

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 343 OF 2012**

Mr. P. Venku Reddy
Age : 61 Years, Occ: Business,
R/at: 1st Floor, Sri Durga
Chambers, Punjagutta,
Hyderabad - 500082

.. Applicant
(Org. Accused)

Vs.

The State of Maharashtra,
(At the instance of Sub Inspector
Chandgad Police Station, Kolhapur)

.. Respondent

Mr. Ashok Mundargi, Senior Advocate i/b Mr. Abhishek Yende a/w Mr.
Rishikesh Dube for the Applicant.
Ms. Anamika Malhotra, APP, for the Respondent-State.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 4th NOVEMBER, 2023.

PRONOUNCED ON : 30th NOVEMBER, 2023.

JUDGMENT: [PER- SHYAM C. CHANDAK, J.]

1) By this Application under Section 482 of the Code of Criminal Procedure, 1973, the Applicant seeks quashing of the F.I.R. bearing C.R.No.12 of 2012, registered with *Chandgad* Police Station, District Kolhapur, on 16th February, 2012, for the offences Punishable under Sections 304-A, 337, 338 read with Section 34 of the Indian Penal Code, 1860,

against the Applicant and others.

2) Heard learned Counsel for the Applicant and learned APP for the Respondent-State.

3) By an Order dated 25th October, 2012 Rule and interim relief were granted.

4) As alleged in the F.I.R., M/s. P Venku Reddy Project Ltd., a private company had taken the contract of constructing the dam under *Jamabre* Medium Project, at District Kolhapur. The Applicant (accused No.1) is owner of the said Company. At the relevant time, excavation work for the dam was going on in the bed of river *Tamraparni*. The said work was being done with the help of a Poclain machine. The excavation was deep, hence, water from surrounding area had collected in the excavated area. That water was to be drained with the help an engine.

4.1) On 15th February, 2012, the work at the site was to be started at about 8 a.m, but surrounding water had collected at the excavated site and it was necessary to be lifted. Therefore, at about 10:30 a.m. labours namely Allaiya Bhandri Sawaigoda, Mohammad Jahangir Pakija and Jamunapal carried an engine at the excavated site and they were fixing a pipe to the engine. At that time, Bartala Ramana, Project Site Supervisor and Shashidhar Reddy, Chief/General Manager (accused No.4) went there and were telling the labours to connect the engine. At this juncture, a big boulder

tumbled down from upper side of the work site. Immediately, Bartala Ramana jumped aside and saved himself. But Shashidhar Reddy and the said three labours got pressed under that boulder. Immediately, the boulder/earth was removed with the help of Poclain machine and labour Jamunapal, Allaiya Bhandri and Shashidhar Reddy were taken out. Jamunapal got injured but labours Allaiya Bhandri, Jahangir Pakija and Shashidhar Reddy died due to the incident. The injured and dead were taken to the Government Hospital. Thereafter, informant Bartala Ramana lodged a report, pursuant to which A.D.No.5 of 2012 was registered under Section 174 of the Cr.PC. The postmortem examinations revealed that, the three died due to pressing of their chest by the boulder. The Police recorded the spot panchnama and statement of witnesses.

4.2) Investigation revealed that, Shashidhar Reddy (deceased) was looking after the construction site work under the supervision of the Applicant and under the directions of his engineers Manoj Kekade and Nagbhushan (accused Nos.2 and 3). At the relevant time, Shashidhar Reddy neglected to keep proper lookout at the situation of the construction site and took the labours at the base of the construction site to drain the water with the help of engine. At the same time, the Applicant, his said two engineers and Shashidhar Reddy did not take proper care and exercise proper supervision in advance. As a result, boulder and earth fell on the labours and

Shashidhar Reddy and consequently, they died. Thus, the incident occurred due to rashness and negligence on the part of the Applicant, his said two engineers and Shashidhar Reddy. Hence, Ankush Pawar, PSI, *Chandvad* Police Station lodged the FIR based on which the above said crime came to be registered against the Applicant, his said two engineers and Shashidhar Reddy.

