



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

+ **CRL.M.C. 1375/2021 and CRL.M.A. 8438/2021 (Stay)**

Date of Decision : 21.12.2021

IN THE MATTER OF:

MANASVI VASHISTHA Petitioner
Through: Ms. Rashmi Chopra, Advocate.
versus
STATE AND ANR. Respondents
Through: Mr. Ashok Kumar Garg, APP for
State with SI Kailash, P.S. I.P. Estate
Mr. R.K. Vats, Advocate for
respondent No. 2 with Mr. Rajesh
Kumar, Asstt. Manager (HR),
IPGCL

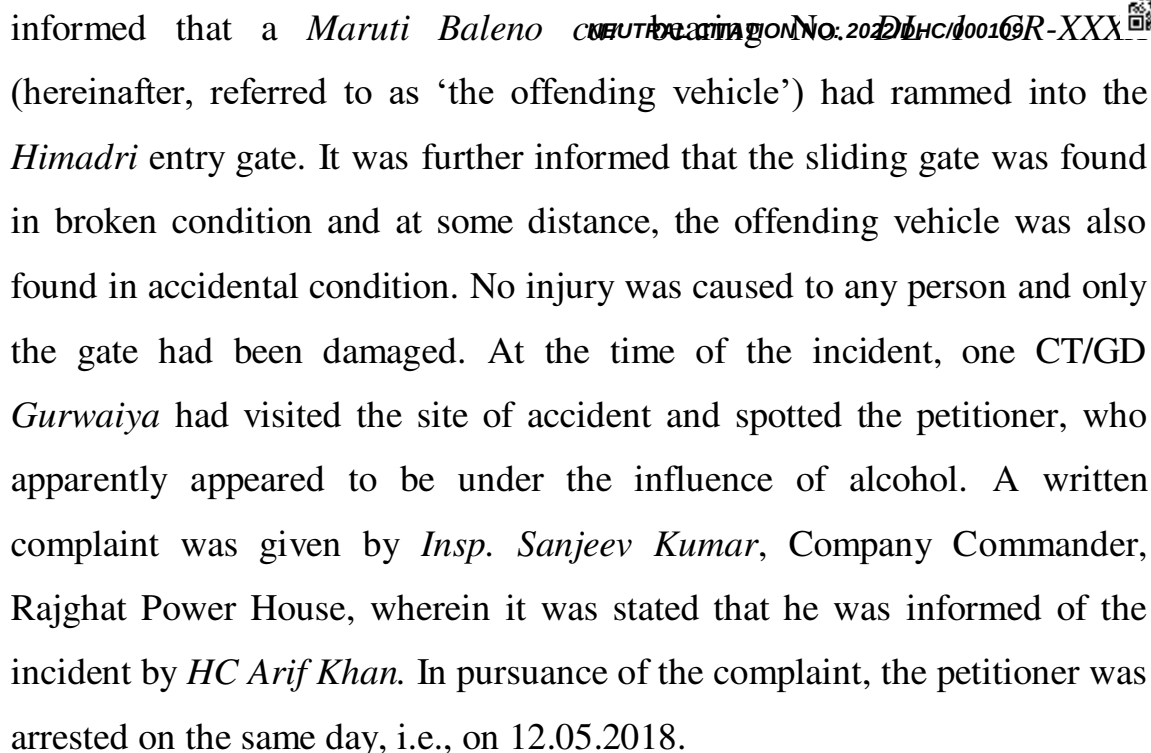
CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking quashing of FIR No. 103/2018 registered under Sections 279/427 IPC at P.S. IP Estate, Delhi and the consequent proceedings arising therefrom, including the order dated 19.10.2019 passed by the learned Metropolitan Magistrate-03, Central, Delhi in Criminal Case No. 11187/2019, vide which charges under Sections 279/427 IPC have been framed against the petitioner.

