

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 4185 of 2022

Arnav Choudhury

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Sekhar Kumar Basu, Sr. Adv.,
Ms. Priyanka Tiberwal, Adv.,
Mr. Rajdeep Mazumdar, Adv.,
Mr. Moyukh Mukherjee, Adv.

For the O.P: Mr. Sudipto Moitra, Sr. Adv.,
Mr. Ayan Bhattacharya, Adv.,
Mr. Pawan Kumar Gupta, Adv.,
Mr. Amitava Ray, Adv.,
Mr. Vijay Verma, Adv.,
Ms. Sofia Nesar, Adv.,
Mr. Santanu Sett, Adv.
Mr. Aditya Ratan Tiwari, Adv.

For the State: Mr. Ranabir Roy Chowdhury, Adv.,
Mr. Anand Keshari, Adv.

Heard on: 05 & 06 December, 2022.

Judgment on: 14 December, 2022.

BIBEK CHAUDHURI, J. : –

1. The petitioner has approached this Court under Section 482 of the Code of Criminal Procedure praying for quashing of the proceeding being CGR Case No.3436/2022 corresponding to Ballygunge P.S Case No.123 of 2022 dated 14th November, 2022 under Section 279/304 Part-II

/308/427 of the Indian Penal Code presently pending before the learned Chief Judicial Magistrate at Alipore, South 24 Parganas.

2. One Basant Jhunjhunwala, opposite party No.2 herein lodged a written complaint on 14th November, 2022 stating, inter alia, that at about 1:06 am he came to learn that his daughter Jayantika Jhunjhunwala met with a car accident at about 12:30 am. It was also learnt by the defacto complainant that the said car was driven by the petitioner at a very high speed and dangerous manner as a result of which the said accident had taken place. The daughter of the defacto complainant was travelling in the said car with two other young men besides the driver and she succumbed to her injuries. On the basis of the said complaint police registered a case against the petitioner under Section 279/304 Part-II/308/427 of the IPC and at present investigation is going on.

3. Though the petitioner prays for quashing of Ballygunge P.S Case No.123 dated 14th November, 2022, the learned Senior Counsel on behalf of the petitioner confines his submission on the question as to whether under the facts and circumstance, the FIR case ought to have been registered under Section 304A of the IPC.

4. Elucidating the issue, it is submitted by the learned Senior Counsel on behalf of the petitioner that prior to the lodging of the complaint a GD entry being Ballygunge P.S GD entry No.911 dated 13th November, 2022 was lodged in connection with the said road traffic accident and a police officer attached to Ballygunge P.S conducted inquiry in respect of the said incident. The said inquiry report is the depiction of the earliest

information about the said unfortunate accident. It is found from the said inquiry report (GD entry No.915) that the police officer visited the spot in front of Kusum Apartment, 11 G.S Road and found a small gathering. He also found one private car bearing No. WB-02 AR-9165 in overturned condition on the footpath. The car was severely broken and he found two male and two female persons in severely injured condition inside the car. He also found one milk van bearing registration No. WB-25E-8678 lying at the middle portion of the road in front of 11, GS road. Left front side of the said van was also found in damaged condition. From local inquiry it was ascertained that on 14th November, 2022 at about 00:30 hours the driver of the above numbered private car was driving the vehicle along with GS road from east to west direction dangerously with the knowledge that due to his rash and careless driving any untoward incident of grievous hurt or death might cause. When the said car reached in front of 11 G.S road, it first dashed against the road side pavement and then dashed against a milk van who was coming from the opposite direction. As a result of such collision the private car overturned near the footpath and the driver with three other passengers sustained serious injury. The police officer obtained identity of the injured persons. The police officer after inquiry submitted a detailed report to the Officer-in-Charge of the police station.

5. Learned senior counsel on behalf of the petitioner refers to a decision of this Court in the case of **Goutam Singh vs. State of West Bengal** reported in **(2010) 1 C Cr LR (Cal) 586** inviting the Court to

consider the initial inquiry report in pursuance to GD entry No.911 dated 13th November, 2022. It is submitted by the learned senior counsel on behalf of the petitioner that materials on record and the documents collected so far never made out a case of willful and deliberate act on the part of the accused/driver to show even prima facie with the accused caused the death by such act with knowledge that it was likely to cause death. This is absolutely a case of rash and negligent driving causing unfortunate death of the daughter of the defacto complainant. In such circumstance the case against the accused ought to have been registered under Section 304A of the IPC.

6. Learned senior counsel on behalf of the petitioner referring to a decision of the Hon'ble Supreme Court in the case of **State of Punjab vs. Balwinder Singh and Ors.** reported in **2012 (2) SCC 182** submits that in respect of the case wherein a person caused death of another by acts as are rash or negligent, but there is no intention to cause death and no knowledge that such rash and negligent act will cause death, the accused should be booked for committing offence under Section 304A of the IPC. The learned counsel has raised serious doubt that even taking the allegations against the accused as they are, penal provision under Section 304 Part-II cannot be attributed to the accused. Therefore, it is submitted on behalf of the petitioner that registration of the case is bad in law and investigational proceeding in so far as it relates to Section 304 Part-II should be quashed.

