

S.Muthamilselvi Vs. The State Rep. By

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Court : Chennai

Decided On : Sep-09-2015

Judge : The Hon'ble Mrs.Justice S.Vimala

Appellant : S.Muthamilselvi

Respondent : The State Rep. By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED:

09. 09.2015 CORAM THE HON'BLE MRS.JUSTICE S.VIMALA CrI.R.C.(MD) No.344 of 2015 S.Muthamilselvi ... Petitioner -vs- The State Rep. by The Inspector of Police Gandharvakottai Police Station, Pudukkottai District. (Crime No.101/2013) ... Respondent Prayer: Criminal Revision Petition has been filed under Sections 397 r/w 401 Cr.P.C. to call for the records from the Lower Court and to set aside the order passed in Cr.M.P.No.9213 of 2014 dated 11.11.2014 on the file of the learned Judicial Magistrate, Pudukkottai. !For Petitioner : Mr.N.Sudhagar Nagaraj ^For Respondent : Mr.P.Kandasamy Govt. Advocate (CrI.Side) :

ORDER

My heroes are those who risk their lives every day to protect our world and make it a better place - police, firefighters and members of our armed forces - So said Sidney Sheldon, appreciating the work of the Police. When duties and

responsibilities of the respondent are expected to be like that, what is the conduct of the respondent herein?.

2. Leaving his eight months' pregnant wife, the husband Sathiyaraj, S/o.Pitchai Muthu, died in an accident. Alleging that the accident was on account of rash and negligent driving of the deceased himself, the Sub- Inspector of Police of Kandharva Kottai Police Station filed the final report before the Magistrate. Holding that the final report has been filed after proper investigation, the learned Magistrate has chosen to reject the objection petition. This order is under challenge in this revision petition.

3. The deceased was a Carpenter by profession. The deceased Sathiyaraj, belonging to Minnadurai, met with an accident, while he was returning from old Kandharva Kottai to Kandharva Kottai in order to take lunch, while driving his vehicle with the registration No.TN-45 AB8341 Hero Honda Passion Pro. The accident had taken place, while there was a clash of this two wheeler with the Police Jeep TN-55 G-0428. This accident took place on 30.05.2013 at about 01:30 p.m. He was taken to the hospital, where he died at about 8:00 p.m.

4. In respect of this accident, one Natarajan has preferred a complaint and his complaint has been registered in Crime No.101 of 2013 of Kandharva Police Station under Section 304-A IPC, by the Special Sub-Inspector of Police Muthukaruppan. Later on, investigation has been continued by the Inspector of Police and he closed the investigation with a finding that the complaint of causing death by rash and negligent driving is contrary to truth and it is a mistake of fact. In the final report, it has been stated that the deceased invited the accident as he was in a state of intoxication and that this fact is medically evident.

5. The defacto complainant filed a protest petition before the Magistrate, alleging that there are witnesses to prove the complaint made and the defacto complainant has strong objection to close the complaint on the ground of mistake of fact. Learned Magistrate rejected the protest petition by the order dated 11.11.2014 and this order is under challenge in this revision petition.

6. A perusal of the order passed by the learned Magistrate Crl.M.P.9213 of 2014 reveals that the dismissal was with the following observation: i) There are materials in the form of the statement of three eye witnesses wherein the witnesses have stated that the accident was on account of the rash and negligent driving. ii) The deceased had driven the vehicle without driving licence. iii) The deceased had been in intoxicating state.

7. From the stated circumstances, as disclosed from the final report, the learned Magistrate held that the final report has been filed on proper investigation and rejected the protest petition.

8. What is the procedure to be followed by the Magistrate, when a protest petition is filed with regard to the closure of the investigation. Whether the Magistrate is empowered to reject the protest petition just because the Court is of the opinion that the investigation has been done on proper lines without looking into the grounds stated in the protest petition. These are the issues canvassed in this revision petition.

