



Crl.O.P.(MD)No.11193 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.07.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.11193 of 2023

and

Crl.O.P.(MD) Nos.8879 and 8880 of 2023

Vijay @ Vijayananth

... Petitioner

Vs.

1. The Assistant Commissioner of Police,
S.S.Colony Circle (Law and Order),
Madurai City.
2. The Inspector of Police,
S.S.Colony Police Station, Madurai City.
(Crime No.760 of 2022).

3. N.Sakthivel

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records relating to the proceedings in connection with the Spl.S.C.No.44 of 2023 on the file of the 3rd Additional District Judge, PCR Court, Madurai and Quash the same.

For Petitioner : Mr.M.Jegadeesh Pandian

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



Crl.O.P.(MD)No.11193 of 2023

ORDER

WEB COPY

This Criminal Original Petition is filed seeking quashment of charge sheet filed against the petitioner / third respondent against whom cognizance was taken for the offences under Section 304(A) of IPC altered to 304(A) of IPC and Section 7 and 9 of the Prohibition of Employment as Manual Scavengers and their rehabilitation Act, 2013 (in short "the Manual Scavengers Act") and Section 3(1)(j), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (in short "the SC/ST Act").

2. It is submitted by the learned counsel for the petitioner that the provisions of Section 3(1)(j), 3(2)(v) of the SC/ST Act, and also the Manual Scavengers Act, applies only when the deceased were employed by the petitioner / accused for the purpose of manual scavenging. It is submitted that even according to the charge sheet, the deceased were employed to carry out repairs to a electric motor fixed in the drainage. It is submitted that thereby the facts will not attract the above said offences .



Crl.O.P.(MD)No.11193 of 2023

3. According to the prosecution the defacto complainant, who is working as Junior Engineer in Madurai Corporation, has filed a complaint before the second respondent police on 22.04.2022 alleging that the 'Underground Drainage Storage unit' situated at Ward No.70 near Nehru Nagar of Madurai Corporation, was required to be maintained and thereby, in order to maintain and operate, contract has been assigned to VRG Contraction. The petitioner/accused No.3, who is the proprietor of VRG Contraction, whereas, accused No.2 is the Ward Level Administrator of VRG Contraction.

4. According to the prosecution, on 21.04.2022 at about 10:00 p.m., while a person who has been attending the repairing work of an electric motor in the underground drainage unit, a person died while repairing an electric motor. Immediately, the Fire and Rescue Department has taken out three persons from the drainage. It is alleged by the petitioner and other accused that they have allowed the labours to employ during night without any precautionary material and thereby, a case has been registered in Crime No.760 of 2022 against the petitioner for the offences under Section 304A of IPC on 22.04.2022. However,



Crl.O.P.(MD)No.11193 of 2023

subsequently the police have altered the Section of adding Sections 7 and 9 of the Manual Scavengers Act and Sections 3(1)(j) and 3(2)(v) of the SC/ST Act against the petitioner and two others. It is submitted by the learned counsel for the petitioner that the provisions of the offences altered against the petitioner under the Manual Scavengers Act and the SC/ST Act are not applicable.

5. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor and perused the records.

6. Sections 7 and 9 of the Manual Scavengers Act read as under:-

"7. Prohibition of persons from engagement or employment for hazardous cleaning of sewers and septic tanks.—No person, local authority or any agency shall, from such date as the State Government may notify, which shall not be later than one year from the date of commencement of this Act, engage or employ, either directly or indirectly, any person for hazardous cleaning of a sewer or a septic tank.

9. Whoever contravenes the provisions of section 7



CrI.O.P.(MD)No.11193 of 2023

shall for the first contravention be punishable with imprisonment for a term which may extend to two years or with fine which may extend to two lakh rupees or with both, and for any subsequent contravention with imprisonment which may extend to five years or with fine which may extend to five lakh rupees, or with both."

7. Sections 3(1)(j) and 3(2)(v) of the SC/ST Act read as under:-

“(j) makes a member of a Scheduled Caste or a Scheduled Tribe to do manual scavenging or employs or permits the employment of such member for such purpose;

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property [knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member], shall be punishable with imprisonment for life and with fine;"



Crl.O.P.(MD)No.11193 of 2023

8. On perusal of the above penal provisions, it is clear that both the provisions would apply, in case, if a person belonging to a Scheduled Caste/Scheduled Tribe is employed for doing manual scavenging. Even according to the prosecution case, the persons employed by the petitioner and other accused are not for manual scavenging but, they were employed to effect repair to an electric motor inside the drainage. When the allegation itself is that workers were not employed for manual scavenging, the provisions under SC/ST Act are not applicable and therefore, the alteration of Section of law in FIR by including Sections 7 and 9 of the Manual Scavengers Act, are erroneous.

9. Accordingly, the charge sheet filed against the petitioner is hereby quashed insofar as the offences under Sections 7 and 9 of the Manual Scavengers Act are concerned. This petition is allowed in part. Consequently, the connected miscellaneous petitions are closed.

27.07.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN



WEB COPY



Crl.O.P.(MD)No.11193 of 2023



Crl.O.P.(MD)No.11193 of 2023

WEB COPY To

1. The Assistant Commissioner of Police,
S.S.Colony Circle (Law and Order),
Madurai City.
2. The Inspector of Police,
S.S.Colony Police Station, Madurai City.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.11193 of 2023

DR.D.NAGARJUN,J

PKN

Crl.O.P.(MD)No.11193 of 2023

Dated: 27.07.2023