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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 25th October, 2018

+ CRL. M.C. 5404/2018 and Crl.M.A.34806/2018

NARESH SHAH @ NARESH GUPTA & ANR.

..... Petitioners

Through: Mr. Vidit Gupta, Advocate with
petitioner in person.

versus

STATE & ORS.

..... Respondents

Through: Mr. Amit Ahlawat, APP for the
State with SI Sanjeev Kumar,
PS Vivek Vihar.
R-2 & R-3 in person.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. On the basis of final report under Section 173 of the Code of Criminal Procedure, 1973 (Cr.P.C.) submitted on conclusion of investigation into first information report (FIR) No.354/2016 of Police Station Vivek Vihar, the petitioners herein have been summoned by the Metropolitan Magistrate to face prosecution on the accusations for offences punishable under Sections 287/304-A of the Indian Penal Code, 1860 (IPC), the case involving the death by electrocution of Manjre, son of Late Ganesh Shah. It is the case for the prosecution that the deceased while being engaged as a worker by the petitioners herein was electrocuted due to the rash or negligent acts of

commission or omission indulged in by the petitioners, they having failed to take such order with the machinery in their possession or under their care as was sufficient to guard against any probable danger to human life therefrom.

2. The petitioners have approached this court by the present petition invoking inherent power and jurisdiction under Section 482 Cr.P.C. to seek the proceedings arising out of the said FIR to be quashed on the basis of settlement with the third respondent, she being the mother of the deceased. The second respondent has been added to the fray on the ground he was the first informant of the case.

3. The respondent State resists the petition relying on the rulings of this Court in *Shivam Chauhan & Anr. vs. The State (Govt. of NCT of Delhi) & Anr.*, *Crl.M.C.2759/2018*, dated 05.09.2018; and *Madan Lal vs. The State (Govt. of NCT of Delhi) & Ors.*, *Crl.M.C.4382/2016*, decided on 05.09.2018.

4. The learned counsel for the petitioners relies upon decisions of a single benches of this Court in *Mahender Singh vs. State (GNCT of Delhi) & Ors.*, *Crl.M.C.512/2016*, decided on 05.02.2016; and *Jasvinder Singh Malhotra vs. State of NCT of Delhi & Ors.*, *Crl.M.C.996/2016*, decided on 16.03.2016, to submit that the prayer in the petition deserves to be accepted in view of the rulings of the Supreme Court in *Gian Singh vs. State of Punjab & Anr.*, (2012) 10 SCC 303; and *Narinder Singh & Ors. vs. State of Punjab & Anr.*, (2014) 6 SCC 466, which were followed in the said previous decisions. It is his submissions, with reference to the decisions in

Tribhuvandas Purshottamdas Thakur vs. Ratilal Motilal Patel, (1968) 1 SCR 455; and *Union of India & Ors. vs. S.K. Kapoor*, (2011) 4 SCC 589, that this court cannot take a different view.

5. In *Shivam Chauhan* (supra), this court had noted, *inter alia*, the rulings of the Supreme Court in *Gian Singh* (supra), *Narinder Singh* (supra) and also a decision of a bench of three Hon'ble Judges of the Supreme Court reported as *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another*, (2017) 9 SCC 641.

6. Noticeably, the decision in *Mahender Singh* (supra) and *Jasvinder Singh Malhotra* (supra) are prior to the ruling of the Supreme Court in *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur* (supra).

7. Following the decision of this court in *Shivam Chauhan* (supra), similar prayer in another similarly placed petition titled *Madan Lal vs. The State (Govt. of NCT of Delhi) & Ors.*, Crl.M.C.4382/2016, involving offence punishable under Section 285/304-A IPC was declined by judgment dated 05.09.2018, wherein it was observed thus:-

“5. In another similar petition concerning a case of death by rash or negligent act (albeit by driving of a motor vehicle on a public road) by an order passed today, while declining to exercise the inherent power under Section 482 Cr.P.C. to bring an end to the criminal process, this Court taking note of the rulings of the Supreme Court, inter alia, in Gian Singh vs. State of

