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Crl.O.P.No.4754 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2025

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4754 of 2023

and

Crl.M.P.No.3006 of 2023

M.Syedali Fathima

.. Petitioner

Vs.

1.The State,

Represented by Inspector of Police,
F4, Thousand Lights Police Station,
Thousand Lights, Chennai.

2.S.Pandimurugesan

.. Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.PC.,
praying to call for the records in Cr.No.14 of 2023 dated 27.01.2023
pending on the file of the 1st respondent and quash the same in so far as
the petitioner is concerned.

For Petitioner : Mr.Abdul Saleem
Senior Counsel
for M/s.AAV Partners

For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)

For R2 : Mr.A.R.Ramanathan



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ORDER

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This petition has been filed to quash the FIR in Crime No.14 of 2023 on the file of the 1st respondent.

2.On the complaint lodged by the 2nd respondent, the 1st respondent registered FIR in Crime No.14 of 2023 for the offence punishable under Section 304 of IPC, alleging that the daughter of the 2nd respondent was proceeding to her office at about 09.30 A.M, on 27.01.2023, from Thousand Lights, Chennai, after getting down from the Metro Train, there was building demolition process going on without following any safety measures and due to which the old building was fell down on the 2nd respondent's daughter. Immediately, she was taken to a Hospital and she was declared as brought dead.

3.The learned counsel for the petitioner would submit that the petitioner is arrayed as A1 out of this incidence. The petitioner along with one Mubarak Sahitha Samsudeen purchased 6/7th undivided share in the property situated at Door No.676, Anna Salai, Chennai – 600 006 (formerly Door No.1, Kammalar Street and Door Nos.1/140, 1/140-C,



1/140-D, 2/140, 2/140-A and 2/140-B) Mount Road, Thousand Lights,

Chennai – 600 006, measuring an extent of 3326 sq.ft (1592 sq.ft + 1734

sq.ft), comprised in Old.S.Nos.447 and 448, C.C.No.3035,

Old.R.S.No.34/24 and 35/24, New R.S.Nos.35/49 and 35/50, Block

No.6, Nungambakkam Village, Egmore Taluk, Chennai District, by the

registered sale deed dated 12.01.2023 vide Document No.56 of 2023 in

Sub Registrar Office, Chennai Central Joint II from Mr.K.Shafiq,

Mr.K.Hasan Ali, Mr.M.Nuhman, Mr.A.G.M.Salman, Mr.A.K.Wajith and

Mrs.M.K.Zameera. After obtaining the order for demolishing the existing

building, the petitioner approached the 6th accused, who is none other

than her relative. In turn, the 6th accused referred A2 & A3 as contractor

to complete the demolition work. While they were carrying out the

demolition work with all safety measures on 27.01.2023, the front side

of the debris had fallen upon the pedestrian, namely the deceased. Due to

which she sustained grievous injuries and died. As far as the petitioner is

concerned, she already entrusted the work to a contractor and as such she

is not liable to be prosecuted for any offences. Further, as per the FIR,

there is no specific allegation as against the petitioner to attract any of

the offences. In support of his contention, he relied upon the judgments

of this Court:



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(i)*Rajesh Vs. State Rep. By The Inspector of Police in Crl.O.P.No.10930 of 2019 dated 30.09.2022 and*

(ii)*Selvakumar Vs. State through The Inspector of Police in Crl.O.P.(MD).Nos.1041 and 1568 of 2022 dated 03.02.2022.*

4. On perusal of the records revealed that the petitioner and another had purchased the subject property by the registered sale deed dated 12.01.2023 vide Document No.56 of 2023. As per the sale deed, it is a vacant land and there is no superstructure in the said property. Accordingly, the petitioner valued the property and paid stamp duty. But the recital says that the petitioner's vendor have decided to demolish the old building as per the demolition order obtained from the Town Planning Section, Greater Chennai Corporation, Teynampet. On perusal of the so called permission to demolish the existing building dated 13.01.2023 revealed that it is only a planning and building permission issued by the Town Planning Section, Greater Chennai Corporation, Teynampet. It is also mentioned that the plan showing the existing building to be demolished. It is therefore, it is not at all the order of permission to demolish the existing building located in the subject property. Thus, it is clear that the petitioner did not even obtained any



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demolition order from the concerned authority to demolish the existing building. That apart, the petitioner did not properly value the property and suppressed the fact that there was an existing building and valued the property while registering the property.