5) Learned counsel for the Applicant submitted that, at the relevant time, the Applicant was Chairman of the Company. Manoj Kekade was the Chief Engineer, Mr. Nagbhushan was Jr. Site Engineer and Shashidhar Reddy was the Site Manager. The Applicant was not present at the excavation site of the dam. Such type of work of the company was going on simultaneously at various places/sites. Hence, the Applicant had no knowledge about the manner in which the excavation work was carried out. It is submitted that, the Chief Engineer, Junior Engineer and Site Manager (accused Nos.2 to 4) were looking after the said excavation work. So, the excavation, removing the water collected at the excavated site and use of excavated material etc. was totally the responsibility of Accused Nos.2 to 4. The said work was carried out under their direct instruction. Therefore, they had engaged the labours for the said work. It is submitted that, Sashidhar Reddy was head of the site office. His prime duty was to manage the site in all respects including the overall security and safety of the work.

6) Learned Counsel for the Applicant submitted that, the excavation work in question was not carried out under the direct instructions of the Applicant. In fact, the Applicant has not given any instructions to the labours and masons who were working at the site as to how the excavation work be carried out. As such there is no nexus between the alleged rash and negligent act attributed to the Applicant and the unfortunate incident. That apart, the excavated portion consists of soft soil including round boulders. As long as the soil is in wet condition (*i.e.* having moisture), it grips boulders and when exposed gradually the soil gets dried up and boulders become fetterless or loose. This may be one of the reasons which caused this incident. In the backdrop, there is no prima-facie case to invite the charge of the aforesaid offences and fasten criminal liability upon the Applicant. Yet, the Applicant has been figured in the impugned F.I.R. for one simple reason that, he was the Chairman of the Company, so vicariously liable for the act of his Officers. He submitted that, hence the F.I.R. is liable to be quashed and set aside.

7) Per contra, based on the Affidavit-in-reply submitted by the Investigation Officer, learned APP strongly submitted that, the Applicant had obtained the contract of constructing the dam. He had employed the other accused persons to execute the dam construction work. In turn, the said

accused Officers undertook the excavation activity at the construction site with the help of labours. Looking at the contents of the F.I.R., accumulation of the surrounding water in the excavated site was a recurring problem. At the relevant time, the water had accumulated at the base of the site, where the excavation work was going on. Therefore, there was every possibility of the boulder/earth falling from the top on the people who were busy at the base in lifting the water. This danger was easily foreseeable. As such, the Applicant and the co-accused persons were duty bound to take due care and exercise necessary caution, so that the victims would have been warned, not to go for lifting the water or to provide them necessary protection to avoid the untoward incident. Nevertheless, no such care and caution was taken. This omission ultimately gave rise to the present incident claiming innocent lives of two labours and causing injuries to one labour. These circumstances are very evident from the statement of the engineers from PWD and other witnesses. Thus, there was rashness and negligence on the part of the Applicant and the co-accused persons. Hence, no fault can be found with the Respondent Police Station for registering the impugned F.I.R against the Applicant and others. As such there is no substance in the Application and it is liable to be rejected.

8) It is not in dispute that, the Applicant is owner of the Company. The Work Order (Exh.-A) shows that, the construction work of the earth

dam under *Jamabre* Medium Project was given to the Company of the Applicant. As stated in the F.I.R. (Exh.-C), Accused Nos.2 and 3 were the engineers at the construction site and Accused No.4 Sashidhar Reddy (deceased) was the Chief/General Manager there.

9) The claim of the Applicant that, he was not present at the excavation site, is not controverted in the reply Affidavit. As alleged in the F.I.R., at the relevant time Shashidhar Reddy-deceased was looking after the work of the construction site under the supervision of the Applicant and under the directions of his engineers Manoj Kekade and Nagbhushan. But Shashidhar Reddy neglected to keep proper lookout at the perilous situation of the construction site and instead took the labours at the base of the construction site to drain out the water with the help of the engine. Looking at this narration in the F.I.R., it is crystal clear that neither the Applicant nor Manoj Kekade and Nagbhushan were directly or indirectly involved in the said act of Sashidhar Reddy of omitting to keep proper lookout at the hazardous situation of the construction site and taking the labours at the base of the construction site to drain out the water.

10) Considering the facts and circumstances of the case, Sashidhar Reddy being Chief/General Manager, onus was his to take proper care at the construction site and to ascertain whether it is safe to take the labours at the base of the site to lift the water, or not. But unfortunately, he omitted to do

so. As such the Applicant and other co-accused persons cannot be held responsible for this omission on the part of deceased Sashidhar Reddy. Therefore, at the most only Sashidhar Reddy can be said to have committed the rash and negligent act in the incident.

