

Crl.R.C.No.410 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.410 of 2022

and

Crl.M.P.Nos.4177 & 4178 of 2022

Dr.Laskhmi

... Petitioner

Versus

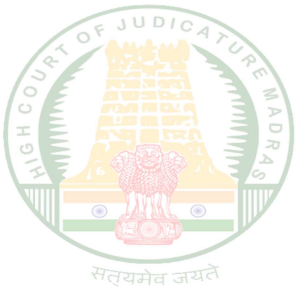
The State Rep. by the Inspector of Police
D-6, Anna Square Police Station
(Traffic Investigation Wing)
Chennai City.
Crime No.679/T3/2013

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Sections 397 and 439 of the Code of Criminal Procedure to set aside the order dated 21.12.2021 dismissing the petition for discharge filed under Section 227 of the code of Criminal Procedure in Crl.M.P.No.17523 of 2021 in S.C.No.265 of 2019 in the Court of the learned 1st Additional Sessions Judge, Chennai.

For Petitioner : Mr.R.John Sathyan

For Respondent : Mr.S.Vinoth Kumar
Govt. Advocate (Crl. Side)



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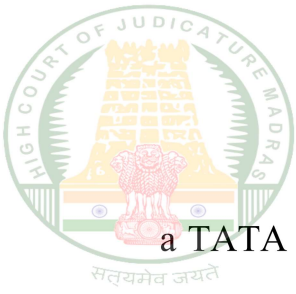
ORDER

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The revision is filed aggrieved by the order of the learned First Additional Sessions Judge, Chennai dated 21.12.2021 in Crl.M.P.No.17523 of 2021 in S.C.No.265 of 2019 in and by which, the prayer of the petitioner / third accused to discharge her from the case, was rejected by the Trial Court.

2. Heard *Mr.R.John Sathyan*, learned counsel for the petitioner and *Mr.S.Vinoth Kumar*, learned Government Advocate (Crl. Side), appearing on behalf of the respondent.

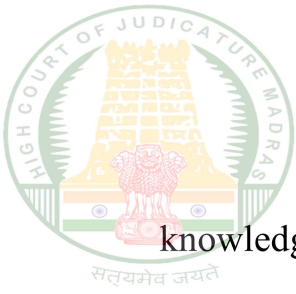
3. Learned counsel for the petitioner submits that, in this case, the allegation of the prosecution is that, on 12.11.2013, at about 3.30 AM, the first accused *Anbusurya*, who is the younger brother of the petitioner was driving a car bearing Registration No.PY-01-BR-7290 and the second accused, namely one *Krish @ Sebastian Krishnan* was the co-passenger in the rear seat and the petitioner was the co-passenger in the front seat. The car, while nearing the All India Radio building at Kamaraj Salai (Beach Road, Chennai), ran berserk and dashed against three pedestrians, killing them instantly and gravely injured one more person and injuring two other persons. The car also dashed against a motor bike, bearing Registration No.TN-48-S-4380 and went on to dash against



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WEB a TATA SUMO, bearing Registration No.TN-12-4621 and came into halt after colliding with yet another car bearing Registration No.TN-06-F-8880, which was parked in front of the All India Radio building. The Police Man on duty was also one of the unfortunate victim. On the strength of the said allegations, all the three accused are now prosecuted in S.C.No.265 of 2019. The first accused for the offence under Section 304(ii) (3 counts) and other two accused for the offence under Section 304(ii) (3 counts) r/w 109 of the Indian Penal Code and for the other offences.

4. Learned counsel would submit that firstly, in this case, the petitioner / third accused was not in an inebriated condition, even though she was subjected to medical examination and the same is on record. Secondly, there is no investigation whatsoever, as to where the driver of the vehicle and the other passenger got drunk and whether the petitioner / third accused was present along with them or whether the petitioner had any knowledge whatsoever regarding the fact that the driver of the vehicle, namely the first accused / her brother, was in an inebriated condition. In the absence of the same, she herself being an innocent victim, having suffered injuries in the accident, cannot be prosecuted by the respondent police, especially in the absence of any positive act of instigation whatsoever. Therefore, there is no evidence firstly, as to the



knowledge about the fact that the accused was driving in an inebriated condition and secondly, about the fact as to any positive act which would amount to instigation for the commission of offence. The prosecution of the petitioner is absolutely groundless and therefore, she is entitled to be discharged.

