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Court : Karnataka

Decided On : Feb-13-2006

Reported in : II(2006)ACC735; 2006CriLJ1850; ILR2006KAR1383; 2006(2)KarLJ556

Judge : Huluvadi G. Ramesh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482; Indian Penal Code (IPC) - Sections 304A

Appeal No. : Criminal Petition No. 4934 of 2005

Appellant : Krishnamurthy and anr.

Respondent : The State of Karnataka by the Station House Office

Advocate for Def. : Satish R. Girji, H.C.GP

Advocate for Pet/Ap. : S.G. Bhagavan, Adv.

Disposition : Appeal allowed

Judgement :

Huluvadi G. Ramesh, J.

1. This petition is filed under Section 482 of Cr.P.C. seeking to quash the proceedings pending in C.C. No. 272/05 on the file of JMFC, Yelburga.
2. A complaint has been filed before the respondent-police alleging the criminal negligence against the Principal and also against the Secretary of Vidyananda Gurukula Trust alleging that on 6.9.05 around 12.00 noon, Ramappa, a boy aged about 12 years was electrocuted and died on the spot due to the burning of the submersible motor of the bore well and grounding of the GI. Pipe in the land belonging to the said Trust and later they were charge sheeted for the offence punishable under Section 304-A of IPC.
3. Heard the Counsel for the petitioners and the Learned HCGP.
4. It is the submission of the Learned Counsel for the petitioners that there is no negligence or dereliction of duty on the part of the petitioners as the cause of death was due to short circuit as per the report of the Assistant Executive Engineer since the submersible motor of the borewell was burnt and due to the grounding of GI. pipe the electrical shock has occurred. Accordingly, in support of his argument, he relied upon the ruling reported in the case of *Kurbanhussein Mohamedalli Rangawalla v. State of Maharashtra* : [1965]2SCR622 to contend that the death must be the direct result of rash or negligent act of accused and not otherwise. He also relied upon one more ruling reported in the case of *Cherubin Gregory v. State of Bihar* : [1964]4SCR199 to contend that there is no willful act on the part of the occupier or set a trap or set a naked live wire with a deliberate intention to cause harm to the trespasser.
5. The Learned HCGP has submitted that due to the negligence on the part of the petitioners the alleged incident has occurred and they ought to have been more careful and would not have allowed any person to enter the said area. Accordingly, submitted that investigation is already completed and charge sheet is filed and it does not require any interference.
6. Referring to occupier's liability in so far as the trespasser is concerned in the judgment reported in : [1964]4SCR199 referred to above it is held that 'It is, no doubt, true that the trespasser enters the property at his own risk and the occupier

owes no duty to take any reasonable care for his protection, but at the same time the occupier is not entitled to do willfully acts such as set a trap or set a naked live wire with the deliberate intention of causing harm to trespassers or in reckless disregard of the presence of the trespassers.'

As per Section 304-A of IPC, '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.

7. In the instant case, it is seen that on 6.9.05 around 12.00 noon the boy aged 12 years who went to drink the water and to take bath died on the spot due to short circuit and grounding of the GI.Pipe when he came in contact with the same. The statement of one of the witnesses reveals that he also went to the spot around 9.30 a.m. on the same day and having started the starter, he has taken the water for drinking and went away towards the school. Earlier to the alleged incident no such grounding was reported. Subsequently, as contended by the Learned Counsel for the petitioners the submersible motor of the borewell was burnt due to the short circuit or some other reason and there was grounding of the entire GI. pipe and on coming into contact with such pipe or the nearby place, the death has occurred apparently of which, the petitioners were not aware of and also it was not within their knowledge so as to take care to prevent anybody reaching the place and nor it was the deliberate act on their part although there was a responsibility on the part of the occupier to keep informed or to display the warning board. But, in the instant case the alleged incident has occurred as an accidental one and it was not in anticipation of the petitioners nor they were required to anticipate or take due care in anticipation of such a remote possibility of grounding. Under such circumstances, although investigation is completed and charge sheet is filed, as the allegation against the petitioners do not prima facie constitute an offence under Section 304-A of IPC, proceeding against them on the basis of charge sheet filed would amount to abuse of process of law.

8. Accordingly, petition is allowed. The charge sheet filed and also the proceedings pending thereon in C.C. No. 272/05 before JMFC, Yelburga are

quashed.

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