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

+ **CRL.M.C. 2773/2015**

NARENDRA JHA & ANR Petitioners

Through: **Ms.Aruna, Advocate**

versus

STATE OF NCT OF DELHI & ORS Respondents

Through: **Mr. Kamal Kr. Ghei, APP for State
with SI Ramesh Kumar, PS Sultan
Puri**

**Mohd. Arshad, Adv for R-2 and 3
None for R-4,5 and 6**

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

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21.12.2017

The personnel of the MCD i.e. respondent No.4 Mr. Jaipal, respondent no. 5 Mr. M.K. Kaushik and respondent No. 6 Rajpaul Singh arrayed on record are indicated to have already been discharged in relation to the FIR No.63/2005, under Section 304A IPC, 1860, Police Station Sultan Puri with proceedings against them having been stopped under Section 258 Cr.P.C., 1973 vide order dated 4.7.2016 of the learned Metropolitan Magistrate-01, North West, Delhi.

Vide the present petition, the petitioners No.1 and 2 seek the quashing of the FIR No.63/2005, under Section 304A IPC, 1860, Police Station Sultan Puri submitting to the effect that a settlement has been arrived at between the petitioners and the respondents No.2 and 3, inasmuch as the respondents No.2 and 3 are the parents of the deceased child who is indicated to have fallen in an open manhole of the Sulabh Shochalay located between F-7, Sultan Puri and West Friends Enclave on 9.1.2005 and was taken out from the manhole, on 12.1.2005. As the child Puran was not traceable, the parents of the deceased child, i.e. respondent nos. 2 & 3 lodged the FIR No.63/2005, under Section 363 of the IPC, 1860, Police Station Sultan Puri reporting the missing of the child.

On behalf of the State, a prayer is made submitting to the effect that the petitioners were the supervisor and the caretaker of the Sulabh Shochalay and were responsible for keeping the lids of the manohole closed.

Learned counsel for the respondents No.2 and 3, however, does not oppose the prayer made by the petitioners and a submission has been made on behalf of the petitioners seeking quashing of the FIR submitting *inter alia* also to the effect that the marriage of the daughter of the respondents No.2 and 3 is fixed for the date 6.1.2018.

It is essential to observe that vide judgment dated 3.7.2007 in WP(C) No. 5072-73/2005 which had been filed by the parents of the deceased child Puran aged seven years Sh.Kishan Lal and Smt.Mithlesh who are arrayed as respondents No.2 and 3 to the present petition, had sought a prayer of compensation in relation to

the negligence attributed against the MCD and had also impleaded the respondent therein, i.e., Sulabh International Social Service Organization which had an agreement with the Municipal Corporation of Delhi to maintain the toilet complexes of the Sulabh International Social Service Organization.

As observed vide proceedings dated 3.7.2007 in WP(C) No.5072-73/2005 which facts have been reproduced therein to the effect that on 9.1.2005, the child was playing with other children outside his home at Sultanpuri and had gone to use the free lavatory located between F-7 Sultanpuri Block and West Friends Enclave, which is owned by the Corporation and that he never returned leading his parents to file a missing persons report and that on 12.1.2005 the dead body of the child was found in the open manhole by the local residents and the Police at Police Station Sultanpuri subsequently conducted a post mortem which indicated that Puran had ante mortem injuries, specifically, a lacerated wound on his chin. ***After the viscera examination, the doctor's conclusion was that the cause of the death was "asphyxia as a result of drowning".*** The petitioners therein, i.e., the parents of the deceased child arrayed as the respondents No.2 and 3 herein contended that the five sewerage manholes in the vicinity in which Puran had gone to use the lavatory were not covered with the lids and that Puran slipped and fell into the open sewerage tank resulting in his untimely death as a result of the dereliction of duty on the part of the respondents (which included the petitioners No.1 and 2 herein). There were other contentions raised on behalf of Sulabh International Social Service Organization to the

effect that the septic tank was cleaned one month before and all manholes were properly covered and there had been no complaints by any person nor by any authority that the cover of any manhole was found missing and there were volunteers who were at the said site on the date of the incident who stated that the covers of the manholes were checked and were properly covered and Sulabh submitted that the volunteers take extra care to ensure that the manholes are always covered and that broken or stolen lids are immediately replaced and that the said organization and its employees were thus not negligent in causing the death of the child and that it met its duty of care.

A contention was also raised before the Court during the course of the proceedings in WP(C) No. 5072-73/2005 that Puran was likely kidnapped and that the kidnapper may have killed the boy and then thrown him into the manhole or killed the boy by throwing him into the manhole and that it was also possible that the child may have playfully removed the lid himself and then slipped or lost his balance thereby falling into the manhole.

The observations in paragraph 13 of the verdict in WP (CrI.) 5072-73/2005 are reproduced herein below:

“13 Third, was the accident caused in part by any voluntary action or contribution by the deceased? This question is dealt with in some detail under issue three. At this juncture, it is sufficient to point that the deceased Puran cannot be attributed with any contributory negligence nor is there any material which points in that direction. Therefore, it would be reasonable to conclude that Puran’s death was caused by the negligence of the respondents in failing to ensure that the manhole lids

were covered.”

whereby it was thus observed to the effect that it would be reasonable to conclude that Puran's death was caused by the negligence of the respondents therein (inclusive of the petitioner Nos.1 and 2 herein) in failing to ensure that the manhole lids were covered.

Learned counsel for the petitioners submitted the requisite compensation was awarded in terms of the said verdict dated 3.7.2007 in W.P.(C) No. 5072-73/2005 was paid to the claimants, i.e., the parents of the deceased despite the factum that LPA 1210/2007 had been filed by the Sulabh International Social Service Organization against the verdict dated 03.07.2007 in W.P.(C) No. 5072-73/2005.

