

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K.RAMAKRISHNAN

TUESDAY, THE 24TH DAY OF MARCH 2015/3RD CHAITHRA, 1937

CrI.MC.No. 169 of 2013 ()

**AGAINST THE ORDER IN CP 40/2012 of J.M.F.C.-II, ALUVA, IN
CRIME NO. 9993/2011 OF TRAFFIC POLICE STATION EAST, ERNAKULAM.**

PETITIONER(S)/ACCUSED:

**GEORGE LINSON,
S/O. LINSON JOSEPH, ATTOKKARAN HOSUE, MANIMALA ROAD,
EDAPPALLY, ERNAKULAM DISTRICT.**

BY ADV. SRI. BABU S. NAIR

RESPONDENT(S)/STATE:

**THE STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, KOCHI-31,
THROUGH THE STATION HOUSE OFFICER,
CITY TRAFFIC POLICE STATION, KOCHI.**

BY PUBLIC PROSECUTOR SMT. V.H. JASMINE

**THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24-03-2015,
THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

:2:

Crl.MC.No. 169 of 2013

APPENDIX

PETITIONER(S) EXHIBITS :

ANX.A : TRUE COPY OF THE F.I.R. IN CRIME NO. 9993/2011 OF THE CITY TRAFFIC POLICE STATION, KOCHI, DATED 30-7-2011.

ANX.B : TRUE COPY OF THE FINAL REPORT/CHARGE IN CRIME NO. 9993/2011 OF THE CITY TRAFFIC POLICE STATION, KOCHI.

RESPONDENTS' EXHIBITS : NIL

// True Copy//

P.A. to Judge

SS

K. RAMAKRISHNAN, J.

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Crl.M.C. No.169 of 2013

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Dated this the 24th day of March, 2015

ORDER

Accused in C.P.40/2012 on the file of the Judicial First Class Magistrate Court-II, Aluva, has filed this petition to quash the proceedings under Section 482 of the Code of Criminal Procedure (hereinafter called 'the Code').

2. It is alleged in the petition that the petitioner is the accused in Annexure-A first information report in Crime No.9993/2011 of City Traffic Police Station, Kochi, alleging commission of the offence under Section 304 of the Indian Penal Code.

3. The case of the prosecution was that, on 30.07.2011 at about 09.05 P.M., the petitioner drove the car with Reg.No.KL-07/BN-1131 in a rash and negligent manner through the service road on the western side of the national highway and when it reached the place of occurrence, it collided with a motor bike resulted in the death of the rider

of the motor bike by name Manoj and caused injury to another person, who was travelling as a pillion rider and thereby he had committed the above said offence.

4. After investigation, Annexure-B final report was filed for the offence under Section 304 of the Indian Penal Code and it was taken on file as C.P.40/2012 on the file of the Judicial First Class Magistrate Court-II, Aluva and pending before that court. According to the petitioner, it is only a motor vehicle accident caused at the most due to reckless and negligent driving of the car by the petitioner. Even if the entire allegations of the prosecution is accepted, it will not amount to culpable homicide not amounting to murder punishable under Section 304 of the Indian Penal Code. Further in order to attract the offence under Section 304 of the Indian Penal Code, it must be alleged that, he had the intention to cause that particular act and also the knowledge that it is likely to cause death of a person and such allegations are lacking in the case. Further rash and

negligent driving and death due to negligent act and culpable homicide not amounting to murder will not go together and they are mutually exclusive and ingredients are entirely different and this is clear from the decision reported in **Prabhakaran v. State of Kerala [2007(3) KLT 400 (SC)]**. Even assuming that, the entire allegations of prosecution is accepted, no offence under Section 304 of the Indian Penal Code is attracted and proceeding with the case will amount to abuse of process of court and the offence may at the most fall under Section 304(A) of the Indian Penal Code and not under Section 304 of the Indian Penal Code. The petitioner has no other remedy, except to approach this court, seeking the following relief:

“It is most humbly prayed that this Hon'ble Court may be pleased to quash the entire proceedings in C.P.No.40/2012 of the JFCM-II, Aluva, Kochi, in the interest of justice”.