11) It is well-settled that, there is a distinction between a rash act and a negligent act. It is a fact incapable of being construed or seen in isolation. It must be examined in light of the attendant circumstances. A rash act is primarily an over-hasty act and is thus opposed to a deliberate act. But it also includes an act which, though it may be said to be deliberate, is yet done without due deliberation and caution. In rashness, the criminality lies in running the risk of doing an act with recklessness or indifference to consequences. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. Simple lack of care such as will constitute civil liability, is not enough. For liability under the criminal law a very high degree of negligence is required to be proved.

12) Under the English law rashness means recklessness. A reckless act has to be understood in two different senses, subjective and objective. In the subjective sense, it means deliberate or conscious taking of an unjustified risk which could be easily foreseen and in the circumstances of the case was unreasonable to take. In this sense it almost amounts to an oblique intent on

the part of the accused. In the objective sense, the accused is not conscious of the result though he ought to be aware that it might follow and in this sense, it is almost equivalent to negligence. In other words, negligence involves blameworthy heedlessness on the part of the accused which a normal prudent man exercising reasonable care and caution ought to avoid. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having duty of the accused person to have adopted. Negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do or doing something which a prudent and reasonable man would not do. A culpable rashness is acting with the consciousness that, the mischievous and illegal consequences may follow, but with the hope that they will not and often with the belief that, the actor has taken sufficient precaution to prevent their happening. The imputability arises from acting despite the consciousness. Culpable negligence is acting without the consciousness, that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him and if he had, he would have had the consciousness. The imputability arises from the neglect of the civic duty of a circumspection. As between rashness and negligence,

rashness is a graver offence.

13) As can be gathered from the text of the F.I.R., the boulder/earth suddenly fell at the place where the three deceased and the injured were working to lift the water. But it was not the case that at the relevant time some Poclain machine was actually excavating at the upper portion of the work site and therefore, felling of the boulder/earth was certain. It is also not the case that, the boulder/earth at the said upper portion had loosened due to the excavation work already done there, therefore it was very likely that said loose boulder/earth would fall down, and the said facts were noticed by or within the knowledge of the Applicant and the co-accused. Yet, they instructed and allowed Sashidhar Reddy to take the labours to lift the water and at that very juncture, the boulder/earth fell on them. In short, there were no circumstances from which it can be said that, when Sashidhar Reddy took the labours in the excavated pit to lift the water, Sashidhar Reddy, the Applicant and the co-accused Officers knew that the boulder/earth would fall on them, but they hoped that it would not. Thus, deliberately they took the unreasonable risk of sending Sashidhar Reddy and the labours to lift the water, as a result Sashidhar Reddy and the labours came under the boulder/earth. Therefore, there was rashness on the part of the accused persons. Nor the facts and circumstances of the case make it easily understandable that the situation at the spot of occurrence was such

that if Sashidhar Reddy and the labours go to lift the water, the present incident would follow. But Shashidhar Reddy was unaware of such a pernicious situation. However, there was every scope for Shashidhar Reddy to exercise sufficient caution and estimate such a situation. Therefore, either he could have provided them certain protection or given safety instructions to avert the incident or he could have omitted to take the labours to lift the water. Therefore, this is a case of negligence. In fact, as can be easily perceived from the F.I.R., the three labours had already taken the engine down and were fixing the pipe and thereafter only, Shashidhar Reddy and Bartala Ramana went down to see the engine and give necessary instructions to the labours. That apart, if indeed the situation at the spot of the occurrence was so dangerous, then at least Shashidhar Reddy would not have risked his own life.

14) In view of the above discussion, it cannot be said that, there was direct nexus between the act of Sashidhar Reddy in taking the labours to lift the water and felling of boulders/earth on them. As such this incident cannot be held to be the outcome of alleged rash and negligent act on the part of the Applicant and his engineers Accused Nos. 2 and 3. In fact, considering the totality of the facts and circumstances, the incident in question was purely an accident. As such, the offences punishable under Sections 304A, 337, 338 read with Section 34 of the Indian Penal Code

probably only because the Applicant is the owner of the company and accused Nos.2 and 3 were the immediate higher Officers of the company. As a result, the impugned F.I.R. is liable to be quashed and is accordingly set aside qua the Applicant.

15) The impugned F.I.R. bearing C.R.No.12 of 2012 registered with the Respondent-*Chandgad* Police Station, District Kolhapur dated 16th February, 2012 for the offences Punishable under Sections 304-A, 337, 338 read with Section 34 of the Indian Penal Code, 1860, against the Applicant is quashed and set aside.

16) Application is allowed in the aforesaid terms.

17) Rule is made absolute.

(SHYAM C. CHANDAK, J.)

(A. S. GADKARI, J.)