

IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 228 of 2005

CRAN 4 of 2022

CRAN 5 of 2022

JHARNA DASGUPTA

VS.

THE STATE OF WEST BENGAL

For the Petitioner : Mr. Sekhar Kumar Basu, Sr. Adv.
Mr. Shiladitya Banerjee, Adv.
Mr. Abhijit Ganguly, Adv.
Mr. Diptangshu Basu, Adv.

For the State : Mr. Arijit Ganguly, Adv.
Mr. Sanjib Kr. Dan, Adv.

Hearing concluded on : 8th February, 2023

Judgement on : 15th February, 2023

Siddhartha Roy Chowdhury, J.:

1. This criminal revision challenges the order passed by learned Additional Sessions Judge, Fast Track, 3rd Court, Barasat, North 24 Parganas, arising out of Rajarhat P.S. Case No. 143 dated 8th July, 1999. By the impugned order learned Trial Court refused to discharge the accused persons.
2. Briefly stated, Debaprasad Das of village Hariharpur, set the criminal proceeding into motion by informing the Officer-in-charge of Rajarhat Police Station that on 8th July, 1999 at about 9.15 a.m. he attended the factory under the style "Moon Electrical Company" where

he was working for gain. The building housed another factory under the style “Lampco Electricals” in the first floor and second floor. The entire property is owned by Chandan Dasgupta and his brother Swapan Dasgupta. While the informant was preparing himself for the work, he first heard a sound of blast on the 3rd floor, people were screaming for help. Black smoke was bellowing out of the room. Then he could understand that there had been a fire break out in the factory. Local people also assembled there. Fire Brigade came and extinguished the fire. Rabin Maity and 5-6 other workers sustained severe burn injury. Six lady workers and two male workers succumbed to burn injuries caused by fire. There was inflammable like kerosene required to run the wire compressor in the factory.

3. As the information disclosed offence cognizable in nature Rajarhat P.S. Case No. 143/1999 was registered. Police took up investigation which culminated into submission of charge sheet under Section 285/287/338/304/34 of the I.P.C. against six accused persons. The accused persons surrendered to the jurisdiction of learned Trial Court and filed an application under Section 227 of the Code of Criminal Procedure. Learned Trial Court after due consideration was pleased to dismiss the application. The petitioner Jharna Dasgupta being one of the six accused persons filed this application for criminal revision.
4. Assailing the impugned judgement Mr. Abhijit Ganguly, learned Counsel for the petitioner submits that the petitioner is the wife of Chandan Dasgupta who happens to be the proprietor of the factory where the accident took place and fire broke out. She is in no way

connected with the business. Police implicated her without any cogent reason. In the backdrop of such claim a report was called for from the Deputy Commissioner of Police, New Town Division and such report was submitted vide memo no. 23338/22/DCP/NT/BPNP-C. The said report, however, reveals that the petitioner is one of the owners of the factory under the style of “Moon Electricals Company” and the other co-owner is her husband Chandan Dasgupta. Liberty was given to the petitioner to submit supplementary affidavit to refute such contention of the police and such supplementary affidavit was filed duly affirmed by one Chandan Dasgupta, annexing certain documents issued by Rajarhat Gopalpur Municipality. One of such documents Annexure-B is the tax receipt issued by the Municipal Authority acknowledging the payment of tax in respect of holding no. RGM-8/A/S/580/1999, premises no. B/8/1, Jangra Rabindra Pally, Kolkata-59 and the other one is the completion/occupancy certificate of the building issued by Municipality on 31st December, 2002. However, none of the documents has got any nexus with the business under the style of Moon Electricals Company as claimed by the Investigating Agency. Mr. Ganguly further submits that the prosecution is to prove that the petitioner is associated with the business having ownership right. No such document is submitted before the Court.

5. Mr. Sekhar Kumar Basu, learned Senior Counsel appearing for the petitioner submits that admittedly people died because of an accident. Fire broke out in the factory where workers were working. There is no reason to presume that the accused persons including the petitioner

had any intention to kill any of the workers and with such mens rea set the factory on fire. Therefore, by no stretch of imagination it could be held to be an offence causing homicidal death not amounting to murder. It is out and out a case of accidental death caused due to negligence. Therefore, Investigating Agency had no reason to submit charge sheet under Section 304 of the I.P.C.

6. To buttress his argument Mr. Basu, learned Senior Counsel, relied upon the judgement of Hon'ble Supreme Court pronounced in the case of ***State of Haryana vs. Rajesh Aggarwal & Anr.*** reported in **AIR 2018 SC 3998** and ***Keshub Mahindra vs. State of M.P.*** reported in **1996 SCC (Cri) 1124**.

In *State of Haryana (supra)*, the judgement was pronounced in the appeal against final judgement and order of the High Court while considering the order passed by learned Trial Court framing charge under Section 302 of I.P.C. In the case of *Keshub Mahindra (supra)* also the order of learned Trial Court was challenged after the charge was framed. In this case at hand charge is yet to be framed by learned Trial Court. Thus, in my humble opinion, both the judgements are distinguishable in the backdrop of facts and are not applicable in the case at this stage.

7. Mr. Arijit Ganguly, learned Counsel representing the State produced the case diary and the statement recorded in course of investigation which prima facie suggests that the petitioner is known as one of the co-owners of the business.

8. True it is that prosecution is to prove the charge during trial beyond reasonable doubt. Whether the petitioner has ownership interest in the business or not is the question of fact which could be decided at the time of trial.
9. The application filed by the accused persons under Section 227 of the Cr.P.C. has been rejected by learned Trial Court. Whether there is ingredient of offence within the meaning of Section 304 of the I.P.C. or not is to be considered by learned Trial Court while framing charge under Section 228 of the Code of Criminal Procedure.
10. In the given facts and circumstances, I do not consider it proper to make any comment on the applicability of penal provision at this stage. The senior officer holding the post of Additional Sessions Judge is expected to find out the proper section under which the charge should be framed against the accused persons or in other words, in the backdrop of given facts whether it should be considered as an offence of causing death by negligence or such death was in the nature of culpable homicide not amounting to murder. When charge sheet has been filed against the petitioner depicting her as one of the co-owners, in absence of material prima facie to negate such claim, I do not find any reason to interfere with the order impugned. The criminal revision, in my humble opinion, is bereft of merit and is dismissed. With the disposal of criminal revision, application, if any, stands disposed of.
11. Let a copy of this judgement be sent down along with lower Court record to the learned Trial Court for information and necessary compliance.

12. Urgent photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)