



Crl.O.P.(MD)No.4448 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

Crl.O.P.(MD) No.4448 of 2022
and Crl.M.P(MD).No.3155 of 2022

1.P.Manoharan

2.Suresh Kumar

... Petitioners

(*Petitioner No.2 is impleaded as per the order of this Court dated 19.03.2024 in Crl.M.P(MD).No.3552 of 2024 in Crl.O.P(MD).No.4448 of 2022 *)

Vs.

1.The State Rep.by
The Inspector of Police,
Anna Nagar Police Station,
Madurai City,
Madurai.

2.Durga Devi

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the entire records pertaining to C.C.No.287 of 2021 on the file of the learned Judicial Magistrate No.VI, Madurai against the petitioner herein and quash the same.

For P1

: Mr.Niranjana S.Kumar

For P2

: Mr.P.Banuprasath



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For R1

: Mr.S.Manikandan

Government Advocate (Crl.side)

For R2

: Mr.C.Mayilvahana Rajendran

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.287 of 2021 pending on the file of the learned Judicial Magistrate No.VI, Madurai, against the petitioners herein.

2. The case of the prosecution is that the defacto complainant's husband, namely, Alagarswamy was a Mason and was doing civil work under the first accused. While so, due to non issuance of safety measures, the defacto complainant's husband had fallen down from the open lift and sustained grievous injuries and passed away. Hence, a complaint was given by the second respondent, based on which, initially a case in Crime No.720 of 2019 was registered for the offence punishable under Section 174 Cr.P.C. However, after completing the investigation, the first respondent Police filed charge sheet and the same was taken on file in C.C.No.287 of 2021 for the offence punishable under Section 304 IPC against the owner of the premises and contractor.



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3. The learned counsel appearing for the newly impleaded second petitioner submits that the newly impleaded second petitioner is the Contractor/ accused No.1 and he entered into a contract with the first petitioner/accused No.2, who is the owner of the building and during construction, the incident had happened. It is further submitted that without admitting the criminal liability in the offence, on humanitarian ground, the second petitioner is ready to pay a sum of Rs.5,00,000/- to the defacto complainant within a period of four weeks from the date of receipt of a copy of this order, to show his bona fide and the case against him may be quashed.

4. The learned counsel appearing for the second respondent submits that if the second petitioner pays a sum of Rs.5,00,000/- in favour of the second respondent, the second respondent has no objection for quashing of the complaint case in respect of the second petitioner.

5. The learned counsel appearing for the first petitioner submits that the first petitioner entered into contract with the second petitioner and handed over the entire construction work to the first accused and not providing of necessary safety measures cannot be put against him.

More so, the first petitioner is a blind person. He further submits that the



first petitioner cannot be held to be responsible for the death of the defacto complainant's husband. Though the petitioner is the owner of the property, he was not aware of non-providing of safety measures, since he is a blind person. Therefore, the necessary ingredients required for the offence under Section 304 IPC are not attracted against the first petitioner. To strengthen his argument, he relied upon the judgment of the Hon'ble Supreme Court in the case of *Ambalal D.Bhatt vs. State of Gujarat* reported in (1972) 3 SCC 525 and the judgment of this Court in the case of *Geetha Ramesh and others vs. Inspector of Police, G-1 Town West Police Station, Udagamandalam Nilgiris District* reported in (2010) 1 MLJ (Crl) 1064, and *Dr.Jeppiar and another vs. the State of Tamil Nadu, rep.by its Inspector of Police, C-2 Sunkuvar Chatram Police Station, Kancheepuram District* reported in (2013) 1 LW (Crl) 45 and *ATB Bose vs. The State of Tamil Nadu, rep.by its Inspector of Police, D6 Anna Square Police Station, Triplicane, Chennai and another* reported in (2015) 1 LW (Crl) 70 and the order of this Court dated 30.09.2022 made in Crl.O.P.No.10930 of 2019 and prays for quashing the charge sheet in respect of the first petitioner.

6. The learned Government Advocate (Crl.side) appearing for the first respondent Police submits that there are materials available to proceed with the case as against the petitioners herein and at the



threshold, the criminal proceedings cannot be quashed and hence, he prays to dismiss the present petition.

7. The factum of the accident is not disputed. Though initially the case was registered u/s 174 Cr.P.C. on the complaint of the defacto complainant, upon investigation, it transpired that an offence u/s 304 IPC stood attracted against the petitioners herein.

8. The gravamen of the allegations against the petitioners is that the workman was not provided with the safety measures which has resulted in the death of the workman and, therefore, negligence is attributable both to the owner of the premises/A-2 and the contractor/A-1. Though the 2nd petitioner, who has impleaded himself in the case as a petitioner submits that he is ready and willing to pay a sum of Rs.5,00,000/- to the defacto complainant for the death of her husband, to show his bona fides, however, the 1st petitioner, citing his case as a blind person and not aware of the safety measures provided by the contractor, is not inclined to pay any compensation to the defacto complainant, as it is the case of the 1st petitioner that the ingredients of Section 304 IPC does not stand attracted to him.



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9. It is to be pointed out that the petition has been laid by the 1st petitioner and the 2nd petitioner has impleaded himself in the said petition as party petitioner. That being the case, the case against the 2nd petitioner cannot be quashed in a petition filed by the 1st petitioner and allowing the 1st petitioner to undergo the rigours of the trial, more so, when the 1st petitioner pleads that he is a blind person and, therefore, was not aware of the steps taken by the 2nd petitioner, who is the contractor, with regard to provision of safety gears for the workmen employed in the said work. Though the 2nd petitioner is willing to pay compensation to the defacto complainant and the defacto complainant is also ready and willing to receive the same and submits that the case as against the 2nd petitioner may be quashed, however, the case having been taken cognizance of and committed and is pending trial before the Magistrate, interest of justice warrants that this Court ought not interfere with the said cognizance and trial.

10. It is to be pointed out that the offence registered against the petitioners, which are taken cognizance of are triable in nature and for



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the reasons it would not be in the interest of justice to interfere with the said case by quashing the same at this point of time and suffice to direct the petitioners to place the relevant facts as aforesaid at the time of trial and it is open to the Magistrate to consider the same on its merits and in accordance with law and pass orders thereon, without being in any way influenced by any observations made by this court in the present petition.

11. Accordingly, the present criminal original petition is dismissed with the aforesaid observations and directions. Consequently, connected miscellaneous petition is closed.

27.03.2024

Index : Yes/No
Internet : Yes/No
ssb

To

- 1.The Judicial Magistrate No.VI, Madurai.
- 2.The Inspector of Police,
Anna Nagar Police Station,
Madurai City,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI. J.

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