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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-4804-2018 [O&M]

Date of Decision : January 28, 2019

Inderjit Singh

.... Petitioner

Versus

State of Punjab

.... Respondent

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Argued by Mr. Bipan Ghai, Senior Advocate,
with Mr. Paras Talwar, Advocate,
for the petitioner.

Mr. Ajay Pal Singh Gill, DAG, Punjab,
for respondent-State .

SHEKHER DHAWAN, J.

Present revision petition is against order dated 12.10.2018 passed by learned Additional Sessions Judge, Ludhiana, whereby charge was ordered to be framed under Section 304 IPC and Section 92 of the Factories Act, 1948 in case bearing FIR No. 252 dated 20.11.2017 under Sections 304, 285, 337, 338, 427 IPC and Sections 92 and 92-A of the Factories Act, 1948 registered at Police Station Division No.2, Ludhiana.

2. Facts relevant for the purpose of decision of the present petition; that an unfortunate fire incident took place on 20.11.2017 at the factory premises of the petitioner and intimation was sent to the Fire office upon which rescue operations were put in action. As huge quantity of raw

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material for manufacturing plastic was lying in the factory, the fire had broken out. Officials from the Fire department put in efforts to extinguish the fire. During rescue operations, dead bodies of two persons were taken out and as per FIR, the incident had taken place due to non-installation of fire fighting equipment in the factory premises, which was owned by the present petitioner.

3. After completion of investigation, final report under Section 173 Cr.P.C. was filed before the Court for commission of offence punishable under Sections 304, 285, 337, 338, 427 IPC and Sections 92 and 92-A of the Factories Act. The trial Judge framed charge vide impugned order dated 12.10.2018.

4. Learned senior counsel representing the petitioner contended that this unfortunate incident resulted into death of (16) persons and at the same time, ruined the life of present petitioner as well who has lost his entire earnings. Initially, the FIR was registered under Section 304-A IPC and there was no material available with the investigating agency, but still final report was submitted under Section 304 IPC and other offences. There was absolutely no intention on the part of the petitioner in his capacity as owner of the factory for storing the raw material and no knowledge could be imputed to the petitioner for causing death of others. Requisite permissions had already been obtained from all the concerned quarters and licences were obtained. Fire brigade officials were immediately called and despite prompt rescue operations, this unfortunate fire incident had occurred. However, this case does not fall within the ambit of provisions of Section 304 IPC because there was no intention on the part of the petitioner. Reliance was placed upon judgment from Hon`ble

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Apex Court in **Keshub Mahindra Vs. State of M.P.**, (1996) 6 SCC 129.

Reliance was also placed upon judgment of Hon`ble Bombay High Court in **Abdul Salim Shaikh (Siddique) and Ors Vs. State of Maharashtra**, 2014 (44) R.C.R. (Criminal) 180. However, learned trial Judge did not appreciate the law laid down in these cases and simply discarded the same on the ground that the same are not applicable on facts though both the judgments are fully applicable to the present set of facts. As such, the order dated 12.10.2018 passed by learned Additional Sessions Judge, Ludhiana be set-aside.

5. Learned State counsel while arguing on this point, contended that the accused had stored huge quantity of inflammable raw material in the factory and the possession of such an inflammable raw material in the factory premises certainly makes out a case that the petitioner had the knowledge that fire could broke out at any time and that may cause loss to human lives as well. There are no grounds for setting aside the order dated 12.10.2018.

6. Having considered the submissions made by learned counsel for the parties and perusal of record of this case, this Court is of the considered view that as per provisions of Sections 299 of Indian Penal Code, if a person commits culpable homicide which amounts to causing death, the same shall be culpable homicide and the same shall be punishable under Section 304 IPC.

7. For ready reference, Sections 299 and 304 IPC are being extracted as under :-

299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with

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the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.”

“304. **Punishment for culpable homicide not amounting to murder.** - Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death,

or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.”

