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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 18.12.2019

+ CRL.M.C. 6536/2019

AKHILESH GOENKA @ AKHIL LOHIA Petitioner
Through Mr. Rakesh Khanna, Sr. Adv. with
Mr. Rinku Kumar Garg, Adv. with
petitioner in person
versus
STATE & ORS. Respondents
Through Mr.Panna Lal Sharma, APP for State.
SI Kuldeep Kumar, PS Vasant Kunj
Mr. Abhishek Chauhan, Adv. for R-
2to6

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

CRL. M.A. 42951/2019

1. Allowed, subject to all just exceptions.
2. Application is disposed of.

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3. Vide the present petition, the petitioner seeks direction thereby quashing FIR No. 726/2017 dated 16.12.2017, registered at Police Station Vasant Kunj, North and all other proceedings emanating therefrom.
4. Notice issued.
5. Notice is accepted by learned APP for the State and counsel for the

respondent nos.2 to 6.

6. With the consent of the counsel for the parties, the present petition is taken up for final disposal.

7. The instant FIR was registered on the statement of H.C. Kishori Lal [Respondent No.7] whereby he stated that on 15- 16/12/2017 at about 3.15 a.m., while he was posted at Nelson Mandela Marg, the petitioner/accused while driving his Skoda car, came from Vasant Vihar side in a rash and negligent manner and he signaled the petitioner to stop the car by showing light bar. The petitioner instead of stopping his car, turned the same towards him, but somehow he saved himself, but the petitioner hit three barricades, which were put on the road, one by one and thereafter, also hit the armoured Morcha behind the barricades, where Ct. Bhup Singh (deceased) was standing in his position, due to which above named constable suffered various injuries on his head, face, chest and legs due to which his M.P.-5 magazine got broken and the bullets were scattered. It has been further alleged in the said FIR, that after causing the said accident, the petitioner tried to flee away from the spot, but after going about 30 meters, his car was stopped and again he tried to flee away but the nearby passers caught him. Strong alcohol smell was coming out from his mouth and

thereafter, Ct. Bhoop Singh as well as the petitioner were taken and got admitted in Fortis Hospital, Vasant Kunj. Thereafter, present FIR was registered and when the petitioner was discharged from the hospital after providing him medical aid, he was arrested on 16.12.2017.

8. The present petition has filed by the petitioner seeking the quashing of FIR qua the petitioner only, whereas the prosecution and respondent no. 2 to 6 are at liberty to proceed against M/S Grand Auto capital, through its partner Sh. Abhinav Rishi.

9. Mr. Rakesh Khanna, learned senior counsel appearing on behalf of petitioner submits that initially the case was registered under section 308 IPC in addition to other penal provisions, but due to the unfortunate death of Ct. Bhoop Singh, the same was converted in to Section 304 IPC. However, during investigation, section 304 IPC was converted into 304A IPC. Accordingly, the Detailed Accident Report (DAR) has been filed under Section 304A IPC before the Accident Claims Tribunal.

10. As stated in the present petition, at the time of hearing of Bail Application before the Learned ASJ, the petitioner, without prejudice to his rights and that too on humanitarian grounds, offered compensation to the family members of the deceased Ct. Bhoop Singh and accordingly, the

father and father in law of the deceased Bhoop Singh appeared before the court of the LD ASJ, Patiala House Courts, New Delhi and submitted that they have arrived at a compensation settlement with the petitioner voluntarily for a sum of Rs.50,00,000/- [Rupees Fifty Lakh only] and pursuant to the said settlement and upon receiving the settlement amount of Rs.50,00,000/- [Rupees Fifty Lakh] from the petitioner, they do not want to oppose the bail of the Petitioner. Accordingly, the LD ASJ was pleased to grant regular bail to the petitioner vide order dated 23.12.2017.

11. Learned senior counsel submits that initially there were allegations against the petitioner that he caused the accident while driving the vehicle under the influence of liquor, however later on as per the FSL report, the petitioner was not found under influence of liquor /drugs at the time of the alleged accident. Accordingly, offence of Section 304 IPC was converted in to Section 304 A IPC, which has been duly mentioned in the Detailed Accident Report (DAR).

12. Accordingly, Mr. Khanna, submits that section 304A IPC has been invoked against the petitioner at a subsequent stage and as such there is no question of committing the offence as punishable under Section 186 IPC. Thus, the alleged negligent act by the petitioner cannot be termed as

intentional, which is the prime requirement to invoke Section 186 IPC and similarly, Section 3 PDPP Act also cannot be invoked against the petitioner. Thus, neither the offence under Section 186 IPC nor section 3 PDPP Act, are made out at all against the petitioner.

