

R. Vijayan Vs. State of Kerala, Rep. by Public Prosecutor and Others

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Court : Kerala

Decided On : Jul-29-2011

Reported in : 2011(3)ILR(Ker)811; 2011(3)KLJ589; 2011(3)KLT787;
2011(3)KHC563

Judge : S.S. Satheesachandran

Appeal No. : Crl.Rev.Pet.No.944 of 2011

Appellant : R. Vijayan

Respondent : State of Kerala, Rep. by Public Prosecutor and Others

Judgement :

Father of a child, aged four years, which succumbed to the injuries sustained in a road accident involving a vehicle driven by the 2nd respondent, in which the 3rd respondent, his wife, attended to children taken in that vehicle to different schools, has filed this revision, impeaching the propriety, legality and correctness of the order passed by the learned Additional Sessions Judge, (Fast Track-I), Thrissur, by which the case committed to Sessions Court for trial has been remitted to the magistrate, holding that no offence triable by Sessions Court is made out as imputed in the final report filed by the police.

2. The unfortunate incident resulting in the death of the child, it is alleged, occurred when the vehicle was parked for dropping the child near its house. While the child crossed over the road on account of alleged recklessness and, perhaps, culpable

criminal negligence on the part of the driver, and also the attendant of the vehicle, his wife, who too traveled in that vehicle, to facilitate the collection and dropping of the children taken to different schools, the vehicle ran over the child, who later, succumbed to the injuries sustained. The crime registered over the incident led to the indictment of the husband and wife, the accused, for offences under Sections 279, 336 and 334 of the Indian Penal Code. The magistrate, before whom the final report was laid, after complying with the formalities covered by Section 207 of the Code of Criminal Procedure (for short "the Code") noticing that the offences included those exclusively triable by a Sessions Court committed the case under Section 209 of the Code. On such committal, after appearance of the accused and hearing the public prosecutor and also the counsel for the accused and upon consideration of the materials tendered by the prosecution, as envisaged under Sections 227 and 228 of the Code, the learned Sessions Judge coming to the conclusion that no offence exclusively triable by the Sessions Court is made out, passed the impugned order transferring the case to the Judicial Magistrate of the First Class-III, Thrissur, for trial and disposal. That order is assailed in this revision as illegal and unsustainable by the revision petitioner/father of the victim in the case.

3. I heard the learned counsel for the petitioner and also the counsel who appeared for respondents 2 and 3/the accused in the case.

4. Adverting to the views expressed in the impugned order that no sessions offence is made out in the case, the learned counsel for the petitioner contended that it would preclude the magistrate, even after collecting evidence, to commit the case, if serious offences triable by the Sessions Court are disclosed by such evidence. Further more, it is contended that the materials tendered by the prosecution disclose that sessions offences are involved, and where it is so expressed by the investigating agency, after collection of the materials, the learned Sessions Judge had gone wrong in concluding that there was no intention of causing death and so much so, the offence of culpable homicide not amounting to murder falling under Section 304 of the Indian Penal Code would not lie.

5. I have given anxious consideration to the submissions made by the counsel, with reference to the facts and circumstances involved in the case, as presented by counsel on both sides, and also what is given expression to in the order of the learned Sessions Judge.

6. The question whether there was an intention of causing death or such bodily injury, as is likely to cause the death, or with the knowledge that the act would cause the death of the victim, to inculcate the accused for the offence falling under culpable homicide not amounting to murder, no doubt, depends upon the totality of the facts involved, which resulted in the death of the victim in the incident involving the vehicle. Perhaps, there was culpable laches and also criminal neglect on the part of the driver and also the attendant-his wife, in ensuring that no harm is caused to the child when she was dropped from the vehicle and it crossed over the road to reach her house. But her death by a hit from the vehicle or even running over, that alone, would not be sufficient to pin down them for the grave offence under Section 304 Indian Penal Code as rightly taken note of by the learned Sessions Judge to hold that no sessions offence is made out, on the materials placed. However, when he formed such an opinion, the mandate under Section 228(1)(a) of the Code is to frame a charge, over the offence/offences disclosed, and, then transfer the case to the magistrate for trial and disposal. No such procedure has been followed in the case. The word 'may' used in Section 228(1)(a) of the Code is no ground to hold that it is only obligatory, as it has, a very striking purpose inasmuch as once the Sessions Judge frames a charge, after expressing an opinion that no Sessions Offence as imputed is made out against the accused so far as the accused is concerned, it amounts to implied discharge of such offence, after committal of the case before the Sessions Court. So, a valuable right of the accused would be defeated, if charge is not framed by the Sessions Judge, with respect to the offences, that alone, made out against him, which is triable by a magistrate, as there are chances of the accused being tried again with offences triable by the Sessions Court, after transfer to the magistrate, on recording of evidence in the case. So much so, the impugned order of transfer of the case to the magistrate has to be carried out, after framing the charge for the offence/offences with which the accused are to be tried by the magistrate, as noticed by the Sessions Judge. The Sessions Judge has to frame

the charge, and then forward the case to the magistrate for trial and disposal, in accordance with law. The views expressed to hold that no offence for trial by Sessions Court is made out upon consideration of the materials in the order, which have been taken exception to by the counsel, necessarily, have to be expressed, where the Sessions Judge has formed an opinion that the offences made out are only triable by the magistrate. Otherwise, when cognizance of the offence has been taken on committal, the trial has to proceed before the Sessions Court.

7. The learned Additional Sessions Judge is directed to take note of the observations made above, and, after framing the charge, transfer the case, to the Judicial Magistrate of the First Class-III, Thrissur.

8. The accused are directed to appear before the Sessions Judge on 29.08.2011, to facilitate the speedy completion of the proceedings before the court below.

Revision is disposed of as above.

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