

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

CRIMINAL WRIT PETITION NO. 2879 OF 2022

1. Pinkesh Dhiraj Patel)
Age: 34 Years, Occ:- Business,)
Resident of Thane having)
address at 1803/7, Tulip,)
Vardhman Garden, Old Agra)
Road, TMC Office, Balkum,)
Thane (W), Mumbai-400 608)

2. Hiren Kirtikumar Rangani)
Age: 35 Years, Occ:- Business,)
Resident of Thane having)
address at 63/64-1B,)
Kalptaru Hills, Tikujini Wadi)
Road, Opp. Tikujini Wadi,)
Manpada, Thane (W), Thane)
Maharashtra-400 610)

...Petitioners

Versus

1. The State of Maharashtra)
Through Police Inspector,)
Criminal Appellate Side,)
High Court, Bombay)
(Through Sr. Inspector of)
Police Goregaon Police Station,)
Session Case No.280 of 2022,)
arising out of C.R. No.32/2022)

2. Savitri Amitkumar Gound)
Age:28 Years, Occ:- Housewife,)
Resident of Mumbai having)
address at Room No.123,)
Janta Colony, Adarsh Nagar,)
Veer Nariman Road, Worli,)
Koliwada, Mumbai)

...Respondents

Mr. Prashant K. Aher, for Petitioners.
Mr. J.P. Yagnik, APP for Respondent No.1-State.

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

DATED : 3rd MAY, 2023

ORAL JUDGMENT (PER : SUNIL B. SHUKRE, J.)

1. Rule. Rule made returnable forthwith. Heard finally, by consent of learned counsel for the Petitioners and learned APP for Respondent No.1 State.

2. It is the submission of the learned counsel for the Petitioners that even though charge-sheet is filed under Section 304 read with Section 34 of the Indian Penal Code against both the Petitioners and although the learned Judicial Magistrate First Class has committed the case to the Sessions Court for its trial for an offence punishable under Section 304 of the Indian Penal Code, the fact is that by no stretch of imagination can it be stated that any offence of culpable homicide not amounting to murder as explained by the Exception 2 of Section 300 of the Indian Penal Code is committed in this case. He further submits that in this case, there is no homicide much less culpable, committed by the Petitioners and, for committing the offence of culpable homicide, some overt act on the part of

the accused and that too with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death and as provided under Section 299 of the Indian Penal Code is required. He submits that such intention is conspicuously absent from the allegations made in the FIR. He relies upon the law laid down in the case of **Shantibhai J. Vaghela and Anr. V. State of Gujarat.**¹

3. Learned APP for the Respondent-State submits that the allegations made against the Petitioners are specific in nature and it is because of their failure to provide proper safety belts and safety measures and leaving by them exposed vertical iron bars in the column, that the unfortunate death has occurred in the present case and therefore, it would be a matter of trial as to whether or not there was any intention on the part of the accused persons in doing such an act as was likely to cause a fatal injury. He further submits that Petitioner No.2 has not been charge-sheeted only because he is absconding and such conduct of Petitioner No.1 would dis-entitle him from invoking the jurisdiction of this Court.

4. Learned counsel for the Petitioners submits that the fact that Petitioner No.2 has been granted anticipatory bail itself shows that the Petitioner No.2 is not absconding and false charge-sheet has been filed in that regard. Learned counsel for the Petitioners submits that Petitioner No.2 has made his appearance before the Sessions Court and therefore, it

¹ (2012) 13 SCC 231

cannot be said that his conduct is bad.

5. The submission of the learned counsel for the Petitioners regarding Petitioner No.2 not being an absconding accused anymore is accepted. As it is not in dispute that he has appeared before the Sessions Court, and therefore, there is no need for us to consider the conduct of Petitioner No.2 now.

