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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 1074/2012

% Judgment delivered on: 27th March, 2012

NAKUL DEV GUPTA Petitioner
Through: Mr. Suryakant Singhla, Adv.

versus

STATE & ORS Respondent
Through: Mr. Navin Sharma, APP.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J. (Oral)

CRL. M.A. 3808/2012 (Exemption)

Exemption is allowed subject to just exceptions.

Criminal M.A. stands disposed of.

+ **CRL. M.C. 1074/2012**

1 Notice issued.

2 Learned APP accepts notice on behalf of State/R1.

3 Ld. counsel Mr. Sanjeev Ailawadi, Advocate accepts notice on behalf
of respondents No. 2 to 4.

4 With the consent of the learned counsels for the parties, the instant petition is taken up for final disposal.

5 Learned counsel for the petitioner submits that vide the instant petition, the petitioner has sought quashing of FIR No. 30/2012 dated 08.02.2012 registered at P.S. Bharat Nagar, Delhi for the offences punishable under Sections 304/34 Indian Penal Code, 1860 against the petitioners on the complaint of respondent No.3/Mr. Rahul.

6 The unfortunate incident took place on 08.02.2012. Petitioner resides at Flat No. 12, SFS Flats, Ashok Vihar, Phase IV, Delhi which happens to be the top floor. Sh. Ravinder Nath Malhotra (deceased) and his family living on the first floor in Flat No. 4 of the same building. The overhead water tanks of the entire building are located on the roof above the flat of the petitioner.

7 On 08.02.2012, an altercation took place between the petitioner and deceased Ravinder Nath Malhotra's family with regard to the replacement of water pipe as laid on the roof above the flat of the petitioner. Deceased Ravinder Nath Malhotra, who was a heart patient and had undergone bypass surgery once, suffered a massive heart attack while on the roof of that day. He was immediately taken to the hospital but unfortunately was declared brought dead.

8 Learned counsel for the petitioner further submits that the deceased died a natural death on account of heart attack for which the petitioner cannot be held responsible. Since the deceased was suffering from heart ailment for which he had been operated upon on earlier occasions, therefore,

his death only become the co-incidence.

9 Further submits that post mortem was conducted on the body of deceased which revealed no signs of any internal or external injury on the body of deceased. On the post mortem being conducted, it was revealed that deceased was a heart patient and had 100% blockage in his right coronary. Besides this, three metallic sutures were also found on the left side of the sternum. Since deceased was suffering from heart disease and had undergone bypass surgery, therefore he had died due to massive heart attack, therefore, the petitioner cannot be held liable for his death.

10 Ld. counsel refers to Post Mortem being conducted on the body of the deceased. Relevant parts of the Post Mortem report is being reproduced here:-

External Injuries : No external injuries on the body except old healed surgical scar marks on the left side of sternum, inner aspect of left leg and inguinal area, right side.

Internal Examination

1 Neck : Soft Tissues

f) Any Foreign Body in Trachea/Its Divisions : Three Metallic Sutures pres left side of sternum.

3 Chest : Both lungs congested, edematous, full of frothy hemorrhagic fluid.

d) Heart : patient, right coronary 100% blocked.

4 Abdomen & Pelvis

- a) Liver & Gallblader : Congested
- b) Spleen : Congested
- c) Kidneys : Congested
- d) Pancreas : Congested
- e) Stomach -- Contents – full of food, undigested about AD

OPINION : Cause of death can only be given after receipt of the viscera analysis report.

11 Further submits that the deceased was an Advocate by profession and had undergone by-pass surgery of heart in 1994. Even as per Post Mortem report, right coronary was 100% blocked. There were no marks of external injuries on the body of deceased.

12 Ld. counsel further submits that in the circumstances, otherwise also the petitioner could not be booked under Section 304 of Indian Penal Code, 1860.

13 Be that as it may, Respondents No.2 to 4 are present in person, who are wife and two sons respectively of the deceased.

