

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-17277-2014 (O&M)

Date of decision: 21.12.2017

Krishan Kumar

... Petitioner

Vs.

State of Haryana and another

... Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Rajesh Arora, Advocate
for the petitioner.

Ms. Harpreet Kaur, AAG, Haryana.

Mr. Deepak Sabherwal, Advocate
for DHBVNL.

Ms. Simranjeet Kaur, Advocate for
Mr. Vijay Pal, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR No.16 dated 09.01.2014 under Section 304A of the Indian Penal Code ('IPC' for short), registered at Police Station Dadri Sadar and complaint No.NIL dated 04.01.2014 filed by respondent No.2 under Section 304A, 217 and 34 IPC and all the subsequent proceedings arising therefrom.

Brief facts of the case are that one Sanjay son of Azad Singh got electrocuted on account of coming into contact with overhead electric wires,

while watering his fields on 09.07.2013. An FIR No.16 dated 09.01.2014 was registered under Section 304A IPC, at Police Station Dadri Sadar on basis of a private complaint dated 04.01.2014 filed by respondent No.2, in which a direction was issued to investigate the matter and register the FIR. The petitioner Krishan Kumar at that point of time was working as SDO/OP, DHBVNL, Jhojhu Kalan, District Bhiwani, whereas co-accused Raffik (non-petitioner) was working as Junior Engineer.

The present petition was filed in the year 2014 and vide order dated 13.01.2015, further proceedings before the trial Court were ordered to be stayed.

After filing the reply by the respondents, during the course of arguments on 24.07.2017, it was directed that the petitioner shall place on record the relevant documents, if respondent No.2 had been granted any compensation or not. Vide Annexures P-10 and P-11, it was informed that the claim of respondent No.2-complainant Narender, who is brother of deceased Sanjay, was rejected by the DHBVN. Thereafter, vide order dated 08.11.2017, Chief Engineer/OP, DHBVN, Hisar was directed to appear in this Court to explain why the application for compensation filed by father of deceased Sanjay was rejected without making any reference to the existing policy of the State Government.

On 06.12.2017, Chief Engineer/OP, DHBVN, Hisar appeared in person before this Court and stated that a communication has already been sent to father of deceased Sanjay on 05.12.2017 to the effect that legal heirs are entitled to compensation of Rs.8,15,400/-, as out of Court settlement on account of death of Sanjay son of Azad Singh, irrespective of the fact that whether any

default of DHBVN or of deceased was proved or not and it was further submitted that Azad Singh-father of deceased should appear before him on 11.12.2017 for completing all the formalities in this regard. In pursuance to the said order, DHBVN vide aforesaid office order dated 18.12.2017, has sanctioned the amount of Rs.8,15,400/-.

Counsel for the petitioner has produced before this Court a copy of office order No.463 dated 18.12.2017, vide which the amount of Rs.8,15,400/- has been sanctioned in favour of Smt. Anita widow of deceased Sanjay and the aforesaid proceedings have taken place as out of Court settlement scheme and DOP 49.1 of DHBVNL. Office order dated 18.12.2017 is taken on record as Mark 'A'.

The aforesaid fact has also not been disputed by counsel appearing for respondent No.2.

Counsel for respondent No.2-complainant has submitted that he has got no objection if the present FIR against the petitioner is quashed in view of aforesaid facts.

Counsel for the petitioner submits that the offence under Section 304A IPC on the face of it is not made out, as three ingredients to prove the commission of offence under Section 304A IPC i.e. the mens-rea on the part of an accused, his physical presence at the spot to do an rash and negligent act and any illegal action by him resulting into death of a person, are missing in the present case. Counsel for the petitioner has relied upon a judgment of the Hon'ble Supreme Court in **State of M.P. Vs. Mehtaab, 2015 (1) RCR (Criminal) 1008**, wherein it has been held that in order to prove an offence under Section 304A IPC, all the aforesaid ingredients are to be proved by the

complainant. A similar view is taken by Bombay High Court in **2015 (15) RCR (Criminal) 45 M/s Divis Infratech Builders and Electrical Contractors Vs. State of Maharashtra.**

After hearing learned counsel for the parties, I find merit in the present petition on the following grounds: -

- (a) On the basis of an out of Court settlement dated 18.12.2017, an amount of Rs.8,15,400/- has already been paid to Smt. Anita wife of deceased Sanjay and it has been stated by way of affidavit of Azad Singh-father of the deceased as well as Smt. Anita widow of the deceased Sanjay that they do not intend to proceed with the present case/FIR.
- (b) In view of the judgment of the Hon'ble Supreme Court in **Mehtaab's** case (supra), there is no mens-rea proved on the face of the FIR, as it is the case of the complainant that deceased Sanjay, while watering his fields, came into contact with overhead electric wires and on account of electrocution, he died. Therefore, no mens-rea on the part of the petitioner Krishan Kumar, who was SDO/OP at that time as well as co-accused Raffik, who was Junior Engineer, could be proved on record, as admittedly, they were not present at the spot and they have not acted in a rash or negligent manner, which has resulted into accidental death of Sanjay.

For the reasons stated above, this petition is allowed and FIR No.16 dated 09.01.2014 under Section 304A IPC, registered at Police Station

Dadri Sadar and complaint No.NIL dated 04.01.2014 filed by respondent No.2 under Section 304A, 217 and 34 IPC and all the subsequent proceedings arising therefrom are quashed in toto, including against Raffik, who is non-petitioner/party in this petition.

21.12.2017
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[ARVIND SINGH SANGWAN]
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No