



Crl.RC.(MD).No.914 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :20.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Manikandan

... Petitioner

Vs.

1.The State rep by
The Inspector of Police,
Karaikudi North Police Station,
Sivagangai District.
(Crime No.384 of 2022)

2.Vallikannu

... Respondents

(Rs is suo motu impleaded as per order of the Court dated 25.08.2023, in Crl.R.C.(MD).No.914 of 2023 by KK RKJ)

PRAYER: Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the impugned order of taking cognizance against the petitioner/accused No.1, dated 30.05.2023 in P.R.C.No.24 of 2023, on the file of the learned Judicial Magistrate, Karaikudi and to set aside the same.



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For Petitioner : Mr.R.Venkateswaran
For Respondents : Mr.M.Muthumannikkam
Government Advocate (Crl.Side)
for R1
: Mr.K.Hari Prasanth for R2

ORDER

This Criminal Revision Case has been filed against the impugned order dated 30.05.2023 in P.R.C.No.24 of 2023 passed by the learned Judicial Magistrate, Karaikudi.

2. The petitioner is the sole accused in P.R.C.No.24 of 2023, on the file of the learned Judicial Magistrate, Karaikudi. The petitioner herein and other accused are said to have committed offence under Section 304 (ii) of IPC.

3. According to the prosecution, on 09.12.2022 at about 11.30 a.m, the side door of the apartment had fallen down on the deceased and as such the deceased sustained injuries and he succumbed to the injuries. Hence, the respondent police registered a case against the owner of the apartment and the petitioner, who is the manager of the apartment for the



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offence punishable under Section 304(ii) of IPC. After investigation, the first respondent police deleted the name of the owner of the apartment and filed a final report only against the petitioner for the offence under Section 304 (ii) of IPC before the Judicial Magistrate, Karaikudi. The same was taken on file in P.R.C.No.24 of 2023.

4. According to the petitioner, on the date of occurrence Mandous Cyclone swept across the area. Due to Mandous Cyclone, three districts got affected. It is the admitted case of the Government that the Mandous cyclone caused huge damage to the properties and deaths were reported. The said aspect was investigated by the investigating officer. In the said circumstances, he produced number of documents to prove the damages occurred due to Mandous cyclone. He further submitted that the incident had happened due to act of God. The deceased was working only as a serviceman in the said apartment.

5. It is seen that the petitioner herein entered into a compromise with the legal heirs of the deceased and they agreed to receive the amount of



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Rs.7,00,000/-. The same was also paid and hence he seeks for quashment of the cognizance taken in P.R.C.No.24 of 2023.

6. The learned Government Advocate (Criminal Side), admitted the fact that the mandous cyclone swept across the area on that day and the glass door fell down due to the impact of cyclone. But the investigating officer independently conducted the investigation and found that the accident had not occurred due to the mandous cyclone. According to the investigating agency, it happened due to the improper maintenance of the apartment. Therefore, the first respondent Police filed a final report under Section 304(II) of IPC. Upon investigation, it was found that the owner of the apartment was in abroad and the petitioner alone was managing the apartment and hence, he is liable for the maintenance and for the said accident.

7. The defacto complainant appeared through his counsel and stated that there was mandous cyclone on that day, due to which, the window door of the apartment fell down and the deceased sustained injuries

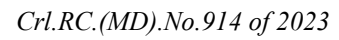


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and died. Subsequently, the petitioner gave compensation of Rs.7,00,000/- to the second respondent and she also acknowledged the receipt of the same.

8. The above submission of the learned counsel for all the parties were considered by this Court and perused the materials available on record and the precedents relied by them.

9.The petitioner is the manager of the apartment called Abina apartment and the first accused is the owner of the said apartment and he is residing in Singapore. Therefore, the petitioner was managing the said apartment. Prior to 09.12.2022, the Central Government Regional Meteorological Centre, Chennai, issued the alert notification regarding the Mandous Cyclone Storm over the South-West way of Bengal moving nearly West-North towards. As per the notification, expected Cyclone happened on 09.12.2022, at 11.30 a.m.,in the occurrence place namely, Karaikudi Abina Apartment and there was severe cyclone storm with an intensity of speed of 85 KmPh and hence, the side windows of the Abina apartment, in which, the appellant was working as a Manager fell down on



10. The investigating agency intentionally omitted to investigate in the angle of the mandous cyclone. This Court took judicial notice of the above fact that the mandous cyclone swept the place on the occurrence and the same was substantiated by the Government. Particular district was suffered due to the mandous cyclone and the fact was also confirmed by the learned Government Advocate. The complainant is also not disputed the fact that the death was caused by falling down of the door as a result of the mandous cyclone. This Court is unable to accept the finding of the investigating officer that due to the poor maintenance of the apartment the door fell down. Therefore, this Court is unable to accept the final report filed by the investigating agency.



