

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

Judgment reserved on: 25.07.2016

% **Judgment delivered on: 01.08.2016**

+ **W.P.(CRL) 1280/2016 and Crl. M.A. No.6706/2016**

BHAJAN LAL SHARMA

..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
along with Mr. Anurag Jain,
Advocate.

versus

STATE (GOVT OF NCT OF DELHI) & ORS Respondents

Through: Mr. Avi Singh, ASC and Ms. Megha
Bahl & Mr. Ananya Mohan,
Advocates along with SI Janak Singh,
PS-New Friends Colony, for the
State.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

J U D G M E N T

VIPIN SANGHI, J.

1. The present writ petition has been preferred by the petitioner to seek the quashing of FIR No. 619/2015 dated 25.12.2015 registered at PS New Friends Colony under Sections 288/337/304A IPC and the proceedings arising therefrom.

2. The case of the petitioner is that petitioner is a building contractor. He was engaged to carry out construction work on Plot No. D-1093, New Friends Colony, New Delhi. The aforesaid FIR came to be registered in pursuance of DD No. 8A dated 25.12.2015 recorded at Police Station New Friends Colony regarding collapse of a building at New Friends Colony, resulting in people getting buried under the debris.

3. The case of the prosecution is that after reaching the spot, on investigation by the police it was revealed that during excavation of basement in a dangerous manner, debris and soil fell on the labourers. On search in the debris, one of the labourer Badri Prasad, son of Keram, aged 65 years, was removed. He was removed to the hospital. He was declared brought dead by the hospital. Several other labourers i.e. respondent Nos. 5 to 9 herein were also injured in the accident, and were taken to AIIMS for treatment. Investigations revealed that the construction of basement was being carried out without any safety measures. The crime team reported the commission of an offence under Sections 288/337/304A IPC. The deceased Badri Prasad is survived by respondent No.2-his wife, and respondent Nos. 3 and 4-his sons.

4. The present petition is premised on a settlement arrived at between the petitioner on the one hand, and respondent Nos. 2 to 9 on the other hand, before the Deputy Labour Commissioner, South District, Government of NCT of Delhi. The petitioner has paid a sum of Rs. 4,50,000/- as compensation and Rs. 20,600/- as ambulance charges, totaling Rs. 4,70,600/-, against receipt dated 26.12.2015 to the LRs of the deceased Badri Prasad, namely, respondent Nos. 2 to 4. Respondent Nos. 5 to 9 made

a statement before the Deputy Labour Commissioner that they had not received any injury and that they do not want any compensation from the petitioner. Respondent Nos. 2 to 9 also filed their affidavits before the Labour Court in the aforesaid terms. The petitioner submits that respondent Nos. 2 to 9 do not want any further action in the matter, and that the said respondents have no objection if the said FIR and the proceedings arising there from are quashed, as no useful purpose would be served in continuing with the same.

5. Along with the petition, the affidavits of respondent Nos. 2 to 9 have also been filed, stating that an amicable settlement of all disputes has been reached with petitioner No. 1 without any pressure or coercion, and that each of the said respondent has no objection if the FIR and the proceedings arising there from are quashed.

6. The State has filed its counter affidavit seriously opposing the quashing of the FIR and the proceedings arising there from.

7. The submission of Mr. Sethi, learned senior counsel for the petitioner is that, firstly, there is nothing to show that there was any negligence, much less grave negligence on the part of the petitioner in carrying out the construction work, which led to the accident resulting in death of the labourer Badri Prasad. Mr. Sethi submits that the petitioner is concerned about the well-being of his labour force, and the petitioner did not take any time to assuage the suffering of the LRs of the deceased Badri Prasad. He submits that without any delay, the payment of compensation amounting to Rs. 4,70,600/- was made on 26.12.2015 itself. Mr. Sethi submits that there

was no *mens rea* to commit the offences of which the petitioner has been accused. Mr. Sethi further submits that since the respondent Nos. 2 to 9 have supported the petition, no useful purpose would be served in keeping the said FIR and the proceedings there under pending any further.

