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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 1537/2016 & CrI.M.A.8015/2016
AMIRA JHA Petitioner
Through : Mr. Ashutosh Jha, Adv.
versus

STATE OF NCT OF DELHI & ANR Respondents
Through : Mr. Avi Singh, ASC, Ms. Megha
Bahl, Mr. Ananya and Mr. Peeyush,
Advts. with ASI Tej Ram PS
Najafgarh.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **15.09.2016**

By this writ petition under Article 226 of the Constitution of India read with Section 482 of Cr.P.C., petitioner has prayed for quashing of FIR No.923/2015 under Sections 288 and 304A IPC, registered at police station Najafgarh, pursuant to DD No.24A recorded in police station Najafgarh on 23rd November, 2015, on receipt of information from duty constable Harkesh, posted at RTR hospital, that Ram Chander (deceased), aged about 60 years, was admitted in the hospital after falling down from the building, where he was doing job of white washing. During the investigation, it was revealed that 2-3 other workers were also with him while white washing the building. One of the persons namely Raju stated before the Investigating

Officer that owner had not provided proper safety for carrying out white washing at the third floor of the house.

Petitioner is owner and had engaged the deceased for white washing the building. Deceased himself had approached and taken job of white washing. Owner was not expert in the field and was a layman and had simply awarded job of white washing to the deceased, who was having experience in this kind of work and was to do work of his own with the help of other workers. It is submitted that petitioner and respondent no.2 (wife of deceased), have settled their disputes, inasmuch as, petitioner has paid ₹2,00,000/- to respondent no.2, even though petitioner, as a owner, is not guilty of any negligence since she had engaged the deceased for white washing the building and it was for him to had taken all precautions, having experience in the field of white washing the buildings. Petitioner had no expertise in white washing of the building nor had any knowledge in this regard.

Learned additional standing counsel has opposed the quashing of FIR. It is contended that petitioner, as an owner, was responsible to take all safety measures which he failed to do. Petitioner was grossly negligent and deceased died of her negligence. Offence under Section 304A IPC is against

the society and cannot be quashed in view of the law laid down by a learned single judge of this court in Bhajan Lal Sharma Vs. State (Govt. of NCT of Delhi), 2016 SCC OnLine Del 4234 and of Division Bench of Punjab and Haryana High Court in Baldev Singh Vs. State of Punjab, 2016 SCC OnLine P & H 4509.

I have perused Bhajan Lal Sharma (Supra) and find that no such law has been laid down that under no circumstance FIR under Section 304A IPC cannot be quashed in view of settlement between the accused and the legal heirs of deceased. The view taken is that, in cases, where gross negligence on the part of accused is there FIR cannot be quashed in view of the settlement. In the said case, petitioner was building contractor and during excavation of basement in a dangerous manner, debris and soil fell on the labourers resulting in death of one person. In Baldev Singh (Supra) also, keeping in mind the facts of said case, it was held that quashing of proceedings under Section 304A IPC and subsequent proceedings solely on the basis of a compromise was not permissible.

In Lalit Gupta Vs. State, 2009 (2) JCC 890, FIR under Sections 288/304A IPC was quashed in view of the compromise. In Vishal Arora Vs. State, 2014 (4) JCC 2867, also FIR under Sections 279/337/304A IPC was

quashed in view of the compromise. Similarly, in Saheb Mandal Vs. State of NCT of Delhi, 2015 (4) JCC 2600, FIR under Sections 288/304A IPC and Manjeet Vs. State, NCT of Delhi, 2016 (1) JCC 574, FIR under Sections 279/337/304A IPC were quashed in view of the settlement arrived at between the accused and complainant/heirs of the deceased-victim.

In Baldev Raj Kapur Vs. State, MANU/DE/0141/2009, an under construction building collapsed resulting in death of six labourers and grievous injuries to eight labourers, it was held that no criminal liability of the owner arises as the owner had engaged a contractor, who was raising the construction. It was observed that petitioner being the owner of the property and a layman cannot be held with the liability for death of the labourers by a rash and negligent act. Petitioner was a layman and did not know the technicalities of construction. Complainant was working as a mason and was in the know of technicalities of construction. There was no direct nexus of the petitioner with the stages of construction of the building.

Even though, as an owner, having awarded the work of white washing to the deceased, who was aware of the technicalities and precautions and care required for white washing a building, petitioner is, prima facie, not responsible of any rash and negligent act, she has settled the matter with the

respondent no.2 and has paid Rs.2,00,000/- to her. Respondent no.2 is present in Court and submits that she has no objection if the FIR is quashed.

For the foregoing reasons, the present FIR No.923/2015 under Sections 288/304A IPC registered at police station Najafgarh is quashed, in view of the settlement.

Writ petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

A.K. PATHAK, J.

SEPTEMBER 15, 2016/dk