

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.4083 of 2018

ORDER:

In this petition, filed under Section 482 Cr.P.C, petitioner – accused seeks to quash the proceedings against him in Crime No.17 of 2018 of Bhainsa Police Station, Nirmal District, registered for the offence under Section 304-II IPC and Section 135 of the Electricity Act, 2003.

2. Brief facts of the case are that the accused and deceased are having agricultural lands in juxtaposition in Sy.No.46/A and they were raising maize crop. In order to protect their crop from the wild bores and other wild animals, they fenced their lands with live electric wires. They used to switch on the power supply to the respective fencing everyday before they leave the fields in the evening and, in the morning hours, after they come to the fields, they used to switch off the electric current. On 23.02.2018, in the morning hours, the husband of the *de facto* complainant went to the land and removed electric supply to his land, and started working in the field. At about 11.00 a.m, his son, Shankar went to the field and noticed that his father was working in the field and the accused was working in the neighbouring field. While so, the accused, having noticed that wild bores entered his field, switched on the electric supply to the fencing to kill them without taking into consideration whether anybody was working in the nearby field. The deceased

came into contact with live wire, got electrocuted and died instantaneously. Hence the report.

3. Denying the complaint allegations, learned counsel for the petitioner would submit that, even if the entire prosecution case is accepted to be true, still the charge under Section 304-II IPC does not attract in as much as there was no intention or knowledge on the part of accused to kill the deceased. Moreover both of them are the neighbouring land owners and everyday they used to switch on electric supply to fields before they leave to home and they used to switch off electric current when they enter the fields. It is also not the definite case of the prosecution that, having known that the deceased was working in the neighbouring field, the accused switched on the electric supply to his fencing with a view to kill the deceased. Therefore, no offence can be attributed against him, much less the offence under Section 304-II IPC. He would submit that, at the worst, the offence under Section 304-A IPC may be attributable against the petitioner – accused. He would submit that the offence under Section 304-A IPC is a bailable offence. So also, the offence under Section 135 of the Electricity Act, 2003 is a non-bailable offence since it is punishable with a term extended to three years and fine. On this submission, learned counsel would, at the first instance, seek to quash the proceedings on the ground that no offence is made out against the petitioner – accused. Alternatively, he would submit that, if the Court comes to the conclusion that the offence under Section

304-II IPC is made against the accused, an order, in terms of the guidelines rendered by Hon'ble Apex Court in the decision reported in **Arnesh Kumar vs. State of Bihar**¹, may be passed.

4. Learned Additional Public Prosecutor opposed the petition on the submission that the charge under Section 304-II IPC is very much maintainable against the petitioner – accused because, as per the complaint allegations, the accused switched on the electric supply without having taken due care and caution and knowing that, if anybody comes into contact with live wire, it would be fatal to him. He would further submit that, investigation is in the nascent stage and, therefore, at this stage proceedings may not be quashed.

5. This Court finds some force in the submission of the learned Additional Public Prosecutor. As investigation is at infancy, it is not possible to definitely say whether the offence under Section 304-II IPC or Section 304-A IPC is applicable which is to be determined after investigation is completed. Therefore investigation shall be proceeded with.

6. So far as the offence under Section 135 of the Electricity Act is concerned, the same is punishable with imprisonment which may extend to three years and fine. Hence, the same can be treated as a non-bailable offence. In these circumstances, this Court is of the view that investigation shall lead to its logical conclusion. However, the Investigating Officer shall strictly follow the guidelines rendered by Hon'ble Apex

¹ AIR 2014 SC 2756

Court in the decision reported in **Arnesh Kumar vs. State of Bihar**² and also the procedure contemplated under Section 41-A Cr.P.C towards the petitioner - accused during the course of investigation. In turn, the petitioner - accused shall cooperate with the investigating agency for smooth completion of investigation.

7. Accordingly, this Criminal Petition is disposed of. Miscellaneous petitions, if any pending, shall stand closed.

U.DURGA PRASAD RAO, J

Date: 18.04.2018
Note:CC tomorrow
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² AIR 2014 SC 2756