14 It is submitted that the petitioner has already compensated to respondent No.2, who is widow of deceased, by paying Rs. 4 Lacs as she has

no source of income. Respondents No.3 and 4 has also joined their mother while reaching at an amicable compromise.

15 Ld. APP on the other hand submits that the parties has reached an amicable compromise and the matter has already been settled between them, but Section 304 of Indian Penal Code, 1860 is non-compoundable in nature.

16 Learned APP referred the decision of Hon'ble Supreme Court in ***Gian Singh v. State of Punjab & Anr.*** in ***SLP (Crl.) No.8989/2010*** wherein the Division Bench of the Supreme Court has referred three earlier decisions viz, ***B.S. Joshi v. State of Haryana (2003) 4 SCC 675***, ***Nikhil Merchant v. Central Bureau of Investigation & Anr. (2008) 9 SCC 677*** & ***Manoj Sharma v. State & Ors. (2008) 16 SCC 1*** to the larger Bench for re-consideration whether the abovesaid three decisions were decided correctly or not. Therefore, she has prayed that till the matter is decided by the larger Bench of the Apex Court, instant petition may be adjourned *sine-die*. Alternatively, she prayed that in the event, the FIR is quashed, heavy costs should be imposed upon the petitioners, as the government machinery has been pressed into and precious public time has been consumed.

17 The Division Bench of Mumbai High Court in ***Nari Motiram Hira v. Avinash Balkrishnan & Anr.*** in ***Crl.W.P.No.995/2010 decided on 03.02.2011*** has permitted for compounding of the offences of 'non-compoundable' category as per Section 320 Cr. P.C. even after discussing ***Gian Singh (supra)***.

18 Therefore, I feel that unless and until, the decisions which have been referred above, are set aside or altered, by the larger Bench of the Supreme

Court, all the above three decision hold the field and are the binding precedents.

19 In addition, the Supreme Court in *Shiji @ Pappu & Ors. v. Radhika & Anr* in *Crl.Appeal No.2064/2011* decided on *14.11.2011* that the cases of *non-compoundable* nature can be compounded, certainly not after the conviction observing as under:-

‘..... That being so, continuance of the prosecution where the complainant is not ready to support the allegations which are now described by her as arising out of some “*misunderstanding and misconception*”; will be a futile exercise that will serve no purpose. It is noteworthy that the two alleged eye witnesses, who are closely related to the complainant, are also no longer supportive of the prosecution version. **The continuance of the proceedings is thus nothing but an empty formality. Section 482 Cr.P.C. could, in such circumstances, be justifiably invoked by the High Court to prevent abuse of the process of law and thereby preventing a wasteful exercise by the Courts below.**’

20 Learned APP further submits that if this court is inclined to quash the FIR in the present case, then the compensation given to the respondent No.2 may be enhanced as the deceased was an Advocate from profession and was 61 years old only. He was expected to live 15-20 years more according to average living age.

21 I find force in the submission of learned APP for State on compensation.

22 At this stage, learned counsel upon instruction from petitioner has

come forward and submits that the petitioner has offered to pay Rs.3lacs more as compensation to respondent No.2 in addition to already given as mentioned above.

23 I appreciate this gesture of petitioner.

24 Accordingly, petitioner is directed to pay additional Rs.3lacs as compensation to respondent No.2 within two weeks from today. Proof of the same shall be placed on record.

25 Further, respondent No.2 is directed to keep this additional compensated amount in form of FDR, initially for a period of 05years and be renewed thereafter periodically. Interest accrued thereupon can be withdrawn by respondent No.2, if required.

26 In case of financial constraint, she can withdraw maximum amount of Rs.25,000/- in a year from the said FDR amount.

27 Keeping in view the above discussion, statement of respondents into view and in the interest of justice, I quash FIR No. 30/2012 registered at P.S. Bharat Nagar, Delhi.

28 Criminal M.C. 1074/2012 is disposed of on above terms.

29 Dasti.

SURESH KAIT, J

MARCH 27, 2012

j/jg