8. Mr. Sethi submits that in a large number of other cases under Section 304A, where the accusation was that the accused had caused the death of a person by doing any rash or negligent act – not amounting to culpable homicide, the Courts have quashed the criminal proceedings on the basis of settlement reached with the LRs of the deceased. In this regard, he places reliance on ***Lalit Gupta Vs. State & Ors.***, 2009(2) JCC 890 - which was a case under Section 288/304A IPC; ***Vishal Arora Vs. State & Ors.*** 2014(4) JCC 2867-which was a case under Section 279/ 337 and 304A IPC; ***Ram Karan Vs. State & Ors.***, 2015(3) JCC 1685-which was a case under Section 279/304A IPC, ***Saheb Mandal Vs. State of National Capital Territory of Delhi & Anr.***, 2015(4) JCC 2600-which was a case under Section 288/304A; and ***Manjeet Vs. State (NCT of Delhi)***, 2016 (1) JCC 574-which was a case under Section 279, 337 and 304A IPC, wherein the Court quashed the FIR and the proceedings arising thereunder, on account of the settlement reached between the accused and the complainants/heirs of the deceased-victim. Mr. Sethi submits that the stand taken by the respondent in the present case is discriminatory inasmuch, as, the State cannot raise an objection to the FIR and the proceedings there under being quashed in the present case-which also alleges commission of offences under Sections 288/337/304A IPC, when the State did not object to the FIRs being quashed in other similar cases, such as the aforesaid.

9. Mr. Sethi submits that in the aforesaid cases, this Court noticed the judgment of the Supreme Court in ***Gian Singh Vs. State of Punjab***, (2012) 10 SCC 303 for the proposition that even a non-compoundable offence can be quashed on the ground of a settlement between the offenders and the victim if the circumstances so warrant. The Courts also took notice of ***Narinder Singh and Ors. Vs. State of Punjab and Anr.***, 2014(2) Crimes 27(SC). Mr. Sethi submits that in ***Narinder Singh*** (supra), the Supreme Court had, inter alia, held that the inherent power to quash the criminal proceedings lies with the High Court even in respect of cases which are not compoundable. The guiding factor, in such circumstances, is to secure the ends of justice; or to prevent the abuse of process of any Court. Mr. Sethi submits that such power cannot be exercised in cases where the prosecution is in respect of heinous and serious offences of mental depravity or offences like murder, rape, dacoity etc. This is because such offences are not private in nature, and have a serious impact on society. Offences under special Statutes like the Prevention of Corruption Act, or the offences committed by public servants while working in that capacity also cannot be quashed, merely on the basis of compromise between the victim and the offender. However, criminal cases which are overwhelmingly and pre-dominantly civil in character, particularly, those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed where the parties have resolved their entire disputes. Mr. Sethi submits that this Court should also examine as to whether the possibility of conviction is remote and bleak, and continuation of criminal case would put the accused to great oppression, prejudice and extreme injustice if the criminal case is not quashed. Mr. Sethi submits that in the present case,

since the complainant and the other injured, as also the legal heirs of the deceased Badri Prasad have entered into a compromise with the petitioner, the possibility of the petitioner being convicted is remote. Mr. Sethi submits that in such cases, the timing of the settlement plays a crucial role. In the present case, settlement has been arrived at at the initial stage itself. The Supreme Court has held in *Narinder Singh* (supra), that where a settlement is arrived at immediately after the alleged commission of offence, and the matter is still under investigation, the High Court could be liberal in accepting the settlement to quash the criminal proceedings/investigation. Cases where the charge is framed, but the evidence is yet to start, or evidence is still at initial stage, may also be considered benevolently by the High Court but after prima facie assessment of the circumstances/materials brought on record.

10. On the other hand, learned Additional Standing Counsel for the State has submitted that the death of a person in an accident like the present can never be a private affair. He submits that the mere fact that while digging the basement, the mud collapsed, resulting in one of the labourer Badri Prasad getting buried and others, namely, respondent Nos. 5 to 9 also getting injured, itself speaks for the fact that the said digging was being undertaken by the petitioner-contractor in a grossly negligent manner, i.e. without due and adequate protection. He submits that the fact that such an accident speaks for itself, that sufficient support to prevent the earth from collapsing on the labour force working on the excavated ground had not been provided. Such negligence is gross, as collapse of earth/ mud, gravity, unless the same is adequately supported, is known to be highly likely.

11. Mr. Singh, learned ASC submits that the deceased Badri Prasad was a poor person and his LRs respondent Nos. 2 to 4 i.e. his widow and the two sons are equally poor. So far as respondent Nos. 5 to 9 are concerned, they really have no choice but to settle with the petitioner, as he is their employer and they are dependent upon him for their livelihood. Mr. Singh submits that the present case does not fall within the parameters laid down by the Supreme Court in *State of Haryana Vs. Bhajan Lal and Others*, (1992) SCC (Cri) 426, wherein the Supreme Court laid down the guidelines with regard to exercise of power by the High Court under Section 482 Cr.P.C. for quashing of a FIR. In particular, he has referred to para 102 and 103 of the said decision.

