

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 3839 OF 2012

Shyam s/o Rameshwar Darak,
aged 60 years, Occupation Business,
R/o. Parali Vaijinath, Taluka Parali,
District Beed.

... **APPLICANT**

VERSUS

01. The State of Maharashtra.

02. Vaijnath s/o Vishwanath Ture,
Age: 60 years, Occu: Agri.,
R/o: Lambota, Tq. Nilanga,
Dist: Latur.

... **RESPONDENTS**

...
Mr. Ambar S. Barlota, Advocate for Applicant.

Mr. M. M. Nerlikar, APP for Respondent No.1 /State.

Mr. G. B. Patunkar, h/f Mr. S. S. Halkude, Advocate for Respondent No.2.

...

CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 03rd August, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed under Section 482 of the Code of Criminal Procedure for relief of quashing of R.C.C. No.78 of 2012, pending in the Court of learned Judicial Magistrate First Class,

Nilanga, which is filed by Police in Crime No.127 of 2011, registered with Nilanga Police Station. Charge-sheet is filed for the offence punishable under Sections 304 read with 34 of the Indian Penal Code.

2 Both the sides are heard.

3 The present Applicant is a contractor and the work of laying electrical wire and doing other work in connection with supply of electricity to agricultural lands, was given to him by the Electricity Distribution Company. There was the work of laying electrical wire for giving connection of electricity to the borewell situated in the land of Dhanraj Patil. It is the case of Applicant that he had appointed Anil Jadhav for doing labour work as he had experience of doing such work through Sub-Contractor, D. M. Kalyani. Thus, when the contract was given to the Applicant, he had given the work to Sub-Contractor and the Sub-Contractor had appointed Anil Jadhav for execution of the work.

4 The incident took place on 18th November, 2011 when Sub-Contractor took deceased Sambhaji who was working with Anil Jadhav for execution of the work. Some other labours were also

engaged by Anil Jadhav. When Sambhaji was pulling wires of electricity for giving connection, he suffered shock of electricity. Due to the current of electricity, Dagadu, other employee also received shock and he was virtually thrown away from the pole of electricity. Attempt was made to save the life of Sambhaji, but in hospital it was declared that he was already dead. It transpired that even when there was current of electricity, which was not put off, from that line, attempt was made to give connection to the borewell and due to that incident took place. Report was given by the father of Sambhaji on 19th November, 2011 and crime came to be registered for the aforesaid offences. As the present Applicant is the main contractor, he is also made accused in the case.

5 The learned counsel for Applicant mainly submitted that the Applicant had engaged Sub-Contractor and Anil Jadhav was negligent as he did not take proper care. He submitted that as per the agreement, Anil Jadhav was to be held responsible.

6 On the other hand, the learned APP submitted that there was contract between the present Applicant and Electricity Distribution Company and under the said contract, such liability is on

the present Applicant, contractor. It is not disputed that under the contract made with the Electricity Distribution Company, the present Applicant becomes liable in respect of all the risk, loss or damage to the person or property including the death, which may take place in consequence of performance of contract. The site was handed over to the contractor and the entire responsibility of execution of the work was of the contractor. In view of the terms and conditions of contract dated 28th January, 2011, it is not open to the Applicant to say that under different agreement with Anil Jadhav or others, he had delegated the responsibility or work to the Sub-Contractor.

7 In view of the aforesaid circumstances and as proper care was not taken and the labour force, which had no experience was engaged and even care was not taken to see that supply of electricity was off before starting the work, this Court holds that no relief can be granted to the Applicant. The submission made that at the most the act will fall under Section 304(A) of the Indian Penal Code is also not acceptable. It will be the matter of appreciation of the evidence by the Trial Court and only after that the Trial Court will ascertain as to whether the offence is committed under Section 304 or 304(A) of the

Indian Penal Code. *Prima-facie*, there is a material to show that knowledge can be inferred at this stage. In the result, the following order is passed:

ORDER

- I. The application is dismissed.
- II. Interim relief is already vacated.
- III. Rule is discharged.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]

ndm