2. Briefly stated, the facts involved in the case are that on 12.05.2018 an information was received in the concerned Police Station about an accident having resulted in damage to public property. During investigation, one *Arif Khan* of *Raj Ghat Power House Controller Room*



3. Learned counsel for the petitioner has contended that from the material collected and placed on the record alongwith the charge sheet, the ingredients of the charged offences are not satisfied. It is submitted that offence under Section 279 IPC is not made out against the petitioner as it has not been stated anywhere that he was driving the offending vehicle in a rash and negligent manner as to endanger human life, or to be likely to cause hurt or injury to any other person.

Learned counsel further submitted that the offence punishable under Section 427 IPC is also not made out against the petitioner, as he is not alleged to have committed any mischief with the intention to cause loss or damage. In support of her contentions, learned counsel has placed reliance on the decision in State of Rajasthan v. Nauratan Mal reported as **2001 SCC OnLine Raj 291**.

Lastly, it has been contended that although quashing of FIR is sought on merits, the petitioner, without prejudice to his rights and contentions, is ready and willing to tender an unconditional apology to IPGCL as well as

compensate for any damage caused to its property. ION NO: 2022/DHC/000109



4. Learned APP for the State has submitted that as per the allegations in the FIR, CT/GD Gurwaiya had reached the spot of incident and found the Himadri gate as well as the offending vehicle in a damaged condition. Further, the petitioner was seen stepping out of the offending vehicle and he reportedly appeared to be under the influence of alcohol.

5. I have heard learned counsels for the parties and gone through the material placed on record.

6. In order to constitute the offence punishable under Section 279 IPC, the following ingredients must be made out:-

- (i) there must be rash or negligent driving or riding;
- (ii) it must be on a public way; and
- (iii) the driving or riding must be in a manner so rash or negligent so as to endanger human life or to be likely to cause hurt or injury to any person other than the driver.

7. Likewise, to constitute an offence under Section 427 IPC, the following ingredients must be made out:-

- (i) there must be commission of '*mischie*f'; and
- (ii) there must occur loss or damage to the amount of fifty rupees or upwards as a result of the act amounting to '*mischie*f'.

8. While deliberating upon the law surrounding cases of rash and negligent acts, the Supreme Court in Rathnashalvan v. State of Karnataka reported as (2007) 3 SCC 474 has distinguished between '*rashness*' and '*negligence*' in the following terms:-

"7. ... Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness



will always depend upon the circumstances of the case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

8. As noted above, 'rashness' consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.

9. The distinction has been very aptly pointed out by Holloway J. in these words:

'Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The immutability arises from acting despite the consciousness (luxuria). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection.' (See Nidamarti Nagabhushanam, In re, Mad HCR pp. 119-20.)"



9. In Naresh Giri v. State of M.P. reported as **(2008) 1 SCC 791**, the Supreme Court has further held as follows:-

“9. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edn.), Vol. 34, Para 1 (p. 3) as follows:

“1. General principles of the law of negligence.-Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two.”

10. Considering the facts of the present case, it is deemed expedient to also refer to the observations made by the Supreme Court in State of Karnataka v. Satish reported as **(1998) 8 SCC 493**, wherein the importance of the prosecution establishing guilt of the accused in a case of rash and negligent driving was discussed:-

“4. Merely because the truck was being driven at a ‘high speed’



does not bespeak of either 'negligence' or 'rashness' by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by 'high speed'. 'High speed' is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by 'high speed' in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of 'rashness' or 'negligence' could be drawn by invoking the maxim 'res ipsa loquitur'. ...

(emphasis added)

11. The expression 'mischief' has been defined in Section 425 IPC, as per which, the three ingredients essential for establishing commission of 'mischief' by a person are - (i) intention to cause or knowledge that he is likely to cause wrongful loss or damage to the public or to any person; (ii) causing destruction of some property or any change in the property or in the situation thereof; and (iii) the change so made destroying or diminishing the value or utility or affecting it injuriously [Refer: Indian Oil Corpn. v. NEPC India Ltd. and Others reported as **(2006) 6 SCC 736**].

