

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No.197 of 2015****Order reserved on :4.2.2021****Order delivered on:5.4.2021**

Smt.Madhuri Patel wife of Shri Ganesh Ram Patel, aged about 37 years (Govt.Employee), Junior Engineer, CSEB, posted at CSPDCL office, Hardibazar, Korba) R/o-CSPDCL office Hardibazar, Police Chowki-Hardibazar, P.S.-Kusmunda, Tahsil – Pali, Civil and Revenue District – Korba (CG)

----- Petitioner**Versus**

- 1.The State of Chhattisgarh, through: the Secretary, Department of Home Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur (CG)
- 2.The Director General of Police, Office of the Director General of Police, Naya Raipur (CG)
- 3.The Collector, Korba, Civil and Revenue District-Korba (CG)
- 4.The Superintendent of Police, Korba, Civil and Revenue District-Korba (CG)
- 5.The Officer in Charge of Police Station-Kusmunda, OP Hardibazar, Civil and Revenue District-Korba (CG)

----- Respondents

For Petitioner	:	Mr.Roop Naik, Advocate
For Respondents/State	:	Mr.Ravi Bhagat, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**C.A.V. Order**

- 1.By way of this writ petition, the petitioner seeks quashment of FIR No.79/2015 registered at Police Station-Kusmunda, Out Post-Hardibazar, District Korba for offences punishable under Sections 287,

337 and 304A of the IPC and also seeks quashment of charge-sheet filed before the Judicial Magistrate First Class, Pali, District-Korba in Criminal Case No.133/2015 for the aforesaid offences.

2. The petitioner herein is Junior Engineer working in the office of Chhattisgarh State Power Distribution Company Limited (for short 'CSPDCL'), Hardibazar, District Korba. On 15.4.2015, FIR No.79/2015 has been registered at Police Station-Kusmunda for the aforesaid offences against the petitioner. As per prosecution case, on 10.4.2015 at 3.45 p.m. one Reshamlal Anant (since deceased) received electric burn injuries when he was connecting electricity line in transformer situated at village Bhathora, District-Korba, he was immediately hospitalized at District Hospital, Korba and thereafter on the same day, referred to Apollo Hospital, Bilaspur where he succumbed to the injuries and died on 15.4.2015 at 4.50 p.m. On the same day, Mr.Ashwani Kumar Anant, son of the deceased, lodged a written complaint alleging that deceased Reshamlal Anant had been working as electrician for 20 years under the contractor of Electricity Department, however, the service of deceased Reshamlal Anant was being taken by the petitioner for last four months as on the

date of incident the deceased was directed by the petitioner to connect electricity line without any safety instruments and equipments and due to negligence of the petitioner, deceased Reshamlal Anant suffered electric burn injuries and died. It is also alleged in the FIR that the petitioner is wholly responsible for the aforesaid incident and after due investigation, the respondent-police has submitted charge-sheet before learned Judicial Magistrate First Class, Pali and the trial is in progress.

3. Now this writ petition has been preferred by the petitioner on the ground that even if taking the allegations made in the FIR at their face value and accepted in their entirety, allegations do not prima-facie constitute any offence against the petitioner particularly offence under Section 304A of the IPC. It has also been stated that the petitioner is Government servant within the meaning of Section 197 of the CrPC and without prior permission from the appropriate Government/State Government under Section 197 of the CrPC, the petitioner could not have been charge-sheeted and cognizance of the offence cannot be taken against the petitioner for the aforesaid offences, as such,

FIR and consequent charge-sheet filed against the petitioner deserve to be quashed.

4. The State has filed its return opposing the averments made in the writ petition stating inter-alia that after investigation charge-sheet has been filed against the petitioner and question of sanction is a question of fact and it can be determined only after the evidence is recorded and prayer for quashment of FIR and charge-sheet at this stage for want of sanction is not tenable and thus, the present writ petition is not maintainable at this stage. It has also been submitted that prima-facie case is made out against the petitioner for the aforesaid offences and it is not the case where extraordinary jurisdiction can be exercised in favour of the petitioner by quashing the FIR and consequent charge-sheet, as such, the writ petition deserves to be dismissed. Rejoinder has been filed by the petitioner.