12. Here itself, I may observe that the reliance place on *Bhajan Lal* (supra) is misplaced, for the reason that the Supreme Court was not considering a situation where the complainant/ victim/ heirs of the victim had entered into a settlement with the accused. The categories of cases, enumerated in paragraph 102 of the decision in *Bhajan Lal* (supra) is illustrative, and all the said categories of cases are where the quashing of the FIR may be ordered by the Court on merits, and not on account of a settlement.

13. Mr. Singh has also relied on *Gian Singh* (supra) and *Narinder Singh* (supra) to submit that the offence in the present case is not one of civil nature, and cannot be quashed merely on the basis of settlement. The offences involved in the present case cannot be described as private in nature. The same have a serious impact on the society, and the quashing of the FIR in the present case would send a message to the petitioner as well as

the society at large that contractors/ authorities/ entities can get away with their gross negligence – which may even result in loss of innocent lives, by merely paying compensation to the victim/ his legal heirs. Mr. Singh submits that even in *Narinder Singh* (supra), the Court has observed that the power to quash an FIR is to be sparingly exercised with caution.

14. Mr. Singh also submits that the possibility of conviction in the present case cannot be said to be remote, considering the facts and circumstances of the present case. Mr. Singh submits that the draft charge-sheet has already been prepared in the matter.

15. He places reliance on *Jacob Mathew Vs. State of Punjab & Another*, (2005) 6 SCC 1, and in particular to conclusion drawn by the Court as contained in paragraph 48 (5), wherein the Supreme Court held that for negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher, i.e. gross, or of a very high degree. Negligence which is neither gross, nor of a high degree, may provide a ground for action in civil law but cannot form the basis for prosecution. The Supreme Court held that the word “gross” has not been used in Section 304A IPC, yet it is settled that in criminal law, negligence or recklessness, to be so held, must be of such a high degree as to be “gross”. The expression “rash or negligent act” as occurring in Section 304A IPC has to be read as qualified to be read “grossly”.

16. He also places reliance on *Sushil Ansal Vs. State*, (2014) 6 SCC 173, wherein the Supreme Court observed:

“Enforcement of laws is as important as their enactment, especially where such laws deal with safety and security of citizens and create continuing obligations that call for constant vigil by those entrusted with their administration. Callous indifference and apathy, extraneous influence or considerations and the cynical “chalta hai” attitude more often than not costs the society dearly in man-made tragedies whether in the form of fire incidents, collapse of buildings and bridges, poisonous gas leaks or the like. Short-lived media attention followed by the investigations that at times leave the end result flawed and a long-winding criminal trial in which the witnesses predecease their depositions or switch sides under pressure or for gain and where even the victims or their families lose interest brings the sad saga to an uncertain end.”

17. Mr. Singh submits that the Supreme Court in ***Sushil Ansal*** (supra) echoed the same callous indifference, apathy and cynical *chalta hai* attitude which the petitioner has displayed in the present case. Merely because the complainant and the injured and LRs of the deceased Badri Prasad have settled with the petitioner, does not mean that the crime against the State can be condoned or compounded.

18. He also places reliance on ***Sheonandan Paswan Vs. State of Bihar & Others***, (1987) 1 SCC 288, wherein the Supreme Court, *inter alia*, observed as follows:

“14. It is now settled law that a criminal proceeding is not a proceeding for vindication of a private grievance but it is a proceeding initiated for the purpose of punishment to the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right is given to any citizen to set the machinery of the criminal law in motion for the purpose of

bringing the offender to book. It is for this reason that in A.R. Antulay v. R.S. Nayak [(1984) 2 SCC 500 : 1984 SCC (Cri) 277] this Court pointed out that (SCC p. 509, para 6) “punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait jacket formula of locus standi”

... ..

If the offence for which a prosecution is being launched is an offence against the society and not merely an individual wrong, any member of the society must have locus to initiate a prosecution as also to resist withdrawal of such prosecution, if initiated.”.

19. Mr. Singh has also referred to Section 357A of the Code of Criminal Procedure. He submits that quashing of the FIR at this stage would mean that the possibility of the victims being compensated, in the event of the petitioner/ accused being convicted, would be extinguished.

