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

+ W.P.(CRL) 3492/2016

JAIPAL

..... Petitioner

Through Ms. Ankita Chaudhary Rathi, Adv.

versus

GOVT OF NCT OF DELHI & ORS

..... Respondents

Through Mr. R.S. Kundu, ASC.

Ms. Archana Pathak, Adv. for R-2 to
R-4.

CORAM:

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **24.05.2017**

The petitioner, who happens to be the owner of the property in question, has sought quashing of the FIR No.128/2016 dated 20.03.2016 (PS Kanjhawala) instituted for the offences under sections 288/304A of the IPC.

The petitioner had started the work of renovation of his house in the month of March 2016. While the renovation work was going on, one old wall collapsed which led to the death of one Bhupender @ Bhura. No sooner had the wall fallen on the deceased, the petitioner along with the contractor had taken the deceased to the nearest hospital but unfortunately the deceased succumbed to the injuries. A co-worker lodged the subject FIR. In the FIR, it has been stated that the petitioner was asked for providing safety measures but such a request went unheeded and the petitioner is said to have told the workers to continue with the work and nothing would

happen.

Learned counsel appearing for the petitioner has drawn the attention of this Court to the averments made in the FIR. Though it has been alleged that the petitioner was asked to provide safety measures which was not provided by him but it does not disclose to what safety measures could have been put in place by the petitioner, in his capacity of a house owner.

In cases of renovation where building is pulled down, the workers normally have to show alacrity of mind and have to be careful. Be that as it may, learned counsel for the petitioner has pointed out that no safety measure has been pointed out at the instance of the state also which could have been employed by the contractor at the instance of the petitioner.

While opposing the prayer of the quashing of the subject FIR, Mr. R.S. Kundu, learned Additional Standing Counsel drew the attention of this Court to the provision of the Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002, whereby every building worker is required to be provided with helmet of certain types, whenever there is a hazard of his being struck by falling objects or materials. The deceased is not alleged to have been hurt by any falling object. The wall was not being pulled down. Only because the wall was old, it fell down during the renovation.

In any view of the matter, the conduct of the petitioner in taking necessary steps of bringing the injured/deceased to the hospital in time clearly establishes that there was no negligence on the part of the petitioner. The petitioner, in a humanitarian measure, has also agreed to pay a total amount of Rs.1,85,000/- to the parents of the deceased who have been impleaded as respondent nos.3 & 4 in the present petition. It has been

submitted that Rs.85,000/- has already been paid, which assertion has been affirmed by the respondent nos.3 & 4 who are present in court. The petitioner has brought a demand draft of Rs.90,000/- and cash of Rs.10,000/- which has been paid to the respondent nos.3 & 4 which they have accepted to their satisfaction.

Taking into account the aforesaid facts namely the effort of the petitioner to provide medical succour/help to the deceased and trying in his limited way to recompense the family of the deceased, this Court has been persuaded to quash the subject FIR.

In ***Gian Singh vs. State of Punjab & Another, (2012) 10 SCC 303***, the Supreme Court has held that cases which are not compoundable under Section 320 of the Cr.P.C. could also be quashed, when continuation of any criminal proceeding would be an exercise in futility and where justice demands that the dispute between the parties should be put to an end and peace is restored. But ending of such criminal proceedings could only be ordered for securing the ends of justice.

The Supreme Court has further observed in *Gian Singh vs. State of Punjab & Another (Supra)*:

“58..... No doubt, crimes are acts which have harmful effect on the public and consist in wrongdoing that seriously endangers and threatens the well-being of the society and it is not safe to leave the crime-doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without the permission of the court. In respect of serious offences like murder, rape, dacoity, etc., or other offences of mental depravity under IPC or offences of moral turpitude under special

statutes, like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between the offender and the victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to the victim and the offender and the victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or FIR if it is satisfied that on the face of such settlement, there is hardly any likelihood of the offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is illustrative and not exhaustive. Each case will depend on its own facts and no hard-and-fast category can be prescribed.”

[Refer to B.S. Joshi, (2003) 4 SCC 675; Nikhil Merchant, (2008) 9 SCC 677 and Manoj Sharma, (2008) 16 SCC 1.]

Thus, the inherent powers of the High Court, having a wide plenitude could be used for quashing the FIR for securing the ends of justice and to prevent the abuse of the process of the court.

For the aforesaid facts, the FIR No.128/2016 dated 20.03.2016 (PS Kanjhawala) instituted for the offences under sections 288/304A of the IPC and all other proceedings emanating therefrom are quashed.

The petition is disposed of in terms of the above.

ASHUTOSH KUMAR, J

MAY 24, 2017
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