

**IN THE HIGH COURT OF PUNJAB AND HARYANAAT
CHANDIGARH**

Crl. Revision No.3114 of 2014(O&M)

Date of Decision: March 11 , 2015.

Narender Kumar @ Pappu

..... PETITIONER (s)

Versus

State of Haryana

..... RESPONDENT (s)

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. Parvesh Sachdeva, Advocate
for the petitioner.

Mr. Anmol Malik, AAG, Haryana.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

LISA GILL, J.

This revision petition has been preferred against order 11.09.2014 passed by learned Additional Sessions Judge, Sirsa directing framing of charge under Sections 279/427/304 Part II IPC as well as the charge-sheet dated 17.09.2014 against the petitioner.

Briefly stated facts are that, the abovesaid FIR was registered under Sections 279/304A/427 IPC on the statement of complainant, Narottam Singh.

As per the allegations in the FIR, complainant alongwith his two brothers Tarlochan Singh and Nirmal Singh were travelling in a Alto Car bearing registration No.DL9CR-5985. They were following Maruti car bearing registration No.DL2-CZ-3935 being driven by their brother, Purshotam in which their mother Gurdeep Kaur, brother's wife Manpreet Kaur, nephew Gursharan Singh and niece Sanjot Kaur @ Khushi were also travelling. At about 8.30 a.m. when they reached in between barrier of Panniwala Mota and Sahuwala, a TATA 407 bearing registration No. HR-57-5263 being driven by the present petitioner in a rash and negligent manner came from the opposite side and while overtaking a bus dashed against the Maruti car of his brother due to which, the car was completely damaged from its front side. In the accident, complainant's mother Gurdeep Kaur, brother Purshotam and niece Sanjot Kaur @ Khushi passed away. His sister-in-law and nephew Gursharan Singh received serious injuries.

Learned Chief Judicial Magistrate, Sirsa vide order dated 28.12.2013 observed that an offence punishable under Section 304 Part II IPC is made out against the petitioner. Section 304 Part II IPC was directed to be added and further investigation was directed to be carried out in accordance with law. Order dated 28.12.2013 is not under challenge in this petition and neither is it revealed to have been challenged by the petitioner.

After completion of investigation, challan/report under Section 173 Cr.P.C. was presented against the petitioner for offences punishable under Sections 279/304 Part II/427 IPC. The matter was ultimately committed to the court of Sessions by the learned Judicial Magistrate First Class, Sirsa on

16.05.2014, the offences not being triable by the Judicial Magistrate First Class.

After considering the entire facts and circumstances of the case, learned Additional Sessions Judge, Sirsa vide impugned order dated 11.09.2014 directed that the petitioner-accused be charge-sheeted for the commission of offences punishable under Sections 279/427/304 Part II IPC and the charges were accordingly framed against the petitioner on 17.09.2014.

Learned counsel for the petitioner vehemently contends that a bare perusal of the FIR merely reveals, if at all, the commission of offence punishable under Section 304A IPC though the same is also specifically denied. While referring to the statement of complainant Narottam Singh, it is submitted that he himself states that the offending vehicle was being driven in a rash and negligent manner by the petitioner, therefore, there is no question of attracting Section 304 Part II IPC. It is further submitted that there is nothing on record which would *prima facie* point to commission of the offence punishable under Section 304 Part II IPC. Reliance is placed on a judgment of Hon'ble Supreme Court in **Prabhakaran v. State of Kerala, 2007(3) RCR(Criminal) 605.**

I have heard learned counsel for the petitioner and gone through the file.

It is apparent that the petitioner was driving the offending vehicle i.e., TATA407 bearing registration No. HR-57-5263 and was approaching the complainant's as well as his brother's vehicle from the opposite side. It is obvious that he could see the vehicle coming from the opposite direction but he still persisted in overtaking the bus. In this situation, it can *prima facie*, be inferred that he had the knowledge that this act on his part could result in a

serious accident which may prove fatal. Undoubtedly, it is not a case where the petitioner has an intention to cause such bodily injury or to cause death but indeed he can be imputed with the knowledge that by his act of overtaking the bus in the face of oncoming of a vehicle, his act could result in a fatal accident.

Section 304 Part II IPC reads as under:-

“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.”

In the facts and circumstances of the case, there is no irregularity or illegality in the impugned order framing charge for the commission of offence under Section 304 Part II IPC. If at all during the course of trial or by leading evidence, the petitioner is able to prove otherwise, he can always be acquitted or punished for a lessor offence.

In view of the above but without expressing any opinion on the merits of the case, this petition is dismissed.

March 11, 2015.
'om'

(LISA GILL)
JUDGE