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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4501 OF 2014**

Shri. Shivkumar Ramdeo Singh	... Petitioner
Versus	
The State of Maharashtra and Anr.	... Respondents

**WITH
CRIMINAL WRIT PETITION NO.803 OF 2014**

Mr. Mohammed Rashid Shaikh	... Petitioner
Versus	
The State of Maharashtra and Ors.	... Respondents

Mr. Pradeep M. Patil a/w Mr. Sachin D. Bagal for the Petitioner in WP/4501/2014 and for Respondent Nos.3 and 4 in WP/803/2014.

Mr. A.A. Mirza for the Petitioner in WP/803/2014 and for Respondent No.2 in WP/4501/2014.

Dr. F.R. Shaikh, APP for Respondent No.1 in WP/4501/2014 and for Respondent Nos.1 and 2 in WP/803/2014.

**CORAM : A.S. OKA &
ANUJA PRABHUDESSAI, JJ.**

DATE : 10th FEBRUARY, 2017

ORAL JUDGMENT (Per A.S. Oka, J.)

1 There is already an order passed by this Court on 3rd February, 2017 that these two Petitions will be heard finally at the stage

of admission. Writ Petition No.4501 of 2014 is filed for quashing the First Information Report registered at the instance of the second respondent who is the first informant for commission of an offence under Section 304A read with Section 34 of the Indian Penal Code. The first informant has filed the Criminal Writ Petition No.803 of 2014 seeking a writ of mandamus directing the Police to submit a report on investigation in connection with the same FIR. Second prayer in the said Petition is for transfer of investigation to some other agency. As per order dated 18th November, 2016 passed by the Hon'ble the Chief Justice both the Petitions have been assigned to this Bench.

2 The first informant is residing in B/Wing a building known as Saidham Tower, Achole, Nalasopara along with his family. He is a resident of B/Wing of the said building. On 19th November, 2013 around 5.00 pm, his son was coming up by a lift in B/wing. There was an accident and it is alleged that his son got stuck up between the ceiling of the first floor and the lift. In the FIR, it is alleged that the lift was installed 12 years back and during the period prior to the incident, the lift was not working properly. About 10 months back the lift came down directly from the seventh floor to the ground floor. It is alleged that the first informant was repeatedly informing the members of the Managing Committee, the Chairman of the Co-operative Society and the

Secretary requesting them to carry out repairs to the lift. It is alleged that the first informant suggested the Chairman and Secretary of the Society to replace the lift by a lift of OTIS or any other reputed manufacture. It is alleged that the work of repairs of the lift was entrusted to M/s. Das Electrical at Bhayandar. His allegation is that the said Contractor as well as the office bearers and Managing Committee members of the Society were responsible for the death of the son of the first informant on account of their negligence to maintain the lift in proper condition. The allegation is that failure to take prompt steps for repairing the lift and for keeping the same in good condition amounts to negligence and therefore, Section 304A of IPC is attracted.

3 It is true that the incident in which the first informant lost his son is a very unfortunate incident. However, we are called upon to decide a very limited issue whether by taking the allegations made by the first informant as true and correct, the offences punishable under Section 304A of the Indian Penal Code is attracted. Writ Petition No.4501 of 2014 is filed by the petitioner who was the Secretary of the Society at the relevant time.

4 In Writ Petition No.803 of 2014 allegations have been made against the Investigating Officer attached to Nalasopara Police

Station regarding the failure to carry out proper investigation. Therefore, we had called upon the Investigating Officer to remain present and to produce the file of the investigation. We have perused the file. We find from the file that the Investigating Officer has recorded statements of several witnesses. The Investigating Officer called upon the Electrical Inspector (Lifts), Mumbai who is a Government Officer to examine the lift and to submit a report. On 2nd January, 2014 the Electrical Inspector (Lifts Mumbai) submitted a report to the Senior Inspector of Police of Nalasopara Police Station. In the report, the lift inspector mentioned that inspection of the lift of B/wing showed that the lift was in proper condition. He has stated that if the inner door of the lift is open, the same cannot function. He has also stated that if inner door of the lift opens while the lift is working, the operation of the lift stops. He has stated that the incident must have occurred as due to technical defect in the door of the lift as the lift started while the door was open. It is opined that unfortunately deceased son of the first informant died as he was crushed between the lift and the shaft.

