

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO. 642 OF 2016

G.A. Rajegauda

... Applicant

Vs.

State of Maharashtra

... Respondents

...

Mr. Rajiv Patil, Sr. Advocate i/by Mr. Milind Sawant for the applicant.

Miss Pallavi Dabholkar, APP for the Respondent-State.

...

CORAM : PRAKASH D. NAIK, J.

DATE : 10th JULY, 2018.

P.C.

1. The applicant had preferred an application before the Sessions Court, Pune for discharge which has been rejected by order dated 3rd October, 2016. The applicant has preferred this revision application challenging the said order.

2. The brief facts of the prosecution case are as follows :-

(a) Bhartiya Sanskruti Darshan Trust decided to construct a building for its hospital. The work of construction of the building was given to M/s Prompt Landsmark Private Limited. The said company in turn assigned the work of centering to the applicant as per the quotation dated 14th March, 2012.

(b) On 21st December, 2012 while the work of putting slab of

dome on 5th floor was in progress, the slab of the fifth floor had collapsed and 13 persons were killed in the said mishap.

(c) Initially, accidental death was registered. Subsequently, FIR was registered at Lonikand Police Station, Pune against the applicant and other accused vide CR No. 207/2012 for offences punishable under Sections 304 and 308 read with 34 of Indian Penal Code.

(d) The Collector, Pune appointed committee consisting of officers of PWD to enquire into mishap vide Report dated 21st December, 2012, committee found that the cause of incident was due to improper centering work. Investigation was conducted and on completion of the same, the chargesheet was filed.

3. The applicant preferred an application for discharge under Section 227 of Code of Criminal Procedure, 1973 which was rejected on 3rd October, 2016.

4. Shri Rajiv Patil, learned senior counsel appearing for the applicant made following submissions.

(i) Chargesheet does not make out offences under Sections 304 and 308 of Indian Penal Code against the applicant. The prosecution has not established *prima-facie* case for proceeding against him to frame charge for the said offences.

(ii) Learned Sessions Judge has committed an error in rejecting the application for discharge, although, there was no evidence to prosecute the applicant for the said offences.

(iii) The applicant was neither concerned with construction nor designed the construction of the building which was being constructed. He is a supplier of labour for the construction work, and has nothing to do with the construction of dome which had collapsed.

(iv) The work of construction was given to M/s Prompt Landmark Private Limited.

(v) Accused No.2, 5, 7 to 9 had also preferred an application for discharge before the Sessions Court which were allowed.

(vi) The trial Court has erroneously relied upon the affidavit filed by co-accused Makarand Kulkarni who had stated that contract of centering was given to the applicant and he has carried out centering work of the building for which payment of Rs.26,76,625/- is made to him.

(vii) The principal accused who were responsible for the construction work were discharged by the trial Court and the applicant is entitled for discharge on the ground of parity.

(viii) The prosecution has not established the nexus between the

incident of collapse of the building and the applicant. There is no evidence on record to establish that applicant was assigned centering work. Chargesheet does not satisfy existence of any ingredients constituting the offence under section 304 and 308 of Indian Penal Code against the applicant. Witnesses have not attributed any overact to the applicant connecting him to the alleged incident

(ix) The construction in question was being carried on behalf of Bhartiya Sanskruti Darshan Trust who had outsourced the work by appointing technical experts for the construction of the hospital building. The Trust had appointed Shri Kailash Sontakke of M/s Associate Architect as the Architect for construction of Hospital by letter dated 28th January, 2012. The Trust had also appointed M/s Sunil Mutalik and Associates as their structural consultantants for the construction of Panchakarma Hospital by letter dated 28th January, 2012. The applicant was neither appointed in any capacity by the Trust nor he was appointed as technical expert.

(x) There was no complaint of any nature alleging that the applicant had supplied inferior material or unskilled labour.

(xi) Statement of Shri Sunil Mutalik dated 21st December, 2012 shows that the spot of incident was visited on 17th December 2012

by structural Engineers and they had approved the construction. Thereafter the incident of collapse of slab had occurred. It was not the responsibility of the applicant to check the quality of construction. There is no evidence in the form of statement of any witness that the applicant had carried out the construction work. Thus, the charge under Section 304 and 308 of Indian Penal Code were groundless.

5. Learned APP supported the impugned order. It is submitted that at the stage of framing of charge it is not expected that the trial court would enter into mini trial. The court is required to see that *prima-facia* case is made out to proceed against the accused for framing charge. It is submitted that the statement of witnesses clearly shows the involvement of the applicant in the said crime. The grounds raised by the applicant cannot be appreciated at this stage and at the most the same are his probable defences which are to be adjudicated in trial. It is submitted that the first informant in the statement dated 21st of December, 2012 has stated that the labour contractor (applicant) was given contract of centering by Prompt Landmark Private Limited. He has also employed his workers for the work of centering. She relied on the statement of Guren Thakur who stated that he is working as a

labourer with the applicant and he was working at the construction sites in Pune at his instructions. She referred to the statement of Makarand Kulkarni. It is submitted that the statement of witnesses shows that the centering was done by the applicant. The statement of the witnesses also shows that the workers who died at the place of mishap on account of collapse of slab were working for the applicant. The applicant is a proprietor of M/s Avinash Construction Private Limited who had submitted quotation to the main contractor. It is submitted that there is oral and documentary evidence showing his involvement. There is nexus between the centering work of the dome of the hospital which had collapsed with the applicant. It is submitted that the enquiry report indicated the cause of incident as improper centering. Learned APP relied upon a decision of Supreme Court in the case of *State of Tamil Nadu Vrs. N Suresh Rajan and others*¹.

