

IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 1941/2008 & CRL.MA 7041/2008

RAJNEESH KLER & ORS. Petitioners

Through Mr. Ramesh Gupta with
Mr. Sumit Arora &
Mr. Sulaiman Khan, Advocates

versus

STATE Respondent

Through Mr. Jaideep Malik, APP.

CORAM:

HON'BLE DR. JUSTICE S. MURALIDHAR

- | | |
|---|-----|
| 1. Whether Reporters of local papers may be allowed to see the order? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the order should be reported in Digest? | Yes |

ORDER
28.01.2009

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeks the quashing of FIR No. 153 of 2007 under Section 285/304-A/34 IPC registered at Police Station R.K. Puram and all proceedings consequent thereto. It also questions the charge sheet dated 27th August 2007 filed by the respondent in the matter.

2. The facts leading to the filing of this petition are that on 8th March 2007 an information was recorded at Nanakpura, PS R.K. Puram, New Delhi at 5.30 pm through telephone that in a cultural programme organized at the Moti Lal Nehru College, a boy who was demonstrating a performance "fire from mouth" on stage had suffered burns consequent

upon his cloth getting fire. On receiving this information, SI Mahabir Prasad reached the College and found that some portion of the carpet on the stage and on the rear side of the stage burnt shoes and clothes of the person who had got injured were found. On reaching the Safdarjung Hospital the SI found that the injured Prithvi s/o Tribhuvan aged 22 years had been admitted. The doctor on duty had opined that the injured was unfit to make a statement. SI gathered information about the incident from the college students present at the hospital and from other people present on the spot. The accident had happened when the injured was performing a dangerous stunt of filling his mouth with oil and throwing it on a burning fire torch due to which his clothes caught fire and he received injuries. The allegation was that the organizers of the programme had been negligent in not making sufficient arrangements for extinguishing the fire. On this basis an FIR under Section 285/338/34 IPC was registered.

3. On 10th March 2007 the injured Prithvi Narain Mishra succumbed to his injuries and his body was handed over, after post-mortem to his relatives. The offence was converted from Section 338 to 304A IPC.

4. It appears that while the investigation was in progress, a letter was sent by one Dr. V.S. Deshpandey to the Additional Chief Metropolitan Magistrate (ACMM), Patiala House Courts, New Delhi for taking cognizance of the offences under Section 304-A/201 read with 120-B IPC. The learned ACMM summoned the SHO Police Station R.K.

Puram along with a preliminary report. The status report was filed on Crl.MC. No. 1941/2008

20th July 2007 before the ACMM. In the said status report the police informed the learned ACMM as follows:-

“The teachers and students told that on 8.03.07 one artist Mr. Jasmeet Joshely was invited. He had to come at 5.00 PM but he became late. The principal also corroborated the above version in writing. To keep the gathering of the students near the stage, the anchors Ms. Kastoori & Mr. Avninash who were on the stage, announced that as per directions of cultural convener, the students who wants to show their art could come on the stage one after another. The injured also got noted his name and started to do the fire stunt.

The principal in a reply of notice u/s 91 Cr. PC categorically mentioned that the students advisory committee and cultural committee were to organize and supervise the programme of dated 8.03.07. These committees have been constituted for the specific purpose of organizing cultural programme as well as to supervise the function. There are four members in the student advisory committee and five members in the cultural committee. One member Sh. Rajneesh Kler is common in both the committees.

During investigation the IO got recorded the statement of witnesses and Sh. Rajnessh Kler was arrested on 28.04.07 and released on bail on the same day. Dr. Reeta Kakar, the convener of the cultural committee was also arrested on 02.07.07 and at the same time she was released on bail.”

5. The allegations contained in the letter of Dr. V.S. Deshpandey were found unsubstantiated and an explanation was given by the police in its aforementioned status report filed to that effect.

