

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943

CRL.MC NO. 5811 OF 2020

(CRIME NO. 734 OF 2019 OF CHOKLI POLICE STATION, KANNUR DISTRICT)

**AGAINST THE ORDER/JUDGMENT IN CC 1129/2020 OF JUDICIAL MAGISTRATE OF FIRST CLASS ,
THALASSERY, KANNUR**

PETITIONERS/ACCUSED:

- 1 SHAJL.P.K
 AGED 47 YEARS
 S/O ANANDAN,
 CHUTTENTA VIDA(H), NARAVOOR, POST KOOTHUPOARAMBA, KANNUR
 DISTRICT, PIN-670643.**
 - 2 PRASANTH P
 AGED 46 YEARS
 NEYYANTA VIDA(H), POST PATHAYAKUNNU, KANNUR DISTRICT, PIN-670691.**
- BY ADVS.
K.M.SATHYANATHA MENON
SMT.KAVERY S THAMPI
SHRI.GANESAN M.**

RESPONDENTS/COMPLAINANT AND STATE:

- 1 THE SUB INSPECTOR OF POLICE
 CHOKLI POLICE STATION, KANNUR DISTRICT-679326.**
 - 2 STATE OF KERALA
 REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
 ERNAKULAM, KOCHI-682031.**
- SR.PP - SRI. HRITHWIK C.S.**

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 30.09.2021, THE COURT
ON THE SAME DAY PASSED THE FOLLOWING:**

ORDER

This is a Criminal Miscellaneous Case filed under Section 482 of the Cr.P.C., by the accused in C.C. No. 1129 of 2020 pending before the Judicial First Class Magistrate Court, Thalassery. That case was taken on file on a final report laid by the Sub Inspector, Chokli police station in Crime No. 734 of 2019 of that police station. The crime was registered on 23.12.2019 under Section 304A of the IPC. Early that day, between 5.15 and 6 a.m., deceased Satheesan, relative of the defacto complainant was travelling on his motor cycle bearing registration No. KL-58B-1326, from his house to the place by name Kallummathode in connection with his avocation. On the way, his head happened to hit against a coconut tree which had fallen across the road in the night, he sustained grievous injuries and died on the spot. Thus the crime was registered showing Kerala State Electricity Board Limited as the accused persons, alleging offence under Section 304A of the IPC. After conclusion of investigation, charge sheet has been laid before the Judicial First Class Magistrate, Thalassery

alleging offence punishable under Section 304A of the IPC against the petitioners who are evidently a lineman in the Kerala State Electricity Board Limited and also an electricity worker respectively. It is alleged that on 23.12.2019 early hours, the incident had happened on the Kannamvalli-Elangode public road. That day a coconut tree had fallen across the public road causing damage to the overhead electric line and electric posts; matter was duly intimated to the Electricity Board authorities by CW2 over phone and then the petitioners had reached there; allegation is that, instead of cutting and removing the coconut tree or placing any danger signal at the place or intimating the matter to Fire and Rescue authorities or police, they acted negligently and left the place for the purpose of switching off the power supply. Later they reached there, but without removing the coconut tree, the power line and the electric post alone were removed from the place. Resultantly the said Satheesan who happened to come through the road on his motor cycle hit his head against the coconut tree and sustained grievous injuries and died on the spot. Thus alleging

negligence on the part of the petitioners, offence under Section 304A of the IPC is attributed against them.

2. I heard the learned counsel for the petitioners and also the learned Senior Public Prosecutor.

3. According to the learned counsel there is absolutely no negligence on the part of the petitioners. There is no duty cast upon them to do anything at the early hours, immediately on getting information about the fall of the coconut tree and causing damage to the electric installations, they had rushed to the place and switched off the power supply and also removed electricity cables and also electric posts. Neighbours also had gathered there and had taken steps for intimating the police and the Fire and Rescue authorities. There were similar other incidents happened in the neighbourhood which they had to attend and thus they could not remain there for long. According to the counsel, absolutely there is no nexus between the incident and the alleged negligence of the petitioners. The allegations are far-fetched and therefore such a prosecution cannot sustain. The learned counsel for the petitioners

also added that the police laid such a final report at the instigation of the relatives of Satheesan without good faith in their bid to collect or realize huge amounts as damages from the Electricity Board for which reliance has been placed on Annexure-C lawyer notice issued by their counsel.

4. From the prosecution records, that is Annexures A and B, it is quite patent that a coconut tree stood on the side of the public road had uprooted and fallen over the electric installations, over the electric line, a 11 KV line and electric posts. Petitioners who were on duty, on getting information about the incident rushed to the place, took stock of the situation and took steps for switching off the power supply. It is also shown from the prosecution records that they had removed electric cables and broken pieces of the electric post from the place. According to the petitioners there were neighbours present at the place, they could not remain there for long as they had to attend similar other incidents elsewhere, that by the time, the neighbours who had collected at the place had taken steps to warn the passers-by, against possible dangers posed by the

fallen tree. The coconut tree had fallen across the road and was remaining at a man's height. In such a situation, the said Satheesan came that way at the wee hours, that he was moving without wearing helmet and his head hit against the coconut tree and suffered fatal injuries and died on the spot.