5. Heard the counsel for the petitioner Smt. Smitha Babu and Public Prosecutor Smt. V.H. Jasmine.

6. The counsel for the petitioner submitted that, even assuming that the entire allegations are accepted, no offence under Section 304 of the Indian Penal Code is attracted. Further what is stated by the witnesses is that, the vehicle was driven in a rash and negligent manner and hit against the motor cycle driven by the rider of the motor cycle and on account of the same, the rider and pillion rider of the motor cycle sustained grievous injuries and the rider of the motor cycle succumbed to the injuries. There is no intention on the part of the driver of the car who is the petitioner herein to commit the crime or he had the knowledge that his act is likely to cause death of a particular person. In the absence of such evidence or allegations, the offence is not attracted. The learned counsel has relied on the decision reported in **Prabhakaran v. State of Kerala [2007(3) KLT 400 (SC)]**, **Benny v. State of Kerala (1991(1) KLT 695)**, **Sushil Ansal v. State Through CBI (2014 KHC 4153)**.

7. On the other hand, the learned Public Prosecutor has submitted that, the witnesses have deposed that, he had driven the vehicle with a knowledge that it is likely to cause death, and the other things are matter for evidence. It is not a fit case to invoke Section 482 of the Code of Criminal Procedure to quash the proceedings at this stage and she had relied on the decision reported in **State Through PS Lodhi Colony, New Delhi v. Sanjeev Nanda [2012(8) SCC 450]**.

8. It is an admitted fact that police had registered Annexure-A first information report as Crime No.9993/2011 of City Traffic Police Station, Kochi, against the identifiable driver of the car KL-7/BM-1131, alleging offence under Section 304 of the Indian Penal Code. After investigation, police filed Annexure-B final report alleging that the petitioner had committed the offence punishable under Section 304 of the Indian Penal Code and during investigation it was revealed that, it was the petitioner who

had driven the vehicle at the relevant time and he was shown as accused and the case was taken on file as C.P.No.40/2012 on the file of the Judicial first Class Magistrate Court-II, Aluva and it is pending before that court.

9. The allegation in the final report was as follows:

"പ്രതി തന്റെ പ്രവർത്തികൊണ്ട് ആർക്കെങ്കിലും മരണം വരെ സംഭവിക്കാം എന്നുള്ള അറിവോടെ KL-7/ BN 1131-ാം നമ്പർ കാറിന്റെ ഡ്രൈവറായി ചുമതല വഹിച്ച് പാലാരിവട്ടം ഇടപ്പള്ളി ബൈപാസ് റോഡിനു പടിഞ്ഞാറു വശം സർവീസ് റോഡെ തെക്കു നിന്നും വടക്കോട്ട് അശ്രദ്ധയോടെ അതിവേഗതയിൽ ഓടിച്ചു വന്ന് ഇടപ്പള്ളി നോർത്തു വില്ലേജ് ചുറ്റുപാടു കരയിൽ തെക്കു വടക്കായി കിടക്കുന്ന വൈറ്റില-ഇടപ്പള്ളി ബൈപാസ് റോഡിനു പടിഞ്ഞാറു വശം സമാന്തരമായി സ്ഥിതി ചെയ്യുന്ന ഈസ്റ്റേൺ ബിൽഡിങ്ങിനു തെക്കു വശം ടി റോഡിനു പടിഞ്ഞാറു വശം സ്ഥിതി ചെയ്യുന്ന KTC കമ്പനി വക സ്ഥലത്തിന്റെ മുൻവശം ഗേറ്റിന്റെ വടക്കു വശം പില്ലറിന്റെ തെക്കു കിഴക്കു മൂലയിൽ നിന്നും 10.55 മീറ്റർ വടക്കു കിഴക്കു മാറിയും ആയതിനു വടക്കു വശം ടി റോഡിനു പടിഞ്ഞാറു വശം റോഡ് മാർജിനിൽ സ്ഥിതി ചെയ്യുന്ന EM 19/9 എന്ന നമ്പറുള്ള കോൺക്രീറ്റ് ഇലക്ട്രിക് പോസ്റ്റിന്റെ ചുവട്ടിൽ നിന്നും 8.95 മീറ്റർ തെക്കു കിഴക്കു മാറിയും ടി റോഡിനു കിഴക്കു വശം ടാർ എസ്റ്റിൽ നിന്നും 55 cm നേരെ പടിഞ്ഞാറു മാറിയും

കാണുന്ന ടാർ റോഡെ വടക്കു നിന്നും തെക്കോട്ട് ഓണക്കൂർ വില്ലേജ്.”