20. Mr. Singh relies on ***State of Karnataka Vs. Sharanappa Basanagouda Aregoudar***, (2002) 3 SCC 738, to submit that the aspect of deterrence, which goes into the prosecution and punishment for such offences would be completely lost, if all cases involving Section 304A IPC were permitted to be quashed on the basis of a compromise. This was also a case under Section 304A IPC. The respondent had been found guilty of offences under Section 279/ 337/ 338/ 304 A IPC. The appeal before the Supreme Court arose on account of the learned Single Judge of the High Court, while upholding the conviction, reducing the sentence to payment of fine of Rs.5,000/-, and in default thereof, to undergo simple imprisonment

for 3 month for the offence under Section 304A. In respect of the offence under Section 337 IPC, the learned Single Judge imposed a sentence with a fine of Rs.500/-, and in default, to undergo simple imprisonment for 15 days. Similarly, for the offence under Section 338 IPC, the sentence was fine of Rs.550/-, and in default, a simple imprisonment for 15 days. There was no separate sentence for the offence punishable under Section 279 IPC. The Supreme Court interfered with the judgment of the learned Single Judge of the High Court, insofar as the High Court had reduced the sentence. The Supreme Court observed that, in view of the serious nature of the accident, which resulted in death of four persons, the learned Single Judge should not have interfered with the sentence imposed by the Court below. The Supreme Court observed:

“6. It may create and set an unhealthy precedent and send wrong signals to the subordinate courts which have to deal with several such accident cases. If the accused are found guilty of rash and negligent driving, courts have to be on guard to ensure that they do not escape the clutches of law very lightly. The sentence imposed by the courts should have deterrent effect on potential wrongdoers and it should commensurate with the seriousness of the offence.....”.

21. He also places reliance on ***Raj Pal Vs. State***, 1992 CrL.L.J. 1470, to submit that this Court denied the benefit of probation in a case of rash and negligent driving by the accused bus driver, on the wrong side on a high speed resulting in loss of two lives and grievous injury to the third. Mr. Singh submits that this shows the seriousness with which offences of gross negligence resulting in death are viewed by the Court.

22. Having heard learned senior counsel for the petitioner as well as the learned ASC, I am not inclined to quash the FIR in question and the criminal proceedings arising therefrom in the facts of the present case.

23. The decision relied upon by Mr. Sethi in *Lalit Gupta* (supra) is distinguishable inasmuch, as, the State was agreeable to the FIR in that case under Sections 288 and 304A IPC being quashed. The decision itself does not show the nature of the accident which resulted in “accidental death” in that case.

24. *Vishal Arora* (supra) was a case where one of the labourers sitting on the top of the truck fell on the road and died when the truck met with an accident with a Maruti SX4 car. In this case as well, the State did not oppose the quashing of the FIR on account of the settlement being reached between the petitioner/ accused and the legal heirs of the deceased.

25. It would be seen that the nature of the accident was quite different from the one involved in the present case. The deceased was sitting on top of the truck, which was hit by the car of the accused. He fell off the truck on the road and died. The nature of the accident itself did not prima-facie indicate the culpability of the accused. Whether or not the accident took place due to the gross negligence of the accused; the accident was the immediate cause of the fatality, and; whether there was any contributory negligence were all issues that were still at large. The nature of the accident did not indicate, prima facie, that culpability of the accused could be said to be probable.

26. **Ramkaran** (supra) was also a case under Section 279/ 304A IPC. In this case as well, the State did not raise any objection to the settlement and consequential quashing of the FIR and the proceedings arising therefrom. The Court was informed that the incident in question was purely accidental, and the petitioner, therefore, could not be held to be wholly responsible for the said incident in question. It was in this background that the Court proceeded to quash the FIR in that case.

27. **Saheb Mandal** (supra) was a case under Section 288/ 304A IPC. In this case as well, the State gave its no objection to the quashing of the FIR and the proceedings arising therefrom. The decision in **Saheb Mandal** (supra) does not disclose the nature of the accident. It is not clear whether the death of the victim was purely attributable to gross negligence on the part of the accused or, whether the accident occurred was providential or a result of contributory negligence on the part of the deceased.

28. **Manjeet** (supra) was a case under Section 279/ 337/ 304A IPC. In this case as well, the State had no objection to the quashing of the FIR and the proceedings arising therefrom, since the heirs of the deceased victim had settled their dispute with the petitioner/ accused. Once again, perusal of the decision does not rule out the possibility of the accident being providential, or due to or contributory negligence of the victim/ deceased. The culpability of the accused/ petitioner, prima-facie, is not evident from the decision, as those facts have not been recorded.

