

IN THE HIGH COURT OF BOMBAY AT GOA.**Criminal Writ Petition No.111 of 2017.**

Mr. Vishnu V. Vaze,
Junior Engineer (Elect),
Through office of the Executive Engineer,
Elect, Div-V,
Bicholim, Goa
and permanent resident of
Kanolwada, Nanoda,
Assnora, Goa.

Petitioner**V/S**

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

Respondents

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Shri Arun DE SA with Shri S.Shet, Advocates for the
petitioner.

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

**CORAM: C.V.BHADANG &
PRITHVIRAJ K.CHAVAN, JJ.
RESERVED ON : 13.07.2017.
PRONOUNCED ON :16.08.2017.**

JUDGMENT (Per Prithviraj K.Chavan, J.):

1. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the petitioner and respondents. The learned Public Prosecutor waives notice on behalf of the respondents.

2. The petitioner, a Junior Engineer, in the office of

Electricity Department, Bicholim, Goa, has invoked jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, for quashing the Final Report filed by the respondents under Section 173 of the Code of Criminal Procedure (for short "Code") in Sessions Case No.49/2014 and also an order dated 13.1.2014 by which the Additional Sessions Judge framed a Charge against him, under Section 304 of Indian Penal Code (for short "IPC") on 22.9.2016.

3. Briefly stated the facts are, that on 30th November, 2016, the petitioner was working as a Junior Engineer in the office of the Electricity Department, Government of Goa, Divn-V, O & M Sub Division-I (U), Bicholim, Goa. On 25.11.2006 due to new Monday programme at Bicholim LT Site, load re-shuffling was arranged by the petitioner along with Lineman/Wireman, Ravindra Naik, Krishna Kalangutkar and other staff members. The petitioner had taken line clearance from individual transformer centres and while doing so, had instructed one Mr. Bhagwan Gaonkar to open jumpers in front of Dr. Kairo's Hospital pole, which is connected to two transformers supply namely Bicholim Urban Co-operative Transformer and Chimulwada Transformer. Mr. Bhagwan Gaonkar, therefore, opened the jumpers and got down from the pole, as per the direction of the petitioner. However, Bhagwan Gaonkar, due to inadvertence, forgot to open

one of the jumpers and subsequently informed Lineman Mr. Ravindra Naik that he had opened all the jumpers as per the directions of the petitioner. Mr. Ravindra Naik thereupon ordered the other staff to charge the line without confirming the jumpers having been opened. Soon after charging the transformers one phase which had not opened, supply had gone to other Transformer centre where fuses were not opened in the said box and, therefore, internal supply went to the third transformer where the victim Mr. Sudan Naik was working and due to the said supply, the victim Sudan Naik got severe shock and fell down from the pole, resulting into his death due to electrocution.

4. Brother of the deceased namely Krishna Naik lodged a complaint against the petitioner and also against Bhagwan Gaonkar, Lineman/Wireman Mr. Ravindra Naik and others for their negligent conduct and for not taking proper care and caution while carrying out the electrical line work resulting into the tragic death of his brother.

5. An offence came to be registered under Section 304 of IPC, vide FIR No.187/2006 against the petitioner and others. Respondent no.1 had sought detailed report from the office of the Executive Engineer, Div-V, Electricity Department, Government of Goa, Bicholim. Accordingly, the report was

submitted by the Executive Engineer on 29.11.2006. In the said report, the Executive Engineer has, in detail, furnished information disclosing sequence of events inter alia, indicating the negligence and lack of co-ordination amongst all staff members of its office, under the supervision of the petitioner.

6. The District Superintendent of Police, North Goa, by his communication dated 20.11.2008, vide DO No. SP/North/1181/08 sought sanction against the accused including the petitioner. On 24.9.2013 the Chief Electrical Engineer, Electricity Department, Government of Goa, has accorded sanction only against the petitioner and Mr. Ravindra Naik under Section 197 of the Code.

7. On 8.10.2013 P.S.I. Bicholim Police Station, informed the Judicial Magistrate First Class, Bicholim with reference to the present crime that the Charge stands altered from 304-A to one under 304 of IPC. A Final Report under Section 173 of the Code came to be filed in the Court of learned Judicial Magistrate First Class on 12.10.2013 under Section 304 of IPC. The learned Judicial Magistrate First Class committed the case to the Principal District and Sessions Judge, North Goa on 14.8.2014. The Chief Electrical Engineer, vide Memorandum Ref.no.2-5-80(Bicholim)/CEE/CONF/330 dated 27.11.2014 exonerated the

petitioner from the Article of Charge framed against him.

8. The petitioner appeared before the learned Sessions Judge, who by the impugned order framed a Charge against the petitioner and others under Section 304 Part II of IPC.

9. We have heard Shri Arun De Sa, learned counsel for the petitioner and Shri S.R.Rivankar, learned Public Prosecutor for the respondents.

10. According to the learned counsel, there is absolutely no material to constitute an offence as alleged against the petitioner. Even if, the charge-sheet is accepted on its face value, it does not, *prima facie*, spell out the ingredients of an offence punishable under Section 304 of IPC. According to the learned counsel, the learned Judicial Magistrate First Class as well as learned Sessions Judge, exercised jurisdiction not vested in it and sans application of mind proceeded with the matter by the impugned order of framing of charge. In the absence of valid sanction under Section 197 of the Code, Charge could not have been framed under Section 304 of IPC. The petitioner was, while discharging his duties, alleged to have committed the said offence. He further submits that to fasten a liability in a criminal law, degree of negligence has to be higher than that of negligence

enough to fasten liability for damages in civil law.

