

16.11.2022
Item No.08
BR

CRR 1463 of 2000

In the matter : Somir Kumar Das Kar

Mr.Milon Mukherjee,,Senior advocate,
Mr. Smartajit Sarkar
... for the Petitioner

Mr. N.P.Agarwal,
Mr. Pratick Bose for the State

One Shri Sukanta Ghosh informed the Officer -in-Charge of Sibpur P.S. in writing that his paternal uncle Narayan Das Ghosh aged about 76 years on 28.05.1999 went for morning walk at about 6.30 a.m. to Dumurjola Stadium , wherefrom an information was given that his said paternal uncle was dashed by speeding Fiat car registered as WB 02-D 2090 . His Paternal uncle sustained injuries . He was taken to hospital. As the information disclosed offense cognizable in nature Sibpur P.S. Case No. 273 of 1999 was registered on 28th November, 1999 under Section 279/338 of the Indian Penal Code . Police took up investigation. Subsequently Shri Narayan Das Ghosh succumbed to the injuries he suffered. Police submitted charge sheet under Sections 279/304/201 of the Indian Penal Code against the accused person Somir Kumar Das Kar.

Shri Samir Kumar Das Kar filed this application under Section 482/401 of the Cr P C to get the proceeding being GR Case No. 2126 of 1999 quashed. From the attending facts of the case it is admitted that the victim succumbed to injuries due to alleged rash and negligent driving on the part of the accused person who has been booked under Section 279 of the Indian Penal Code.

The accused person was therefore, allegedly driving vehicle on a public way and rashly or negligently endangering the human

life. To constitute an offense under Section 304 of the Indian Penal Code there has to be an intention on the part of the accused, of causing death. From the materials made available in the record, I do not find anything to suggest the mens rea of the accused person to drive his vehicle in such a manner so as to cause death of the victim. Therefore proceeding against the accused/petitioner under Section 304 of the Indian Penal Code cannot be allowed to remain in force. However, the culpability of the petitioner for committing the offense under Section 279 as well as an offense under Section 304A of the Indian Penal Code cannot be denied. So I do not consider it to expedient to quash the proceeding as a whole. Direction is given to learned trial Court to proceed with the case after framing appropriate charges against the petitioner who happens to be the accused before the learned trial Court.

With this observation the criminal revision is disposed of.

Let a copy of the judgment be sent down to the learned Court below for information and necessary action.

Urgent certified copy be made available, if applied, therefor, upon compliance of requisite formalities.

All parties are to act on the server copy of this order duly downloaded.

(Siddhartha Roy Chowdhury, J.)