5. Now it is the admitted position that the petitioners are lineman and electricity worker respectively in the Kerala State Electricity Board Limited. But before going into the correctness of the contentions, let us consider the basic ingredients of an offence under Section 304A of the IPC. Firstly, there must have been a death caused, for which there is no dispute. Secondly, such death must have been caused due to any rash or negligent act of the accused persons. The second aspect has been seriously disputed by the petitioners who face allegations under Sections 304A of the IPC.

6. As noticed earlier, petitioners are employees at the lower echelon of the Electricity Board Limited. Both of them were on night duty; on getting information about the fall of the coconut tree

they promptly attended the call, visited the place and finding that a coconut tree had dangerously fallen across the road, over the electric installations, that is over the electric line and the electric post, they promptly switched off the power supply which was the most vital duty they were expected to do at that time. So they could avert any causality of electrocution of passers-by, who moved ahead, without knowing the breakage of electric cables and the fallen post. If someone had gone in contact with the broken cables, the result would have been fatal. It was submitted by the learned counsel that they had also removed the broken electric cables and also broken pieces of electric posts from the place. It is evident that they had reached the place on being alerted by neighbours. In other words, neighbours were conscious of the hazards caused due to the fall of the coconut tree over the electric installations. So the petitioners were not alone there. It is pointed out that when they had reached the place, neighbours had collected there and had taken steps for guarding people touching against the electric installations and some signs were also exhibited by them.

It is also submitted that people in the locality had taken steps for informing the police and Fire and Rescue department. Whatever it may be, it is certain that the coconut tree was not cut and removed by the petitioners. Here the important question is whether the petitioners could do it immediately after the fall of the coconut tree. There are numerous reasons to answer it in the negative. Firstly, they are last grade employees of the Kerala State Electricity Board Limited and had to attend other calls also. Secondly, still it was darkness in night and they themselves could not have done it without the help of other agencies and instrumentalities. It is very clear that, immediately on getting information about the fall of the tree, they had rushed to the place and did whatever was necessary at that time by switching off the power supply. Thus they averted major fatal incidents. This is indicative of their devotion to duty.

7. The question of negligence will arise only if there is a duty cast upon the petitioners to cut and remove the coconut tree at that time. I do not find that even though they had taken steps for removing the coconut tree at that time, they would not have been

able to accomplish it. It is important that there must be duty cast upon the petitioners to do such acts.

8. The most important aspect is that there must be direct nexus between the death of the person and negligence attributed against the petitioners. A remote nexus is not sufficient. The Honourable Supreme Court in numerous cases has considered this aspect and reiterated that unless there is a direct nexus between the death and the alleged negligence on the part of the accused persons, they cannot be found guilty under Section 304A of the IPC. In the decision reported in **Suleman Rehiman Mulani and another v. State of Maharashtra (1968 AIR SC 829)** it has been held that the requirements of the Section are that the death of any person must have been caused by the accused by doing any rash or negligent act. In other words there must be proof that the rash or negligent act of the accused was the proximate cause of the death. There must be direct nexus between the death of the person and the rash or negligent act of the accused.

9. The Hon'ble Supreme Court in numerous cases has relied

on the following extracts from **Emperor v. Omkar Rampratap [(1902) IV Bombay. L.R. 679]**

“To impose criminal liability under Section 304A Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the causa causans; it is not enough that it may have been the cause sine qua non”.

This has been reiterated by the Honourable Supreme Court in **Ambalal D. Bhatt v. The State of Gujarat (AIR 1972 SC 1150)**.

10. In other words, the cause of action and the negligence attributed against the petitioners must have proximate and direct nexus. Here that is wanting. Petitioners are last grade employees of the Kerala State Electricity Board Limited. From the version of the prosecution itself it is clear that immediately on knowing about the incident they had reached the place and disconnected the electric supply and did whatever was possible to avert major mishaps. It is true that they had not remained there throughout nor

cut and removed the coconut tree and cleared the road. That could not have been done in the night itself. Therefore any direct nexus between the incident and the allegation against the petitioners is wanting.

11. In the circumstances, this Court is justified in invoking its inherent jurisdiction under Section 482 of the Cr.P.C. It is true that no flexible guidelines or formula can be set out to invoke the extraordinary jurisdiction of the Court. But if it is eminently proved that the prosecution is a clear abuse of the process of law, then Court can readily step it. I find that it is a fit case for quashing the proceedings against the petitioners and therefore entire proceedings in C.C. No. 1129 of 2020 pending before the Judicial First Class Magistrate Court, Thalassery pursuant to the filing of charge sheet in Crime No. 734 of 2019 of Chokli police station are liable to be quashed. The petitioners shall stand exonerated.

The Criminal Miscellaneous Case is allowed as above.

Sd/-
K. HARIPAL
JUDGE

APPENDIX OF CRL.MC 5811/2020

PETITIONER ANNEXURE

- ANNEXURE-A** **THE TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.734/2019 OF CHOKLY POLICE STATION, KANNUR DISTRICT DATED 23.12.2019.**
- ANNEXURE-B** **CERTIFIED COPY OF THE FINAL REPORT SUBMITTED BY THE 1ST RESPONDENT IN CRIME NO.734/2019 OF CHOKLY POLICE STATION FILED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE COURT, THALASSERY IN CC NO.1129 OF 2020.**
- ANNEXURE-C** **TRUE COPY OF THE LAWYER NOTICE DATED 5.11.2020 ISSUED BY SRI. M JAYAKRISHNAN, ADVOCATE AND NOTARY THALASSERY.**