

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CRM-M-38779-2017 (O&M)

Reserved on : 27.01.2020

Pronounced on : 20.02.2020

Mangat Ram

...Petitioner

Versus

State of Haryana and another

...Respondents

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present:- Mr. J. S. Bedi, Sr. Advocate with
Mr. Lovekirat S. Chahal, Advocate
for the petitioner.

Mr. Naveen Sheoran, DAG, Haryana.

Mr. Manohar Lall, Advocate
for respondent No. 2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing of FIR No.79 dated 18.02.2017, registered under Section 304-A IPC at Police Station Sampla, District Rohtak along with all the subsequent proceedings arising therefrom including report submitted under Section 173(2) Cr.P.C.

On 23.10.2017, the following order was passed:

“...Counsel for the petitioner has submitted that the petitioner is an employee of M/s. Maruti Suzuki India Limited (in short 'MSIL') and is working as an Assistant Manager-cum-Liasion Officer. Counsel for the petitioner has further submitted that in January, 2011 vide agreement (Annexure P3) with M/s. R.R. Facilities Private Limited, it was agreed that the aforesaid agency will provide various works as per the agreement and as per Clause 24 of the agreement, the Contractor and Sub-

Contractor personnel be required to comply permit to work system. It is essential that contractor personnel read, understand and sign to that effect and carry out any conditions or precautions laid down in work permits, if any doubts exist, guidance from the MSIL Representative shall be obtained. Examples of high risk activities are not limited to:-

- a) xxxx xxxx xxxx xxxx
- b) xxxx xxxx xxxx xxxx
- c) Entry into confined spaces.

It is further submitted by counsel for the petitioner that as per Clause 26, it was the duty of the Contractor to provide the equipments for working in hazardous condition, identified and shall maintain the equipments in a professional manner. Clause 26 of the agreement is reproduced as under:-

“Clause 26.0 Personal Protective Equipment.

The Contractor shall provide PPE of an approved type appropriate to the work hazards identified and shall maintain this equipment in a professional manner as indicated by applicable legal and industrial standards. The Contractor shall keep up to date records of all the said equipment. The Contractor shall remove from the site any worker who consistently refuses to wear the appropriate personal protective equipment. The PPEs and safety appliances provided by the contractor shall be of the standard as prescribed by Bureau of India Standards (BIS) or equivalent standard. All construction workers should be provided with high visibility jackets with reflective tapes confirming to the requirement specified under BS EN 471:1994. The contractor shall at all time maintain a minimum of 10% spare PPEs and

safety appliances and maintain proper record.

The colour coding of safety Helmets shall conform to the following:-

- Yellow Technician/Workman
- White Managers
- Blue Supervisor
- Red Fire Personnel
- Green Safety Stewards

All helmets shall also display name of the company logo for easy identification. Specialization stickers on the helmet (e.g., Forklift driver, crane drive, fire trained, first aid trained, etc.) as per MSIL standards.”

It is further submitted that the FIR (Annexure P7) was got registered by Rakesh who is the Supervisor of M/s. R.R. Facilities Private Limited with the allegation that on 18.02.2017, 02 persons namely Sumit and Sonu employed by M/s. R.R. Facilities Private Limited while clearing the safety tank died due to suffocation. It is further submitted that the petitioner was not present at the spot and it was not his job to supervise the working of M/s. R.R. Facilities Private Limited as it was within the domain of M/s. R.R. Facilities Private Limited to look after the safety arrangements of its employees. It is further submitted that both the deceased namely Sumit and Sonu were never employed by MSIL and were admittedly employees of M/s. R.R. Facilities Private Limited. Counsel for the petitioner has further submitted that in fact negligence, if any, was on the part of M/s. R.R. Facilities Private Limited and its employees including the complainant and after registration of the FIR, the petitioner has given a detailed complaint (Annexure P8) on 20.03.2017 in which, in para 3 it has been specifically brought to the notice of the prosecution

agency that in fact M/s. R.R. Facilities Private Limited who is the Contractor was responsible for the safety and security of its employees, however, the police has not taken any action on the complaint.