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for the offence under section 304 (II) of IPC. There is no material to prosecute the petitioner either under Section 304(II) of IPC or 304(A) of IPC.

11.This Court in similar circumstances, in the case of ***K.Rajendran Babu and another Vs. The Inspector of Police and another*** reported in ***2021 (2) MLJ Crl. 367*** considered the ingredients of 304 (ii) of IPC and quashed the proceedings. The relevant paragraph is as follows:

11.In the present case, the charge sheet the petitioners is for an offence punishable under Section 304-II IPC. A punishment under this provision, will get attracted only if there is a culpable homicide not amounting to murder. Taking the cue from the above judgments, it must be seen if there is a homicide in the first place. Homicide involves the killing of one human being by another. If this ingredient is satisfied, the Court has to thereafter, see if such a homicide is culpable or not culpable. In other words, the Court has to see if the facts relied upon by the prosecution brings the case within any one of the four limbs of Section 300 of



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IPC. If it falls within any one of the four limbs, it will be a culpable homicide amounting to murder punishable under Section 302 of IPC. If it does not fall within any of the four limbs under Section 300 of IPC, it will be a culpable homicide not amounting to murder. The punishment under Section 304-I, IPC or 304-II, IPC will depend upon the limb within which the case falls under Section 299, IPC. It must also be stated here that where the act falls within any one of the four limbs under Section 300, IPC, but however, comes within any one of the exceptions enumerated under Section 300, IPC, it will again be treated as a culpable homicide not amounting to murder, punishable under Section 304-I, IPC. In a case which does not fall within the term 'culpable homicide', it has to be seen if the facts will satisfy the requirements under Section 304-A, IPC. These are the broad parameters that must be kept in mind by a court in case of homicide.

12. In the present case, there is an unfortunate and untimely death of a young boy aged about 11 years. This boy went on a school tour to an amusement park along with his schoolmates, and he is said to



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have fallen into a swimming pool and drowned to death. The Petitioners who are the Correspondent and Principal of the school are sought to be charged for an offence of culpable homicide not amounting to murder. Admittedly, the Petitioners were not present in the scene of occurrence and not a single witness speaks about the involvement of the Petitioners in the alleged crime.

13.By no stretch, the facts of the present case can be brought within the term 'homicide'. If there is no homicide, a case can never be prosecuted for an offence of culpable homicide amounting to murder or not amounting murder, as the case may be. The court below ought not to have taken cognizance against the Petitioners for an offence punishable under Section 304-II, IPC. This charge is totally unsustainable.

14.If the case does not fall within the ambit of culpable homicide, this Court has to see if the Final Report and the materials collected by the prosecution makes out an offence of criminal negligence to attract the provisions of Section 304-A, IPC. In order to bring a case within the ambit of Section 304-A, IPC, there must be some material to



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show that it is the rash or negligent act of the Petitioners that has resulted in the death of the boy. In other words, the Petitioners, must have acted with such recklessness or total disregard for the possible consequences which must be the causa causans for the death. Simple lack of care, howsoever bad the consequences are, will not constitute criminal negligence.

15.In the present case, it is not even the case of the prosecution that the lack of care on the part of the Petitioners resulted in the death of the boy. Therefore, on the given facts, even an offence under Section 304-A, IPC has not been made out against the Petitioners.

16.In view of the above discussion, this Court finds that there are absolutely no materials to proceed further against the Petitioners, and the continuation of the criminal proceedings against the Petitioners will be an abuse of process of Court which requires the interference of this Court in exercise of its jurisdiction under Section 482, Cr.P.C.



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12. By applying the above principle and also the above discussion ie., due to the sever cyclone storm with intensity of 85 kmph, the window of the Abina Apartment fell down on the deceased and the same was undisputed fact, this Court finds that the offence under Section 304 (ii) of IPC is not made out against the petitioner and it is a case of civil negligence and the same was compensated by the petitioner, which was also acknowledged by the Defacto complainant and hence this Court is inclined to quash the final report filed before the Judicial Magistrate, Karaikudi.

13. Accordingly, this Criminal Revision Case stands allowed and the proceedings against the petitioner in P.R.C.No.24 of 2023 on the file of the learned Judicial Magistrate, Karaikudi, is hereby quashed.

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NCC :Yes/No

Index :Yes/No

Internet :Yes/No

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To
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1. The learned Judicial Magistrate,
Karaikudi.
2. The Inspector of Police,
Karaikudi North Police Station,
Sivagangai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section (Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

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