6. As regards the merits of the matter, we find that if any criminal proceedings are to be quashed and set aside by this Court, the parameter on the basis of which an accused person is found to be fit for his being discharged from the criminal case by the Sessions Court under Section 227 of Criminal Procedure Code would, along with other relevant factors, also be relevant. For the sake of convenience, Section 227 of Cr.P.C. is reproduced as under:

“Section 227. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

7. It is clear from the provisions made in Section 227 of the Criminal Procedure Code that after the learned Sessions Judge considers that there is no sufficient ground for proceeding against the accused then only he

can discharge the accused for the reasons to be recorded in writing by him. It also shows that if there are sufficient grounds for proceeding against the accused in a Sessions trial, the Sessions Judge cannot discharge the accused. It is well settled law that there is a difference between what is considered to be a sufficient ground for proceeding against the accused in Sessions trial and what is seen as not constituting the offence itself. There is also a difference between the existence of sufficient ground to proceed against the accused and the probability of acquittal of the accused and just because there can be a possibility of acquittal of the accused, it cannot be said that there is no sufficient ground existing for proceeding against the accused. Having examined the core and contours of Section 227 Criminal Procedure Code, let us now consider the allegations made against the Petitioners, by taking them at their face value, in the light of existence of need for proceeding further against the Petitioners or otherwise.

8. The allegations made against both the Petitioners as seen from the charge-sheet, are quite specific in nature. They are in two parts, one part relating to the gross negligence on the part of the Petitioners in performing their duty which would fall under the category of omission on their part and the second part relating to performing of dangerous act by them which would fall in the category of an overt act on their part. Insofar as the omission part is concerned, certainly as rightly submitted by the

learned counsel for the Petitioners, which is also the law laid down by the Apex Court in the case of **Shantibhai J. Vaghela and Anr.**, there would not be attracted any offence of culpable homicide as defined under Section 299 of the Indian Penal Code. In order that the offence of culpable homicide is committed, there must be doing of an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely by such act to cause death. So, an overt act coupled with the criminal intention or criminal knowledge or both, as contemplated under Section 299 Indian Penal Code is sine qua non of Section 299 of Indian Penal Code. Even if there is knowledge in committing an act that by such an act there is reasonable likelihood of causing of death, the offence of culpable homicide as contemplated under Section 299 of Indian Penal Code would be complete.

9. In the present case, as discussed by us earlier, apart from omission on the part of the Petitioners, there is also prima facie an overt act on their part which is in the nature of leaving dangerously exposed vertical iron bars embedded in the RCC column at the construction site. The Petitioners had, prima facie, knowledge that construction work over these bars was being carried out by men sitting in cabins of the cranes suspended in air and, therefore, leaving dangerously exposed vertical iron bars was like an invitation to disaster. It is this material which prima facie makes out a case

for proceeding further against the Petitioners in the present criminal trial. Of course, there may be issues about correctness or otherwise of the allegations. But, at this stage, one has to go by the prima facie worth of the evidence. If there is a question, whether such an overt act was actually committed by the Petitioners or not and if so committed, whether it was accompanied by any criminal intention or criminal knowledge as envisaged under Section 299 of Indian Penal Code, all would be a matter of trial. Therefore, it cannot be said that this is a case where there is no sufficient ground for proceeding against the Petitioners, rather it is a case where there is sufficient ground for proceeding against the Petitioners.

10. In this view of the matter, we find no merit in this petition. Writ Petition deserves to be dismissed.

11. Learned counsel for the Petitioners has tendered across the bar two documents, as per the list of the documents, which compilation is taken on record and collectively marked as document "A". He submits that these documents would show that the Labour Commissioner has given his adjudication about the incident and his verdict is that the incident was an accident pure and simple and therefore, no criminal prosecution can be launched against the Petitioners. On facts, we must say that there is no finding recorded by the learned Commissioner on criminal aspect of the incident leading to death of a worker at the construction site, in the first place. Secondly, we are of the view that grant of compensation to the

widow of the deceased by the Labour Commissioner in a case like this by itself would not mean that there is also a finding recorded by the Labour Commissioner that the death of the husband of the widow had occurred only accidentally and without there being any criminal intention or criminal knowledge on the part of the Petitioners. There is a difference between consideration of the material necessary for grant of compensation and consideration of the evidence necessary for recording a finding of guilt or otherwise for an offence arising from the same set of facts and therefore, the set of documents vide document “A” would have no bearing upon the criminal prosecution that has been initiated against the Petitioners, at least as of now.

12. Petition is dismissed.

13. Rule is discharged.

[M.M. SATHAYE, J.]

[SUNIL B. SHUKRE, J.]