6. The incident in question had occurred on 21st December, 2012 while putting slab of dome on 5th Floor which collapsed and 13 people were killed. The building was being constructed at the instance of Bhartiya Sanskruti Darshan Trust and the contract of construction was given to M/s Prompt Landmarks Pvt. Ltd. It is

1. 2014 11 SC 709

alleged that the work of RCC and Centering was given to the applicant as per the quotation. The applicant is a proprietor of M/s Avinash Construction Private Limited. The statement of witnesses indicates that they were working at the instance of the applicant at the site of slab work of dome. The statement of witnesses shows that centering and slab work was done by the applicant. Although, the other accused were discharged by the trial Court, on the basis of material on record, the application preferred by the applicant was rejected.

7. Mr. Patil, learned counsel for applicant pointed out statements to contend that the applicant was only a labour contractor and was not concerned with the construction of the dome. It is submitted that witnesses nowhere stated that the work of construction or centering was entrusted to the applicant. I have perused the statements and other documents on record. The FIR was lodged on 21st December, 2012. The incident of collapse of slab had occurred on 18th December, 2012. The complainant on enquiry has stated that, contract of construction was given to M/s Prompt Landmark Pvt. Ltd. The Director of said company was Pramod Gore who was given work order to perform construction on behalf of M/s Prompt Landmark Pvt. Ltd. Site Engineer

Makarand Kulkarni, Junior Engineer, Abhishek Patil, Supervisor Venkat Jadhav were supervising the work. It is further stated that Labour Contractor Raje Gowda (applicant) was given contract of centering by M/s Prompt Landmark Pvt. Ltd. He had employed his workers for the said work. The incident had occurred due to technical defects for which contractors and concerned engineers are responsible. Statement of Sunil Mutalik indicate that he was appointed as Structural Designer and Shri Kailas Sontakke was appointed as Architect. He was requested to check the work of roof slab on 4th floor. Hence, he along his associate had visited the place and approved the work and permitted construction work of next slab. Mr. Patil submits that the statement makes it clear that the work was approved by structural designer. However Mr. Mutalik has further stated that, on 19th December, 2012 he visited the spot of incident and noticed that, there was defect in placement of steel props and other material to support of centering for roof slab above courtyard on 4th floor which had resulted in incident. He further stated that the contractor and sub contractor Raje Gowda (applicant) appointed for centering and others were responsible for mishap on account of their negligence. The statement of Dr. Umesh Tekawade also refers to circumstances in

which the incident had occurred and stated that defective work had resulted in mishap and various persons including applicant being centering contractor are responsible for incident. Statement of Shailesh Shinde dated 23rd December, 2012 refers to applicant being appointed as centering contractor. Statement of Guren Thakur stated that he alongwith several others are working as labourers with applicant. The chargesheet contains report dated 20th December, 2012 submitted by Superintendent Engineer to Additional District Magistrate in which it is stated that the contractor had not conducted designing of centering and did not get approval of structural designer and improper centering was done for dome slab which shows negligence of main contractor and contractor for centering which had resulted in the said incident. The statement of Dilip Ingle dated 5th January, 2013 states that the applicant is having his office of AVA Construction near the office of witness and that the applicant is conducting business of centering contracts in city of Pune. The investigating officer has collected the partnership deed of AVA Construction. In the said Deed indicate that the firm was established to start business of centering contractor and other business related to construction.

8. The learned Sessions Judge while rejecting the application has taken into consideration material on record. The observation of the Sessions Court, however, with regards to the affidavit filed by the co-accused accused Makarand Kulkarni was not warranted. The Court has noted that the said co-accused has filed affidavit stating that the contract was given to the applicant and that he has carried out the centering work of the building and the payment was made to him. Such an affidavit cannot be relied upon. It does not form part of chargesheet and it was tendered by co-accused. However, there is sufficient material to proceed against the applicant. This is not the stage to evaluate the evidence and fixed liability of any person. The statement of witnesses and the material on record has to be taken as it is and the defence of the accused can be considered at the time of trial.

9. The Supreme Court in the decision of *State of Tamil Nadu Vrs. N Suresh Rajan and others* (supra) relied upon by the learned APP has observed that while framing charge or discharge of accused, the trial Court is not required to hold mini trial. The Court has to proceed with assumption that the material brought on record by the prosecution is true and only probative value of the material has to be looked into to find out if there is *prima-facie*

case to proceed against the accused. The Court is not expected to go deep into the matter and hold that materials would not warrant the conviction. If the Court, on the basis of the materials, thinks that accused *prima facie* might have committed offence, it can frame charge.

10. In the light of the principal of law enunciated by the Apex Court and materials on record, no case is made out to grant the relief prayed in this application and the same is required to be rejected.

ORDER

- (i) Criminal Application No. 642 of 2016 stands rejected;
- (ii) It is clarified that observations made in the order are only for considering the present application and the trial Court shall not be influenced by the same;
- (iii) Application stands disposed of.

Sachidanand
Kuttan Nair

Digitally signed
by Sachidanand
Kuttan Nair
Date:
2018.07.25
14:04:08 +0530

(PRAKASH D. NAIK, J.)