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Crl.O.P.No.21735 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:29.10.2024

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.21735 of 2024

and

Crl.M.P.Nos.12441 and 12442 of 2024

Dilipkumar

.. Petitioner/Accused-6

/versus/

1.The Inspector of Police,
Law & Order,
G-1, Vepery Police Station,
Vepery,
Chennai 600 007.
(Crime No.57 of 2020)

2.Y.Chandra Sagar Sharma

.. Respondents/Defacto
complainant

Criminal Original Petition has been filed under Section 528 of BNSS, to call for the records and quash the Final Report in C.C.No.1101 of 2024 on the file of the learned II Metropolitan Magistrate, Egmore, Chennai.

For Petitioner

:Mr.R.Rajan

For R1

:Mr.S.Udayakumar

Govt.Advocate (Crl.Side)

For R2

:Mr.P.Tamilavel



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ORDER

The petitioner herein is one of flat owner in the Apartment in which Yuvaraj Sharma was engaged by the Apartment Owners Association for doing menial work. On 21.02.2020, while the said Yuvaraj Sharma tried to prune the tree branches from the nearby Church building, protruding over the apartment fell down and died. In this connection, the Police registered a case in Crime No. 57 of 2020 under Section 174 of Cr.P.C. After recording the statements of witnesses concluded it as an accidental fall, hence, the complaint was closed. Thereafter, the son of the deceased/defacto complainant had forwarded a representation to the Commissioner of Police raising suspicion over his father's death and sought for reinvestigation. His representation dated 17.03.2023 suspecting the role of office-bearers and the flat owners of the apartment was taken into consideration. The charge was altered into Section 304(A) of IPC and on completion of investigation, Final Report filed before the II Metropolitan Magistrate, Egmore, Chennai and the same was taken on file in C.C.No.1101 of 2024.



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2. The petitioner herein who is one of the owner of the flat is presently residing in Cheyyar at Tiruvannamalai District. He is arrayed as one of the accused in this case. Therefore, being aggrieved, has filed the quash petition on the ground that the petitioner is noway connected with the incident and on the date of the occurrence, he neither instructed Yuvaraj Sharma to prune the branches nor he was present in the apartment on that day. While so, without any material to implicate this petitioner for any overtact, cognizance been taken by the Magistrate.

3. Alleging that the Final Report by the respondent police bristles with non application of mind and inspite of lack of material to show that Yuvaraj Sharma was engaged and instructed by the Apartment owners to prune the tree branches, merely on presumption and statement of the wife and son of the deceased, who were not present in the place of occurrence, the prosecution been launched.



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4. The learned counsel appearing for the defacto complainant submits that the statements of the defacto complainant and his mother recorded under Section 161 of Cr.P.C would clearly show that Yuvaraj Sharma was instructed to prune the branches of the tree, which was about 30 feet height, but he was not provided with any safety gadgets. Hence, the apartment owners are liable for his death. The charge under Section 304(A) IPC against them has to be tested through evidence and it is not the case to quash since *prima facie* materials are available to proceed against the petitioner.

5. On a careful consideration of the Final Report along with the statements of the witnesses recorded by the Police, this Court finds that the incident had taken place on 21.02.2020 at about 08.00a.m. The fall of Yuvaraj Sharma from the tree branch while pruning the tree was witnessed by one Thangadurai, who was working as a security in the opposite building. His statement does not disclose that Yuvaraj Sharma was instructed by the office-bearers of the Apartment Association to



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prune the tree or any of the occupant of the apartment so instructed. This incident had taken place on 21.02.2020. Immediately, First Information Report been registered for unnatural death and investigated. While so, after three years, the representation of his son been taken up for consideration and charge been altered and out of eight apartment owners, six been prosecuted, while the statement of the witnesses, who could have been probable present at the time of occurrence, does not implicate this petitioner in any manner, there is no material to frame charge against the petitioner for the offence under Section 304(A) of IPC, which reads as below:-

“Section 304(A)-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. To fasten the criminal liability on a person for causing death



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by negligence, there must be a some act of rash or any act of commission or omission leading to negligence. In other words, lack of diligence must be explicit in the final report.

7. According to the learned counsel appearing for the defacto complainant, not providing safety gadgets before instructing the deceased to climb the tree and cut the branches is an act of wilful omission, which amounts to negligence.

8. To accept this argument, there must be some material to show that Yuvaraj Sharma was asked by this petitioner to climb the tree and cut the branches. When there is no evidence to prima facie conclude that this petitioner instructed the deceased to climb the tree, there can be no inference about negligence or rashness to attract Section 304(A) of IPC. Hence, this Court finds merits in this petition to quash the case against this petitioner.

9. Accordingly, this Criminal Original Petition is allowed and



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the case in C.C.No.1101 of 2024 on the file of the II Metropolitan Magistrate, Egmore, Chennai, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

29.10.2024

Index:yes/no

Internet:yes/no

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To:

- 1.II Metropolitan Magistrate, Egmore, Chennai.
- 2.The Inspector of Police, Law & Order,
G-1, Vepery Police Station, Vepery, Chennai 600 007.
- 3.The Public Prosecutor, High Court Madras.



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