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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 3264 OF 2017.

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|------------------------------------|---|-------------|
| 1. Pavneet Singh Sethi |] | |
| Adult Indian inhabitant, |] | |
| Age: 45 years, |] | |
| r/at : A-26/3, Mohan Co-operative |] | |
| Industrial Estate, Mathura Road |] | |
| New Delhi 110 044 |] | |
| |] | |
| 2. Vibhudath Satpati |] | |
| adult Indian inhabitant |] | |
| age: 51 years, |] | |
| r/at A-26/3 Mohan Co-operative |] | |
| Industrial Estate, Mathura Road |] | |
| New Delhi 110 044 |] | |
| |] | Petitioners |
| 3. Ramzan Patel |] | |
| Adult Indian inhabitant |] | |
| age: 44 years, |] | |
| r/at : Mahavir Heritage E/1502 |] | |
| Sector 35G, plot No.3 |] | |
| Near Tata Cancer Hospital |] | |
| Kharghar Navi Mumbai 410 210 |] | |
| |] | |
| 4. Sanjit Srivastav |] | |
| adult Indian inhabitan |] | |
| age: 47 years |] | |
| r/at : 404 Bhanu Height, Sector 19 |] | |
| Kharghar Navi Mumbai 410 210 |] | |

V/s.

- | | |
|-----------------------------|---|
| 1. The State of Maharashtra |] |
| Through Public Prosecutor |] |
| High Court, Bombay |] |
| |] |

2. The Senior Police Inspector	] Respondents.
Nerul Police Station	]
	]
3. Janardhan Madhav Parte	]
Police Inspector/complainant	]
Nerul Police Station	]

Mr. A. P. Mundargi, Senior Advocate, for the
Petitioners.

Mr. V. B. Konde Deshmukh, APP, for the
Respondents.

**CORAM : RANJIT MORE &
DR.SHALINI PHANSALKAR-JOSHI, JJ.**

CLOSED FOR ORDER ON : 15th NOVEMBER, 2017.

ORDER PRONOUNCED ON : 21st NOVEMBER, 2017.

ORDER : [PER : DR. SHALINI PHANSALKAR-JOSHI, J.]

1] Rule. Rule made returnable forthwith. Heard finally with
the consent of learned counsel for both the parties.

2] This writ petition is preferred under Article 226 of the
Constitution of India read with Section 482 of the Code of Criminal
Procedure, for quashing of the C.R. No. 230 of 2017, qua the
petitioners. The said C.R. is registered with Nerul Police Station,

against the petitioners and the co-accused at the instance of respondent No.3, for the offences punishable under Sections 279, 337, 338, 304(A), 304 (II) read with section 34 of the Indian Penal Code.

3] As far as the present petitioners are concerned, they have been booked in the said C.R. for the offence punishable under Section 304 (II) read with 34 of the Indian Penal Code only. Petitioner No.1 is the Vice President, petitioner No.2 is the Assistant Vice President, petitioner No.3 is the Senior Manager and Project Head; whereas the petitioner No.4 is also the Officer of Sion Panvel Tollways Private Limited, which has been awarded a contract for construction of Uran Phata Bridge and the maintenance of Uran Panvel Road.

4] The case of prosecution, as set out in the F.I.R. is to the effect that on 04.07.2017, at about 6.45 a.m, respondent No.3 received wireless message that 4 to 5 vehicles had collided with each other near Uran Phata bridge. Hence respondent No.3 immediately rushed to the spot along with his team. There, he saw that two pick up tempos, two trucks and the motorcycle had collided with each other and met with an accident. The drivers of two pick up tempos and the driver of motorcycle had sustained injuries. They were sent for medical treatment immediately. Respondent No.3 made enquiry with

injured motor truck driver and the drivers of other vehicles involved in the accident. It was informed to him that the driver of the truck bearing registration No.MH-11/AAI-5458, namely, Santosh Hanmant Rajput, was driving his truck in a very high speed and his truck dashed into pick up tempo bearing registration No.MH45-T/7775, who in turn dashed into pick up tempo in front of him bearing registration No.MH-13/AN-9324; as well as the motorcycle ahead. During enquiry, it was also brought to the notice of respondent No.3 that the tarcoal was laid on the said bridge in the last summer which has made the bridge slippery. Hence due to improper laying of tarcoal during the month of June, when monsoon had commenced, the bridge had become slippery. Therefore, these vehicles, even when they were going at slow speed, they could not control the speed and as a result the vehicles collided with each other and hence the accident has occurred.

5] As on account of injuries sustained in the said accident, tempo driver, namely, Sarfaraj Ilahi Sayyed died and other two drivers, Keshav Ghadage and Pankaj Thukrul sustained serious injuries, respondent No.3 lodged F.I.R. against the truck driver namely, Santosh Rajpur, for the offence punishable under Sections 304(A), 279, 337, 338 of the Indian penal Code and as regards the

petitioners, they were implicated for the offence punishable under Section 304 (II) read with 34 of the Indian penal Code.

