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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.REV.P. 480/2016 & CrI.M.A.10953/2016 (Stay)

PARVEZ

..... Petitioner

Through: Mr.Partap Singh, Adv.

versus

THE STATE (NCT OF DELHI)

..... Respondent

Through: Dr.M.P.Singh, APP.

SI Vikram Singh, P.S.Punjabi Bagh.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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25.08.2017

The petitioner is aggrieved by the order dated 21.04.2016 passed by the Additional Sessions Judge-III, West Delhi in connection with FIR No.326/2013 whereby charges have been framed against the petitioner under Section 304 alongwith Sections 279/186/353 of the IPC and Sections 66.1/192A/115/194 of the Motor Vehicles Act, 1988.

From the bare perusal of the FIR itself, it would appear that an accident took place which led to injuries on the person of the deceased. The injured was taken to the hospital where he died during the course of treatment.

The FIR clearly reveals that on the day of the occurrence, the informant saw a truck which was coming from Rajouri Garden side, was being driven by the petitioner at a high speed. Despite the informant having signalled the vehicle to stop, it was driven in such a rash and negligent

manner and in such high speed that the vehicle crossed the lane and hit Mr.Arya Bhushan leading to his injuries and ultimate death.

The police after investigation submitted charge sheet under Sections 279/304A/186/353 of the IPC and Sections 66.1/192A/115/194 of the Motor Vehicles Act, 1988.

The learned trial Court, on receipt of the charge sheet, framed charges against the petitioner under Section 304 IPC and not 304A IPC. The ostensible reason for charging the petitioner with Section 304 IPC is that despite the petitioner having been signalled to stop the vehicle, he proceeded ahead which led to the accident, the injuries to the deceased and his death later.

The trial Court has perhaps gone wrong in appreciating the definition of Section 299 which defines culpable homicide. What is important for the offence under Section 304 IPC to be attracted is that there should be an intention of causing death or intention of causing such bodily injury as is likely to cause death or the knowledge which is likely that by such act, death would be caused.

The averments made in the FIR clearly make out a case of rash and negligent driving. The petitioner has not been shown to be known to the deceased nor he could have been saddled with the intention of causing hurt to the deceased. Any person who drives a vehicle in a rash and negligent manner is expected to be aware of the fact that such driving could lead to disastrous results; nonetheless, the petitioner, in that event also, cannot be attributed with the specific/requisite intention of killing any person for the case to fall within the mischief of culpable homicide not amounting to murder. If the case does not fall in that category, no offence under Section

304 IPC can at all be said to have been made out.

As such, the charge under Section 304 as against the petitioner is absolutely unwarranted/unjustified.

The order impugned dated 21.04.2016 so far as the charge under Section 304 is concerned is set aside. The case is remitted to the learned Trial Court for writing out a fresh order of charge, in accordance with law.

The petition is allowed to the extent indicated above and is disposed of.

ASHUTOSH KUMAR, J

AUGUST 25, 2017

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