

30.09.2021

Item No.1
Ct.No.34
dc.

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

C.R.R. 2741 of 2012
(Via Video Conference)

Subrata Hazra
versus
The State of West Bengal & Anr.

In Re: An Application under Section 482 of the Code of Criminal Procedure, 1973.

Mr. Sourav Chatterjee,
Mr. Billwadal Bhattacharya,
Mr. Aniruddha Bhattacharya ... For the Petitioner.

Mr. Arijit Ganguly,
Mr. Saryati Datta ... For the State.

Report dated 30.09.2021 submitted by the concerned Officer of South Port Police Station be kept with the record.

It is reflected from the report that the next date has been fixed on 18.01.2022.

From the certified copy of the FIR, so handed over by Mr. Arijit Ganguly, learned advocate appearing for the State, it is reflected that first information report was registered against “1) Driver of a Crane of M/s. Soham Shipping Private Ltd. – S0064 and 2) M/s. Soham Shipping Pvt. Ltd of 23A Netaji Subash Ch Bose Rd, Kol-1”.

The fact of the case is extracted below :

On 17.07.2011 at about 02.30 hrs. the accused person being the driver of a Crane of M/s Soham Shipping Private Limited of 23A, Netaji Subhas Chandra Bose Road, Kolkata-700001 drove the same in a rash and negligent manner inside the Khidderpore dock berth No. 27, at the time of unloading the wooden logs from the ship namely M.D. Doua

Young, as a result of which one of the wooden logs suddenly fell down on the right hand and leg of the complainant Md. Moobarak Gazi son of Abdul Gazi of Vill-Talpukur, P.O. Satghara Debipur, P.S. Mathurapur, Dist. 24-Parganas (S) who was engaged for working as labour there. As a result of which the complainant sustained severe injury on his person and he was removed to S.S.K.M. hospital and admitted there and finally his wrist of right hand was amputated.

On the basis of such a complaint, a case under Sections 279/338/114 of the Indian Penal Code was registered for investigation and on completion of investigation, the police authorities submitted charge-sheet under the same Sections. However, instead of the Company being made an accused, one of the Directors, viz., Subrata Hazra was made an accused along with the driver of the Crane, viz. Faruk Molla.

Mr. Sourav Chatterjee, learned advocate appearing for the petitioner submits that the petitioner has been made vicariously liable for his act, although he had no role or overt act in respect of the offence so committed.

Mr. Arijit Ganguly, learned advocate for the State hands over the certified copy of the FIR, charge-sheet and orders passed therein. Let the same be kept with the record.

On an analysis of the charge-sheet, so submitted, I am of the view that the accused should be the Company, viz. M/s Soham Shipping Private Limited of 23A, Netaji Subhas Chandra Bose Road, Kolkata-700001 and the driver of the Crane viz. Faruk Molla. No overt act has been shown on

behalf of the Director of the said Shipping Company. Whether the Company is liable for an act of this driver would be a subject matter in course of trial, but who will represent the Company in a court of law is absolute discretion of the Company and the police authorities could not choose one of the Directors of the Company as an accused in the instant case.

In view of the aforesaid, further continuance of the proceeding, so far as the present petitioner, viz. Subrata Hazra is concerned, is quashed.

However, M/s Soham Shipping Private Limited of 23A, Netaji Subhas Chandra Bose Road, Kolkata-700001 is an accused in the instant case and necessary steps must be taken by the concerned officer for serving notice upon them, so that they are also present in court on the next date so fixed i.e. on 18.01.2022.

The learned Magistrate is directed to proceed with the trial of the case.

The revisional application being CRR 2741 of 2012 is partly allowed.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

The concerned Officer of South Port Police Station is present in Court. His further appearance is dispensed with.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

(Tirthankar Ghosh, J.)