

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CRM-M-21540-2016
Reserved on: 05.08.2022
Date of Decision: 26.08.2022**

R K BHAGAT

....PETITIONER

Versus

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR

**Present: Mr. Arvind Kashyap, Advocate
for the petitioner.**

Mr. Bhupender Beniwal, AAG, Punjab

**Mr. Rahul Dev Singh, Advocate
for respondent No.4.**

SURESHWAR THAKUR, J. (ORAL)

1. On 01.08.2014, Assistant Lineman one, Prem Kumar along with Linesmen Kewal Singh, and, Sukhdev Singh, had proceeded to attend a complaint No.1030, registered by a consumer named Darshan Singh. When they arrived at the site, then they noticed that the clamp fitted between 11000 KV line, and, transformer rather was faulty. The above fault required an intimation being purveyed by Lineman Sukhdev Singh, to the Junior Engineer concerned, for enabling the latter to make a direction, upon the officials concerned, to switch off the power line, so that the fault could be rectified, and, that too without any endangerment(s) to the lives of the attending officials concerned. However, the Lineman concerned, did not adopt the above procedure, and, proceeded to repair the fault in the line, and, that too without cutting off the power supply, which resulted in the electrocution of Prem Kumar (deceased), who is alleged to be directed by

the Lineman Sukhdev Singh, to carry out the requisite rectification.

2. FIR No.91 of 12.11.2014 embodies therein an offence under Section 304-A of the IPC, and, is registered at Police Station Kanwan, District Pathankot, but therein the name of the petitioner also occurs, with an attribution to him, qua given his sharing the penally inculpable *mens-rea*, as, as, arising from his negligently performing his duties, thereupon, his being required to be added, as, an accused along with Lineman Sukhdev Singh, in the petition FIR.

3. Therefore, through the instant petition the present petitioner, who, at the relevant time, was the XEN of the division concerned, has made a prayer for the quashing of the petition FIR, and, has also made a prayer for the quashing of the consequential thereto proceedings, as arise therefrom, and, as may be *subjudice* before the learned Judicial Magistrate concerned.

4. The inculcation of the present petitioner appears to be in consequence, to an order made by this Court, on May 19, 2016, upon, CRM-M-6271-2015, petition whereof became constituted before this Court, by the widow of deceased Prem Kumar. The order, as made upon CRM-M-6271-2015, is extracted hereinafter.

“From the status report dated 01.04.2016, it comes out that in pursuance to the order passed by this Court, SI was constituted making comprehensive investigation, it was found that J.E. Joginder Singh, S.D.O. Ravi Bhushan and R.K. Bhagat, Supervising Engineer, Sub Division, Sarna, Pathankot are also responsible for the death of A.L.M. Prem Kumar along with Sukhdev Singh, Lineman against whom the challan has already been presented.

Learned State counsel on instructions from ASI Harjinder Singh, has sought time to present the supplementary report under Section 178(3) Cr.P.C. before the concerned court.

Let said report be presented before the court concerned within one month.

The present petition is disposed of accordingly.”

5. However, a reading of the above extracted order, does not disclose, that this Court had after accepting the report of the SIT, had made any opinion with respect to the inculcation, as, drawn against the present petitioner by the SIT, being a validly or an invalidly drawn inculcation. In consequence, the order (supra), as made by this Court on petition (supra), may not at all forestall this Court, from proceeding to adjudge the veracity of the inculpatory findings recorded by the SIT against the present petitioner.

6. In the above endeavour, a reading of paragraph 12 of the reply, on affidavit, as, furnished to the petition, on behalf of respondents No.1 to 3, paragraph whereof becomes extracted hereinafter reveals that, the respondents concerned, had in making purported well founded attributions of guilt, against the present petitioner, rather had made them rested, merely upon his, being remotely responsible for the demise of Assistant Lineman Prem Kumar, and, that too on the basis of there being a deficit in the apposite supervisory work appertaining to the area under his command.

“12. That the contents of para 12 of the petition are admitted being matter of record regarding the RTI information vide letter dated 10.6.2016, but it is wrong and denied that the SIT report has not held him responsible for the death of ALM Prem Kumar, rather it is submitted that if not directly, the petitioner is remotely liable for the death of ALM Prem Kumar as shortage was found in the supervisory work in the area of the petitioner as per the SIT report.”

7. The above formed inculpatory opinion against the present petitioner appears to be completely legally deficit, and, nor can well anvil,

and, nor can well plank rather any well informed reason that, the proposed inculcation against the present petitioner, hence is well founded, on any credible evidence.

8. The reason for forming the above conclusion, does but ensue, from the above contention carried in para 12 of the reply on affidavit, as, furnished to the petition by co-respondents no.1 to 3. The above made contention is most mechanically, and, perfunctorily drawn, and, remains unsupported by any cogent, and, reliable evidence, which however may have emerged (i) only when there was evidence of immense probative vigor, personificatory of the factum that, the present petitioner despite receiving an intimation about the complaint from the consumer concerned, his yet not ensuring the switching off the power connection, from the sub station concerned, (ii) and/or, may have become comprised, in despite his becoming communicated by Lineman Sukhdev Singh, about the above necessity, his yet making an express direction, upon Lineman Sukhdev Singh, to ensure that Assistant Lineman does prior thereto, yet proceed to make the requisite rectifications. However, the above evidence is completely amiss, whereas, its existence on record, was an utmost dire necessity hence for convincing the judicial conscience of this Court, that the inculcation drawn against the accused is well founded.

9. The legal sequel of the above best evidence, being amiss at this stage, and, rather with there being only a reference, in the above extracted relevant portion of the reply on affidavit, as, furnished to the petition by co-respondents No.1 to 3, that the petitioner is remotely liable, for the demise of Assistant Lineman Prem Kumar, is that, the respondents concerned, are

only *prima-facie* attributing a remote vicarious liability to the present petitioner, in the demise of Assistant Lineman. In doing so, they do not avail the same rather on any credible evidence. Moreover, when even otherwise the attribution of the remotest vicarious liability, qua the present petitioner, does also require, that some *iota* of evidence emerges *inter-se* the negligence, if any, of the present petitioner rather with the principal offenders concerned, factum whereof however has neither been pointedly contended nor obviously any evidence qua therewith is existing on record. As a corollary, with the respondents contending, that only a remote vicarious liability is fastenable qua the present petitioner, hence with the principal offender(s), in the FIR offences, and, that too without establishing all the apposite connecting links in respect thereof rather with the principal offender(s), does constrain this Court to conclude, that the inculcation drawn against the present petitioner rather suffers from the vice of completest non application of mind.

10. Resultantly, there is merit in the petition, and, the same is allowed. The petition FIR, so far as it pertains to the alleged incriminatory role of the present petitioner is concerned, is quashed, and, set aside, and, also all consequential thereto proceedings, if any, as become entered into by the learned trial Judge concerned, but only so far as the present petitioner is concerned, are also quashed, and, set aside.

(SURESHWAR THAKUR)
JUDGE

26.08.2022
Ithlesh

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No