6. Subsequently on 11.9.2007 the SHO R.K. Puram sought legal opinion of the Chief Prosecutor on the following issues:-

- “1. Whether for the omission to prevent the said fire stunt on the stage the cultural committee and student advisory committee comes in the preview of definition of negligence or not?
2. Whether in the above-mentioned circumstances any criminal liabilities of members of the above said both the committees arise or not?
3. Whether in the above mentioned circumstances all the members of cultural committee & student advisory committee are liable for the above said lapses/negligence or not?
4. Whether the principal being head of the institution is liable for any negligent act in the above said case or not?”

7. In response thereto, the learned Chief Prosecutor opined that “it is a matter of investigation as who is liable for the act of omission or negligence, on the basis of investigation and evidence collected the criminal liability are to be ascertained. No law point is involved. The investigations are at its midways.”

8. The aforementioned opinion was rendered on 17th August 2007 following which on 27th August 2007 the charge sheet was filed. The

charge sheet, a copy of which is placed on record, only states that certain

statements under Section 161 CrPC were recorded and then it proceeds to state as under:-

“As per the investigation and as per the available evidence in the case Rajneesh Kler s/o Shri Harjeet Kler and Rita Kakkar w/o Shri V.N. Kakkar were arrested in the case and were released on police bail as the offences were bailable.

After that S.I. tried to join the other members of Cultural Committee and Student Advisory Committee in the investigation and tried to interrogate them but due to objections/resistance from the staff members further investigation/arrest could not be done. Thereafter S.I. sent the seized exhibits of the case for opinion to FSL but the FSL Authorities did not accept the exhibits due to heavy pendency and shortage of staff. The same were again deposited in the malkhana by the S.I.

Thereafter further investigation was handed over to S.I. Virender Prakash. During investigation SI Virender Prakash tried to join the remaining members of Cultural Committee and Student Advisory Committee in further investigation and interrogation but remained unsuccessful due to the opposition and adverse circumstances. S.I. issued notice and received the relevant information and attached the same with the file. The eye witness of the case namely Kasturi Sharma was examined and her statement was recorded. As per the investigation sufficient evidence had come against (1) Rajneesh Kler, (2) Dr. Rita Kakkar, (3) Brij Kishore, (4) Prahlad Kumar Bairwa, (5) Bishnu Charan Nag, (6) Ms. Swagata Roy, (7) Ms. Priya Bhalla & (8) Dr. Anjali Agarwal for presenting a charge sheet under section 285/304-A/34 of Indian Penal Code.”

9. In the charge sheet it is stated that accused Nos. 3 to 8 (who are petitioners 3 to 8 herein) were not arrested in view of the student union elections and law and order situation but that they were working at the Moti Lal Nehru College at the relevant time.

10. I have heard the submissions of Mr. Ramesh Gupta, the learned counsel for the petitioners and Mr. Jaideep Malik, the learned APP for the State.

11. Mr. Gupta submits that the petitioners are sought to be roped in only on the basis of the statements recorded of one Ms. Kasturi Sharma and one Mr. Subhash C. Sharma. Their statements were recorded on 19th August 2007 and 24th August 2007 respectively, i.e., more than 5 months after the incident. In the said statements there is nothing to indicate that any of the petitioners were in any manner responsible for the accident that took place. In particular he submits that there is no evidence to show that accidental death of the deceased took place on account of any rash and negligent act of any of the petitioners. Relying on the judgment of the Supreme Court in ***Jacob Mathew v. State of Punjab 2005 CRI. L.J. 3710***, he submits that the ingredients of offence under Section 304A IPC are not even prima facie made out in the instant case. He submits that the accident happened on account of the deceased performing an act on his own and since the performance itself was not scheduled, the question of any of the petitioners making advance preparations to prevent such an accident or take precautions did not arise. He adds that the petitioner No.

3 Brij Kishore who was not even present at the college at the time of the incident.

12. In addition to the above submissions, reliance is placed by learned counsel for the petitioners on the decisions in ***Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra 1965 (2) Cr. L.J. 550***; ***Naresh Giri v. State of M.P. 2007 [4] JCC 3285*** and the judgments of this Court in ***M. Shafi Goroo v. State 2000 II AD (Cr.) DHC 225*** and ***Dr. G.S. Chandrakar v. State 2008 [1] JCC 209***.

