

Arun Kumar. S. vs State of Kerala

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Court : Kerala

Decided On : Jun-06-2023

Judge : Honourable Mr. Justice Raja Vijayaraghavan V

Appeal No. : Crl.MC/4357/2023

Appellant : Arun Kumar. S.

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V TUESDAY, THE 6TH DAY OF JUNE 2023 / 16TH JYAISHTA, 1945 AGAINST THE ORDER/JUDGMENT IN CC 2300/2018 OF JUDICIAL MAGISTRATE OF FIRST CLASS -II,NEDUMANGAD PETITIONER/ACCUSED: ARUN KUMAR. S. AGED 38 YEARS, S/O SUKUMARAN RESIDING AT JAYA BHAVAN, CHANGA P.O., VELLANAD, THIRUVANANTHAPURAM, PIN - 695542 BY ADV MITHUN P. RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031 SRI MP PRASHANTH PP THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON

06.06.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER

The petitioner herein is the sole accused in Crime No. 79/2017 of the Nedumangad Police Station, which is registered inter alia for offences punishable under Sections 279 and 304A of the IPC.

2. The prosecution allegation is that on 11.01.2017 at about 9.45

a.m., the petitioner herein had rashly and negligently driven a Tipper Lorry bearing Reg. No. KL-21-C-7727 and the vehicle dashed on the nephew of the defacto complainant, causing his instantaneous death.

3. The learned counsel appearing for the petitioner submitted

that a perusal of a final report would show that there are several discrepancies. According to the learned counsel, though the motor vehicle was inspected by the officers of the Motor Vehicles Department, the fitness certificate, which is produced along with the final report, is in respect of a vehicle owned by the Kerala Road Transport Corporation. He would refer to Annexure-A2 Fitness Certificate, and it is submitted that the registration certificate of the offending vehicle is also different. He would further contend that the material which is collected by the prosecution is not sufficient to bring out a charge under Section 304A of the IPC.

4. The contention of the learned counsel appearing for the

petitioner is controverted by the learned public prosecutor. He would point out that the Motor Vehicle Inspector was cited as CW10 along with the final report. The occurring witnesses have been cited as CWs1 to 5. All those witnesses spoke about the instance as well as the details of the vehicle involved in the accident. The mere fact that the wrong fitness certificate is produced before the Court is no reason to quash the entire proceedings, contends the learned Public Prosecutor. Reliance is placed on the law laid down in Central Bureau of Investigation v. R.S. Pai and another [2002 (5) SCC 82], and it was argued that there is no prohibition

in producing the documents at a subsequent stage. According to the learned counsel, even if some mistake is committed by the Investigating Officer in not producing the relevant documents at the time of submitting the report or the charge sheet, it would be open to the investigating officer to produce the same with the permission of the court.

5. I have considered the submissions advanced.

6. The petitioner has not produced copies of the 161 statements

of the witnesses and also the Motor Vehicle Inspector. However, reference is made to Annexure-A2, and it is submitted that the fitness certificate that is produced before the court does not correspond to the vehicle which was involved in the accident. If a mistake is committed by the Investigating Officer while producing a report, nothing prevents the investigating officer from approaching the Court and in seeking permission to produce the correct report, as held in *R.S. Pai* (supra).

7. From the perusal of the materials on record and looking into

the facts of the case at this stage, it cannot be said that no offense is made out against the petitioners. All the submissions made at the Bar relate to disputed questions of fact, which cannot be adjudicated upon by this Court under Section 482 of the Code. At this stage, only a prima facie case is to be seen in the light of the law laid down by the Supreme Court in the case of *R.P. Kapur Vs. State of Punjab* (AIR 1960 SC 866), *State of Haryana Vs. Bhajan Lal* (1992 SCC (Cr) 426), *State of Bihar Vs. PP Sharma* (1992 SCC (Cr.) 192) and lastly, *Zandu Pharmaceutical Works Ltd. Vs. Mohd. Saraful Haq and another* (2005 SCC (Cr.) 293). Though the learned counsel has pointed out some discrepancies in the report placed along with the final report, it doesn't appear to me that those matters will have to be taken note of by the Trial Court at the appropriate stage. I refrain from passing opinion on the merits of the allegations at this stage lest it affects the case of either the prosecution or the accused.

8. In that view of the matter, I am of the considered opinion

that the petitioner has not made out any case for interference. As it is made out from the records that the crime of the year 2017 and the proceedings are pending since 2018, the learned Magistrate shall endeavor to expedite the matter and take the matter to its logical conclusion at the earliest. This petition is disposed of. Sd/- RAJA VIJAYARAGHAVAN V JUDGE avs APPENDIX OF CRL.MC 4357/2023 PETITIONER ANNEXURES Annexure A1 CERTIFIED COPY OF THE FINAL REPORT IN CRIME NO. 79 OF 2017 OF NEDUMANGAD POLICE STATION THIRUVANANTHAPURAM DISTRICT Annexure A2 CERTIFIED COPY OF THE INSPECTION REPORT OF THE OFFENDING VEHICLE ISSUED BY THE MOTOR VEHICLE INSPECTOR, NEDUMANGAD ROAD TRANSPORT AUTHORITY, DATED 17.01.2017

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