5 The Chief Engineer (Electrical) of the Public Works Department also called for a detailed report. Accordingly, the Electrical Inspector (Lifts), Chembur, Mumbai, the Assistant Electrical Inspector (Lifts), Section No.2, Chembur, Mumbai and the Assistant Electrical

Inspector (Lifts), Section No.6, Mumbai submitted a report of preliminary enquiry. Various observations have been recorded in the said report. It is stated that the lift is being maintained by M/s. Das Electrical. However, an agreement with the said agency was not available. It is stated that breaches have been committed by M/s. Das Electrical of the permit granted by the Chief Engineer (Electrical) of the Public Works Department. It is stated that the Co-operative Society has not maintained the log book of the lift recording the repairs/maintenance work carried out from time to time. The opinion recorded by the three Inspectors is that a technical defect must have been developed in the door of the lift which resulted into accident. According to their opinion, M/s. Das Electrical and the owner of the lift were responsible for the accident.

6 The license in respect of the lift issued to the builder and developer who constructed the building is also a part of the investigation papers. There is a letter dated 15th March, 2014 addressed to the Investigating Officer of the said Society in which it is stated that M/s. Das Electrical are maintaining the lift during last 6 to 7 years and a receipt issued by M/s. Das Electrical of the payment made by the Society is already produced. It is stated that a quotation showing that the said company carried out work of repairs to the lift in the year 2012

– 2013 is also produced. Though the said agency refused to execute the agreement, the said agency is maintaining the lift. The Police have collected the copies of the resolutions passed in the meeting of the Managing Committee of the Society held on 19th August, 2012. It shows that quotations received from different contractors for carrying out repairs to the lift of B and C wings were considered. It was resolved to give contract to M/s. Das Electrical. A copy of the minutes of the meetings of the Managing Committee show that the first informant was present. A copy of the quotation given by M/s. Das Electrical is also a part of the investigation papers. Receipts issued by M/s. Das Electrical to the Society towards the repair charges are also part of the investigation papers. After having perused the file of investigation, as of today, we are unable to accept the contention of the first informant in the Writ Petition filed by him that proper investigation is not being made.

7 Now we deal with the merits of the Petition for quashing the First Information Report. Section 304A of Indian Penal Code reads thus :-

“304A. Causing death by negligence

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of

either description for a term which may extend to two years, or with fine, or with both.”

8 Though the investigation papers indicate that there was a resolution passed to replace the lift and that repairs of the lift were carried out, even taking the statement of the first informant on the basis of which the first information report is registered as correct, it is apparent that as far as the office bearers and members of the Managing Committee of the Society are concerned, at the highest, the allegation against them is that they failed to replace the lift or that they failed to ensure that the contractor appointed by the Society properly maintained the lift. Even assuming that the allegations of omission on their part constitute the acts of negligence, the said omission on the part of the members of the Managing Committee and the office bearers has no direct connection with the unfortunate incident which took place in the lift as a result of which the son of the first informant lost his life. One of the essential ingredients of Section 304A is that the rash and negligent act on the part of the accused must result in causing death. The said ingredient is completely absent in the present case as far as the office bearers and members of the Managing Committee of the Society are concerned. While we draw this conclusion, we are not even considering the reports of the Electrical Inspectors which are on record which record the possible cause of the accident.

9 Therefore, considering the matter from any angle, by no stretch of imagination, the offence punishable under Section 304A is made out against the office bearers and Managing Committee of the Society. As far as role played by the agency appointed to maintain the lift is concerned, we are making no adjudication.

10 Therefore, in our view, this is a fit case to quash the First Information Report as against the petitioner in the Writ Petition No.4501 of 2014. No relief can be granted in Writ Petition No.803 of 2014 inasmuch as, as of today, we find nothing wrong with the investigation. We must hasten to add that investigation will continue as against the contractor who was employed to maintain the lift. We also clarify that we have made no adjudication on the question whether the first informant will have a remedy under the Law of Torts against the Society and its office bearers as well as the Contractor and all contentions in that behalf are kept open.

11 Accordingly, we pass the following order :-

ORDER

- (i) Rule issued in Writ Petition No.4501 of 2014 is made absolute in terms of prayer clause (a) which reads thus :-

- (a) This Hon'ble Court be pleased to issue Rule; and further be pleased to call for the records and proceedings from the Respondent No.1; and after perusing the legality and propriety thereof, this Hon'ble Court be pleased to quash and set aside the impugned F.I.R. No.I 721/13 registered with the Nalasopara Police Station, Taluka Vasai, District Thane for the offence punishable under Section 304(A) read with Section 34 of the Indian Penal Code, 1860 against this Petitioner.”
- (ii) Subject to what is observed above, Writ Petition No.803 of 2014 is disposed of.

(ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)