13. In response to the specific query raised by the court, the learned APP is unable to categorically state that any of the present petitioners were liable for the offences for which they have been charged.

14. There are two aspects of the present case. One is whether any of these petitioners could at all be said to have acted rashly or negligently to attract the offence under Section 304A IPC. The second is whether they had acted negligently “with respect to fire or combustible matter” to attract the offence under Section 285 read with 34 IPC.

15. It is seen that as far as petitioners 1 and 2 are concerned, they were members of the organizing committee of the cultural event and the particular event which resulted in the accidental death was not even scheduled. Consequently, they cannot be visited with any criminal liability in the manner suggested by the prosecution. Their mere presence

at the event cannot straightway attract the offence under Section 285 or 304A IPC. Either some overt act or some illegal omission within the definition of Sections 32 read with 33 of the IPC should be attributed to them. Nothing in the charge sheet even suggests such culpability on the part of the petitioners 1 and 2. Mr. Malik, the learned APP was also unable to counter the submission regarding the petitioners 3 to 8 being criminally liable. If they are sought to be roped in because of their mere presence at the programme, as suggested from the statements of Ms. Kasturi Sharma and Mr. S.C. Sharma, then that could hardly suffice for maintaining the criminal case against these petitioners for the offences aforementioned.

16. In *Sumitra Banik v. State of W.B. (1999) 9 SCC 24* it has been held in the context of the offence under Section 304 read with 34 IPC that (*SCC @ p.27*) “.....mere presence of these persons near the place of the incident cannot lead to an inference that they shared the common intention with the other two accused as they were also residing in that house.”

17. The Supreme Court has in *Kurban Hussein Mohamedalli Rangawalla* held as under (*Cr.L.J. @ p.551*):

“The mere fact that the appellant allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it might be a negligent act, would not be enough to make the appellant responsible for the fire which broke out. The cause of the fire was not merely

the presence of burners in the room in which varnish and turpentine were stored, though this circumstance was indirectly responsible for the fire which broke out. But what S. 304-A requires is causing of death by doing any rash or negligent act, and this means that death must be direct or proximate result of the rash or negligent act.”

18. Further in same judgment in *Kurban Hussein Mohamedalli Rangawalla*, the question which was framed by the Supreme Court in the context of the offence under S. 285 IPC reads as under(*Cr.L.J. @ p.552*):

“The question is whether the appellant on the facts which have been proved knowingly or negligently omitted to take such order with fire or combustible matter in his possession as was sufficient to guard against probable danger to human life from such fire or combustible matter.”

19. In the considered view of this Court on a perusal of the charge sheet there is absolutely no material to even prima facie show that the death which occurred in the present case was as a result of any rash and negligent act on behalf of any of the petitioners or that it was the direct or proximate result of any rash and negligent act. Likewise, there is nothing to even prima facie show that the petitioners failed to take any steps in order to guard against the possible danger to human life from such fire or combustible matter.

20. In *Ambalal D. Bhatt v. The State of Gujarat 1972 SCC (Cri.) 618* it explained by the Supreme Court that the question that has to be

determined in the context of an offence under S. 304 is (*SCC@ p. 625*):

“whether the appellant’s act is *causa causans* or has there been a *cause interveniens* which has broken the chain of causation so as to make his act, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct.”

21. In *Naresh Giri* it was further held (*JCC @ p. 3287*):

“Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any *mens rea*, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.”

22. When examined in light of the law as explained hereinabove, this Court is unable to sustain the criminal proceedings against the petitioners for the offences under Section 285/304A read with 34 IPC. Accordingly, insofar as these petitioners are concerned, the FIR No. 153 of 2007 under Section 285/304-A/34 IPC registered at Police Station R.K. Puram and all proceedings consequent thereto, including the charge sheet are hereby quashed.

23. The petition and application stands allowed with no orders as to costs.

S. MURALIDHAR, J.

JANUARY 28, 2009
ak