5. In support of his contention, learned counsel for the petitioner relied upon the Judgment of the Hon'ble Supreme court of India in **Kulwant Singh @ Kulbansh Singh vs State of Bihar**¹ more specifically paragraph 12, which is extracted hereunder:

“12. Section 109 provides that if the act abetted is committed in consequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for the original offence. Section 109 applies even where the abettor is not present. Active abetment at the time of committing the offence is covered by Section 109. Act abetted in Section 109 means the specific offence abetted. Mere help in the preparation for the commission of any offence which is not ultimately committed is not abetment within the meaning of Section 109. “Any offence” in Section 109 means offence punishable under the IPC or any Special or Local Law/ The abetment of an offence under the Special or Local Law, therefore, is punishable under Section 109. IPC. For constituting offence of abetment, intentional and active participation by the abettor is necessary.”

¹ CDJ 2007 SC 756



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Learned counsel would submit that, as per the above said Judgment, the negative act, that is, not stopping the accused from driving in an inebriated condition cannot come within the definition of abetment under Section 109 of the Indian Penal code and therefore, in view of the dictum of the Hon'ble Supreme court of India, the petitioner is entitled for discharge.

6.Learned counsel also relied upon yet another Judgment in Crl.R.C.No.974 of 2014 in which, in a similar situation, this Court had discharged the co-passenger and it is useful to extract paragraph No.4 of the said Judgment which reads as hereunder:-

“4. There is no dispute over the fact that the petitioner / third accused was a co-passenger in the offending vehicle. There is no dispute over the fact that he too was in drunken state. Even so, the offences alleged viz., Section 134(a)(b) r/w 187 of M.V.Act and Section 109 IPC would not be made out against him. Section 134 of M.V.Act casts a duty to seek medical attention for a person injured in an accident. Such duty is cast upon the driver of the vehicle or other person in-charge of the vehicle. It is not the prosecution case that this petitioner / third accused was either the driver of the vehicle or in-charge thereof.”

Therefore, learned counsel would pray that the petitioner is entitled to discharge.



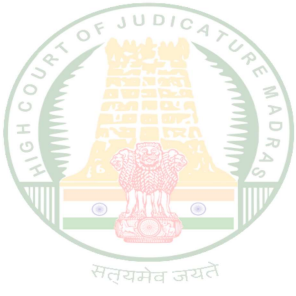
7. *Per contra*, learned Government Advocate (Crl. Side) would submit

that in this case, the final report clearly alleges that the petitioner was a co-passenger in the car, with the full knowledge that the driver was in an inebriated condition and the relevant portion of the final report reads as follows:

“.....எதிரி 2 திரு. கிருஷ் (எ) செபாஸ்டியன் கிருஷ்ணன், ஆ/வ 22, த/பெ (லேட்) செபாஸ்டியன் மற்றும் எதிரி 3 திருமதி. ஆதிலட்சுமி (எ) லட்சுமி, பெ/வ 26, க/பெ.சன்ஜெய் மோகன் ஆகிய இருவரும் மேற்படி கார் PY-01-BR-7290 என்ற வாகனத்தில் அமர்ந்து பயணம் செய்துகொண்டு, காரை எதிரி 1 குடிபோதையில் அதிவேகமாகவும் தாறுமாறாகவும் ஓட்டிச்சென்ற செயலால் பொது மக்களுக்கு மரணம் ஏற்படும் என்று தெரிந்திருந்தும் இச்செயலுக்கு உடந்தையாக இருந்து.....”

8. Learned Government Advocate (Crl. Side) would bring it to the notice of this Court the evidence of listed witness namely, one *Ammavasai*, who is the Sub-Inspector of Police (**L.W.5**), who witnessed the accident and has categorically stated as follows:-

“வாகன ஓட்டுனர் குடிபோதையில் உள்ளார் என்பது தெரிந்தும் லட்சுமி கிருஷ் ஆகியோர் காரில்



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அமர்ந்து விபத்து ஏற்பட உடந்தையாக இருந்துள்ளார்கள் என்று தெரிவித்தேன். விபத்து நடந்த இடத்தையும், விபத்தில் சேதமடைந்த வாகனங்களையும் காட்டினேன். ஆய்வாளர் என்னை விசாரிக்க நான் நடந்ததைக் கூறினேன். ஆய்வாளர் நான் கூறியதை வாக்குமூலமாக பதிவு செய்து கொண்டார்.”

