

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 74 OF 2015

Matthew Joseph Vargis & ors. ... Applicants.
Versus
The State of Maharashtra & anr. ... Respondents.

Mr. Rishi Bhuta, advocate for Applicants.

Mrs. A.A. Mane, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J
DATE : AUGUST 24, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the learned
APP for State.

2 Rule. Rule made returnable forthwith with the consent of the
parties.

3 The applicants herein are charge-sheeted for offence punishable
under Section 304 read with Section 34 of the Indian Penal Code in

Crime No. 15 of 2012. The applicants had filed an application seeking discharge. The learned Sessions Judge, Sindhudurg-Oros by an order dated 20th March, 2014 has been pleased to dismiss the application seeking discharge.

4 It is the case of the prosecution that the present applicant No.1 happens to be the Manager of Divya Jyothi School, Degve, Banda at Vapholi, Tal-Sawantwadi. The Petitioner No. 2 happens to be the Chairman of the said school. The said school is receiving grant in aid from the State of Maharashtra.

5 It is the case of the prosecution that one Mandar Rane, young boy of 10 years had taken admission in the said school which is run by Sangli Mission Society since 10/6/2012. Mandar was residential student of the said school. On 12/6/2012 as per daily routine, swimming coach of the said school namely, Antony Thomas George has taken 35 students to swimming tank to teach them art of swimming. Some of the students were well acquainted with the

swimming, whereas the other students were being given practice and they were directed to take bath by taking water in the bucket by the side of the swimming tank only to get acclimatised to the art of swimming. At about 6 p.m. all the students were directed to come out of the swimming tank. Some students had noticed that Mandar Rane was floating on the water and therefore, had called the swimming coach. Mandar was removed from water. First aid was given to him and then he was taken to Primary Health Centre, Banda. The doctor declared him dead. Parents of Mandar were informed and they rushed to Primary Health Centre, Banda. They found their son dead and they approached the police station and lodged the report. On the basis of the said report, Crime No. 15 of 2012 was registered against the accused under Section 304 read with Section 34 of the Indian Penal Code.

6 The autopsy was conducted on the dead body and the medical officer had opined that the cause of death is asphyxia due to

drowning. The investigating officer had taken all steps of investigation including conducting of spot panchanama.

7 It was noticed in the spot panchanama that the water level in the swimming tank was up to 3 ft. and 8 inches and the total height of the tank was about 6 ft. No ladder was provided in the swimming tank and instead, 3 steel rings were provided for entering inside the tank. It is alleged that there was no protective wall.

8 It is the case of the prosecution that the present applicants are vicariously liable for the death of Mandar Rane, as no protective measures were taken by the Management of the School. No sufficient safeguards were provided. No protective equipments were given. There was only one trainer. The papers of investigation would reveal that there was only one swimming coach available for 35 students and that he could not pay attention to all the students at the same time.

9 The learned Sessions Judge has rejected the application under Section 227 of the Code of Criminal Procedure, 1973 mainly on the ground that the Management was negligent and therefore, they deserve to be prosecuted under Section 304 of the India Penal Code.

10 The learned Counsel for the applicants submits that in fact, the applicants were not even present at the time of the incident. That the school is receiving grant in aid and therefore, it would be under the supervision of the Deputy Director of the Education and that no complaints were filed prior to 12/6/2012.

11 The learned Counsel for the applicants has placed implicit reliance upon the Judgment of the Hon'ble Apex Court in the case of **Shantibhai J. Vaghela & anr. v/s. State of Gujarat & ors., which was registered as Criminal Appeal No. 1805 of 2012 & other connected matters arising out of SLP (Cri) No. 3198 of 2011 & ors.** The Hon'ble Apex Court has observed as follows :

“Commission of the offence of culpable homicide would require some positive act on the part of the accused as distinguished from **silence, inaction or a mere lapse**. Allegations of not carrying out a prompt search of the missing children; of delay in the lodging of formal complaint with the police and failure to take adequate measures to guard the access from the ashram to the river, which are the principal allegations made in the FIR, cannot make out a case of culpable homicide not amounting to murder punishable under Section 304 IPC. To attract the ingredients of the said offence something more positive than a mere omission, lapse or negligence on the part of the named accused will have to be present. Such statements are conspicuously absent in the FIR filed in the present case.”

In the above stated case, two students were missing from Ashram school, as they had gone towards river. The two students residing in Gurukul Ahram Shala had gone for dinner and after dinner, they had gone towards river. The watchman could not find the said children. Subsequently, dead bodies of the children were found from the river bed, which was located by side of the Ashram School.

12 In the present case, also it can be said that there was inaction/negligence on the part of the managing committee. However, they cannot be held responsible for offence punishable under Section 304 of the Indian Penal Code. In view of this, the present applicants deserve to be discharged in Sessions Case No. 31 of 2013. The impugned order dated 20th March, 2014 deserves to be quashed and set aside.

13 Hence, following order is passed :

ORDER

- (i) The Revision Application is allowed.
- (ii) The order dated 20th March, 2014 passed by the Sessions Judge, Sindhudurg-Oros is hereby quashed and set aside.
- (iii) The applicants are discharged in Sessions Case No. 31 of 2013.

14 Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV,J)