

Kannadikara Rajendran Vs. State

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Court : Chennai

Decided On : Jul-30-1990

Reported in : I(1991)ACC548

Judge : Arunachalam, J.

Appellant : Kannadikara Rajendran

Respondent : State

Judgement :

Arunachalam, J.

1. The petitioner is the third accused in C.C.No. 105 of 1986, on file of the Judicial First Class Magistrate, Attur. The respondent, who is the Inspector of Police, Valappadi, after completing investigation in Crime No. 6/86 on the file of the Karumanthurai Police Station, registered at the instance of one Theethan, filed a final report against the petitioner and two others before the trial Magistrate, alleging commission of offences punishable under Sections 279, 337 and 304-A I.P.C. As far as the petitioner is concerned, he was charge-sheeted with the aid of Section 109 I.P.C, alleging abetment of the aforementioned offences.

2. The prosecution case needs narration. The petitioner was a contractor engaged in the construction of a dam. The first informant and several others were working as labourers under the petitioner and were engaged in digging and removing mud

from the dam-site. They had stopped work, since the petitioner had not paid their wages for fifteen days. While so at or about 8 A.M. on 11-3-1986 the petitioner sent his lorry bearing registration number TMK-7992, through his cleaner (first accused) and driver (second accused) to fetch the labourers for work, promising to pay wage arrears. The petitioner was not travelling in the lorry. It appears that at or about 8.15 A.M. on 11-3-1986 at Selatharkattur Kinaru on Karumanthurai to Pappanaickenpatti main road, when the first accused, the cleaner of the lorry was driving the vehicle, having been permitted by the driver, the second accused to do so, he drove it so rashly and negligently, that the lorry fell into Selatharkattur Kinaru, situated on right side of the road. Nine persons who travelled in the lorry died while several others sustained simple injuries. The lorry itself was damaged.

3. In this petition, filed under Section 482 Cr.P.C. to call for the records and quash the proceedings in the afore-mentioned calender case, as far as the petitioner is concerned, Mr. Sethurathinam learned Senior Counsel appearing on behalf of the petitioner, contended that the whole prosecution against the petitioner was misconceived and there was practically no case against him. He cannot be prosecuted for the offences alleged, merely because he is the owner of the lorry.

4. I have heard Mr. Hameed Sultan, the learned Government Advocate, appearing on behalf of the respondent. I have carefully considered the case against the petitioner on the basis of the records forwarded to the trial Magistrate under Section 173 Cr.P.C. To constitute abetment of an offence, intentional aid and active participation of the abettor must be established. The mere fact, that but for the interposition of the abettor, the offence could not have been committed, will not be sufficient, to attract the ingredients of Section 107 I.P.C. It is not enough that an act on the part of the alleged abettor happened to facilitate the commission of the crime. As far as the offences under Sections 279, 304-A and 337 I.P.C. are concerned, they take in their fold rash driving or riding on a public way, causing death by negligence by doing any rash or negligent act, not amounting to culpable homicide, and causing hurt by acts endangering life or personal safety of others. These offences take in their fold the act of the accused which led to the consequences contemplated in those Sections. There must be direct nexus between the death of a person or injuries caused to a person and the rash and

negligent act of the accused. The death or sustaining of injuries must be the direct result of the rash and negligent act of the accused and that the act must be sufficient cause, without the intervention of another's negligence. The petitioner cannot be held guilty, for the negligence of the person who actually drove the lorry, which negligence was the causa causans for the occurrences and the fact that the act of the accused might have been the causa sine qua non would not be sufficient. This very position had been considered by Krishnaswamy Reddy, J. in Public Prosecutor v. Pitchaiya Mooppanar alias Pitchai Pillai. The apex court also laid down the principles, I have applied in this case in Mohamed Ali Rangawalla v. State of Maharashtra and Sulaiman Rahman v. State of Maharashtra.

5. Learned Counsel for the petitioner brought to my notice the judgment of Lakshmana Rao, J., v. Seetharama Chettiar. In that case, the evidence against the petitioner, was that just before the accident happened, he had asked his driver to blow the horn and overtake the car which was going ahead and the charge against him was framed under Section 304-A read with Section 114 of the Indian Penal Code. This court held that the evidence was not sufficient to warrant the charges framed.

6. I have no hesitation whatsoever, in coming to the conclusion that there is no material to connect the petitioner with the crime and if the trial is allowed to be conducted, on the materials aforesaid put forth by the prosecution, it will be nothing but an exercise in futility. If the petitioner had utilised the lorry for a purpose for which it was not intended, he may be liable for other offences under the Motor Vehicles Act, but certainly not for the offences alleged now against him. In this view, this petition is allowed and the proceedings in C.C.No 105 of 1986 on the file of the Judicial First Class Magistrate, Attur, in so far as they relate to the petitioner are quashed.