

IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL WRIT PETITION NO.50 OF 2017

Mr. Krishna Kalangutkar,
s/o. Shantaram Kalangutkar,
R/o H.No.133, Lakerem,
Bordem, Bicholim.

... Petitioner

Versus

1. The Police Inspector,
Bicholim Police Station,
Bicholim
2. Public Prosecutor,
High Court of Bombay at
Panaji, Goa.

... Respondents.

Shri Arun De Sa, Advocate for the petitioner.

Shri S.R. Rivankar, Public Prosecutor for the State.

**CORAM : F. M. REIS &
NUTAN D. SARDESSAI, JJ**

DATE : 6th April, 2017.

ORAL JUDGMENT : (Per NUTAN D. SARDESSAI, J.)

Heard Shri Arun De Sa, learned Advocate for the petitioner
and Shri S.R. Rivankar, learned Public Prosecutor for the State.

2. Rule.

3. Heard forthwith with the consent of the learned Advocate
appearing for the respective parties. Shri S. R. Rivankar, learned
Public Prosecutor waives service for the State.

4. The petition takes exception to the F.I.R. No.187 of 2006 and the Chargesheet filed against him pursuant thereto under Section 304-A I.P.C and seeks to invoke the jurisdiction of this Court under Section 482 Cr.P.C. to quash and set aside the Final Report Form filed in terms of Section 173 Cr. P.C. in the Sessions Case No.49 of 2014 and the consequential issuance of the process vide the Order dated 13/01/2014 and that of framing charge in the said case on the file of the Fast Track Court / Additional Sessions Court, Mapusa.

5. The case of the petitioner in brief was that sometime on 30/11/2006 he was working as an Assistant Linesman in the Electricity Department, Bicholim, Goa. On 25/11/2006, load re-shuffling was arranged by the Junior Engineer and the Lineman / Wireman alongwith the other staff including the petitioner were present at that time. The Junior Engineer had taken the line clearance from the individual transformer centres and whilst working, he had instructed one Bhagwan Gaonkar to open the jumpers in front of Dr. Kairo's Hospital pole which is connected to the two transformers supply namely the Bicholim Urban Co-Operative Transformer and Chimulwada Transformer. Bhagwan Gaonkar had opened the jumpers and got down from the pole as per the direction of the Junior Engineer but due to inadvertence he forgot to open one of the jumpers and subsequently informed the lineman Ravindra Naik that he had opened all the jumpers as per

the directions of the Junior Engineer. The lineman had ordered other staff to charge the line without confirming whether the jumpers had been opened or not. Soon after charging the transformers one phase which was not opened supply had gone to the other transformer centre where the fuses were not opened and therefore internal supply went to the third transformer where the victim, Sudan Naik was working due to which he got a severe shock and fell down from the pole, resulting in his unfortunate demise.

6. A complaint was lodged by the brother of the deceased against the Junior Engineer, Bhagwan Gaonkar and the Lineman/Wireman and others for not taking proper care and caution while carrying out the electrical line work and on the same day an F.I.R. came to be registered being F.I.R. No.187 of 2016 against the Junior Engineer and other working at the Electricity Department for having committed the offence punishable under Section 304-A I.P.C. The investigation being in the realm of technical works and highly complex, a detailed report was sought by the respondent no.1 from the Office of the Executive Engineer, who submitted his detailed report dated 29/11/2006 disclosing the sequence of events and that the cause of death of the victim was due to the non-opening of one of the jumpers by Bhagwan Gaonkar on account of which the victim had got a severe shock and fell down from the pole resulting in his death. Several statements were recorded in the course of the

investigation but none of which implicated the petitioner and/or prima facie disclosed that the petitioner had committed the offence punishable under Section 304-A r/w 34 I.P.C. Nonetheless the Assistant Public Prosecutor, Bicholim had opined to file the chargesheet against all four persons including the petitioner.

7. It was further the petitioner's case that sanction was granted to prosecute only two persons namely the Junior Engineer and the Lineman and not the petitioner. The P.S.I. Bicholim Police Station had intimated to the Judicial Magistrate First Class at Bicholim that the charge stood altered from 304-A I.P.C. to 304 I.P.C. The learned Judicial Magistrate First Class took cognizance of the offence under Section 304 I.P.C. without the application of judicial mind and despite the fact that no sanction had been granted to prosecute the petitioner and issued process against all the accused including the petitioner and vide the Order dated 13/01/2014, the case was committed to the Court of the Sessions Judge, North Goa, Panaji and thereafter charge came to be framed against the petitioner and others pursuant to the Order of the Sessions Judge dated 22/09/2016 which case stood transferred to the Court of the Additional District Judge- F.T.C., Mapusa. There was prima facie material to constitute the offence alleged against the petitioner to necessitate his prosecution under Section 304 I.P.C. The Sessions Case on the file of the Additional Sessions Judge, Mapusa had

therefore to be quashed and set aside as the uncontroverted allegations made in the final report and their evidence did not constitute the punishable offence under Section 304 I.P.C.