9. The contention of the learned counsel for the revision petitioner is that the learned Magistrate ought to have treated the protest petition as a complaint and should have permitted the protestant to pursue the complaint by adducing evidence.

10. It is pointed out that when a private complaint is filed. Under Section 200 Cr.P.C., it had been returned on the ground that already protest petition has been dismissed and therefore, the private complaint is not maintainable.

11. The dismissal order is under challenge on various grounds. i) the learned Magistrate failed to look into the fact that the other vehicle involved in the accident itself belongs to Police Department and that the person who was driving the Police Jeep at the time of accident was the Sub-Inspector of Police and as such, they are interested in saving the department as well as the personnel involved in the accident and therefore, it is a tainted investigation. ii) When already a petition for compensation has been filed by the legal representatives of the deceased Sathiyaraj, the prosecution in order to circumvent from the payment of

compensation has chosen to close the investigation as the mistake of fact iii) When the accused is working as Sub-Inspector of Police, in order to save himself from disciplinary proceedings, the investigation has been closed as mistake of fact without proper investigation. iv) There was no indication in the post mortem report to show that the accused was in a drunken state. v) The Police did not investigate whether the accused driving the vehicle had the necessary driving licence.

12. The procedure to be followed when a protest petition is filed is highlighted in the decision reported in 1969 Cri. L.J.

926 (Lakshman Jena vs. Sudhakar Paltasingh). 12.1 ?Complaint as defined in Section 4 Cr.P.C. is an allegation made orally or in writing to a Magistrate with a view to his taking action under the Code that some person known or unknown has committed an offence.?

13. In this case also, the person who set the criminal law in the motion namely the defacto complainant Natarajan, based on whose complaint, FIR was registered has filed the objection petition.

14. No doubt, there is no power for the Magistrate to call upon the Police to submit a charge sheet, but what is the procedure to be followed when a protest petition is filed. i) To treat the protest petition as petition or complaint to be dealt with in accordance with the provisions of Chapter 16 and 17 of the Code. The relevant paragraph of the said judgment is extracted hereunder: ?4.....Section 200, Cr. P. C. enjoins that when a complaint petition is presented before the Magistrate he shall at once examine the complainant and the witnesses present if any, upon oath, and record the substance of such examination. Thereafter he should follow one of the three following courses: (1) to bring the accused to trial; (2) under Section 202, Cr. P. C. either Inquire into the case himself or direct an enquiry to be made either by a subordinate Magistrate, or a police officer or such other person as he thinks fit for the purpose of ascertaining the truth or falsehood of the complaint; or (3) to dismiss the complaint under Section 203 Cr. P. C.?

15. In this case, the learned Magistrate has not chosen to look into the grievances expressed in the protest petition. The learned Magistrate has gone through the

reports submitted by the investigation and only based on that, the Magistrate has chosen to dismiss the petition. Therefore, the order is liable to be set aside. Adding insult to injury, the learned Magistrate has also chosen to return the petition which was filed under Section 200 Cr.P.C. If this petition had been taken on file, that would have given some remedy to the petitioner, which was declined in the protest petition. The Magistrate has not chosen to do that.

16. De hors the protest petition, the learned Magistrate on going through the materials has powers to order further investigation under Section 173 (8) Cr.P.C.

17. The accident is undoubtedly on account of collision between two vehicles. In respect of an accident, under Section 134 of Motor Vehicles Act, 1988, the driver or owner of the motor vehicle responsible for a road accident is required to take all reasonable steps to secure medical attention for the injured person by conveying him to the nearest medical practitioner or hospital, unless it is not practicable to do so on account of the mob fury or any other reason beyond his control.