Punjab, (2012) 10 SCC 303; *Narinder Singh and Ors. vs. State of Punjab and Anr.*, (2014) 6 SCC 466; *Parbatbhai Aahir alias Parbatbhai Bhimsinhbhai Karmur and Others v. State of Gujarat and Another*, (2017) 9 SCC 641; *State of Karnataka v. Muralidhar* (2009) 4 SCC 463 and certain others, has held thus:-

“19. The offence of rash driving of a motor vehicle on a public road is not directed against any specific individual. It exposes other users of the road – citizens in general – to wanton risk to their life, limb or property. The rising fatalities on public roads bring havoc to the victims, or their kith or kin, and create additional burden on the State and the society at large. Untimely loss of a precious human life not only brings immeasurable pain and suffering to the family that is left behind but, at times, loss of the bread earner resultantly throwing those dependent on him virtually on the road or at the mercy of doles of the civil society or State. As observed by the Supreme Court in *State of Punjab vs. Saurabh Bakshi*, (2015) 5 SCC 182, “(s)uch a crime blights not only the lives of the victims but of many others around them”. Recourse to the remedy of accident claim under the law is no solace. After-all, the legal process invariably takes time to deliver, such litigation being long winding and, at times, uncertain, particularly in cases where there is absence of valid insurance cover against third party risk. If the victim somehow survives with injuries, the trauma or aftermath of hurt is also not fully compensatable in terms of money.

20. We are a society wedded to the ethos of “rule of law”. The Constitution of India guarantees to every person on this soil the fundamental right to protection of life (Article 21). When a person moves on the public road in exercise of his fundamental freedom to move, he legitimately expects the State to ensure that all

others using the public space or way respect his right to do so without he being put to harm. It is the obligation of the State to ensure enforcement of strict discipline of the law. If such rights are breached, there is corresponding obligation on the court to ensure that consequences flowing from law follow.

21. *Unlike certain other jurisdictions, our jurisprudence does not adopt the policy of Islamic law principle of “blood money” (Diyat) as the answer to every wrongdoing. On the contrary, the Supreme Court has ruled that in striking the balance to take care of the “cry of the society” in grave crimes, “(m)oney cannot be the oasis” [Sumer Singh vs. Surajbhan Singh (2014) 7 SCC 323]. Against the reality that number of such cases of rash or negligent acts causing mayhem like death or grievous hurt (or permanent disability) have only been escalating over the years, allowing a lid to be put on the criminal prosecution on account of “settlement” into which the victim is persuaded to enter, in his or her anxiety, to receive some recompense, would erode the policy of the court to maintain the “deterrent element”, such latitude being a result of “misplaced sympathy”, having the potency to convey the undesirable impression that driving can be permitted to be a matter of frivolous “frolic”.*

22. *A case of such nature cannot be treated as merely a private dispute between two individuals – not the least for this court to exercise its inherent power to inhibit further judicial process. The jurisdiction under Section 482 Cr.PC, though couched in terms of “power” is actually a responsibility which has to be discharged carefully bearing in mind the guiding principles and to “secure the ends of justice” in which exercise societal interest must always be paramount. The liberal attitude in quashing such cases as of death*

or serious hurt due to rash or negligent acts would be, borrowing the expression from Muralidhar (supra), “result wise counter productive in the long run and against societal interest” and be in the teeth of the guidelines declared in Parbatbhai Aahir (supra).

6. *Though the cause leading to the untimely death of the individual, which is the subject matter of the case at hand is not a motor vehicular accident but an incident of fire, the fact remains that the acts of commission or omission which led to the said incident stemmed prima facie, from culpable rashness or negligence. Thus, the above principles would squarely apply to the case of this nature as well inasmuch as it is the society at large which is impacted.”*

8. The offences allegedly committed by the petitioners in the present matter do not pertain to acts of gross criminal negligence only against one private individual whose death was consequently caused. Such negligence could have led to other workers in the vicinity of the machinery in question being exposed to undue risk to their life or limb and, therefore, concerns the interests of the society at large. From this perspective, the dispute cannot be treated merely as “private” dispute between the two individuals. In the facts and circumstances of the case and the gravity of the offence involved, the criminal process ought not be drawn to a close on mutual agreement. This court, therefore, declines to exercise the inherent power under Section 482 Cr.P.C. to quash the proceedings in the criminal case.

9. The petition and the application filed therewith are dismissed.

R.K.GAUBA, J.

OCTOBER 25, 2018/vk