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IN THE HIGH COURT OF DELHI AT NEW DELHI

Order reserved on 22nd November, 2017

Order pronounced on 29th November, 2017

+ **CRL. Rev. Petition 51/2015**

BRIJ KISHORE SRIVASTAVA AND ORS.Petitioners

Through : Mr. Joydip Bhattacharya, Mr. Vishnu
Langawat and Mr. Mayank Sharna.
Advocates

Versus

STATE OF NCT OF DELHIRespondent

Through: Mr. Amit Ahlawat, APP for State with SI
Ram Naresh from PS- Amar Colony.

CORAM:

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

Crl. M. A. No. 1181/2017 (Delay in re-filing)

This is an application for seeking condonation of 3 days delay in refiling the petition.

Heard. For the reasons stated in the application, the delay in refiling the petition is condoned.

Application stands disposed of.

Crl. Rev. Petition 51/2015, Crl. M. A. Nos. 1180/2017 and 4265/2015 (Filing additional documents)

1. The present petition under Section 397 of the Code of Criminal Procedure has been filed by the petitioners assailing the order dated 26.09.2014 passed by the Metropolitan Magistrate-08, District South-East District Courts, Saket, New Delhi whereby notice under

Section 251 Cr.PC for the offence under Section 288/338/34 IPC (hereinafter referred to as ‘IPC’) was framed against the petitioner.

2. Brief and relevant facts necessary for the disposal of the present petition is that the petitioners are the owners of the property bearing No. F-6, East of Kailash, New Delhi and sought approval from the concerned authority for construction of a new three storey building on the said premises; that the petitioners started carrying out construction on the aforesaid construction; that on 07.06.2013, the complainant, who was working as labourer had fallen from the fourth floor of the aforesaid building; that on the statement of the complainant, an FIR under Section 288/337 IPC was registered against the petitioners in the instant case.
3. Learned counsel for the petitioners assailing the impugned order contended that the petitioners had hired services of an independent contractor, who had assured to provide all safety measures including helmets, clothing, gloves etc.; that the complainant sustained injuries due to his own negligence; that the petitioners have taken due permission from the authorities for carrying out repairing/construction of the building in question and hence no case under Section 288 IPC is made out against the petitioners.
4. During the course of proceedings before the Trial Court, on 06.05.2015, the parties entered into a settlement/compromise and offence under Section 338/34 stands compounded and the petitioners stand acquitted for the said offences.

5. To substantiate his arguments, learned counsel for the petitioners placed reliance upon *Abdul Kalam Vs. State (Government of NCT of Delhi)* reported in *129(2006) DLT 613*.
6. Refuting the arguments advanced on behalf of the petitioner, learned APP for the State contended that the petitioners failed to prove that adequate safety measure on the construction site have been taken by the petitioners and that being the owners of the property they cannot shed away their responsibility during the repairing/construction of the building and are liable to be punished for the offences under Section 288 IPC.
7. The sole issue which arises for consideration in the present petition is that whether the petitioners are liable to be prosecuted for the offence punishable under Section 288 of the Indian Penal Code.
8. Section 288 of the Indian Penal Code, reads as under :

“288. Negligent conduct with respect to pulling down or repairing buildings.—Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”
9. A reading of aforesaid Section makes it clear that Section 288 of the Indian Penal Code deals with negligent conduct with respect to pulling down or repairing buildings. In order to frame charge under Section 288 IPC, the essential ingredients are :-

- (1) The accused was pulling down or repairing any building; and
 - (2) The accused omitted to take sufficient precaution to guard against the probably danger to human life from the fall of that building or any part thereof.
10. The Trial Court vide its order dated 26.09.2014 framed notice against the petitioners for the offence punishable under Section 288/338/34 IPC on the grounds of negligence on the part of the petitioners which resulted in grievous injury to the complainant because the petitioners failed to take proper and necessary steps in guarding any probable danger to human life.
11. Undisputedly, the petitioners are owners of the property in question where construction work was going on and during the said construction work, the alleged incident took place. It has emerged from the record that the petitioners have taken necessary sanction/approval from the concerned authority to raise construction on their plot for which they hired the services of a contractor. The negligence under Section 288 IPC is attracted when the owner of the building while pulling down or repairing the building omits to take necessary permission from the authorities to guard danger to human life. In the instant case, it is apparent on record that the appropriate approval from the competent authority has been taken by the petitioners and the work contract was assigned to a contract for raising construction of the building. Moreover, the petitioners have compensated the complainant as mentioned in the order dated 06.05.2015 passed by the Trial Court.

12. Considering the fact that Section 288 of the Indian Penal Code only deals with a situation where a person, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building, or any part thereof, I am of the view that essential ingredients of Section 288 IPC have not been answered and the prosecution failed to bring anything on record to connect the petitioners with the alleged incident. Therefore, the impugned order dated 26.09.2014 passed by the Trial Court is set aside and petitioners are discharged for the offence punishable under Section 288 IPC.
13. Accordingly, the present petition stands disposed off along with pending applications.
14. A copy of this order be sent to the concerned Trial Court.

Crl. M. A. No. 1179/2015 (Stay)

In view of the order passed in the main petition, the present application is rendered infructuous.

Application stands disposed of.

SANGITA DHINGRA SEHGAL, J.

NOVEMBER 29, 2017
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