

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

% *Judgment Reserved on: 4th April, 2018*
Judgment Delivered on: 7th January, 2019

+ **W.P.(CRL.) 1650/2016 & CRL.M.A.8586/2016**

R NARAYANAN

..... Petitioner

Represented by: Mr. N.Hariharan, Sr.Advocate with
Mr.Aditya Vaibhav Singh,
Ms.Mallika Chadha and Mr.Prateek
Bhalla, Advocates

versus

STATE (GOVT OF NCT OF DELHI)

..... Respondent

Represented by: Mr.R.S.Kundu, ASC for Ms.Nandita
Rao, ASC with SI Madan Mohan
MACT Cell/ Central

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. FIR No.243/2013 under Sections 279/337 IPC was registered at PS Desh Bandhu Gupta Road after an information was received through PCR call regarding an accident at the gate of Jhandewalan Mandir. HC Ashok along with Ct.Sanjay reached the spot where he found an accidental motor cycle DL-7S BE 5859 Platina of silver colour and Honda City Car No.DL-4CAH 8391 of red colour. The injured had been removed to RML Hospital. On reaching the hospital, the injured was found to have been declared unfit for statement and thus he got the scene of the incident photographed and on the basis of this information, the FIR was registered.

2. Statement of eye witness Yogender was recorded who stated that on 22nd August, 2013 after shutting his shop, he was leaving for his house at

about 7:50-8:00 PM. When he reached Rani Jhansi Road at New Rohtak Road Red Light Point, he saw a person who had met with an accident and was sitting near the red light. His motorcycle DL-7S BE 5859 had been hit and one red coloured Honda City Car was also parked on the side. The injured had severe injury on the head. He called at 100 number when a Maruti Swift White coloured car No.DL 3AA W 8153 came and took injured to the RML hospital. Statement of Pradeep Malik who took the injured in his Maruti Swift White coloured car was also recorded who also stated about the accidental motor cycle and the Honda City car. He stated that he also met the family members of the injured at RML Hospital whose name was revealed as Mukesh Kumar S/o Baldev Raj.

3. Report of the Assistant Director Physics FSL Laboratory on the crime scene is as under:-

“The undersigned along with Dr.Bharti Bhardwaj SSA (Phy.), and Sh.Abhijeet Sarkar LA (Phy.) visited the police station Desh Bandhu Gupta Road on 02.09.13 for the examination of a red color Honda City car bearing registration number DL 4C AH 8391 and a motor cycle (Bajaj Platina) bearing registration number DL 75 BE 5859. It was reported that these vehicles were involved in an incident, and the place of incident was also visited by the team on the same day.

The above mentioned car had scratch and dent marks on the front right door, scratch marks on right mirror and black colour scratch marks on the right rear portion near the tyre and front right portion near the tyre.

The left leg guard of the motorcycle was found bent in forward direction, scratch marks with reddish and white colour paint smears were observed on that leg guard,

scratch marks were observed on the front tyre and on the rubber of the left front foot rest, scratch marks were also observed on the left mirror.

The height of scratch mark on the right front door, on the rear right portion and on the right sided mirror of the car were of the same order to that of the height of scratch mark on bed leg guard, of the front foot rest and of the left mirror of the motorcycle respectively.

The above observations indicate that the two above mentioned vehicles were collided side by side with each other running in almost same direction. The direction of bending of leg guard and nature of scratch mark on car indicate that the velocity of car was relatively more to that of the motorcycle.”

4. During the course of investigation, injured Mukesh Verma died without giving any statement and hence Section 337 IPC was replaced with Section 304A IPC. Petitioner is the registered owner of Honda City Car No. DL-4CAH 8391 and hence charge sheet was filed against him for offences punishable under Sections 279/304A IPC.

5. Vide order dated 18th November, 2015, the learned CMM framed notice against the petitioner for offences punishable under Section 279/304A IPC. The petitioner challenged the said notice in a revision petition before the learned Additional Sessions Judge who dismissed the revision petition vide order dated 29th February, 2016. Hence the present petition.

6. Contention of learned counsel for the petitioner is that no notice could be framed against the petitioner as there was no eye witness to the occurrence and there was no evidence on record to suggest that the petitioner was driving the vehicle in a rash and negligent manner. The FSL

Report at best is advisory in nature and cannot be used as a piece of evidence much less substantive evidence. Merely from the opinion of the expert that the velocity of the car was relatively more than the motorcycle no inference can be drawn that the petitioner was driving the vehicle in a rash and a negligent manner.

7. It is contended that the learned Additional Sessions Judge dismissed the revision petition illegally on the ground that the learned Trial Court had no jurisdiction to discharge the petitioner once he is summoned. Learned counsel contends that even at the stage of framing of notice if the ingredients of the offence are not satisfied the accused is entitled to be discharged and no notice can be framed against him. Reliance is placed on the decisions in AIR 2012 SC 1747 Bhushan Kumar & Anr. Vs. State (NCT of Delhi) & Anr., 2001 (3) PLJR 743 Dr.Jyoti Prakash Vs. The State of Bihar and Umesh Chandra Prasad and Joginder Kumar Vs. Shamsheer Singh Malik & Anr. reported as Manu/DE/9710/2006. Learned counsel for the petitioner also relies upon the decision in 1998 SCC CrL 1508 State of Karnataka Vs. Satish to contend that on the facts stated no case under Section 279/304A IPC is made out.

8. Indubitably the finding of the learned Additional Sessions Judge that at the stage of framing of notice under Section 251 Cr.P.C., the Trial Court has no option to discharge the accused once summons are issued is contrary to all canons of law. It is a fundamental principle of criminal law that a person cannot be put to trial without any allegations of prima facie offence being made out against him.