7. In support of his contention the learned senior counsel further refers to the case of **State of Haryana & Ors. Vs. Bhajan Lal & Ors.** reported in **AIR 1992 SC 604**. It is submitted by him that “Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused” and “Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused” and “Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, the case against the accuse is liable to be quashed.”

8. It is further submitted by the learned senior counsel on behalf of the petitioner that in cases of cognizable offence, receipt or recording of FIR is not a condition precedent to setting in motion of criminal investigation. **Section 157 provides the procedure for investigation.** If the officer-in-charge of the police station, on receipt of information or otherwise, has reason to suspect the commission of a cognizable offence and is empowered to investigate into, he shall proceed in person or shall depute one of his subordinate officer to the spot to investigate the facts and circumstances and, if necessary, to take measures. It is submitted by the learned counsel for the petitioner that GD entry No.915 which was

recorded at 5:45 hours on 14th November, 2022 was not treated as FIR obviously because the police officer did not find any reason to start investigation of an offence under Section 304 of the IPC.

9. Mr. Sudipto Moitra, learned Senior Counsel on behalf of the private opposite party, on the other hand submits that in order to bring home charge under Section 304 Part-II of the IPC, the prosecution has to prove the death of the person in question; that such death was caused by the act of the accused and he knew that such act is so likely to cause death. On the contrary in a case where negligent or rashness is the cause of death and nothing more, Section 304A may be attracted but where the rash and negligent act is preceded that the knowledge that such act is likely to cause death, Section 304 Part-II of the IPC may be attracted and if such rash and negligent act is preceded by real incident on the part of the wrong doer to cause death, offence may be punishable under Section 302 of the IPC. Thus a clear distinction with regard to applicability of the penal provisions under Section 304 and 304A of the IPC has been laid down in **Alister Anthony Pareira vs State of Maharashtra** reported in **2012 (2) SCC 648**.

10. It is submitted by Mr. Moitra referring to a decision of the Hon'ble Supreme Court in **State Tr. P.S Lodhi Colony, New Delhi vs Sanjeev Nanda** reported in **2012 Cri. LJ 4174 (SC)** that in a case where the accused who was driving a car in high speed dashed against six persons who were standing on the road, mowed them down causing their death and the accused was in inebriated state and he did not stop to give help

to the injured person but fled away from the spot, the accused was held liable to be convicted under Section 304 Part-II of the IPC.

11. Coming to the instant case it is submitted by Mr. Moitra, learned Senior Counsel on behalf of the private opposite party that spot inquiry was held by the police immediately after the accident. Local people who saw the accident stated to the police officer that the offending car was being driven at a very high speed and in dangerous manner. The petitioner who was the driver of the said car had the knowledge that if the car is driven at an excessive high speed and in such dangerous manner, it may cause fatal accident. As a result of such rash and negligent driving with conscious knowledge of the driver, the car dashed against the footpath and then against a milk van coming from the opposite direction and overturned causing serious injuries to two of the passenger and death of the daughter of the defacto complainant. Under such circumstances, at this stage of investigation it would not be proper for this Court to quash investigational process in respect of the offence under Section 304 Part-II of the IPC.

12. Mr. Moitra further submits that the unfortunate incident took place on 14th November, 2022 at the wee hours of night. The petitioner has approached this Court for quashing of the case on 16th November, 2022 without giving any opportunity to the investigating officer to consider the veracity of the case of the defacto complainant. At this nubile stage of investigation the Court should not quash the case of the prosecution. To buttress argument, the learned senior counsel on behalf of the private

opposite party refers to the decision of the Hon'ble Supreme Court in **Kurukshetra University & Anr. vs State of Haryana & Anr.** reported in **(1977) 4 SCC 451**. Paragraph 2 of the aforesaid report is relevant for the purpose of this case and is quoted below:

“2. It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under Section 482 of the Code of Criminal Procedure, it could quash a First Information Report. The Police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.”

On the same issue, Mr. Moitra refers to another decision of the Hon'ble Supreme Court in **Minu Kumari & Anr. vs State of Bihar & Ors.** reported in **2006 Cri. LJ 2468** in paragraph 19 of the aforesaid report the Hon'ble Supreme Court was pleased to observe –

“: the power possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principle. The inherent powers should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving prima a facie decision in a case where

the entire facts are incomplete and hazy , moreso when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient materials.”

