

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

+ CRL.REV.P. 550/2009 & CrI.M.A. 11846/2009 (stay)

% Reserved on: 30th April, 2012

Decided on: 17th July, 2012

BHAGWAN DASS &ORS.

..... Petitioners

Through: Mr. Anuj Soni, Advocate.

versus

STATE

..... Respondent

Through: Mr. Mukesh Gupta, APP with ASI
Ram Gopal PS Mukherjee Nagar.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By the present petition the Petitioners seek setting aside of the order dated 11th August, 2009 whereby the learned Metropolitan Magistrate has framed charges against the Petitioners for offences punishable under Sections 288/304A/338/337/427 IPC.

2. Learned counsel for the Petitioners contends that the impugned order of framing charges against the Petitioners is bad in law as well as on facts. The Petitioners herein were simply the members of the Managing Committee who wanted the temple to be constructed for the welfare of general public. It is stated that the Managing Committee of Hari Mandir had taken the services of Ram Naresh, Thekedar and had entered into an agreement with him to construct the temple in question. All the members of the Managing Committee are laymen and were simply serving the temple. It is further stated that the allegation against the Petitioners that they had malice in providing low grade material is not justified. There are no specific allegations against the Petitioners and no role has been attributed to any one

of them. It is further stated that it was either for the contractor, architect or for the labour themselves to decide as to how the support was to be provided to the lantern. If at all the lantern and the roof of the temple have come down, it cannot be due to the rash and negligent act of the Managing Committee to which the Petitioners are members. Reliance is placed on *Ataur Rehman vs. State, 2010 (1) JCC 214* to contend that in the absence of any criminal intention of which there was no whisper in the statement of the Complainant, it cannot be said that the death of the victim was by rash and negligent act of the Petitioners. Thus the impugned order framing charges against the Petitioners is bad in law and liable to be set aside.

3. Per contra learned APP for the State contends that there are specific allegations against the present Petitioners and their role has been clearly specified. Learned Trial Court after considering all the relevant aspects and material available before it, has correctly invoked the provisions of IPC against them. There is a strong prima facie case against the Petitioners being the members of the Committee. There is no illegality in the impugned order framing charges. The present petition has no merit and is liable to be dismissed.

4. I have heard learned counsel for the parties and perused the record.

5. Briefly the prosecution case is that on 27th July, 1999 a lantern on the first floor of one Hari Mandir, Outram Line, Burari Road was being laid. Accused Ram Naresh and Ragunath were contractors. At about 6.20 P.M. DD No. 5A was recorded at PS Mukherjee Nagar in regard to falling of the roof of Hari Mandir. The SHO reached at spot where SI Rajneesh Kumar, SI Praveen Kumar and ASI Tek Chand were present along with other police officials. The ambulance was called and the injured labourers and other

persons were sent to HR Hospital. Statement of Shri Ram, a labourer was recorded who stated that he used to live with his family in Jhuggi No. 109, Indira Vikas Colony and used to work as a labourer. Contractor Ram Naresh and his partner Raghunath approached him and at his instance he along with his friend Raj Bahadur who used to live in neighbourhood came to Hari Mandir, Outram Line, Burari Road, where the First Floor of Hari Mandir was being constructed and lanter was to be constructed. For construction of the lanter four machines had been brought. On each machine 50-60 labours were working. He has stated that when they reached there in the morning for the job, he and Raj Bahadur pointed out to contractor Ram Naresh and Raghunath that shuttering was weak and lanter should not be put because there was no support in the middle of the lanter and the roof can fall. But contractor said that shuttering was OK and that they should do their job and rest should be left on him. He has also stated that many labourers objected to this but contractor did not agree and machines started and work of lanter started. In the middle of the work he and Babu Lal pointed out towards the condition of the roof but nobody listened to them. They were told to continue the work. Other labourers met the President Shri Jagjit Rai Malik and other executive members who were present there but they all supported the contractor and said that the work should be continued and finished quickly. At about 3.00 p.m. when he was working along with other labourers, the roof came down on many laboureres and people got injuries. Somebody called the PCR and the labourers were removed to hospital. Raj Bahadur could not run and died on the spot. He learnt this later in the hospital. It is stated that to construct the lanter of the temple the mixture which was being prepared was not properly mixed with the cement and the

ratio of badarpur was more than the ratio of cement. The lanter of the temple was constructed with inferior material by contractor Ram Naresh, Raghunath, President of the Temple and other executive members who had given sub-standard material and played with the life of labourers. On the basis of this statement of Shri Ram FIR No. 178/1999 was registered under Section 304/427/337/288/34 IPC against the Petitioners.

6. Petitioner No. 1 Bhagwan Dass has expired during the pendency of the petition. It is stated/admitted that the Petitioner No. 2, Petitioner No. 3 are the members of the Managing Committee. Petitioner No. 4 Jagjit Rai Malik is stated to be the President of the Temple and his name is specifically mentioned in the statement of Shri Ram on the basis of which FIR has been registered. It is stated that the president and the other executive members of the temple were informed and had knowledge of the fact that the lanter was being constructed with inferior quality products as there was no support in middle of the lanter the roof of the mandir had collapsed.

7. Learned Metropolitan Magistrate after hearing the arguments of the parties on point of charge has charged the Petitioners under Sections 288/304A/338/337/427 IPC. It is relevant to note that the negligence under Section 304A has to be construed keeping in mind all the surrounding circumstances. The act committed by the accused persons must be grossly and rashly negligent. The death/injury caused must be the direct consequence of the rash and negligent act committed by the accused. In the present case while shuttering the lanter of the mandir the labourers had clearly pointed out to the Petitioners as well as the contractor that the lanter was weak and the same should not be laid without any support. Ignoring the word of caution given by the labourers, the members of management and the

president along with the thekedars instructed them to continue the work and finish the same quickly. This act of the accused persons/Petitioners clearly shows that they were negligent and their negligence was gross in ignoring concern of the labourers. Reliance placed by learned counsel for the Petitioners on *Ataur Rehman* (supra) is misconceived as the facts of the said case are completely different from the one in hand. In the present case the Complainant has clearly stated that the president along with the other executive members of the committee were informed about the weakness of the lanter but they supported the contractors and asked them to continue working. Due to the weak lanter with no support and use of sub-standard inferior quality material the roof collapsed. Further the contention of the learned counsel for the Petitioners that the Thekedars were experts and Petitioners had no knowledge holds no ground and is liable to be dismissed. The workers/labourer had cautioned all of them about the weak lanter but their warning was ignored resulting in the mis-happening taking away the life of innocent labourer and injuring many others.

8. At the stage of charge the learned Trial Court is only required to look into the basic material/evidence before it and form an opinion that prima facie case is made out against the accused persons. In the present case the negligence of using inferior quality cement and constructing the lanter without any support is sufficiently proved/stated by the labourer Shri Ram. Despite giving them warning the Petitioners ignored the fact and asked them to continue with the work. The aspect of determining the very nature of degree of the inferior quality material and the extent of involvement of the Petitioners in the offence committed is a matter of fact which is to be looked

into during the trial. At this stage I find no reason to interfere with the order of the learned Metropolitan Magistrate.

Thus the petition and the application are dismissed being devoid of merits.

(MUKTA GUPTA)
JUDGE

JULY 17, 2012
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