



*Crl.O.P.(MD) No.12054 of 2023*

**WEB COPY** BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 25.09.2023**

**PRONOUNCED ON : 29.09.2023**

**CORAM:**

**THE HONOURABLE DR.JUSTICE D.NAGARJUN**

**Crl.O.P.(MD) No.12054 of 2023**

**and**

**Crl.M.P.(MD) No.9503 and 9504 of 2023**

Jain Manokhar

... Petitioner

**Vs.**

1.The Inspector of Police,  
Thuckalay Police Station,  
Kanyakumari District.

2.Duraimani

..Respondents

**PRAYER :** Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in CC.No.231 of 2018 on the file of the learned Judicial Magistrate No.I, Padhamanabapuram, Kanyakumari District and quash the same as illegal.

For Petitioner : Mr.R.Balamuruganathan  
For R1 : Mr.E.Antony Sahaya Prabahar  
Additional Public Prosecutor



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### **ORDER**

This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure seeking quashment of the charge sheet in CC.No.231 of 2018 on the file of the learned Judicial Magistrate No.I, Padhamanabapuram, Kanyakumari District.

2.The facts, in brief, as per the prosecution version, are that on 14.06.2018 at about 10.00 am., when the defacto complainant's son by name, Rajan was working in the stone quarry situated at Marunthukottai belonging to J.S.J. Construction Private Limited, a wooden log from the Rubber Tree, height of which was approximately 500 ft., fell on Rajan, who was working under the tree and caused severe injuries on the backside on his head. He was admitted at Muthu Neuro Hospital for treatment, then shifted to Trivandrum, KIMS and then to Asaripallam Government Hospital and ultimately, on 18.06.2018, he passed away.

3.On 18.06.2018, the father of the deceased has filed a complaint, on the basis of which a case in Crime No.222 of 2018 was registered for the offences punishable under Sections 304A IPC. The police have completed the



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investigation and filed the charge sheet alleging that the petitioner has committed the offence under Section 304 IPC. When the charge sheet is presented before the learned Magistrate, the cognizance of offence was taken for the offence under Section 304A IPC and not for the offence under Section 304 IPC. Aggrieved by the said charge sheet, this petition is filed seeking quashment by the petitioner/accused.

4.It is submitted by the learned counsel for the petitioner that the petitioner is noway concern for the accidental falling of the wooden log from the Rubber Tree. The branch of the tree, which was fallen on the head of the deceased, was not in the land belonging to the petitioner and it was in the neighbour's land. The petitioner was not physically present at the scene of offence and the day-to-day affairs of the quarry are being taken by other persons and the petitioner is not in-charge of the day-to-day activities of the said quarry and simply because he is the owner of the premises, he is roped in this case, thereby sought for quashment of the charge sheet.

5.Section 304-A IPC runs as under:-



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***“304A. Causing death by negligence —***

*Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”*

6.In order to prove the offence, the prosecution has to make out a case that the petitioner has caused the death of the deceased by doing rash or negligent act, which does not amount to culpable homicide. Therefore, the prosecution is expected to prove whether the petitioner was rash or negligence, on account of which the wooden log had fallen down on the head of the deceased. Admittedly, the petitioner is the owner of the land, where the quarry is being done. There is no concept for vicarious liability in the criminal law. The petitioner was not admittedly present in the scene of offence and there is no material placed by the respondent police connecting the petitioner to the alleged death of the deceased except that the petitioner is the owner of the place, where the quarry was being done.



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7.The other contention of the petitioner is that the branch of the tree, which was fallen on the head of the deceased, does not belong to him, as it is situated in the adjacent land belonging to his neighbour. If at all there is any negligence in respect of not removing or cutting the tree or branch of tree, which is dead, as the branches of the tree may likely to fall, the owner of the land, in which the tree is situated, can be made accountable, that too remotely. It is not the case of the respondent police that either the tree or branch of the tree was dead and the petitioner has not taken steps to cut away the same, so that it does not fall. Further, there is no record that the tree, the branch of which has fallen down, is in the land belonging to the petitioner.

8.The only aspect, which is relevant insofar as this petitioner is concerned, is that if at all the deceased was provided with safety gadgets, like helmet, at least the impact of the injury on account of falling of the wooden log from the tree could have been less, thereby there could have been a chance for his survival. But the question is whether on account of non supply of those safety gadgets to the deceased, can the petitioner be made liable.



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9. Admittedly, the petitioner is the owner of the quarry, who has not been taking care of day-to-day activities in the quarry. That is the reason why the police have made another person as accused No.1, who is responsible for the day-to-day activities of the quarry. So far as the petitioner/A2 is concerned, he is noway connected and not responsible for not providing the safety gadgets, thereby he cannot be made accountable for the death of the deceased. The petitioner/A2 being the owner of the quarry certainly is liable to pay compensation to the dependants of the deceased for his death. Perhaps the family of the deceased must have initiated proceedings in respect of seeking for compensation from the petitioner/A2. The respondent police have not placed any material at all even remotely connecting the petitioner to the death of the deceased. In fact, the cognizance should not have been taken against the petitioner/A2, who has no semblance of connection to the death of the deceased. When a rash or negligent acts have not been attributed to the petitioner/A2, he cannot be charge cheeted for the offence under Section 304A IPC.



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10. Even otherwise, the accident appears to have been occurred may be on account of nobodies' negligence or rashness. The deceased perhaps as usual should have been sitting under the tree. Normally, it is the practice in the villages to sit under the shadow of the trees to take rest, but unfortunately, on the fateful day, one of the big branches from the tall tree has fallen on him. The height of the tree stated to be more than 500 ft., thereby the impact of falling of the wooden log on his head must have been severe, thereby he passed away during the course of treatment.

11. Even according to the prosecution, neither the petitioner nor anybody is responsible for falling of the branch of the tree on the head of the deceased. According to the charge sheet, on account of wind, the branch of the tree has fallen down. In fact, the deceased also should not have sat under the tree without safety gadgets like helmet etc., It is not clear as to whether the quarry has provided the safety gadgets and still the deceased has not used them at the time of the accident. The deceased himself has chosen to sit voluntarily under the tree, which may not be a direction of anybody.



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12.Considering from any angle, the petitioner/A2 has no connection for falling of a branch of a tree from 500 ft., and unfortunately landing on the head of the deceased, which resulted in his death. The prosecution has not placed any materials to show that the petitioner was in rash or negligence. Therefore, the offence under Section 304A IPC does not attract to the facts of the case.

13.In the result, this Criminal Original Petition is allowed and the charge sheet in CC.No.231 of 2018 pending on the file of the learned Judicial Magistrate No.I, Padhmanabapuram, Kanyakumari District is hereby quashed insofar as the petitioner is concerned. Consequently, connected Miscellaneous Petitions are closed.

Speaking : Yes / No  
NCC : Yes / No  
Internet : Yes / No  
Index : Yes / No

**29.09.2023**

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To

1.The Judicial Magistrate No.I,  
Padhamanabapuram, Kanyakumari District.

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- 2.The Inspector of Police,  
Thuckalay Police Station,  
Kanyakumari District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.



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**DR.D.NAGARJUN. J.**

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**order made in**  
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