

CRIMINAL REVISION APPLICATION NO. 487 OF 2015

P.C. :

IPC. The case that is disclosed from the chargesheet in short is as under:

3. In Girgaon area of Mumbai City there were three buildings viz. Krishna, Laxmi A & B and Marker these were old cessed buildings. They were in dilapidated condition. The owner of the buildings sought permission to redevelop after demolition of the buildings. Such permission was granted to him. The owner appointed a developer for this work. The residents of these buildings were tenants of the owner and they were promised alternate accommodation / rehabilitation etc. Initially Krishna building was demolished and the new building in its place was constructed. Thereafter Laxmi A & B building was also demolished and in August 2006 demolition of third building viz. Marker building was started.

4. It is the prosecution case that there were at least five tenants staying in the building in August 2006. They were promised alternate accommodation, but were not given. While they were staying in the building the developer and his companions started demolition of the building from the top floor i.e., 4th floor. On 3rd of August 2006 part of the building collapsed causing death and injuries to residents as described above. The police, therefore, registered offence mainly against the demolition workers.

5. Accused No.1 Mangesh is the site Engineer/Supervisor and accused No.2 was in charge of the demolition work. It has

come on record that respondent/accused No.3 was over all in charge of the work, but he had given demolition work on contract-basis to one Kasambhai who is witness in this case. Kasambhai stated in his statement to police that prior to starting of demolition work he ensured that all residents of this building had vacated their tenements and it is only, thereafter, he started the work of demolition. He state that he appointed accused No.2 incharge of the demolition work. He also stated that on 3rd of August, 2006 he learnt from accused No.2 that mishap had taken place.

6. There is nothing on record to show that respondent/accused No.3 was present at the site when the mishap took place. It is also not the case of prosecution that accused No.3 was visiting the site prior to the mishap to ensure that demolition work continued despite knowing that five tenants were still occupying their tenements.

7. The formula adopted by the prosecution agency clearly appears that those who attended the work of demolition on the site would be prosecuted. Applying this formula they did not make Kasambhai (who was given contract of demolition work) as an accused, only because he was not present when the mishap took place. They accepted his case that he had appointed Yusuf(accused No.2) as worker to execute the demolition work. So if demolition contractor of the project, who was not present at the spot cannot be fastened with criminal liability, the learned Judge rightly accepted the plea of the respondents that he was not present on the spot at

the time of the mishap and discharged him.

8. The learned APP pointed out that the present respondent/accused No.3 had earlier in 2007 made a similar application seeking discharge and the same was rejected by a reasoned order of the learned Judge of the Sessions Court. She further suggests that second application seeking discharge was not maintainable. I am afraid this plea is not sufficient to set aside the impugned order. Till 2013 the case remained pending for pre-trial formalities. I found that several applications were moved, some came even before this Court and ultimately in 2013 parties were given liberty to make fresh applications to the trial Court before the charge could be framed. At one point of time dispute between the parties revolved around the question is to whether offence punishable under Section 304(2)IPC is maintainable against the accused. In any case assuming that such offence is made out against accused Nos. 1 and ,the question still remained as to whether there is sufficient ground for proceeding against accused No.3 whose case was different than accused Nos. 1 & 2. I must also record that case against accused Nos. 1 & 2 is distinctly different than the case against accused No.3. The order discharging him from the case appears to be in law. No interference is called for.

9. The learned APP also showed to me that way back in 2002 though respondent (accused No.3) was one of the owners of the project, for the purpose of Municipal permission etc., he was named as Site Supervisor. Others were appointed as Architect,

Structural Engineer etc. Even this circumstance would not help the prosecution because on the day of mishap / incident the Site Supervisor was accused No.1 between 2002 and 2006 several changes took place and therefore, this circumstance in my view is not relevant and cannot be a ground for proceeding against respondent No.3.

10. Revision application is dismissed.

(A.V. NIRGUDE, J.)

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