8. The other relevant section for decision of the present case would be Section 304A IPC which defines causing of death by negligence. For ready reference, Section 304A IPC is also being extracted hereunder:-

304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

9. It is not disputed in any way that unfortunate death of about 10 persons had taken place.

10. The ambit and scope of Section 304 and 304A was before Hon`ble Apex Court in case **Keshub Mahindra's case (supra)**. Law on the point is also settled that at the time of framing of charge, the Court must be satisfied that there must be prima facie case that the accused person had committed the offence and for trial under Section 304 IPC,

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accused person must have committed offence of culpable homicide and they can be held guilty for that. But if the material for framing of such a charge against the accused concerned falls short of even *prima facie* indicating that the accused appeared to be guilty of an offence of culpable homicide, Section 304 Part I or Part II would get out of picture and for that purpose, provisions of Section 299 which defines culpable homicide (as extracted above) shall be taken into consideration.

11. Consequently, the material relied upon by the prosecution for framing of charge under Section 304 must at least *prima facie* indicate that the accused had done an act which had caused death with at least such a knowledge that he was by such act likely to cause death. The entire material which the prosecution relied upon before the trial Judge for framing of charge does not support such a charge because the petitioner has come with the plea that he had obtained the required licence for storage of raw material and there was no maximum prescribed limit for storage of the same. That way, there was no violation of that point even what to talk of storing the same with intention to cause death of any body. There was absolutely no evidence before learned trial Judge to record a finding that there was some material or evidence so as to make out *prima facie* case that accused person was having an intention to cause death of certain persons. It is also pertinent to note that when the FIR was registered by the police authorities, criminal case was registered under Section 304-A IPC only. Once it is concluded that the material produced by the prosecution before the trial Court at the stage of framing of charge did not even *prima facie* connect the accused with any act done with the knowledge that by that act itself, deaths of human beings would be caused

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the accused could not be even charged for culpable homicide and consequently, there would be no question of attracting the provisions of Section 304 IPC against the accused concerned on such material.

12. In **Abdul Salim Shaikh's case (supra)**, Hon`ble Bombay High Court while dealing with this aspect, observed as under:-

“32. Degree of knowledge which any particular person can be assumed to possess must vary. Ordinarily, intention and knowledge go together and, therefore, knowledge contemplated by Section 299 of the IPC is such as can be distinguished from a mere awareness of the risk involved in culpable act. Thus, the material from the charge-sheet that is pointed out by the Special Public Prosecutor, though indicates that the applicants were aware, or were made aware of the risk in constructing the building and that they still went ahead with such dangerous construction without any regard to the possible consequences, that would make them criminally liable in respect of the offence punishable under Section 304A of the Indian Penal Code and not in respect of an offence punishable under section 304 of the IPC.”

13. Merely by recognizing such 'sentiments', (which may have aroused because of death of so many persons in this case), for twisting the law, and attempting to treat the deaths as homicide of a higher degree, would be highly improper. The attempt to bring the acts attributed to the applicants within the penal provisions of section 304 of the IPC on the basis that he had knowledge, is too artificial and prima facie unacceptable. The acts attributed to the accused prima facie show reckless and high-handed conduct aimed at profit making. Even if the accused flouted all the laws for pecuniary gains and did not take precautionary safe guards, he would, certainly be liable in respect of an offence punishable under section

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304A of the IPC. Bit, It seems difficult to stretch the accusation further, and claim that he had committed an offence punishable under section 304 IPC.

14. Taking into consideration the above factual and legal aspect, this Court is of the considered view that learned trial Judge has not considered the matter properly and framed charge under Section 304 IPC and Section 92 of the Factories Act vide order dated 14.12.2018 and the said order is hereby set-aside and it is held that on the material led by the prosecution, appropriate charges which are to be framed against the accused-petitioner are under Section 304A and Section 92 of the Factories Act and learned Sessions Judge, Ludhiana shall transfer the present case to the court of competent jurisdiction.

15. The present revision petition stands allowed in the above terms.

(SHEKHER DHAWAN)
JUDGE

January 28, 2019

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Whether speaking/reasoned?	:	Yes
Whether reportable?	:	Yes