13. It is submitted by him that in the instant case the investigating officer could not collect all evidence in support of the charges as yet. The investigating agency should be given adequate authority to investigation into the case. The petitioner must wait till the culmination of investigation. This is not the stage where investigational proceeding should be quashed. Mr. Moitra also refers to a decision of a Coordinate Bench of this Court in **CRR 3241 of 2018 and CRAN 3192 of 2018: Vikram Chatterjee vs. The State of West Bengal & Ors**, decided on 13th February, 2019. In this case prayer of the accused for discharge under Section 227 of the Cr.P.C was dismissed by the trial court. The accused then approached this Court in revision. In this case also it was urged on behalf of the petitioner that the accused was wrongly charged under Section 304 Part-II of the IPC. The Coordinate Bench observed as follows:-

“I am unable to agree with such argument of Mr. Ghosh at this juncture taking into consideration the entirety of the fact as emerges from the case diary pressed in service by Mr. S.G. Mukherjee, learned Public Prosecutor appearing for the State/opposite party wherefrom it is prima facie revealed that in the yester night of the incident, the petitioner was on the steering as the driver of the vehicle driving at the speed of 105 k.m. per hour. However, it is for the learned trial Court to consider the police papers as to whether the offences alleged

would come within the realm Section 304A IPC or under Section 304 II of IPC and whether the Investigating Officer was bias to submit charge-sheet against the petitioner for the major section under Section 304 II of IPC but such observation can be arrived at on appraisal of the evidence of the prosecution witnesses after their examination on oath.”

14. Having considered the submission made by the learned senior counsel on behalf of the petitioner and the private opposite party as well as the ld. P.P-in-Charge who has placed relevant papers from the case diary for consideration, this Court requires to consider as to whether under the facts and circumstances of the case and the materials collected by the investigating officer so far, registration of case under the penal provision of Section 304 Part-II of the IPC is justified or it is to be scaled down under Section 304A of the IPC. Section 304 runs thus:

“304. Punishment for culpable homicide not amounting to murder.—Whoever commits culpable homicide not amounting to murder shall be punished with 1[imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury.....”

15. Plain reading of Section 304 makes it clear that it is in two parts the first part of the Section is generally refers to as “**Section 304 Part-I**,” where as the second part as “**Section 304 Part-II**”. The first part applies where the accused causes death to the victim with **intention** to cause

such bodily injury as is likely to cause death. Part II on the other hand comes into play when death is caused by doing an act under **knowledge** that it is likely to cause death, but without any intention to cause death or such bodily injury as is likely to cause death.

16. The makers of the Code observe:-

“The most important consideration upon a trial for this offence is the intention or knowledge with which such the act which caused death was done. The intention to cause death or the knowledge that death will probably be caused, is the essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with the judicial powers should clearly understand that no conviction ought to take place, unless such intention or knowledge can from the evidence be concluded to have really existed”.

17. The makers further state:-

“It may be asked how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind ? They can be ascertained only from external and visible acts. Observation and experience enable us to judge of the connection between men’s conduct and their intentions. We know that a sane man does not usually commit certain act heedlessly or intentionally and generally we have no difficulty in inferring

from his conduct what was his real intention upon any given occasion.”

18. Before Section 304 Part-II can be invoked, the following ingredients must be satisfied:-

- i. The offender must have knowledge that the bodily injury is such that it is likely to cause death.

19. Section 304A, on the other hand, was inserted by the Indian Penal Code (Amendment) Act, 1870 and reads thus:-

“304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

20. The Section deals with the homicidal death by the rash or negligent act. It does not create a new offence. It is directed against the offences outside the range under Section 299 and 300 of the IPC and covers those case where death has been caused without intention or knowledge. The words “not amounting to culpable homicide” in the provision are significant and clearly convey that the Section seeks to embraces this case where there is neither intention to cause death, nor knowledge that the act done will in all probability result into death. It applies to act which are rash or negligent and are directly the cause of death of another person.

21. There is thus distinction between Section 304 and Section 304A. Section 304A carves out case where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300 of the IPC. In other words Section 304A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is “motivating force” of the act complained of, Section 304A will have to make room for the graver or most serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The Section has application to those case where there is neither intention to cause death or knowledge that the act in all probability will cause death. The learned counsel for the petitioner argues with great force that by no stretch of imagination, it can be said that the petitioner while driving the car had the knowledge that it would cause death by accident of one of his friends.

22. On the contrary it is vigorously urged by the learned counsel for the private opposite party no.2 that the investigation of the case has not reached to the stage where it can be gathered whether the petitioner had the knowledge that driving of a vehicle at very high speed and in dangerous manner would likely to cause accident resulting in death of the fellow passenger.

23. I have already discussed that there cannot be any direct evidence of knowledge of the offender. It can be only ascertained through circumstantial evidence. The test adopted by the court under such

circumstances is the test of prudent person under the same facts and circumstances. A prudent person will not drive a vehicle at a very high speed and in a dangerous manner which he cannot control because a man of prudence has the knowledge that there is obvious chance of fatal accident if a car is driven at very high speed and in dangerous manner. It is found from the initial police report vide G.D No.915 dated 14th November, 2022 that the offending car was being driven at such high speed from east to west that it had first dashed against the footpath and then collided with a milk van coming from the opposite direction and then overturned. The petitioner was driving the vehicle at utmost high speed inspite of having knowledge that such reckless driving may cause death of any by-stander or himself and his fellow passengers.

24. Therefore at this stage of investigation, I am not inclined to quash the registration of case against the petitioner under Section 304 Part-II of the IPC.

25. Accordingly the instant criminal revision being devoid of any material is dismissed on contest.

(Bibek Chaudhuri, J.)