It was further submitted on behalf of the petitioners herein that the observations of the Hon'ble Division Bench in LPA 1210/2007 are significant in relation to the aspect that it has been observed vide paragraph 5 thereof to the effect that it had clarified that the Criminal Court seized of the proceedings against the appellant therein i.e. the Sulabh International Social Service Organization under Section 304A of the IPC or any other Court that may have to decide any claim for damages or any other relief would adjudicate on their merits uninfluenced by the impugned judgment of the learned Single Judge, i.e.. the reference to the verdict in WP(C) No.5072-73/2005. It was thus submitted on behalf of the petitioners that in view of the observations in the verdict in LPA 1210/2007, taking into account the

factum that the respondents No.2 and 3 through the averments made in the petition which are stated to be made on their behalf by their learned counsel do not seek the continuation of the proceedings against the petitioners any further in view of the settlement arrived at between the petitioners and the respondents No.2 and 3 and the prayer made in the petition be allowed which prayer is opposed on behalf of the State.

On behalf of the petitioners reliance is placed on the verdict of this Court in CrI.M.C. No.3506/2007 titled ***Akhilesh Kumar Jha v. Govt. of N.C.T. of Delhi & Anr.*** and in CrI.M.C. No.2644/2015 in ***Shankar Khandelwal vs. The State (NCT of Delhi) & Ors.***, to submit that in similar circumstances where children had fallen down in the manholes in the toilet complex, the prayers seeking quashing of the FIR have been allowed and it has thus been submitted that the prayers thus made by the petitioners be granted.

It is essential to observe that the reliance that has been placed on behalf of the petitioner on the verdicts of this Court in CrI.M.C. No.3506/2007 titled ***Akhilesh Kumar Jha v. Govt. of N.C.T. of Delhi & Anr.*** and in CrI.M.C. No.2644/2015 in ***Shankar Khandelwal vs. The State (NCT of Delhi) & Ors.*** is misplaced as the said verdicts relate to the facts and circumstances of those cases. In the case of CrI.M.C. No.3506/2007 titled ***Akhilesh Kumar Jha v. Govt. of N.C.T. of Delhi & Anr.***, the charge-sheet had been filed and the trial was on for a period of 15 years and the FIR was allowed to be quashed on the basis of the aspect of the trial having lasted for 15 years and not likely to be concluded in near future and due to the compromise arrived at

between the parties. The verdict in ***Shankar Khandelwal vs. The State (NCT of Delhi) & Ors***: CrI.M.C. No.2644/2015 relied upon on behalf of the petitioners categorically observes to the effect that it was observed therein by the parents of the deceased that there had been a misunderstanding in lodging of the FIR.

It is essential to observe that the verdict in ***Gian Singh vs. State of Punjab & Another***, (2012) 10 SCC 303, categorically observes that where there are offences committed by public servants while working in that capacity, they ought not to be quashed merely on the basis of a compromise between the victim and the offender where it is established that the offences have a serious impact on society. Further as laid down in ***Rahul Mehra & Anr. vs. Union of India and Ors***. 114 (2004) DLT 323, by the Division Bench of this Court those performing public functions qua that duty or function are subject to judicial scrutiny.

A status report has been submitted by the State as submitted under the signatures of Inspector Anil Kumar, SHO, Police Station Sultanpuri dated 19.12.2017, detailing therein to the effect that during the course of investigation it was found that the maintenance and the operation at the spot was the responsibility of Sulabh International Social Service Organization and the then in-charges Narender Jha and the caretaker Bhagat Jha, i.e., the petitioners No.1 and 2 herein, and that they were apparently responsible for the lapse in having not covered the open manholes.

In view of the discussion in the verdict in WP(C) No.5072-73/2005 to the effect that as per the terms of the agreement between

the MCD and Sulabh International Social Service Organization, it was the sole responsibility of the Sulabh International Social Service Organization for the maintenance and supervision of the Sulabh Toilet complex owned by the MCD and that MCD was not responsible for the same. The proceedings dated 4.7.2016 before the MM-01/NW/Rohini/Delhi further indicate that the aspect of the ascertainment of the element of rashness and negligence on the part of the other two accused persons (i.e., the present petitioners to the present petition) was an aspect which required a trial in relation to which the charges were to be framed on the date 18.10.2016 trial qua which it has been submitted on behalf of the petitioners that the said charges have not yet been framed.

As to whether or not there existed any element of criminal rashness or negligence on the part of the present two petitioners in relation to the open manhole in the toilet complex of the Sulabh Sauchalya, F-7, Sultan Puri, New Delhi into which the minor child Puran fell down and thus died, taking into account the factum that the post mortem report indicates that the death of the child was due to Asphyxia due to drowning, is an aspect which has essentially to be adjudicated on trial.

In view thereof, there is no ground whatsoever for quashing of the FIR No.63/2005, under Section 304A IPC, 1860, Police Station Sultan Puri. This is so inasmuch as in the instant case, those responsible for performing duties towards the public at large, cannot be permitted to take the discharge of their duties lightly to the extent that they be exonerated on the basis of a settlement with the parents of

the deceased child even though they are alleged to have committed dereliction of duty in exercising the supervision and keeping of the manhole in the public toilet complex, covered.

Nothing stated herein above shall however affect the analysis of the merits or demerits of the evidence led during the trial.

The petition is thus dismissed.

ANU MALHOTRA, J

DECEMBER 21, 2017/sv