

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.497 of 2015

Pawan Kumar Chauhan, S/o Kartik Ram Chauhan, aged about 23 years, R/o Dehjari, Thana Kharsia, Distt. Raigarh (C.G.)

---- Applicant

Versus

State of Chhattisgarh, Through the Station House Officer, Chaal, Distt. Raigarh (C.G.)

--- Non-applicant

For Applicant: Mr. N.K. Malaviya, Advocate.

For Respondent: Mr. O.P. Sahu, Deputy Govt. Advocate, on advance notice.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

16/07/2015

1. Heard on the question of admission.
2. By this criminal revision, the applicant assails the order dated 1-1-2015 passed by the 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.225/2014 along with the charge framed against the applicant for the offence under Section 304 Part-II of the IPC by which the charge has been framed against the applicant for the aforesaid offence.
3. Case of the prosecution, in brief, is that on 18-9-2014 at about 6.30 p.m., the applicant while driving the offending dumper No.CG-12/C-0822 rashly and negligently dashed

the pedestrians / persons who were in the crowd gathered and participating in the Vishwakarma visarjan pooja near Maand bridge on account of which Ranjan Mistri, Saami Ansari, Manoj Patel, Mohd. Nizam, Niranjana & Ranjit Kumar Karmakar suffered grievous injuries whereas, Uttam Karmakar, Ranjit Kumar Manjhi & Niranjana Pal succumbed to death.

4. Mr. N.K. Malaviya, learned counsel for the applicant, would submit that the trial Court ought to have framed charges for the offence under Section 304A of the IPC i.e. causing death by negligence and as such, Section 304 Part-II of the IPC is not attracted at all and the said Court has committed illegality in framing charge for offence under Section 304 Part-II of the IPC.
5. The question for consideration is whether considering and accepting the material available on record a prima facie case for framing charge for the alleged commission of offence under Section 304 Part-II of the IPC is made out against the applicant or charge under Section 304A of the IPC is required to be framed.
6. Before proceeding further, it would be appropriate to take notice of the recent decision of the Supreme Court in the matter of **State Through PS Lodhi Colony, New Delhi v. Sanjeev Nanda**¹ in which their Lordships have considered and held the principle governing distinction between

¹ (2012) 8 SCC 450

Section 304 Part-II and Section 304A of the IPC, and it has been held that Section 304 Part-II of the IPC comes into play when death is caused by doing an act with knowledge that it is likely to cause death, but there is no intention on part of the accused either to cause death or to cause such bodily injury as is likely to cause death. Further relying upon the decision in the matter of **Alister Anthony Pareira v. State of Maharashtra**², their Lordships of the Supreme Court held that person must be presumed to have had the knowledge i.e. the act of driving the vehicle in a high speed is likely or sufficient in the ordinary course of nature to cause death of the pedestrians on the roads.

7. In the case in hand, it is quite apparent that the applicant while driving the offending vehicle rashly and negligently particularly in high speed, dashed the persons assembled at the place of incident for religious purpose by which three persons died and six persons suffered grievous injuries.
8. Before proceeding further, it would be appropriate to notice relevant judgments of the Supreme Court with regard to jurisdiction of this Court to interfere with the order framing charge.
9. In **State of Maharashtra v. Priya Sharan Maharaj and others**³, the Supreme Court has held that at the stage of framing charge, Criminal Court has to find out whether

² (2012) 2 SCC 648 : (2012) 1 SCC (Cri) 953 : (2012) 1 SCC (Civ) 848

³ (1997) SCC (Criminal) 584

there is ground for presuming that accused has committed offence or not to following effect:-

“8. The law on the subject is now well settled, as pointed out in **Niranjan Singh Punjabi vs. Jitendra Bijjaya (1990) 4 SCC 76**, that at Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken in their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.”

10. Very recently in **Vinay Tyagi v. Irshad Ali alias Deepak and Ors.**⁴, the Supreme Court while considering Section 227 of the Cr.P.C. held as under:-

“12. On analysis of the above discussion, it can safely be concluded that 'presuming' is an expression of relevancy and places some

weightage on the consideration of the record before the Court. The prosecution's record, at this stage, has to be examined on the plea of demur. Presumption is of a very weak and mild nature. It would cover the cases where some lacuna has been left out and is capable of being supplied and proved during the course of the trial. For instance, it is not necessary that at that stage each ingredient of an offence should be linguistically reproduced in the report and backed with meticulous facts. Suffice would be substantial compliance to the requirements of the provisions.”

11. In **Amit Kapur v. Ramesh Chander and another**⁵, the Supreme Court while considering the scope of jurisdiction of this Court in revision against the order of charge held as under:-

“The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is

required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a *sine qua non* for exercise of such jurisdiction. It may even be weaker than a *prima facie* case.”

12. In the aforesaid decisions, their Lordships of the Supreme Court have clearly held at the stage of framing of charge, the Court has to consider the material with a view to find out if there is ground for presuming that an accused had committed offence and not for the purpose of arriving at a conclusion that it is not likely to lead a conviction.
13. In the light of aforesaid enunciation of law, if the facts of the present case are examined, it is the case of the prosecution that on 18-9-2014 at 6.30 p.m. at Village Edu, near bridge, the applicant while driving the dumper (hyva) rashly and negligently dashed the persons assembled for Vishwakarma visarjan pooja by which three persons

suffered death and six persons suffered grievous injuries.

The material brought by the prosecution and the fact that ten witnesses have already been examined by the prosecution go to show that the trial Court has not committed any illegality in framing charge for the offence under Section 304 Part-II of the IPC.

14. After hearing learned counsel for the applicant and from perusal of the record, considering the charges framed, the fact that 3 persons lost their lives and 6 persons suffered grievous injuries, the manner in which the applicant has driven the offending vehicle in crowded place, and at the advanced stage of trial, I do not consider it a fit case for interfering in the impugned order framing charge against the applicant for offence under Section 304 Part-II of the IPC.

15. The revision is, therefore, liable to be dismissed and it is hereby dismissed at the admission stage itself without notice to the other side.

Sd/-
(Sanjay K. Agrawal)
Judge