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

+ CRL.REV.P. 455/2013

STATE

..... Petitioner

Through: Ms.Kusum Dhalla, APP for the State
with SI Binod Kumar PS Mehrauli

versus

SANDEEP SAINI & ORS

..... Respondents

Through: Mr.Dharmender Arya, Adv. for R-3

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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10.02.2016

CRL.M.A.11967/2013

For the reasons stated in the application, the delay in re-filing of the revision petition is condoned.

The application stands disposed of.

CRL.M.A.11966/2013

For the reasons stated in the application, the delay in filing of the revision petition is condoned.

The application stands disposed of.

CRL.REV.P. 455/2013

1. This revision petition has been filed by the State impugning the order dated 4th October, 2012 whereby the respondent No.3, Baldev Singh was discharged by learned Trial Court in Sessions Case No.10/12 pertaining to FIR No.79/2012 under Sections 304/34 IPC.

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2. Vide impugned order the learned ASJ directed the contractor and the sub-contractor to be charged for committing the offence punishable under Section 304 Part II read with Section 34 IPC. However, the respondent No.3, Baldev Singh was discharged on the ground that he was the owner of the property who had entered into a collaboration agreement with the accused Sandeep Saini (Collaborator-cum-Builder) and another accused, Mohd. Saleem (contractor).

3. The State has challenged the impugned order mainly on the ground that being beneficiary, the owner cannot escape his liability under criminal law by entering into an agreement with the contractor or the builder. The building was being constructed unauthorisedly and the owner was also beneficiary under the collaboration agreement. It has been further contended that the use of sub-standard building material was major cause of collapse resulting into death of four innocent children and being owner of the property where the construction was going on, he was also liable to be charged along with the builder and the contractor.

4. On behalf of respondent No.3, Sh.Dharmender Arya, Advocate has submitted that Session Case No.31/2015 wherein the co-accused persons have been charged for committing the offences punishable under Section 304 Part-II/34 IPC, has already been disposed of by the learned Trial Court vide judgment dated 13.10.2015. He has also placed on record the copy of the judgment passed in Session Case No.31/2015.

5. Perusal of the copy of the judgment dated 13.10.2015 passed in Session Case No.31/2015 reveals that **though the Contractor – Mohd. Saleem has been convicted for committing the offence punishable under**

Section 304-A IPC, the Builder – Sandeep Saini has been acquitted of the charge.

6. Vide impugned order dated 4th October, 2012, though the Builder - Sandeep Saini and Contractor – Mohd. Saleem were ordered to be charged for the offence punishable under Section 304 (Part-II)/34 IPC, the owner – Baldev Singh i.e. the respondent herein was discharged for the following reasons :-

- (i) The construction at plot No.D-27, Chhattarpur Extension, New Delhi was done by accused Sandeep Saini (Collaborator-cum-Builder) and Mohd. Saleem was the contractor of the builder.
- (ii) The plot in question belonged to Baldev Singh (discharged respondent) who had entered into collaboration agreement on 7th July, 2011 with accused Sandeep Saini. Under the said agreement the entire investment on construction of four flats each on four floors (16 flats) was to be done by Sandeep Saini with his own funds.
- (iii) The owner of the plot was to get 8 flats out of those 16 flats i.e. two flats on each floor.
- (iv) The owner of the plot had no say in the matter of construction hence he cannot be charged for the offence committed by the builder/contractor.

7. While discharging the owner Baldev Singh, learned Trial Court placed reliance on decision of this Court in ***Baldev Raj Kapur Vs. State, 2009 CrL LJ 1418*** wherein in somewhat or similar circumstances the owner was discharged.

8. The prosecution is trying to fasten the criminal liability on the owner of the plot i.e, respondent No.3 before this Court namely Baldev Singh on the ground that he was owner of the property but without disputing that he

entered into a collaboration agreement for constructing 16 flats on four floors (four flats per floor). The Builder was to get the construction done from accused Mohd.Saleem. There is no material collected by the prosecution that the owner of the plot had any say, interference, supervision in the construction to be raised on his plot or at any point of time was found giving instructions in respect of the quality of the material used in the construction.

9. In the case ***Baldev Raj Kapur Vs. State*** (Supra) which has been relied upon by the learned Trial Court, the facts were identical to the extent that the petitioner/accused Baldev Raj Kapur was owner of Shop No.23, DDA Market, Shanti Store, Punjabi Bagh, Delhi. On 22.10.2012 the said four-storey building, which was under construction, collapsed and six labourers were died and eight labourers received grievous injuries in the said incident. Injured Arun Kumar, who was working a mason in the said building made a statement to the police, on the basis of which FIR No.832/2002 for committing the offence punishable under Sections 304/308/427/34 IPC was registered against the petitioner/accused Baldev Raj Kapur and co-accused Mohd. Kaif. At the stage of trial, the learned ASJ formed an opinion that a prima facie case under Section 304 Part-II/308 IPC was made out against him and the said order was impugned by the petitioner/accused by filing Criminal Revision (P) No.431/2005. After considering the decisions reported as ***State of Maharashtra v. V. Govind Salalsure and others – 1991 (2) Cri. LC 623*** and ***Krishan Lal v. State of Haryana 1994 (1) Recent Criminal Reports 259*** as well the aspect of vicarious liability, the petitioner/accused, who was owner of the property, was discharged observing as under:-

'18. Reading of Section 304 Part II makes it clear that an accused can be charged under the said provision for an offence of culpable homicide not amounting to murder only when being so charged, it is alleged that the accused has done the act with the knowledge that it is likely to cause death or to cause such bodily injury as is likely to cause death; under such circumstances the charged offences would fall under Section 304 Part II. But, before any charge is framed under Section 304 Part II, the material on record must at least prima facie show that the accused is guilty of homicide and the act committed must amount to culpable homicide. Where the material relied upon for framing such a charge against the accused concerned falls short of even prima facie indicating that the accused appeared to be guilty of an offence of culpable homicide under Section 304 Part II IPC not amounting to murder, it is in the interest of justice that provisions of Section 304 Part II IPC are eliminated.

19. Consequently, the material placed on record and relied upon before the trial court by the prosecution for framing a charge under Section 304 Part II IPC, as discussed, in my view, cannot support such a charge unless, it indicated prima facie that on that fateful day when the building collapsed, it was being constructed under the direct supervision of the petitioner or on his instructions and it was within the knowledge of the petitioner that such construction was likely to cause death of human beings.

20. Therefore, the trial court did not rightly consider the entire material placed on record by the prosecution while charging the petitioner for offences under Section 304 Part II IPC. The material placed on record did not call for framing of a charge against the petitioner only on the plea that, petitioner being owner of the property was in the knowledge of the consequences of the construction, that it was likely to cause death or bodily injuries to the labourers working therein.'

10. The case of the petitioner/State is squarely covered by the decision of

this Court in *Baldev Raj Kapur's case* (Supra) as here also except the fact that the respondent No.3 was owner of the plot on which construction was to be raised by the builder, there was no material against him on the basis of which criminal liability could be imposed on him even for purpose of framing of charge.

11. The factual aspect of the matter that Baldev Singh was discharged by the learned Trial Court on the ground that he was owner of the plot on which construction is being raised and he had no say in the construction at his plot carried out by the builder/contractor is not in dispute.

12. The learned ASJ has passed a reasoned order and the view taken by learned ASJ cannot be termed as unreasonable, perverse or untenable in law or formed after ignoring the material facts.

13. The impugned order does not warrant any interference by this Court in exercise of revisional jurisdiction.

14. Revision petition is dismissed.

PRATIBHA RANI, J.

FEBRUARY 10, 2016

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