

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

+ **CRL.M.C. 90/2016**

Date of Decision : April 08th, 2016

DINESH MISHRA

..... Petitioner

Through **Mr.B.K. Mishra, Adv.**

versus

STATE GOVERNMENT OF NCT DELHI & ANR Respondents

Through **Mr.Mukesh Kumar, APP for the State
with SI Mahrab Alam, PS Khajuri
Khas, Delhi.**

Mr.V.K. Vashishtha, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

P.S.TEJI, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter shall be referred to as the "Cr.P.C.") has been filed by the petitioner for quashing of FIR No.133/2002, under Section 279/304A IPC, Police Station Khajuri Khas, Delhi and seeking discharge from the proceedings.

2. The facts culled out from the record are that the complainant Md. Salim made a statement to the police that on the fateful day, he along with his daughter, namely, Muskan aged 4 years was going to a shop near his house. When his daughter Muskan reached gali no.2

before crossing, one truck having registration no.HR-38G-4556 came in speed while reversing it due to which Muskan came under the rear side left wheel of the truck. The complainant made a hue and cry. The driver of the truck was caught at the spot who disclosed his name as Dinesh Mishra. The daughter of the complainant died at the spot.

3. On the basis of statement of the complainant, FIR of the present case was registered. After completion of investigation, charge sheet was filed in the Court.

4. By way of present petition, the petitioner is seeking the quashing of the FIR in question on the ground of having reached a compromise with the complainant/father of the deceased. It is submitted that the petitioner is very poor and is unable to afford day to day expenses of the lower Court. As such, he requested the respondent no.2/complainant to forgive him as he intentionally did not hit the daughter of the respondent no.2, rather the deceased came running behind the vehicle and as such the said accident occurred. It is further submitted that the petitioner and respondent no.2 entered into a compromise deed dated 16.11.2015 and amicably settled their dispute in the presence of people of the society and the respondent no.2 does not want to pursue the matter against the petitioner.

5. In the present case, the allegations leveled against the petitioner are that on the fateful day, he crushed a minor girl child, namely, Muskan under the wheels of his truck. It was the morning of 24.07.2002 at about 07.00 a.m., the deceased was going to a shop to purchase rusk. When the complainant and his minor daughter reached gali no.2, the petitioner was backing the truck bearing registration

no.HR 38G 4556 in a rash and negligent manner and with a high speed crushed the deceased under the rear wheel. The petitioner was apprehended at the spot by the public. The deceased died at the spot itself.

6. It is apparent from the statement made by the complainant to the police that the truck was being driven by the petitioner in a rash and negligent manner and with a high speed which resulted into the accident in which the minor daughter of the complainant died. The present petition has been filed for quashing the FIR in question on the ground that the petitioner/accused and the complainant entered into a compromise.

7. The offences alleged in the present case are under Section 279 and 304A IPC which are non-compoundable. This Court is of the considered opinion that when an innocent minor child died due to alleged rash and negligent act of the petitioner, compounding of such offences has no scope merely because the parties have decided to compromise the matter on behalf of a dead person. The kin of the deceased i.e. respondent no.2 has no right to compound the offences on behalf of the deceased. It is not the case where the inherent power under Section 482 Cr.P.C. should be exercised. While exercising the power under Section 482 Cr.P.C., the Court must have regard to the nature and gravity of the offence. FIR in serious offences cannot be quashed even if the family of the victim has settled the dispute with the offender.

8. In view of the above discussion, this Court is of the considered opinion that it is not a fit case to quash the FIR and the proceedings

emanating therefrom in exercise of the power under Section 482 Cr.P.C.

9. Consequently, the present petition is dismissed.

(P.S.TEJI)
JUDGE

APRIL 08, 2016
dd

