

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1494 OF 2017

Shri. Ashok Muktaji Pawale,
Age 68 years, Occu. Retired,
R/o Shri Bungalow, Kirloskar Colony,
Ahmednagar. ... **Petitioner**

Versus

1. The State of Maharashtra
Through Police Station Officer,
Camp Police Station Bhingar,
District – Ahmednagar.
2. Prakash Pote S/o Mohan Pote,
Age – Major,
R/o Nimbodi, Ahmednagar. ... **Respondents**

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Adv. Pradnya S. Talekar h/f Talekar and Associates,
Advocate for Petitioner
Mr. D.R.Kale, APP for Respondent No.1 - State

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**CORAM : S.S.SHINDE AND
MANGESH S. PATIL, JJ.**

**RESERVED ON : 17th November, 2017
PRONOUNCED ON : 09th January, 2018**

JUDGMENT : (Per Mangesh S. Patil, J.) :-

Rule. The Rule is made returnable forthwith.
Heard finally with the consent of the learned advocate

for the Petitioner and the learned APP.

2. By way of this Writ Petition filed under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code, the petitioner being one of the accused from Crime No.173 of 2017 registered under Section 304 read with Section 34 of the Indian Penal Code at Camp Police Station Bhingar, District Ahmednagar, is praying to quash the FIR.

3. Shortly stated the facts leading to the filing of this Writ Petition are as follows :

In an unfortunate incident on 28.08.2017, a slab and a wall of a Class Room of Zilla Parishad Primary School, Limbodi, Taluka and District Ahmednagar caved in causing death of three students studying in 5th standard and injuring 18 other students. As usual, the Government Machinery moved. The Chief Executive Officer of the Zilla Parishad directed an inquiry to be conducted and the inquiry report (Exh-B) was received on 31.08.2017. It was found that the project for

construction of the room had received technical sanction from the Executive Engineer P.W.D. on 18.08.1997. The foundation was laid in a black soil. The proportion of Bed Concrete as prescribed was not maintained. When the construction was to be carried out in cement mortar in the proportion of 1:6, in fact it was found that the construction was not carried out by maintaining the proportion. It was also expected that there should have been a proportion of 60:40 in respect of unskilled work and skilled work. But there was a possibility of even this ratio having not been maintained. The stones of prescribed length which should have been used for laying the header was not used. It was then concluded that the construction was faulty for the aforementioned reasons. The persons i.e. the Sarpanch and the Gram Sevak as well as the Sectional Engineer and Deputy Engineer who were then posted during the period in which the room was constructed are responsible for the mishap.

4. Father of one of the students who has died in the

incident lodged the report on 31.08.2017 and the offence has been registered as mentioned herein above.

5. According to the learned Advocate for the petitioner, although the project for construction of the class room was sanctioned in the year 1997, the work was actually completed in the year 2001. The petitioner had only worked as a Deputy Engineer for the first 9 months of the project and was transferred before its completion. There were several other causative factors like heavy rain fall and accumulation of rain water which has resulted in dampening of walls. There was neither any intention nor knowledge on the part of the petitioner to cause death. The class room was abandoned because of its weak structure but still the Head Mistress had allowed it to be used as a Class Room since about 2 weeks next before the incident and therefore, she alone was responsible for causing the deaths. There was only a limited role to be discharged by the petitioner of forwarding the estimate prepared by the Junior Engineer to the Executive Engineer and to

issue completion certificate. He was not involved any further and therefore was not responsible for maintaining the quality or standard of the construction which responsibility was vested with the Junior Engineer. The Gram Sevak and the Sarpanch were supposed to supervise the work as per the Government Resolutions and the circulars. Therefore applying the principles laid down in the case of ***The State of Haryana Vs. Bhajan Lal and others; AIR 1992 SC 604***, the allegations against the petitioners are inherently improbable.

6. The learned Advocate also submitted that all the necessary ingredients for constituting the offence punishable under Section 304 of the Indian Penal Code cannot be made out from the FIR. The petitioner has retired long back and now he has to face prosecution for something for which he is not responsible and after a lapse of more than 20 years. He would face harassment and even therefore the FIR is liable to be quashed.

7. The learned Advocate also referred to the decision

in the case of (i) ***Shantibhai J. Vaghela & anr. Vs. State of Gujarat & ors. [(2012) 13 Supreme Court Cases 231]***, (ii) ***Mahadev Prasad Kaushik Vs. State of Uttar Pradesh [(2009) 2 Supreme Court Cases (Cri) 834]*** and submitted that in order to attract the offence punishable under Section 304 of the Indian Penal Code mere omission, lapse or negligence on the part of the accused is not sufficient. There should be some more positive act.