10. Section 304 and 304(A) of the Indian Penal

Code reads as follows:

304. Punishment for culpable homicide not amounting to murder.- Whoever commits culpable homicide not amounting to murder shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

304A. Causing death by negligence.- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

11. In the decision reported in **State Through PS Lodhi Colony, New Delhi v. Sanjeev Nanda [2012 (8) SCC 450]**, the Hon'ble Supreme Court has considered the question as to whether for death caused in a motor vehicle accident, the driver can be prosecuted for the

offence under Section 304 Part-II of the Indian Penal Code and the Hon'ble Supreme Court has observed that, if the vehicle was driven at high speed and if the accused had sufficient knowledge that the action is likely to cause death and such an action would in the facts and circumstances of the case resulted in death of a person, then, it will fall under Part-II of Section 304 of the Indian Penal code. Further for convicting the offence under Part-II of Section 304 of the Indian Penal Code, the intention is not required, intention need not be proved and what is to be proved by the prosecution is that, the accused had the knowledge that his action is likely to cause death.

12. In the decision reported in Prabhakaran's case (supra), the Hon'ble Supreme Court has considered the question of distinction between the rashness and culpable negligence. It is observed that, criminal rashness means hazarding dangerous or wanton act with the knowledge that, it is dangerous or wanton and further

knowledge that, it may cause injury, but done without any intention to cause injury or knowledge that it would probably be caused. The criminality lies in such a case in running the risk of doing such act with recklessness or indifference as to the consequences. Criminal negligence on the other hand is a gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to public generally or individual in particular which having regard to all the circumstances of which the charge has been arisen, it was the imperative duty of the accused person to have adopted.

13. In the decision reported in **Benny v. State of Kerala [1991(1) KLT 695]**, it has been observed that, Section 304 is not attracted where intention to cause death or knowledge that the act done will likely or in all probability cause death is there. It was further observed that, Section 222 of the Code of Criminal Procedure cannot be attracted because Section 304(A) is not a minor offence

constituting only some of the several particulars of major offence punishable under second Part of Section 304. Both are independent and mutually exclusive offences. This is not a case in which Section 221 of the Code could be attracted. There is no question of any doubt regarding the offence which the facts will constitute. In a charge for an offence under Section 302 or 304, it is not possible to enter conviction for the offence under Section 304(A) without a charge under that Section. That is clear from illustration also. Section 221 is applicable only in cases where a single act or series of acts is of such a nature that is doubtful which of several offences, the facts which can be proved will constitute.

14. In the decision reported in **Sushil Ansal v. State Through CBI (2014 KHC 4153)**, the Hon'ble Supreme Court has considered the question as to what constitute criminal negligence, so as to attract the offence under Section 304(A) of the Indian Penal Code.

15. All these decisions were rendered on the basis of the evidence available on record, not at the stage of quashing the proceedings. In this case, I have gone through the entire CD statement of the witnesses and they have categorically stated that, the vehicle was driven at high speed in a careless manner with the knowledge that his act is likely to cause death of a person and with that knowledge he drove the vehicle and hit against the motor cyclist and caused his death. So the statement of the witnesses will go to show that they have categorically stated that the accused had done this act with a knowledge that his act is likely to cause death of some person, which is an ingredient to be alleged by the prosecution for attracting the offence under Section 304 Part-II of the Indian Penal Code. At this stage, court need only to consider whether the allegations and the evidence collected by the investigation agency is sufficient to attract the offence under Section 304 of the Indian Penal Code and not to consider as to whether that is sufficient for

conviction. Once the court is satisfied that the statement of the witnesses are sufficient to attract the offence under Section 304 of the Indian Penal Code, then court should be slow in quashing the proceedings and it is for the trial court to consider the question on the basis of evidence to ascertain as to whether that is sufficient to convict the accused and that is not the lookout of the High Court while exercising the power under Section 482 of the Code of Criminal Procedure.

16. In view of the discussions made above, this court feels that, it is not a fit case to invoke the power under Section 482 of the Code of Criminal Procedure to quash the proceedings, as the allegations and the evidence collected by the investigation agency and the statement of witnesses categorically show that, the offence will fall under Section 304 of the Indian Penal Code and in case the court wants to frame charge, court is entitled to frame additional or alternate charge under Section 304(A) of the Indian

Penal Code as well. If ultimately on the basis of evidence is likely to come a different conclusion as has been held in the decision reported in **Benny v. State of Kerala [1991(1) KLT 695]**. So the petitioner is not entitled to get the relief claimed and the same is liable to be dismissed.

In the result, the petition is dismissed.

Interim order of stay granted is vacated and Crl.M.A.No.277/2013 is dismissed.

Office is directed to communicate this order to the concerned court, immediately.

Sd/-
K. RAMAKRISHNAN, JUDGE

// True Copy//

P.A. to Judge

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