5. Further, though the petitioner engaged other accused persons to demolish the existing building, there is no contract entered between the petitioner and the persons who were engaged to demolish the building. There is no order of entrustment and order of contract. The other accused persons were directly engaged by the petitioner and 6th accused to demolish the existing building. Therefore, the judgment relied upon by the petitioner are not at all applicable to this case, since those judgments were held by this Court where work was entrusted to the contractor and the contractor is held liable for any untold incidence while processing the work under the contract. The petitioner without even obtaining any order of demolition from the authority concerned, demolished the existing building that too without providing any safety measures to the general public. It is unfortunate to state that the building is situated in the heart of the city and no one questioned the petitioner about the permission while demolishing the existing building. It is a crowded area and all the



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general public are proceeding to their respective offices at all the peak house. The occurrence had taken place during the hot hour (i.e.,) 09.30 A.M on 27.01.2023. Therefore, there is specific allegations as against all the accused persons to attract the offences under Section 304 of IPC.

6.Further, it is also relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in the judgment reported in **2019 (14) SCC 350** in the case of ***Sau. Kamal Shivaji Pokarnekar vs. The State of Maharashtra & ors., (Crl.A.No.255 of 2019 dated 12.02.2019)*** held that the learned Magistrate while taking cognizance and summoning, is required to apply his judicial mind only with the view to taking cognizance of the offence whether a *prima facie* case has been made out for summoning the accused person. The learned Magistrate is not required to evaluate the merits of the materials or evidence in support of the complaint, because the Magistrate must not undertake the exercise to find out whether the materials would lead to conviction or not. Only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive, the complaint/FIR can be taken for consideration for quashment. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by



Magistrate, it can be considered for quashment. Therefore, it is not necessary that a meticulous analysis of the case should be done before the trial to find out whether the case would end in conviction or acquittal. If it appears on a reading of the complaint and consideration of the allegations therein, in the light of the statement made on oath that the ingredients of the offence are disclosed, there would be no justification to interfere. At the initial stage of issuance of process, it is no open to the Court to stifle the proceedings by entering into the merits of the contentions made on behalf of the accused. Therefore, the criminal complaint cannot be quashed only on the ground that the allegations made therein appear to be of a civil nature. If the ingredients of the offence alleged against the accused are *prima facie* made out in the complaint, the criminal proceeding shall not be interdicted.

7.Further the Hon'ble Supreme Court of India issued directions in the judgment reported in **2021 SCC Online SC 315** in the case of ***M/s.Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra & ors.***, as follows :-

“23.

vi) *Criminal proceedings ought not to be scuttled*



at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

.....

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

.....

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to



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consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;”

8.In view of the above, this Court finds no ground to quash the very FIR registered in Crime No.14 of 2023 for the offence under Section 304 of IPC.

9.In the result, this Criminal Original Petition is dismissed. The 1st respondent is directed to complete the investigation and file a final report within a period of twelve (12) weeks from the date of receipt of a copy of this order, before the jurisdiction Magistrate, if not already filed. It is also made clear that the 1st respondent is directed to add any other offences if made out during the investigation and file a final report. Consequently, the connected miscellaneous petition is closed.

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Index : Yes / No
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G.K.ILANTHIRAIYAN, J.

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To

- 1.The State,
Represented by Inspector of Police,
F4, Thousand Lights Police Station,
Thousand Lights, Chennai.
- 2.The Public Prosecutor,
Madras High Court, Chennai.

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