Counsel for the petitioner has also submitted that though M/s. R.R. Facilities Private Limited has already paid an amount of Rs.10,40,000/- to the legal representatives of deceased – Sumit and Sonu and has entered into a memorandum of understanding that the legal heirs will not take any action against M/s. R.R. Facilities Private Limited, however, the FIR has been registered against the petitioner just to escape the criminal liability of the Contractor himself. Counsel for the petitioner has relied upon the judgment of the Hon'ble Bombay High Court ***“M/s. Divis Infracteh Builders and Electrical Contractors vs State of Maharashtra”, 2015(15) RCR (Criminal) 45*** to contend that in order to make out an offence under Section 304-A IPC, the mens rea on the part of the petitioner is not proved as he was not present at the spot and had not acted in a manner which caused accidental death of employees of M/s. R.R. Facilities Private Limited.

Notice of motion for 20.11.2017.

In the meantime, the trial Court is directed to adjourn the case beyond the date fixed before this Court.”

Learned senior counsel for the petitioner has submitted that the petitioner was working as Assistant Manager, Civil and Maintenance Department at Maruti Suzuki India Limited at Rohtak Facility Centre, Haryana (*for brevity 'MSIL'*), which is a leading car manufacturer in India.

Learned senior counsel further submitted that in terms of agreement dated 25.08.2015, entered into between MSIL and M/s R.R.

Facilities Pvt. Ltd., through its Contractor R. S. Rana, the Contractor was to maintain and secure safe working environment by their appointed supervisors. Learned senior counsel further submitted that as per Clause 26 of the Safety, Health & Environment (SHE) Contract, appended to this agreement dated 25.08.2015, it was the sole duty and responsibility of the Contractor alone to provide personal protection equipment to the its workers. Respondent No. 2 Rakesh was appointed as Housekeeping & Sanitation Supervisor at MSIL by the Contractor, as per appointment letter dated 09.11.2013 (Annexure P-5) and, therefore, he was the person responsible for the safety and protection of the staff working under him.

Learned senior counsel further submitted that at the time when the incident had taken place, in which two workers, namely Sumit and Sonu, lost their lives, it was the responsibility of the M/s R.R. Facilities Pvt. Ltd., i.e. Contractor, to take care of safety and provide adequate measures to its workers, who were cleaning a manhole of a sewer line as both of them, on 18.02.2017, went inside the manhole without being equipped with adequate safety measures and they became unconscious and thereafter, worker Sumit was declared brought dead in PGIMS, Rohtak and another worker Sonu died after some time at a private multi-specialty hospital.

Learned senior counsel further argued that the petitioner cannot be held solely liable for the criminal prosecution as respondent No. 2 Rakesh, in order to escape his liability, has got the FIR registered against the petitioner, whereas he himself was responsible for the aforesaid deaths.

Learned senior counsel further argued that the petitioner has given a representation dated 20.03.2017 (Annexure P-8) to Superintendent

of Police, Rohtak for re-investigation of the case, in which he has explained all the safety measures taken by the MSIL and even MSIL, in a reply to the Investigating Officer, vide its letter dated 16.05.2017, has stated that it is the responsibility of the Contractor/service provider to provide safety/personal protective equipment to its contractual workers and the Contractor is responsible for the said deaths.

Learned senior counsel has further argued that a compromise has been effected between the legal heirs of both the deceased as Geeta, mother of deceased Sumit, has entered into a memorandum of understanding dated 24.02.2017, whereby M/s R. R. Facilities Pvt. Ltd. has paid an amount of Rs. 10,40,000/- as compensation to her. Similarly, another memorandum of understanding dated 24.02.2017 was also executed with Ram Kumar, Shanta and Priynaka, father, mother and widow of deceased Sonu, respectively with M/s R. R. Facilities Pvt. Ltd., whereby similar amount of Rs. 10,40,000/- was paid to them as compensation. Learned senior counsel has relied upon affidavits of aforesaid legal heirs, namely Geeta, Ram Kumar, Shanta and Priyanka, in support of his arguments.

Learned senior counsel further submitted that in the meantime, the police has completed the investigation and has submitted the *challan* against the petitioner.

Learned senior counsel has relied upon judgment of Hon'ble Supreme Court rendered in ***Kurban Hussein Mohamedalli Bangawalla vs. State of Maharashtra, 1965 AIR (SC) 1616***, wherein it was held that where the death was not directly a result of the rash and negligence of the accused,

no offence under Section 304-A IPC is made out. In this case, the accused was charged with breach of the licence conditions who kept naked fire in proximity of stores of turpentine and varnish oil and because of the negligence, fire broke out, which resulted into death of seven workers. Hon'ble Supreme Court, in this case, held that as the death was not directly the result of the rash or negligent act of accused and was not the proximate and efficient cause without the intervention of another's negligence, the accused is liable to be acquitted of the charge under Section 304-A IPC.