12. Before rendering an opinion on the facts of the present case, note is taken of the decision rendered in Nauratan Mal (Supra), where the Rajasthan High Court, while in seisin of a case under Section 429 IPC held that the commission of 'mischief' involves 'animus to do something'. Considering that the case related to a simple accident, the Court further opined that *mens rea* of causing the accident was absent and held as follows:-

"12. ...The commission of mischief involves animus to do



something. Where the accused ~~had no intention of committing the offence of kidnapping or poisoning maiming or rendering useless any of the animus mentioned in that section, this section will not apply.~~

13. Since it is accident case and there is nothing on record that the accused respondent had any enmity with P.W. 1 Dagla Ram and if the accident has taken place then it cannot be said that any mischief was committed by the accused respondent. It may further be stated here that merely an accident has taken place on public highway would not be sufficient to prove the charge for offence under Section 429, I.P.C. unless the evidence has been led that the accused driving the vehicle had any grudge against the complainant or had required intention or knowledge in causing the accident. Since it is a simple case of accident, therefore, mens rea of causing the accident is absent and in these circumstances, the findings of acquittal for offence under Section 429, I.P.C. recorded by the learned trial Magistrate are liable to be confirmed one."

(emphasis added)

13. From a perusal of the judicial dicta outlined hereinabove, it is apparent that to establish the offence under Section 279 IPC, the 'commission of a rash and negligent act' has to be proved. Further, the onus is on the prosecution to prove beyond reasonable doubt that the accused engaged himself in the commission of an act which could be called 'rash' or 'negligent'.

To prove the commission of an offence under Section 427 IPC, it is necessary to establish that a 'mischief' was committed, which in turn requires that an intention to cause, or the knowledge that the accused, by his act, is likely to cause wrongful loss or damage to the public or to any person, be established.

14. Adverting to the present case, a perusal of the site plan would show that the *Himadri* entry gate was situated on a sharp and steep turn of the road. There was no lighting at the spot of the accident. No independent eye-witness was present at the site at the relevant time, and accordingly, no



such witness has been cited by the prosecution to establish the guilt of the accused beyond reasonable doubt.

The allegation that the petitioner appeared to be in an inebriated state is misplaced, as after his arrest, the petitioner was immediately taken to LNJP Hospital and as per the FSL report, no alcohol content was detected in his blood sample. From a perusal of the material placed on record, the incident in question appears to be a case of simpliciter accident, as it has not been stated anywhere that the petitioner was driving the offending vehicle in such a rash and negligent manner as would endanger human life or be likely to cause injury or hurt to any person. The *mens rea* of causing the accident is also absent. Accordingly, the ingredients of the offences charged are not fully satisfied.

This Court also takes note of the fact that during the course of hearing, Mr. R.K. Vats, learned counsel for respondent No.2, has fairly placed on the record a note from the competent authority stating that CISF IPGCL/PPCL unit being the complainant has stated that the matter may be settled if the management has no objection. Learned counsel has also placed on record short submissions giving no objection alongwith a calculation sheet for the damages incurred to the extent of Rs.2,53,214.30/- (inclusive of GST).

15. In pursuance of the above, Mr. Ashok Kumar Garg, learned APP for the State, also submitted that he has no objection to the quashing of the FIR. A Demand Draft bearing No. 507141 dated 09.12.2021 drawn on *State Bank of India, Jawahar Vyapar Bhawan, New Delhi* for Rs.2,53,214.30/- has been handed over to learned counsel for respondent No. 2 on behalf of the petitioner.

16. In this backdrop, after considering the facts and circumstances of the

case, this Court is inclined to allow the present petition and the present FL and the consequent proceedings arising therefrom are quashed.



17. The petition, alongwith the pending application, is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

DECEMBER 21, 2021

Click here to check corrigendum, if any