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Crl.O.P.Nos.21923 & 23791 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.02.2024

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.Nos.21923 and 23791 of 2022
and Crl.M.P.Nos.15154 and 14167 of 2022
and 14969 and 14970 of 2023

Mohanarangan

... Petitioner
in Crl.OP.21923/2022

1.Sundar
2.Suresh

... Petitioners
in Crl.OP.23791/2022

Vs.

1.State
Represented by Inspector of Police
T-14, Mangadu Police Station
Chennai 600 122

2.Ravindra Pradhan
S/o.Dhamodhara Pradhan
(*) No.290/3, Pallavaram Road
Kolapakkam, Chennai 600 122

(*) Amended as per order dt.21.09.2023
in Crl.M.P.No.14970/2023 in Crl.OP.21923/22)

... Respondents
in both

Crl.OPs



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Common Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records in S.C.No.64/2021, pending on the files of the learned District and Sessions Court - II, Kancheepuram and quash the same.

For Petitioner : Mr.S.Shanmugavelayutham
Senior Counsel
for Mr.R.S.Diwagar

For Respondents : Mr.S.Vinoth Kumar
Government Advocate (Crl. Side) - R1

R2 - addressee cannot be located

COMMON ORDER

The petitioner has filed these Criminal Original petitions to quash the proceedings in S.C.No.64/2021, pending on the files of the learned District and Sessions Court - II, Kancheepuram.

2. The prosecution's case is that the petitioners are arrayed as A1, A2, and A3 in Crime No. 2227 of 2017, for the offences under Section 304A of the IPC. Based on the complaint given by the second respondent, an FIR was lodged. After investigation, a final report was filed, thereby charging all



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three accused persons under Section 304(A) IPC and 304(ii) IPC.

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3. Challenging the said proceedings, the petitioners have filed these petitions and prayed to quash the proceedings against them. The first petitioner, Mohanarangan, is the owner of the factory. He asserts that he was not involved in the alleged accident and was not present at the time of the incident. Moreover, he did not give any instructions to the deceased employee to clean the tank. Therefore, he prayed to quash the proceedings, as there was no evidence of his presence or any instruction given by him that could be construed as having knowledge of or causing the dangerous act that led to the death of the deceased. Consequently, the learned counsel submitted that Section 304(ii) IPC would not apply to A1. Similarly, A2 and A3 are the Manager and Supervisor of the company, respectively. They also contended that they did not give any instructions to the deceased to clean the tank on the particular date. Hence, they argue they are not involved in the alleged incident, and there is no specific overt act attributed to them. Their counsel further contended that Section 304(ii) IPC would not apply to them as they had no intention to cause the death of the deceased. Therefore, they prayed to quash the proceedings, arguing that the charges against them are



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vexatious and liable to be quashed.

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4. To support his contention the learned counsel for the peti relied the following authorities in the case of Crl.R.C.No.891 of 2009, reported in MANU/TN/37512/2010, Narender Bir Singh Vs. State, in which, it was read as follows:

“10.Section 304A by its own definition totally excludes the ingredients of Section 299 of Section 300 IPC. Doing an act with the intent to kill a person or knowledge that doing of an act was likely to cause a persons death are ingredients of the offence of culpable homicide. When the intent or knowledge as described above is the direct motivating force of the act complained of, Section 304A has to make room for the graver and more serious charge of culpable homicide. Does this happen in this case?

15.Section 299 IpC includes culpability of mind where in Section 304A IPC excludes culpability of mind. Mens rea plays major role to distinguish both. Knowledge of the person that his act would directly result in causing death in culpability. In the person does not intend even to cause harm but the act resulted in causing death then culpability is absent. Similarly, form the facts available in this case, this Court does not find any material to hold that the accused



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had requisite knowledge to bring the act of the accused within the ambit of Section 304(ii) IPC. The accused had constructed the stage over the swimming pool. Of course, the accused should have avoided such construction for safety reasons. Though the act of accused is wrongful and though it is possible to expect some bad consequences by their act, it is not possible to say that the accused intended to cause any harm to the victims and further even they could have been on the hope that such disastrous consequences would not result. The facts do not reveal the culpability of the accused.”

5. By way of reply, the learned Government Advocate (Crl. Side) submitted that on the date of the alleged incident, i.e., on 20.10.2027, at about 10:30 a.m., A1, being the owner of the company, A2, being the Manager of the company, and A3, being the supervisor of Archana Traders, instructed workers namely Sudharson Pradhan (deceased) and Chandra Duja Bihoee (deceased) to enter the tank, which measured about 10 feet in length, 20 feet in height, and 8 feet in width, to clear the waste matter contained in water. They initially pumped out the wastewater using a motor. However, the remaining waste had converted into a slurry that formed a solid state and was contained in the tank up to 4 ½ feet. Both workers



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attempted to dilute it to convert it into a liquid state, and thus they entered the tank and remained in it. During this time, wit-1 went to switch on the motor for cleaning the tank but did not find both workers when he returned. They had drowned and died due to the cumulative effects of drowning and suffocation. The chemical examiner found that their blood contained liquified paraffin and Carbon Monoxide. The workers died as a result. Admittedly, the tank belongs to A1. A2 and A3 are engaged by the company as Manager and Supervisor, respectively. Thus, all were charged under Section 304(ii) of the IPC.

6. The learned counsel for the petitioner submitted that, in fact, Section 304(ii) of the IPC does not apply to the facts of the case. Even otherwise, Section 304(A) of the IPC, if any negligence on their part is considered, would apply only against A2 and A3 and not A1, as there is no vicarious liability under the Criminal Procedure Code.

7. Considering the facts that the two workers died due to suffocation while cleaning the tank, which belongs to the 1st petitioner who is the owner of the factory, any negligence should be addressed before the trial court. A2



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and A3 are the Manager and Supervisor of the tank. The authority relied upon by the petitioners does not apply to the facts of the case. Therefore, this Court declines to quash the proceedings in S.C.No.64/2021, pending on the files of the learned District and Sessions Court - II, Kancheepuram.

8. Accordingly, these Criminal Original Petitions are dismissed and Consequently, the connected miscellaneous petitions are closed.

23.02.2024

Speaking Order/ Non Speaking Order

Index: Yes/ No

Neutral Citation: Yes/No

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To.

1.The District and Sessions Court - II
Kancheepuram

2.Inspector of Police
T-14, Mangadu Police Station
Chennai 600 122

3.The Public Prosecutor
High Court of Madras
Chennai 600 104



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T.V.THAMILSELVI, J.

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