8. The learned APP strongly opposed the application. He submitted that considering the nature of the duties that were supposed to be performed by the petitioner, his involvement in causing death of children is apparent. The construction of the room was undertaken during the period when he was working as a Deputy Engineer. The foundation was erected and even the construction up to lintel level was carried during his tenure. As a result of the inquiry, it has been revealed that he was responsible for ensuring the quality of the construction. He should have carefully supervised the

construction of the basement. It is a failure on his part to inspect the quality of foundation. Considering the fact that in the Inspection Report it has been found that the quality of construction of foundation was also not as per the prescription, knowledge can certainly be attributable to the petitioner that for want of sound foundation there was likelihood of collapsing the construction standing thereon. Even the knowledge can be attributed to him that the class room was being constructed and it would be occupied by children. Therefore, in the facts and circumstances, it can be said that the petitioner had the knowledge that in case of construction coming down it would certainly cause death of the children. The allegations in the FIR and the result of the investigation would attract the offence under Section 304 read with Section 34 of the Indian Penal Code. The learned APP also referred to the papers of the investigation and pointed out that the duty list of the petitioner for the relevant time clearly shows that it was a part and parcel of his duty to supervise the construction being carried out and since the

construction of the basement and the brick work upto lintel level was carried out during the period during which the petitioner was working as a Deputy Engineer, the responsibility for sound construction to that extent was on him.

9. We have carefully gone through the papers annexed to the petition as also the papers of the investigation with the able assistance of the learned Advocate for the petitioner and the learned APP. There can be no dispute that the project for construction of the class room had received sanction in the year 1999. But it was actually completed after many years in the year 2001. However it is also a fact admitted that the petitioner was working as a Deputy Engineer with Zilla Parishad from 17.08.1996 to 25.06.1999. It is therefore, quite clear that for about 9 months before he was transferred, the construction of the room was going on. It is admitted that the class room was constructed under Employment Guarantee Scheme. A resolution was passed by Gram Panchayat on 25.08.1998 for

carrying out such construction under that scheme. It is also admitted that the applicant was involved in commencing the construction being a Deputy Engineer of the Zilla Parishad. The technical sanction was also obtained by him from the Executive Engineer of the Zilla Parishad and the proposal for that purpose was prepared and submitted under his signature. The Investigating Officer has also collected a duty list apparently showing that it was the duty of the Sectional / Deputy Engineer inter alia to prepare estimates of the constructions to be carried out by Gram Panchayats and to give technical advice. It was also the duty to supervise the construction of the work being carried out. It was then also his duty to provide technical guidance and to get the work done from the subordinates.

10. It is also apparent that the preliminary inquiry has been conducted which reveals that the causative factors for collapse of the class room included a faulty construction or the construction which was not carried

to the prescribed specifications, appropriate proportion of building material was not used. The petitioner was in charge of supervising the construction and the construction of the basement and the walls up to lintel level was carried out during his tenure. In our considered view there is enough material to show that the petitioner was very well involved in carrying out the construction which has resulted in causing the mishap. The petitioner can certainly be attributed with requisite knowledge of the consequences of such faulty construction. He was supervising construction of a class room being carried out and must be held to have had the knowledge that it was to be used by children as a class room. He can certainly be attributed with sufficient knowledge that in case a faulty construction was carried out it could collapse and result in fatalities. Therefore, in our considered view the ingredients for constituting the offence punishable under Section 304 of the Indian Penal Code can easily be made out from the FIR and the investigation carried out up till now.

11. In our view the petitioner cannot seek to derive any benefit merely because there could be several other causative factors like excessive rain and flooding, particularly when such other causative factors could only be established during trial.

12. Keeping in mind the fact that three students have lost life and several others have sustained injuries because of the faulty construction or the construction which has been carried out without adhering to the norms, a detail investigation will have to be carried out and the Investigating Officer also deserves to be extended an opportunity to do it. Therefore in our considered view, this is not appropriate case to exercise the extraordinary power of quashing the FIR.

13. As regards the decision of the apex Court in case of Shantibhai J. Vaghela (supra), few children studying in an Aashram had drowned. The FIR was lodged against 7 inmates of the Aashram for the offences punishable under Section 304 of the Indian Penal Code and the High Court had quashed the FIR. The order

was challenged before the Supreme Court by the parents of deceased children. In such peculiar facts, the criminal appeals filed by the parents of the deceased were dismissed by holding that the negligence or lapse on the part of the Aashram Authorities in not conducting a proper and effective search, not informing police about the incident and failing to effectively man the gates of the Aashram adjoining the river bed were not sufficient to attract the offence punishable under Section 304 of the Indian Penal Code. In the matter in hand, a class room has collapsed apparently due to faulty construction when it was a part and parcel of the duties of the petitioner as Deputy Engineer to ensure the quality of the construction. The facts in the matter in hand are therefore quite different than those were obtaining in the case of Shantibhai (supra). As is observed above, the petitioner can certainly be attributed with requisite knowledge of the consequences ensuing from the faulty construction. Therefore, he is not entitled to seek any benefit from the decision of the Supreme Court.

14. In circumstances the petitioner's case is not covered by any of the instances / categories of cases laid down in the case of State of Haryana Vs. Bhajan Lal (supra). The FIR therefore, cannot be quashed.

15. The petition is dismissed. Rule is discharged.

16. The observations made herein above are prima facie in nature and confined to the adjudication of present petition only. Rejection of this petition shall not preclude the petitioner from availing appropriate remedy in the event of filing of the charge-sheet.

(MANGESH S. PATIL, J.)

(S.S.SHINDE, J.)

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