9. He would further submit that, once the third accused does the positive act of traveling in the car along with the inebriated person, then it is a positive act of abetment and she is also liable for all the consequences in view of the Section 111 of the Indian Penal Code. Section 111 of the Indian Penal Code is reproduced hereunder for ready reference:-

“111. Liability of abettor when one act abetted and differed act done. -- when an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

(Proviso) - Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.”

He would also further submit that Section 113 of the Indian Penal Code also comes into force in the matter like this. Section 113 of the Indian Penal Code is



also reproduced hereunder for ready reference:-

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“113. Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.- When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment, caused a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.”

10. Therefore, he would submit that the prosecution of the petitioner, is in accordance with the Judgment of the Hon'ble Supreme Court of India, relied upon by learned counsel for the petitioner, and as far as the earlier Judgment of this Court, he would submit that the provision of Sections 111 and 113 of the Indian Penal Code were not expressly considered in the said Judgment and as a matter of fact, why the co-passenger's act will not amount to abetment was also not discussed in detail so as to have any precedential value.

11. I have considered the rival submissions made on either side and perused the material records of this case.

12.The first arguments for discharging the petitioner is that as per the



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Judgment of the Hon'ble Supreme Court of India, in ***Kulwant Singh Case***²,

WEB COPY referred supra held that, unless there is a positive act of an instigation, the petitioner cannot be said to have abetted the offense, he is merely being a co-passenger. There is a positive act of the petitioner, opening the door and sitting in front of the seat, participating in the journey. Whether this positive act would amount to instigation of the first accused to drive the vehicle in an inebriated condition would depend on the facts and circumstances of the each case. In this case, the time was 3.30 AM., and the place of occurrence is near the beach and thus, it is clear that if any person joins the person, in an inebriated condition for a late night after the party stroll in the Car to the beach that by itself is a positive act of instigating the person to drive the vehicle in an inebriated condition and consequences that follow on account of the inebriated driving, will also be fastened on the abetter under Section 111 and 113 of the Indian Penal Code.

13.Next submission is that there is nothing on record to prove that the petitioner had knowledge that the driver was in an inebriated condition and the Trial Court had only presumed about the smell of the Car. Therefore, it proceeded on the mere presumption and surmises of the contention. But,

2 CDJ 2007 SC 756



however, the Hon'ble Supreme Court of India, in ***Jothi Parshad Vs. State of***

Haryana³, while dealing with the above concepts of "knowledge" and "reason

to believe", and it is useful to extract the paragraph No.5 of the said Judgment,

which reads as follows:-

"5.Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and merre seeing also cannot be equated to believing. "Reason to believe" is a higher leel of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same."

15. Therefore, the consideration of direct appeal to the senses cannot be fault and on the materials on record and considering the case, there is grave suspcion that the petitioner did actually have the knowledge and therefore, at this stage, when the petitioner is praying for discharging, it cannot be concluded that the prosecution has not brought anything on record to prove the knowledge. Therefore, I am unable to accept the submissions of the learned

³ 1993 Supp (2) SCC 497 : 1993 SCC (Cri) 691 at page 500



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counsel for the petitioner and hold that there is enough material to proceed against the petitioner.

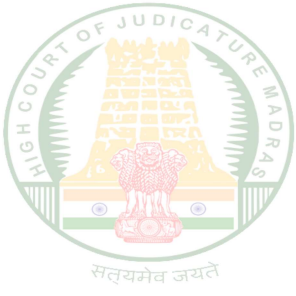
16. Therefore, there is no merits in this revision and finding that there is an equal criminal liability on all these three accused persons, who set out on the journey at the hard hours, in the manner mentioned above, just because, one person was on the wheel and other persons were sitting on the passenger seats, does not in any manner make difference and it will only make a difference of Section 304(ii) of IPC and Section 304(ii) read with Section 109 of IPC. Therefore, the Criminal Revision is dismissed. Consequently, the connected miscellaneous petitions are closed.

29.07.2022

Index : yes/no
Speaking order/Non-speaking order

drm/klt

D.BHARATHA CHAKRAVARTHY. J.,



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To

1. The Inspector of Police,D-6, Anna Square Police Station,
(Traffic Investigation Wing)
Chennai City.
2. The I-Additional Sessions Court, Chennai.
3. The Public Prosecutor, High Court of Madras.

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and
Crl.M.P.Nos.4177 & 4178 of 2022

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