6] The submission of learned counsel for the petitioner is that the allegations made in the F. I.R., even if taken at their face value, they do not make out the ingredients of the offence punishable under Section 304(II) of IPC. According to him, in order to constitute the offence under Section 304 (II) of IPC, there has to be some positive act done with criminal intent. No such positive act is attributed to the present petitioners, even there is no averment that they had any knowledge or intention to cause such accident or the death of vehicle driver. In the absence thereof, it is submitted that, the charge under Section 304 (II) IPC, cannot be attracted at all. In support of his submission, learned counsel for petitioners has relied upon the judgment of the Hon'ble Supreme Court in case of **Shantibhai J. Vaghela and anr -vs- State of Gujarat and ors, (2012) 13 SCC 231.**

7] As against it, according to learned APP, the main cause of accident may be rash and negligent driving of the truck driver, namely Santosh Rajput, the contributory cause of the accident is the fact that the road at the spot of accident was slippery due to improper

laying of tarcoal and petitioners had not taken proper care to repair the said road, despite the fact that it was brought to their notice by letters dated 06.06.2017, 09.06.2017. It is submitted that the act of the petitioners of improper laying tarcoal and not repairing the said road though it was brought to their notice, constitute criminal intent and mens-rea on their part. It is submitted that on account of improper laying of tarcoal, three serious accidents had taken place on the said road in June, 2017; out of them, one was fatal. In the month of June itself additional 35 minor accidents had taken place at that very spot in which vehicles were damaged. In July, 2017 also four minor accidents had taken place. According to learned APP, the cause for all these accidents, therefore, can be attributable to non laying of proper tarcoal, as a result of which the road has become slippery and the petitioners avoided to repair the road despite this fact was brought to their notice. Hence, according to learned APP, the charge under Section 304 (II) IPC is definitely attracted in this case against the petitioners.

8] Perusal of the F.I.R. in the present case clearly reflect that the cause of this accident was the rash and negligent driving of truck bearing No.MH-11/AAI 5458 by its driver, namely, Santosh Rajput. There is clear averment in the F.I.R. that the truck driver has driven

the truck in fast speed and given dash to the pick up tempo and then pick up tempo has given dash to another truck and that truck gave dash to the motorcycle, therefore the accident has occurred. Thus, in the F.I.R., itself respondent No.3, has attributed the cause of accident, on the basis of enquiries made by him, to the truck driver Santosh Rajput, as he has driven his truck in high speed that is in a rash and negligent manner.

9] The only role attributed to the present petitioners is that they failed to take proper care of the said road. They did not repair it, though the fact that road has become slippery, was brought to their notice. It is nowhere alleged in the entire F.I.R. that the petitioners, who are part of the management of the Sion Panvel Tollways Pvt. Ltd, did any act with the intention or knowledge that the act is likely to cause the death of any person or such bodily injuries as are likely to cause the death. In such situation, even if the allegations made in the F.I.R. are taken in their entirety as true, they cannot attract the charge under Section 304 (II) of IPC, on the part of the petitioners, in view of law laid down by the Apex Court in the case of ***Shantibhai J. Vaghela and anr -vs- State of Gujarat and ors (supra)***. In this case while discussing essential ingredients of the charge under Section 304 (II) IPC, the Hon'ble Supreme Court was pleased to

observe in paragraph Nos. 24 and 25 as follows :-

“24. Section 299 IPC defines culpable homicide as causing of death by doing an act with the intention of causing of death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that by such act death is likely to be caused. Under Section 300 IPC all acts of culpable homicide amount to murder except what is specifically covered by the exceptions to the said Section 300. Section 304 of the Penal Code provides for punishment for the offence of culpable homicide not amounting to murder.

25. Commission of the offence of culpable homicide would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. Allegations of not carrying out a prompt search of the missing children; of delay in the lodging of formal complaint with the police and failure to take adequate measures to guard the access from the ashram to the river, which are the principal allegations made in the FIR, cannot make out a case of culpable homicide not amounting to murder punishable under Section 304 IPC. To attract the ingredients of the said offence something more positive than a mere omission, lapse or negligence on the part of the named accused will have to be present.

Such statements are conspicuously absent in the FIR filed in the present case”.

(emphasis supplied)

10] Thus, it is clear that commission of the offence, of culpable homicide under Section 304 (II) IPC require some positive act on the part of the accused as distinguished from silence, inaction or mere lapses. The allegations of not carrying out the repair of the road cannot, thus, make out a case of culpable homicide not amounting to murder punishable under Section 304 (II) IPC. Such statements of positive act are conspicuously absent in the FIR filed in the present case. Conversely, the cause of accident is clearly attributed in the FIR itself to the rash and negligent driving of the truck, in a fast speed.

11] In such situation, in our considered opinion, as the FIR, does not disclose commission of the offence under Section 304 (II) of IPC, as against the petitioners, the F.I.R. needs to be quashed qua the petitioners.

12] The Petition is accordingly allowed. The F.I.R. bearing No. 230 of 2017, registered with Nerul Police Station, at the instance of

respondent No.3 qua the petitioners, for the offences punishable under Sections 304 (II) read with section 34 of the Indian Penal Code. is hereby quashed and set aside.

13] Rule is made absolute in above terms.

[DR.SHALINI PHANSALKAR-JOSHI, J.]

[RANJIT MORE, J.]