5. Mr. Roop Naik, learned counsel for the petitioner, would submit that the petitioner is Government employee and was discharging of his official duty at the time of incident and the respondent-State has not taken any sanction for prosecution from the State Government and as such, protection under

Section 197 of the CrPC is available and applicable at this stage. He would further submit that death of the deceased must be direct result of negligence on the part of the petitioner as the prosecution has failed to produce the material stating that death of Reshamlal Anant was on account of gross negligence on the part of the petitioner. In order to support his case, he would rely upon the judgments of the Supreme Court in the matters of Syad Akbar v. State of Karnataka¹ and S.N. Hussain v. The State of Andhra Pradesh².

6. Per contra, Mr. Ravi Bhagat, learned Deputy Government Advocate for the respondents/State, would support the prosecution and submit that question of sanction is a question of fact and it can be determined during the course of trial. He would further submit that the petitioner has not raised such question before the trial Court and therefore, she cannot be allowed to be raised this point for first time before this Court. He would also submit that statements under Section 161 CrPC and other documents filed along with writ petition clearly demonstrate that it is the case of gross negligence on the part of the petitioner and on account of

1 (1980) 1 SCC 30

2 (1972) 3 SCC 18

which, Reshamlal Mahant suffered electric burn injuries and died, as such, it is not the case where extraordinary jurisdiction under Article 226 of the Constitution of India can be exercised by this Court for quashment of FIR and charge-sheet.

7. I have heard learned counsel appearing for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

8. It is apparent on the face of record that on 10.4.2015 at 3.45 p.m. deceased Reshamlal Anant suffered electric burn injuries while he was connecting electricity in transformer at village Bhathora, he was taken to District Hospital, Korba, admitted therein and on the same day, referred to Apollo Hospital, Bilaspur and thereafter on 15.4.2015 he succumbed to the injuries and died. It is also apparent on the face of record that the deceased was not employee of the CSPDCL at the relevant date of incident, but it appears from the statements of prosecution witnesses namely Lagin Bai, wife of deceased Reshamlal Anant, Priti Anant, daughter of deceased Reshamlal Anant and Anant Kumar, son of deceased Reshamlal Anant that deceased Reshamlal Anant was called by the petitioner on duty

on said date and directed him to connect electricity line in transformer situated at village Bhathora, Bhilai Bazar. Apart from this, Anil Kumar Maravi, who is helper in CSEB, Sub-Station Bhilai Bazar, has also stated in Section 161 CrPC statement that the deceased informed him that the petitioner had directed him to connect electricity line. Similar statement has been made by Akhilesh Kumar, who is also employee of Sub-Station CSEB Hardibazar, as such, it is apparent on record that at the relevant point of time on the instructions of the petitioner, the deceased went to village-Bhathora to connect electricity line in transformer situated at village Bhathora and suffered electric burn injuries and succumbed to death.

9. The question as to whether the petitioner was gross negligent or not in death of Reshamlal for the purpose of Section 304A of the IPC, is a matter to be considered during the course of trial on the basis of evidence on record. At this stage even before framing of charges on the basis of material available on record, it cannot be held that there is no evidence on record against the petitioner to connect him in the aforesaid offences including offence under Section 304A of the IPC.

10. The Supreme Court in the matter of Syad Akbar (supra) has held that where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not negligence merely based upon an error of judgment.
11. As such, the question of gross negligence, if any, on the part of the petitioner has to be established by the prosecution during the course of the trial. As such, taking the entire material available on record, it cannot be held that no offence under Section 304A, 287 and 337 of the IPC is made out against the petitioner.
12. Similarly, the petitioner is claiming that she is entitled for protection against prosecution under Section 197 of the CrPC. Section 197 of the CrPC is applicable only to such public servant who are not removable without the sanction of the State Government or the Central Government. In this regard, reference may be made to Nagraj v. State of Mysore³.
13. Apart from this, question of sanction is a question of fact. The petitioner has not raised any such question based on Section 197 of the CrPC

³ AIR 1964 SC 269

before the trial Court and even no document has been filed along with petition demonstrating that she is in fact appointed by the State Government to attract Section 197 of the CrPC, therefore, issue of sanction cannot be competently gone into in this petition, as such, the petitioner is at liberty to raise such a plea before the trial Court in pending trial and it will be considered by the trial Court in accordance with law at appropriate stage, as such, I do not consider it is a fit case for interdicting FIR and consequent proceeding against the petitioner.

14. With the aforesaid observation, the writ petition is dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-