9. It is trite law that at this stage if the learned Trial Court on the facts available is satisfied that prima facie there is material to show commission of an offence, the learned Trial Court would be entitled to frame a notice. In the decision reported as 2006 CrL.L.J. 1447 Dr.Kamala Rajaram Vs. D.Y.S.P. office of the S.P. (Rural) & Anr. it was held:-

“4. It is admitted that after the court took cognizance, petitioner had appeared before the learned Magistrate and has been enlarged on bail. Particulars of the offence have not been read over to the petitioner. I need only mention that before the learned Magistrate proceeds to read over the particulars to the petitioner accused, the learned Magistrate must consider whether such allegations have been raised against the petitioner and such materials placed before court as to expose the petitioner to a criminal prosecution under Section 304A IPC. It is not necessary or possible for this court in every case to consider all the allegations raised against the inductees and the materials collected against them to decide whether they deserve to stand trial. That question must initially be considered by the trial Magistrate who has the requisite materials before him before a charge is framed/discharged under Section 239/240 Cr.P.C. or while considering whether there is any sufficient material to read over the particulars of the offence to the indictee at the stage of Section 251 Cr.P.C. If accusations and materials are not sufficient to attract culpability the indictee should not be compelled to unnecessarily stand the trauma of trial. In these circumstances, I am satisfied that this petition can be disposed of with specific directions to the learned Magistrate to consider the contention of the petitioner that there is no sufficient allegations or materials raised against her to justify her being compelled to face further proceedings.

5. How can this be done by the learned Magistrate? The offence alleged is one punishable under Sec. 304A IPC. It is a summons case. Procedure prescribed under Chapter XX

has to be followed. There is no question of framing any charge at the stage of Sec. 251 Cr.P.C. There is only the requirement of reading over the particulars of offence to the inditee. A formal framing of charge is not required; but certainly the particulars of offence of which he is accused must be stated to the accused and his plea has to be recorded. Notwithstanding the fact that the formal requirement of framing of a charge is not there, the section pre-supposes that the learned Magistrate must consider whether such allegations are raised which amount to an offence. If no offence is made out, then there is no particulars of offence which have to be read over to the accused and therefore proceeding cannot proceed beyond Sec. 251 Cr.P.C. This appears to be implied from a reading of S. 251 Cr.P.C. which I extract below:—

“Substance of accusation to be stated: When in a summons case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.”

6. At any rate, the present case is one covered under Sec. 258 Cr.P.C. and the learned Magistrate has power under Sec. 258 Cr.P.C. to stop further proceedings. The provisions of Sec. 251 read with Sec. 258 Cr.P.C. must necessarily be held to clothe the learned Magistrate in a case instituted on the basis of a police report with the power to discontinue proceedings at the stage of Sec. 251 Cr.P.C., if there be no sufficient allegations or materials to justify continuance of proceedings for an offence punishable under Sec. 304A IPC. In these circumstances, notwithstanding the dictum in Alalat Prasad v. Rooplal Jindal (2004 AIR SCW 5174), it has to be held that the learned Magistrate has, at least, in a prosecution in a summons case instituted otherwise than on a police report, the power to discontinue the proceedings at the stage of Sec. 251 Cr.P.C. by invoking his powers under

Sec. 251 along; with the powers under Sec. 258 Cr.P.C. That is explicit in the language of S. 258 Cr.P.C. which I extract below:—

“Power to stop proceedings in certain cases:— In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, or any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge”.

7. The larger question whether Sec. 251 would justify discontinuance of the proceedings in all summons cases, whether instituted on a police report or otherwise need not be considered in this case. Suffice it to say that in a summons case instituted otherwise than upon a complaint, Sec. 251 read with Sec. 258 Cr.P.C. does clothe the learned Magistrate with the requisite power to discontinue further proceedings and release the accused at the stage of S. 251 Cr.P.C. or later if the learned Magistrate feels that the allegations and the materials placed before him do not justify continuance of the proceedings against the indictee. Directing continuance of proceedings when allegations and materials collected do not justify such continuance will be the worst form of injustice. This petition is, in these circumstances, dismissed but with the above specific observations.”

10. In Bhushan Kumar (supra) the Supreme Court clarified as under:-

“17. It is inherent in Section 251 of the Code that when an accused appears before the trial court pursuant to summons

issued under Section 204 of the Code in a summons trial case, it is the bounden duty of the trial court to carefully go through the allegations made in the charge-sheet or complaint and consider the evidence to come to a conclusion whether or not, commission of any offence is disclosed and if the answer is in the affirmative, the Magistrate shall explain the substance of the accusation to the accused and ask him whether he pleads guilty otherwise, he is bound to discharge the accused as per Section 239 of the Code.”

11. On facts, the main contention on behalf of the petitioner is that since there is no eye witness there is no evidence to come to the conclusion that the petitioner was driving the vehicle in a rash and negligent manner. Driving in a rash and negligent manner indicates various facets of driving which could be over speeding, overtaking, not leaving sufficient space, zigzagging etc. Even though there is no eye witness to the incident however from the report of the FSL on mechanical inspection and crime scene report, it is prima facie evident that the car of the petitioner overtook the motorcycle of the deceased on a high velocity thereby causing accident, resulting in the death of the injured. At this stage, a strong suspicion arises of the petitioner having committed the offence and hence it cannot be held that the learned Metropolitan Magistrate committed an error in framing the notice for offences punishable under Section 279/304 IPC against the petitioner.

12. Petition and application are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 07, 2019
mamta