8. Shri Arun Bras De Sa, learned Advocate came to be heard on behalf of the petitioner who adverted to the records and submitted that there was no nexus established of the petitioner with the crime and therefore it was a fit case to quash the proceedings against him. He placed reliance in “**Jacob Mathew v/s. State of Punjab and another**”[(2005)6 SCC 1] and that in “**Prabhakaran V/s. State of Kerala**”[(2007) 4 SCC 269] in support of his case. Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State adverted to the records and the Chargesheet and particularly the statement of one Tirodkar to substantiate his case that there was no warrant to quash the F.I.R. against the petitioner.

9. We have examined the records, considered the submissions of Shri Arun De Sa, learned Advocate for the petitioner and Shri S. R. Rivankar, learned Public Prosecutor for the State and besides considered the judgments in **Jacob Mathew** (supra) and **Prabhakaran** (supra).

10. **Jacob Mathew** (supra), observed at paragraph 14, 16 and 38 as under :

“14. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused having run the risk of doing such an act with recklessness and indifference to the consequences.

16. Law laid down by Straight, J. in the case *Reg v. Idu Beg*[(1881) 3 All. 776], has been held good in cases and noticed in *Bhalchandra Waman Pathe v. State of Maharashtra* [1968 Mh.L.J. 423] a three-Judge Bench decision of this Court. It has been held that while negligence is an omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do; criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which having regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted.

38. The question of degree has always been considered as relevant to a distinction between negligence in civil law and negligence in criminal law. In *Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra* [(1965) 2 SCR 622], while dealing with Section 304A of IPC, the following statement of law by Sir Lawrence Jenkins in *Emperor v. Omkar Rampratap* [4 Bom LR 679], was cited with approval:-

"To impose criminal liability under Section 304-A Indian Penal Code, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough that it may have been the *causa sine qua non*."

11. In **Prabhakaran** (supra), the Hon'ble Apex Court held at paragraph nos. 5, 6 and 8 as under :

"5. Section 304A speaks of causing death by negligence. This section applies to rash and negligence acts and does not apply to cases where death has been voluntarily caused. This section obviously does not apply to cases where there is an intention to cause death or knowledge that the act will in all probability cause death. It only

applies to cases in which without any such intention or knowledge death is caused by what is described as a rash and negligent act.

6. "Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal law there are degrees of negligence; and a very high degree of negligence is required to be proved before the felony is established. Probably of all the epithets that can be applied 'recklessness' most nearly covers the case. It is difficult to visualize a case of death caused by reckless driving in the connotation of that term in ordinary speech which would not justify a conviction for manslaughter; but it is probably not all embracing, for 'recklessness' suggests an indifference to risk whereas the accused may have appreciated the risk and intended to avoid it, and yet shown in the means adopted to avoid the risk such a high degree of negligence as would justify a conviction."

8. As noted above, "Rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and

proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.” while allowing the appealing assailing the order passed by the learned Single Judge of the Kerala High Court which held the appellant guilty of the offence punishable under Section 304 Part II of the Penal Code, 1860 and concurring with the conviction imposed by the learned Sessions Judge, Kozhikode where the act of the appellant, a bus driver running over a boy aged 10 years crossing the road alongwith the other school children in a queue came up for scrutiny. The Trial Court and the High Court had held the appellant guilty of culpable homicide not amounting to murder punishable under Section 304 Part II on the basis that the accused acted with the knowledge that it was likely to cause death.”

12. Shri S. R. Rivankar, learned Public Prosecutor on behalf of the State invited attention to the statement of Tirodkar but a perusal thereof indicates that he had explained the work carried out by the electricity staff on 25/11/2006 at Bicholim near Cairo Hospital and referring to the diagram prepared by him showing the electrical

pole on which the work was done and how the electrical current passed on to the electrical pole situated at Pilgao junction, where the deceased got an electrical shock and died. His statement is a virtual representation of the fact that the non-opening of one of the jumpers on the electric pole situated at Cairo Hospital, Bicholim, whereby the transformer situated near the Town Centre Bicholim was switched on due to which the electric current passed to the transformer and the electrical pole where the deceased was working got electric shock and died. This statement contrary to the contention of Shri S. R. Rivankar, learned Public Prosecutor for the State nowhere implicates the petitioner in the crime much less the offence under Section 304 Part II I.P.C. who had his mere physical presence at the spot where these proceedings were going on on the ill-fated day. Besides, there was no material on record for the learned Sessions Judge to order charge to be framed against the petitioner under Section 304 Part II I.P.C. much less even an offence under Section 304-A I.P.C. considering the material on record. Yet, the learned Sessions Judge had progressed to do so ignoring the fact that there was not even a sanction under Section 197 Cr. P. C. to prosecute him. Considering thus the ruling of the Hon'ble Apex Court in **Jacob Mathew** and **Prabhakaran** (supra), and in the facts of the case there is no element of criminality or culpability which can be fastened on the petitioner on the basis of the material on record. Therefore, continuance of the proceedings

against him would amount to a gross abuse of the process of law.

In the circumstances, we pass following

O R D E R

1. Rule is made absolute in terms of prayer clause (a).
2. F.I.R. and also the proceedings in the Sessions Case No.49 of 2014 and the consequential issue of process and the charge framed against him are quashed and set aside.
3. There shall be no order as to costs.

NUTAN D. SARDESSAI,J.

F. M. REIS,J.

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