reads as under:-

"429.Mischief by killing or maiming cattle, etc, of any value or any animal of the value of fifty rupees.-

Whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value of thereof, of any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both."



6. Now let us go to the allegation in the light of the above said definition in sections 425 and 429 IPC. There must be an intention on the part of the petitioner. On that, he might have knowledge that he likely to cause the above said damage.

7. Here, the allegation is that in a rash and negligent manner, the petitioner drove the vehicle. Absolutely, there was no intention on the part of the petitioner to cause damage to the cattle. When section 297 IPC is alleged, automatically section 425 IPC will not be attracted.

8. Now let us go to the definition clause of section 279 IPC. Section 279 IPC, reads as under:-

"279. Rash driving or riding on a public way.—Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may



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extend to one thousand rupees, or with both."

9.The main ingredient of section 279 IPC is that there must be rashness on the part of the petitioner in riding the motor vehicle. Absolutely, there is no necessity for any intention and if the intention is on the part of the petitioner to have caused any damage, naturally, section 279 IPC will not be attracted and section 429 IPC will come into operation. On the face of it, it is seen that section 429 IPC is not made out, even if we accept the allegation mentioned in the FIR on its face value. This conclusion can also be confirmed by referring to the judgment of the High Court of Karnataka in the case of Prathap Kumar.G Vs. State of Karnataka and another (Criminal Petition No.1133 of 2019, dated 21/10/2022), wherein a similar circumstance, after elaborate discussion, it is come to the conclusion that section 429 IPC will not be attracted in such a situation. So far as section 279 IPC is concerned, it was decided that the act involving the pet dog will not attract under section 279 IPC.



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10. Whether there was any rashness or negligent driving on the part of the petitioner, cannot be a matter for consideration by this court, while exercising the jurisdiction under 482 Cr.P.C. It can be decided only on the basis of the evidence.

11. As mentioned earlier, it absolutely stands on different footing. So even though, section 429 IPC is not attracted, I am of the considered view that the petitioner must be ordered to face the trial for the offence under section 279 IPC.

12. With the above said observation, this criminal original petition is **partly allowed**. Since, it is a simple issue, the trial court must complete the trial process within a period of three months from the date of receipt of a copy of this order. Consequently, connected Miscellaneous Petition is closed.

15/06/2023

Index: Yes/No
Internet: Yes/No

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- 1.The Judicial Magistrate,
Nilakottai, Dindigul District.
- 2.The Inspector of Police,
Nilakkottai Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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