

\$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: March 09, 2015

+ **CRL.M.C. 5073/2013**

STATE Petitioner
Through: Ms. Nishi Jain, Additional Public
Prosecutor with SI Prakash Chand
versus

SUDHIR MISHRA Respondent
Through: Mr. Jaidev Sharma, Advocate

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

% **JUDGMENT**
(ORAL)

In FIR No.110/2008 under Sections 285/304-A of IPC registered at P. S. Naraina, Delhi, respondent-accused stands discharged by trial court vide order of 6th January, 2012, which is affirmed by the revisional court in its order of 27th July, 2012.

The facts giving rise to the FIR of this case, as noted in the impugned order of 27th July, 2012, are as under: -

“The respondent had been charge sheeted by the Police for having committed offences u/s 285/304A IPC. It was the case of the prosecution that on 15.5.2008, at about 12.58 pm, at Ring Road, Naraina, Opposite Vashishta Medical Hall, while the deceased Chhotey

Lal was cutting a drum using a welding machine, a blast occurred and the deceased suffered burn injuries to which he succumbed later on. The autopsy doctor opined the cause of death to be septicemic shock due to dry thermal flames, facial and respiratory burns.”

The allegations against respondent-accused are that he had pressurized the deceased to cut open the drum without caring for the safety of the deceased as the drum in question had oil in it. Respondent-accused has been discharged in this FIR case while noting that there is no eye-witness to this incident and no investigation has been conducted regarding petitioner being the Supervisor.

At the hearing, Ms. Nishi Jain, learned Additional Public Prosecutor for respondent-State, submits that the impugned orders result in miscarriage of justice as there is a statement of the deceased which ought to have been treated as dying-declaration, as the deceased had died within few days of the incident due to 70% burns.

It is pointed out that apart from the statement of the deceased, there is statement of witnesses *Ashok* and *Amod Paswan*, which has been illegally ignored by the courts below and from the statement of the deceased and above two witnesses, a *prima facie* case is made out to put respondent-accused on trial in this FIR case.

Learned counsel for respondent-accused had sought to support the impugned orders while submitting that there is no material on record to show that respondent-accused was a Supervisor at the relevant time and infact, no negligence is attributable to respondent-accused. The police file

containing the statements of above three persons was produced before this Court during the course of hearing.

Upon hearing and on perusal of the impugned orders, the statement of *Chhotey Lal* (since deceased) and the statements of other two witnesses i.e. *Ashok* and *Amod Paswan*, this Court finds that the impugned orders do not take any note of the aforesaid three material statements i.e. statement of the deceased as well as aforesaid two witnesses and thus, the impugned orders are rendered unsustainable as they result in miscarriage of justice.

In view of aforesaid, the impugned orders are hereby quashed and in view of statement of the deceased as well as the two witnesses, it is directed that respondent-accused be put on trial for the offence under Sections 285/304-A of IPC.

With aforesaid direction, this petition is disposed of.

(SUNIL GAUR)
JUDGE

MARCH 09, 2015

s