134. Duty of driver in case of accident and injury to a person.?.When any person is injured or any property of a third party is damaged, as a result of an accident in which a motor vehicle is involved, the driver of the vehicle or other person in charge of the vehicle shall?. (a) unless it is not practicable to do so on account of mob fury or any other reason beyond his control, take all reasonable steps to secure medical attention for the injured person, 1[by conveying him to the nearest medical practitioner or hospital, and it shall be the duty of every registered medical practitioner or the doctor on the duty in the hospital immediately to attend to the injured person and render medical aid or treatment without waiting for any procedural formalities]., unless the injured person or his guardian, in case he is a minor, desires otherwise; (b) give on demand by a police officer any information required by him, or, if no police officer is present, report the circumstances of the occurrence, including the circumstances, if any, for not taking reasonable steps to secure medical attention as required under clause (a), at the nearest police station as soon as possible, and in any case within twenty-four hours of the occurrence; 2[(c) give the following information in writing to the insurer, who has issued the certificates of insurance, about the occurrence of the accident, namely:?. (i)

insurance policy number and period of its validity; (ii) date, time and place of accident; (iii) particulars of the persons injured or killed in the accident; (iv) name of the driver and the particulars of his driving licence. Explanation.?. For the purposes of this section the expression ?.driver?. includes the owner of the vehicle.].

18. The violation of duties and responsibilities referred to above would result in being punished under Section 187 of the Motor Vehicles Act. ?.187. Punishment for offences relating to accident.?.Whoever fails to comply with the provisions of clause (c) of sub-section (1) of section 132 or of section 133 or section 134 shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both or, if having been previously convicted of an offence under this section, he is again convicted of an offence under this section, with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.?.

19. It is equally the duty of the Police Officer, who investigates the cases to furnish necessary information to the insurance company as well as to the legal services authority so as to enable the committee/authority to treat it as a claim petition. It would be relevant to quote Rule 4-A of the Tamil Nadu Motor Accident Claims Tribunal as under: ?.4-A.... Any Police Officer not below the rank of Sub-Inspector of Police, who is entrusted with the investigation of Motor Vehicle accident shall, without waiting for the result of investigation or prosecution and as expeditiously as possible get an application in Form No.I and Form No.II appended to these rules from the party injured in the accident or all or any of the any of the legal representatives of the deceased, as the case maybe, and forward the same to the Claims Tribunal, who shall treat it an application for the purpose of Section 140 and 166 of the Act. The said Police Officer shall also gather full particulars of insurance certification in respect of the Motor Vehicle involved in the accident and furnish them to the injured party or to the legal representatives of the deceased....

2. An officer investigating into an accident shall, after the case is registered forward copies of the First Information Report relating to the accident to a) the claims tribunal having jurisdiction and b) the President of District Committee for

legal aid and advice concerned, constituted by the Tamil Nadu State Legal Aid and Advice Board; c) An Officer investigating into accident shall, immediately the accident is registered, also furnish particulars to the nearest legal aid committee or centre constituted by the Tamil Nadu State Legal Aid and Advice Board in Form III and appendix III to these rules.?

20. Apart from that, the victim is also entitled to a sum of Rs.50,000/- as ex-gratia payment from the Government. The respondent should have taken steps to get that amount also. Instead of taking all the positive measures, without even examining the defacto complainant, has chosen to close the investigation as mistake of fact. Under such circumstances, the contention of the revision petitioner is that the respondent with an intention to cover up / protect the personnel attached to the respondent office has chosen to close the investigation.

21. In any event, as enjoined under the maxim *Nemo iudex in causa sua* (or *nemo iudex in sua causa*), literally meaning that, no one should be a judge in his own cause. Therefore, the closure report filed by the respondent herein is hereby set aside. The investigation is entrusted to CBCID of Pudukottai District at the rank of the Deputy Superintendent of Police, who shall investigate and to file a final report before the concerned Court. The result of the investigation shall be communicated to the defacto complainant. The duties and responsibilities referred supra shall be taken note of by the Investigating Officer. The Criminal Revision Petition is allowed accordingly. To:

1. Judicial Magistrate, Pudukkottai.
2. The Inspector of Police Gandharvakottai Police Station, Pudukkottai District.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai..

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