

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 941 OF 2023

Jignesh Shantilal Patel

..Petitioner

V/s.

The State of Maharashtra & Anr.

..Respondents

Mr. Harideep Singh, for the Petitioner.

Mr. J.P. Yagnik, APP for the Respondent No.1/State.

Mr. Gaus Mohd. Shaikh for Respondent No. 2.

**CORAM : SUNIL B. SHUKRE, AND
M.M.SATHAYE, JJ.**

DATE : 28th APRIL 2023

P.C.

1. Heard learned counsel for the Petitioner and learned Counsel for Respondent No. 2. Respondent No. 2 submits that there is an amicable settlement between Petitioner and Respondent No. 2 and that is why Respondent No. 2 has filed consent affidavit for quashing of the FIR.

2. In the present case, the basic allegation made against the Petitioner- supervisor, is about gross negligence of the supervisor by not providing safety helmet, safety belt, safety net etc., because of which nephew of Respondent no. 2-Bhuneshwar Shanu Prasad after

having accidentally fallen down from height at the construction site, succumbed to the injuries suffered by him in the accident.

3. We are of the prima facie view that had the safety measures been taken by the supervisor, who was under a legal duty to take those measures, vital injuries perhaps could have been avoided. From the statement of the complainant who has lodged the first information report and of other witnesses, it is seen that this case also involves an issue about public policy in the sense that there was a legal duty imposed upon the employer to ensure that all safety measures and safety equipments were provided to the labourers working on high rise building, which he failed to perform thereby giving rise to the case of gross negligence on the part of the supervisor.

4. Therefore, in our view, this is not a fit case for accepting settlement between the parties. Learned Counsel for Respondent No. 2 has submitted that relatives of the deceased have already given their consent for settling the dispute and that they have also received insurance amount. We are of the view that receiving of the insurance amount has got nothing to do with the offence which has been prima faice committed in the present case. By accepting some amount,

family of the victim and accused cannot always settle the crime outside the Court, unless the crime is private in nature and/or has civil flavour and is not against public policy. The Court, inspite of settlement, is required to look into various other factors, such as seriousness of the crime, nature of the crime, antecedents of the accused, violation of public policy and so on.

5. In the present case, we find that there is an allegation about gross negligence on account of breach of legal duty which has resulted in offending, prima facie, the public policy that utmost care about safety of labourers working in the construction of high rise buildings is taken by the Developer or the Contractor or the Supervisor in charge of construction activity, which issue would have to be appreciated on it's own merit after detailed evidence is recorded. Therefore, prayer of the Petitioner cannot be accepted.

6. With these observations, we find that there is no merit in the Writ Petition and the Petition stands dismissed.

7. We, however, direct the trial Court to expedite the conclusion of the trial in accordance with law.

(M.M.SATHAYE, J.)

(SUNIL B. SHUKRE, J.)