13. As per the said DAR, the petitioner was not even driving the vehicle in a rash and negligent manner. Learned counsel further submits that in addition to the amount of Rs. 50,00,000/- (Rupees Fifty Lakh only) already paid to the family of the deceased Bhoop Singh at the time of seeking the bail, the Petitioner and the respondent No.2 to 6, also entered into a Memorandum of Understanding dated 12.12.2019, whereby the petitioner agreed to pay an additional amount of Rs.50,00,000/- [Rupees Fifty Lakh only] as additional compensation by way of demand drafts in the name of the respondent no.2 to 6 at the time of quashing in the following manner:

- a. Rs. 10, 00,000/- [Rupees Ten Lakh only] to Smt. Mamta [widow] of deceased Bhoop Singh], Respondent No. 2
- b. Rs. 10, 00,000/- [Rupees Ten Lakh only] to Master Gaurav, respondent no. 3 [Minor son of Sh. Bhoop Singh [Deceased], aged about 3 years, through his mother and natural guardian Smt. Mamta, respondent no.2.
- c. Rs. 10, 00,000/- [[Rupees Ten Lakh only] to Lavanya, respondent no.4 [Minor, aged about 1 year], Daughter of Sh. Bhoop Singh [Deceased]Through her mother and natural guardian Smt. Mamta i.e. Respondent no.2

d. Rs. 10, 00,000/- [Rupees Ten Lakh only) to Smt. Patasi Devi w/o Sh. Babu Lai [mother of deceased Sh. Bhoop Singh), respondent no. 5

e. Rs. 10, 00,000/- [[Rupees Ten Lakh only) to Sh. Babu Lai s/o Sh. Suraj Bhan [Father of deceased Sh. Bhoop Singh), respondent no.6

14. Respondent no.1 is State. Respondent nos. 2 to 6 are the legal heirs of deceased Bhoop Singh. Five draft bearing No. 668755, 668758, 668751, 668753, 668756 dated 16.12.2019 each for sum an amount of ₹50 lacs has been handed over to the respondent no.2 (widow of the deceased) who is present in Court. Respondent no.7 is a performa respondent being informant to the FIR and no relief is sought against him.

15. Respondent nos. 3 & 4 are minor children of the deceased and settlement has been signed on behalf of respondent no.2 who is the mother and natural guardian.

16. The present petition has been filed on the ground that settlement has been arrived between the petitioner and respondent nos. 2 to 6 and they do not wish to pursue the case against the petitioner.

17. Respondent nos. 2, 5 and 6 are personally present in Court, whereas respondent nos.3 & 4 are minor and are being represented by respondent no.2, who is mother and natural guardian of the said respondents. The said

respondents have been identified by SI Kuldeep Kumar. They state that the matter has been settled and they do not want to prosecute the petitioner any further.

18. Learned APP appearing on behalf of State has opposed the present petition and submits that in the accident, life of a young constable of Delhi Police, aged 30 years and having 9 years of service, lost his life and in the accident, the petitioner damaged public property, therefore, if this Court is inclined to quash the FIR, heavy cost may be imposed upon the petitioner.

19. Learned senior counsel appearing on behalf of the petitioner has come forward and submits that petitioner is ready to pay an amount of ₹10 lacs for welfare purposes.

20. Accordingly, keeping in view the compromise arrived between the petitioner and legal heirs of the deceased without any coercion, I hereby quash FIR No. 726/2017 dated 16.12.2017, registered at Police Station Vasant Kunj North and consequent proceedings emanating therefrom.

21. The petitioner is directed to pay an amount of ₹5 lacs in favour of Delhi Police Martyrs Fund, ₹2 lacs in favour of Delhi High Court Legal Services Committee and an amount of ₹2 lacs in favour of Nirmal Chhaya, Jail Road, Hari Nagar, New Delhi for welfare of destitute women and

children and ₹1 lac in favour of Blind school, Sewakutir, Kingsway Camp, Delhi within two weeks.

22. Receipt of the payment shall be furnished to the IO of the case.

23. It is made clear that respondent nos.2to6 are at liberty to initiate the proceedings, if so advised, against the insurance company and the owner of the vehicle in question.

24. Needless to state that amount paid by the petitioner in the present case is only for quashing of the present FIR and all proceedings emanating therefrom and this amount shall not be taken into consideration at the time of granting compensation in the MACT claim.

25. The petition is allowed and disposed of accordingly.

26. Order dasti under signatures of the Court Master.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 18, 2019

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