11. Per contra, Shri Rivankar, learned Public Prosecutor, has supported the impugned order by drawing our attention to the statements of witnesses vis-a-vis the sanction, accorded by the Executive Engineer.

12. We have examined the record and considered the submissions made by the respective learned counsel at bar.

13. The statements of the complainant - the brother of the deceased was recorded on 30.11.2006 which indicates that the deceased was a labourer in Electricity Department and at the relevant time he was on duty. He alleged that the petitioner along with Lineman/Wireman Ravi Naik were negligent in not taking proper care and caution as the deceased was still on the pole of the electric line when supply was started due to which he was electrocuted and died.

14. The statement of Tukaram Bhiva Matnekar, who is also an employee of the Electricity Department indicates that on the day of incident Ravi Naik informed him that the "work is done" and line was O.K. and, therefore, requested this witness to switch on the transformer at the Town Centre, Bicholim. He

therefore, came to the Town Centre at Bicholim and switched on the transformer. When he was going towards his spot he came to know from the public that someone fell down from the pole due to electrocution. He made it categorically clear that he switched on the transformer as per the direction of the petitioner and the Lineman Mr. Ravi Naik. Similarly, Nilesh Dattaram Patre, another labourer, in his statement before the Investigating Officer spoke in tune with Tukaram Matnekar, by clearly stating that as per the direction of petitioner and Lineman Tukaram Matnekar had switched on the transformer.

15. There is no dispute, as is evident from the autopsy report that the deceased died due to electrocution. It is also apparent from the record that it was the petitioner who had arranged reshuffling and, therefore, he ought to have been more diligent and careful before directing to switch on the transformer or charging the line. It would not lie in the mouth of the petitioner to say that Bhagwan Gaonkar inadvertently opened the jumpers when the petitioner himself being in a supervisory capacity ought to have taken sufficient precautionary measures to ensure that there was absolutely no scope for even 'inadvertence' on the part of Bhagwan who alleged to have forgotten to open one of the jumpers. The petitioner cannot shirk his responsibility by blindly relying upon the words of Bhagwan Gaonkar, for, it was

a matter of electric supply to transformer, which is quite serious especially when a few labourers were working on the pole. There can be no reason of any calumny against the petitioner.

16. Coming to the aspect of sanction under Section 197 of the Code, it reveals from the record that the Chief Executive Engineer, by its order dated 24.9.2013, accorded sanction to prosecute the petitioner and Ravindra Naik. It is manifest from the order of sanction that the Chief Electrical Engineer observed that the site was inspected by the Junior Engineer (Elect) and Lineman/Wireman in the office of Assistant Engineer of the said department and after conducting due inquiry, it revealed that the death of the deceased was due to gross negligence on the part of the petitioner and Lineman/Wireman, who failed to take proper care, such as, line to be earthed as well as because of lack of supervision/co-ordination resulting in a fatal accident. It is categorically observed by the Chief Electrical Engineer that no proper procedure was followed during shut down works and no safety equipments were used as well as no earthing of LT line/shorting at work spot was done by the petitioner and others. It is apparent from the order of sanction that the Sanctioning Authority accorded sanction for prosecution of the petitioner for the offence under Section 304-A IPC and further made a reference to "Any other Offences", meaning thereby sanction is

basically accorded to prosecute under Section 304-A IPC and not specifically for the offence under Section 304 Part II IPC.

17. Framing of charge by the learned Sessions Judge against the petitioner and another to that extent, therefore, would not sustain in the eyes of law sans specific sanction to that effect.

18. Powers under Section 482 of the Code are to be exercised sparingly and not as an appellate/revisional Court. The Hon'ble Supreme Court in **AIR 1978 SC 47** (Madhu Limaye Vs. State of Maharashtra) has held that the following principles would govern the exercise of inherent jurisdiction of the High Court under Section 482 of the Code:

- (i) The power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of the aggrieved party;
- (ii) It should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice; and
- (iii) It should not be exercised as against the express bar of law engrafted in any other provision of the Code.

19. The question is not essentially one of the jurisdiction but is that of a judicial discretion to be exercised by application of mind. *Prima facie*, offences have been made out on the basis of the allegations made in the charge-sheet without going into the

truth or otherwise of those allegations as it cannot be gone into at this stage. Sufficiency of evidence or material cannot be gone into, at this stage. The question, whether the petitioner has mens rea or not, can be determined on a proper material adduced during the trial. It would be apposite to refer a decision of the Hon'ble Supreme Court in the case of **Prabhakaran Vs. State of Kerala** (2007)14 SCC 269. Paragraphs 5, 6 and 8 reads thus:

"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. A negligent act is an act done without doing something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs would do or act which a prudent or reasonable man would not do in the circumstances attending it. A rash act is a negligent act done precipitately. Negligence is the genus, of which rashness is the species. It has sometimes been observed that in rashness the action is done precipitately that the mischievous or illegal consequences may fall, but with a hope that they will not. Lord Atkin in Andrews v.

Director of Public Prosecutions at p.583 = All ER 556 C-E) observed as under:

"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".

20. In view of the said ratio and the observations made hereinabove qua the petitioner, it is only during the course of trial the truth can be unearthed as to whether there was a simple lack of care or high degree of negligence on the part of the petitioner at the time of alleged incident.

21. Consequently, the order dated 22nd September, 2016 passed by learned Sessions Judge framing charge under Section 304 Part II of IPC is hereby set aside. The learned Sessions Judge shall remit the matter back to the learned Judicial Magistrate First Class, Bicholim, who shall frame charge against the petitioner for the offence punishable under Section 304-A of IPC and shall proceed to decide the case in accordance with law.

22. Petition is partly allowed in the aforesaid terms.

PRITHVIRAJ K.CHAVAN, J.

C.V.BHADANG, J.

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