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

+ **CRL.REV.P. 826/2017 & CrI. M.(BAIL). 1928/2017, CrI. M.A.  
17826/2017**

SANGAM KUMAR PANDEY ..... Petitioner  
Through: Mr. Mahesh Thakur, Advocate.

Versus

STATE (NCT OF DELHI) & ANR. ....Respondents  
Through: Mr. Tarang Srivastava, Additional  
Public Prosecutor for State with  
SI Jitender P.S. Model Town.

**CORAM:**

**HON'BLE MR. JUSTICE NAJMI WAZIRI**

**ORDER**

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**02.11.2017**

1. The petitioner has invoked the revisional jurisdiction of this Court for challenging the judgment and order of conviction dated 29.08.2017 in Criminal Appeal No. 39/2017 whereby the Court of the Ld. Addl. Sessions Judge - 02, North Rohini Court dismissed the appeal filed by the petitioner and confirmed his conviction under Section 279 and 304-A of the Indian Penal Code, 1860 ("IPC")

2. The brief facts of the case are that on 21-12-2000, at about 7:45 AM, in the compound of Guru Harikishan Public School, Model Town, Delhi, the petitioner allegedly caused the death of one school child viz. Mandeep by driving over the unfortunate child a bus bearing No. DL-IP-5333, in a rash and negligent manner. Upon the complaint of Ms. Ramanjeet, the sister of the deceased, a case vide FIR No. 758/2000 was

registered at PS Model Town, Delhi against the petitioner. He was chargesheeted for offences punishable under Sections 279/304-A IPC & 3/181 Motor Vehicles Act, 1988 ("M.V. Act"). Notice u/s 251 Code of Criminal Procedure, 1973 ("Cr.P.C") was served upon him. He pleaded not guilty. Upon conclusion of the trial, he was convicted for the offences under sections 279/304A IPC, vide judgment dated 17.08.2016 and was sentenced vide order dated 01.03.2017. Aggrieved by this judgment and order passed by the Ld. MM, Rohini Courts, the petitioner preferred an appeal before the Court of Sessions, Rohini. By means of the impugned order 29.08.2017, the Ld. Court of Sessions dismissed the appeal, confirming the judgment and order passed by the Court of Ld. MM, Rohini Courts. The present petition impugns the aforesaid order.

3. In sentencing the petitioner to i) simple imprisonment of three months for the offence u/s 279 IPC and ii) simple imprisonment of one year for the offence u/s 304A IPC, the impugned order dated 29.08.2017 observes as under:-

*22. In the catena of judgments, the Higher Courts including the Hon'ble Apex Court has made it clear that within the ambit of rashness and negligence on the part of the driver, the concept of absence of due care is covered. Also that phrases 'due care' have to be considered in the facts and circumstances of each case as each case has its peculiar facts to decide the quantum of care required by the driver of vehicle at the time of driving such vehicle.*

*23. In this case the driver is a driver of a school bus. The spot of the accident was school compound. The deceased was a small child, a student of the school, who had boarded down from the same bus under which she was crushed. It came on record that there were only two buses in the school at that*

time and the deceased had boarded down from the bus admittedly driven by the accused. Reversing the vehicle in school compound at the time when the school children of tender age, after boarding down from the bus, were in a rush to reach to their class in the morning and the bus from which the ; deceased and the eye witness boarded down was already late. In such facts and circumstances, in the school atmosphere, a 'high degree' of care is required by the driver of the heavy and long vehicle particularly the school bus for driving it in a school compound. where small school students of tender age were studying, the absence of even a minor care could cause the causality and in this case it has happened as duly established by the prosecution through the un rebutted testimony of eye witness Ms. Ramanjeet Kaur examined as PW4. 24. These aspects have been duly discussed in the body of the judgment by the Ld. Trial Court in para Nos. 22 to 27 on the aspects of rashness and negligence on the part of the accused/appellant and on appreciation of the evidence on record.

25. The contentions regarding the evidenciary value of defence witnesses of DW1 & DW2, the para Nos. 28 to 30 have been devoted and with the help of principles of evidence and at weighing the evidence of DW1 & DW2 with the evidence of PW4, the eye witness, Ld. Trial Court has appreciated the evidence not only from the angle of testimony of eye witness but also through the complete chain of evidence and has rightly placed his reliance on the observations made in the case titled as A.N.Venktesh Vs. State of Karnataka, 2005-VIU (AD) (SC) 37, to the conclusion of the guilt of the accused Thus, the appreciation of evidence of DW1 & DW2 in comparison of PW4 by the Ld. Trial Court has been duly done and needs not interference on this aspect.

27. Therefore, in view of the facts and circumstances of the present case, this court is of the considered view that Ld.

*Trial Court has not committed any illegality or perversity in convicting the accused/appellant for the offences u/s 279/304A IPC. Also, there appears nothing to interfere either for judgment of conviction or order on the sentence awarded by the Ld. Trial Court to the convict because Ld. Trial Court has duly considered all the mitigating circumstances raised before such court while awarding the sentence.*

4. In this context, the Court is not inclined to release the petitioner on probation. Regarding the question of compensation raised in the petition, it would be pertinent to note that Section 357(3) of the Cr.P.C reads as follows:-

*(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.*

5. The sentence imposed by the Ld. Trial Court and upheld by the Ld. MM, Rohini Courts is as follows:-

*i) Simple imprisonment of three months for the offence u/s 279 IPC.*

*ii) Simple imprisonment of one year for the offence u/s 304A IPC.*

6. Since a fine has not been imposed as part of the said sentence, the Court was well within its powers to order the accused to pay a compensation of Rs. 1,00,000. Hence, the petitioner's argument that the Court cannot order compensation to be paid is untenable in view of the clear stipulation of section 357 (3) of the Cr.P.C. that when fine is not imposed in

the sentence, a compensation can be granted in the judgment to the person who has suffered any loss or injury by the accused persons' act.

7. For the aforementioned reasons, this Court finds no need to differ with the order dated 29.08.2017, which has upheld the conviction and sentencing of the petitioner. Hence, the petition is dismissed.

**NAJMI WAZIRI, J.**

**NOVEMBER 02, 2017/g**