Learned senior counsel has further relied upon *M/s Divis Infracteh Builders and Electrical Contractors vs State of Maharashtra, 2015(15) RCR (Criminal) 45*, wherein, in an identical circumstance, the criminal prosecution was quashed.

Reply, filed by way of affidavit of DSP (Crime), Rohtak, is on record. As per reply, it is stated that respondent No. 2 and the deceased workers were doing the work of cleaning the tank of sewerage on the direction of the petitioner and, therefore, the present FIR has rightly been registered, however, the factum of giving aforesaid representation by the petitioner is not denied for want of knowledge.

In a separate reply, filed by respondent No. 2, the contents of the various paragraphs of the main petition are admitted. It is further stated in this affidavit that the proper compensation has been given to the family members/legal heirs of both the deceased to their satisfaction and they have no grievance left as the matter was resolved with them. It is further stated that apart from the aforesaid amount of compensation, life insurance claim of Rs. 2,40,000/- was also paid to the legal heirs/family members of each

deceased and an additional compensation of Rs. 5,00,000/- was also paid to the legal heirs/family members of each deceased by the State of Haryana as compensation out of Chief Minister's Welfare Fund, which was paid by the Haryana Welfare Board. It is, thus, submitted that the matter has amicably been settled and this Court may pass appropriate orders as may be deemed fit in the facts and circumstance of the case.

After hearing learned counsel for the parties, I find merit in the present petition.

A perusal of Clause 7.4 of the aforesaid agreement reveals that the first party, i.e. Contractor, was required to use the material provided by the second party i.e. MSIL and as per Clause 7.13, the first party-Contractor is responsible for the conduct and behaviour of its representatives. It is further provided in this clause that it is the Contractor who shall issue necessary instructions to its representatives regarding safety measures. The petitioner, being Assistant Manager, Civil and Maintenance Department of MSIL, is the sole accused and the authorized representative of the Contractor M/s R. R. Facilities Pvt. Ltd. is the complainant in this case. As per terms and conditions of the said agreement, the responsibility of the Contractor is at par with MSIL and, therefore, the petitioner along cannot be prosecuted.

A perusal of the FIR in question would show that there is no such allegation against the petitioner that he was directly involved in the rash and negligent work of the Contractor, which resulted into death of two workers, namely Sumti and Sonu, therefore, in view of the judgment in *M/s Divis Infracteh Builders and Electrical Contractors' case (supra)*, no

offence under Section 304-A IPC is made out against the petitioner.

In view of the memorandum of understanding, arrived at between the two sets of legal heirs/family members of deceased Sumit and Sonu, they have received Rs. 10,40,000/- each as compensation and have shown their satisfaction that they have received sufficient amount. This fact is supported by the affidavits filed by three legal heirs of deceased Sonu and one legal heir of deceased Sumit.

It is also not disputed that even Insurance Company has paid an amount of Rs. 2,40,000/- to the legal heirs/family members of each deceased as well as the State of Haryana has also paid a compensation of Rs.5,00,000/- to legal heirs/family members of each deceased.

Therefore, in view of the above facts and circumstance and also in view of the fact that the matter stands amicably settled, the present petition is allowed and FIR No.79 dated 18.02.2017, registered under Section 304-A IPC at Police Station Sampla, District Rohtak along with all the subsequent proceedings arising therefrom including report submitted under Section 173(2) Cr.P.C. is hereby quashed.

However, this will be subject to payment of additional compensation of Rs. 5,00,000/- (Rupees Five Lakh) by MSIL to Geeta, mother of deceased Sumit and Rs. 5,00,000/- (Rupees Five Lakh), in equal share, to Ram Kumar, Shanta and Priyanka, father, mother and widow of deceased Sonu, respectively.

The MSIL is directed to deposit the aforesaid amount of compensation, i.e. Rs. 10,00,000/ (Rupees Ten Lakh) with the Illaqua Magistrate within a period of four months from today and the same shall be

disbursed to the legal heirs of both the deceased in terms of this order.

It is made clear that if the aforesaid amount is not deposited on or before 30.06.2020, the present petition shall be deemed to have been dismissed.

20.02.2020

Waseem Ansari

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No