29. The submission of Mr. Sethi that the State cannot distinguish one case under Section 304A IPC from another, and that the State is bound to agree to

the quashing of the FIR in the present case, since they have agreed to quashing of the FIR in other cases involving Section 288/ 337/ 304A IPC, has no merit. The State cannot be accused of discrimination merely because the State may chose to give its consent to quashing of the FIR in one case, and may not do so in another case, though the two cases may allege commission of offence under the same legal provision, as no two cases are comparable on facts. It would have to be decided on the facts of each case by the State, whether or not to consent to the quashing of the criminal proceedings on consent. Even if it were to be assumed that the State was remiss in consenting to quashing of FIR in any other case, the same would not afford a ground to raise a plea of discrimination and claim similar treatment by a petitioner/ accused in another case. Each case would have to be examined by the Court on its own merits, and the Court is not bound to quash the FIR and the proceedings arising therefrom, even if it has done so in other cases involving the same offences on consent by the State. The Court is also not dependent for its decision to quash the FIR and the proceedings arising therefrom, on the consent being granted by the State. In appropriate case, the State may not grant its consent, yet the Court may – for reasons to be recorded, and upon considerations which are germane and have been taken note of in ***Gian Singh*** (supra) and ***Narinder Singh*** (supra), quash the FIR and the proceedings arising therefrom.

30. The submission of Mr. Sethi that the concern of the petitioner for his workforce is demonstrated by the fact that the petitioner paid compensation to the LRs of the deceased Badri Prasad without any delay whatsoever, has no merit. The said concern was exhibited post the occurrence of the fatal

accident. What needs to be examined is, as to whether the fatal accident was a result of gross negligence and callousness on the part of the petitioner. It needs to be examined whether the petitioner had taken adequate measures to prevent the accident from occurring – which could have been reasonably foreseen without such protection being taken. Prima-facie, it appears that the petitioner may have been grossly negligent in not providing adequate protection/ supports to prevent the earth from collapsing and falling upon the labourers who may have been working on the basement floor.

31. The Supreme Court in *Narinder Singh* (supra) has observed that the power to quash the criminal proceedings in cases which are not compoundable should be exercised sparingly and with caution. The guiding factors in such cases would be to secure the ends of justice, or to prevent abuse of the process of any Court. In the facts of the present case, neither of the aforesaid two objectives would be achieved if the criminal proceedings/ FIR in the present case were to be quashed. There is nothing to show that the accident was providential, and that it occurred despite due care and precaution being taken by the petitioner. There is also nothing to show that the criminal proceedings initiated against the petitioner are a result of *mala fides* of any person, or an abuse of the process of the Court. The accident has, undoubtedly, taken place in which one labourer has lost his life. The nature of the accident itself is, prima-facie, suggestive of gross negligence. In my view, it would defeat the ends of justice if the criminal proceedings were to be quashed. The present endeavour of the petitioner to seek quashing of the FIR and the proceedings arising therefrom – premised on a settlement with respondents No.2 to 9, itself tantamounts to an abuse of the

process of this Court. In a case like the present, even though respondents No.2 to 9 may have entered into a settlement with the petitioner, it cannot be said that the possibility of conviction is remote. It cannot be said that the petitioner would be put to great oppression and prejudice, or that extreme injustice would be caused to him by not quashing the criminal case.

32. In my view, quashing the FIR in question at this stage would certainly send a very wrong signal not only to the petitioner, but the whole society at large and particularly to other builders, contractors and other agencies engaged in undertaking construction work, that even if they are grossly negligent in taking preventive measures so as to prevent predictable accidents – which may lead to serious injury and even loss of life, they could get away by paying some compensation to the heirs of the injured/ deceased. In fact, such like contractors/ builders/ agencies may find it more economical to risk the lives of their workforce, and in the eventuality of an accident occurring, to pay compensation, than to undertake all safety measures which, if taken, would prevent such accidents in the first place.

33. As observed by the Supreme Court in *Sheonandan Paswan* (supra), criminal proceedings are not a proceeding for vindication of private grievance. They are initiated for the punishment of the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right given to any citizen to set the machinery of criminal law into motion for the purpose of bringing the offender to book.

34. In *A.R. Antulay Vs. Ramdas Srinivas Nayak & Anr.*, (1984) 2 SCC 500, the Supreme Court held that punishment of the offender in society is in the interest of the society. It is one of the objects of the penal statutes enacted for the larger good of the society.

35. I am of the view that quashing of criminal proceedings in the present case would create and set an unhealthy precedent, and send wrong signals to the society at large.

36. For all the aforesaid reasons, the present petition is dismissed. It is, however, made clear that the observations made in this order on the merits of the case, are prima facie in nature, and made only for the purpose of the present discussion and the same shall not come in the way of either party at the trial. The Trial Court shall proceed to deal with the case on its own merits.

(VIPIN SANGHI)
JUDGE

AUGUST 01, 2016