

AGK

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

CRIMINAL REVISION APPLICATION NO.331 OF 2018

Vimalbhai Bhanabhai Patel,
Adult, Indian Inhabitant,
residing at V-1, Engineers Avenue,
Opp. PWD Office, Silvassa 396 230
U.T. of Dadra and Nagar Haveli ... Applicant

V/s.

Union Territory of Dadra Nagar Haveli
(thru Silvassa Police Station) ... Respondent

**WITH
CRIMINAL REVISION APPLICATION NO.297 OF 2018**

Jay Prakash Uraph Kalwant Singh,
Aged 59 years,
Residing at Govt. Quarters, 66 KV Road,
Amli, Silvassa
U.T. of Dadra and Nagar Haveli
Pin 396 230 ... Applicant

V/s.

The State, Union Territory
(At the instance of Silvassa Police
Station, Dadra & Nagar Haveli) ... Respondent

**WITH
CRIMINAL REVISION APPLICATION NO.342 OF 2018**

Jitendra Manilal Kapadi,
Age 58 years, Occupation: Service,
Residing at: Smruti House,
Near Chaitanya Hospital,
Kilvani Naka, Silvassa 396 230. ... Applicant

V/s.

1. The State of Maharashtra
2. Union Territory of Dadra and
Nagar Haveli,
(At the instance of Silvassa Police
Station, Dadra & Nagar Haveli) ... Respondents

**WITH
CRIMINAL WRIT PETITION NO.2309 OF 2018**

1. Pravin Damji Rathod,
Age 45 years, Indian Inhabitant,
permanently residing at Amli,
Sirkewadi, Near Tushar Clinic,
Silvassa
2. Ashok Damji Rathod,
Age 50 years, Indian Inhabitant,
permanently residing at Amli,
Sirkewadi, Near Tushar Clinic,
Silvassa ...Petitioners

V/s.

Union Territory of Dadra Nagar Haveli

Through Silvassa Police Station

... Respondent

Mr. Madhusudan D. Parekh for the applicant in Revn/331/2018.

Mr. M.K. Kochare for the applicant in Revn/297/2018.

Mr. Pawan P. Mali for the applicant in Revn/342/2018.

Mr. Zishan Quazi with Mr. Manuj Borkar i/by Mr. Ashish C. Chavan for the petitioner in WP/2309/2018.

Mr. Harsh Paresh Dedhia with Mr. Kamar Ali Shaikh i/by Mr. H.S. Venegavkar for respondent (U.T.)

Mr. A.D. Kamkhedkar, APP for the State.

CORAM : AMIT BORKAR, J.

RESERVED ON : NOVEMBER 17, 2022

PRONOUNCED ON : JANUARY 17, 2023

JUDGMENT:

1. Since the facts and the points involved are common, all the petitions are being disposed of by this common judgment.

2. All the petitions arise out of rejection of discharge application under section 227 of the Criminal Procedure Code, 1973 (hereafter “CrPC”, for short). The applicant in Revision Application No.331 of 2018 is accused no.2; petitioners in Criminal Writ petition No.2309 of 2018 are accused nos.1 and 3;

applicant in Revision Application No.297 of 2018 is accused no.6; and the applicant in Revision Application No.342 of 2018 is accused no.4.

3. First Information Report (hereafter “FIR”, for short) came to be registered against accused persons mentioned above in relation to unfortunate incident took place on 28 April 2006 on the basis of information lodged by one Mr. Prakash Solanki, Fireman attached to Fire Brigade Department at Dadra and Nagar Haveli stating that fire brigade building near village Amli was under construction since two (2) months prior to the date of the report. The work of construction of the said building was assigned to accused no.1 and his brother accused no.2 who used to supervise the said construction work along with the officials of Public Works Department (hereafter “PWD”, for short).

4. On 28th April 2006, at 5.15 p.m. the informant heard loud noises and shouting of men from building no.2 which was under construction. He saw building collapsing and immediately informed the said fact to the Fire Station Officer, who came on the spot immediately. The IRBN staff, police and general public also rushed at the spot and started rescue work. Due to collapse of the building, men and women labourers doing construction work and their family members sustained injuries. They were sent to the Silvassa Government Civil Hospital for treatment. In the said unfortunate incident, four (4) labourer died on the spot and twenty (20) labourers sustained injuries. It is alleged in the FIR that the building collapse due to negligence and carelessness of PWD officials. The investigation commenced thereafter. During

investigation, the death toll rose to six (6) and twenty-two (22) persons were injured.

5. The investigating agency registered offence under sections 304A, 288, 377, 378 of the Indian Penal Code, 1860 (hereafter “IPC”, for short). However, on 28 March 2008 the investigating agency registered offence under section 304 (II) instead of section 304A. After completion of investigation, charge-sheet came to be filed against the accused persons. In view of section 304(II) of IPC, case was committed to the Sessions Court.

6. The charge-sheet comprises of (i) statements of employees of Fire Brigade including first informant; (ii) scene of offence panchanama; (iii) inquest panchanama of dead body; (iv) panchanama of files pertaining to the construction work; (v) statements of eyewitnesses; and (vi) inquiry report dated 19 July 2006.

7. The applicants filed discharge application before the learned Sessions Judge, which came to be rejected by the impugned order.

8. Since pattern of submissions on behalf of the applicants is same, the submissions of the applicants are noted in common, which are as under:

(a) Charge-sheet does not make out offence under section 304 (II), 304A, 288, 337, 338 of IPC. The prosecution has not established prima facie case for proceeding against the accused persons to frame charge for the said offences;

(b) The learned Sessions Judge has committed error in rejecting

the application for discharge, although, there was no evidence to prosecute the applicants for the alleged offence;

(c) No specific role was assigned to the applicants in the charge-sheet. According to the technical investigation report the reason for collapse of building was the faulty structural drawing given by accused no.5 of execution of work. The defective structural designs prepared by accused no.5 resulted in collapse of fire station building;

(d) The prosecution has not established nexus between the incident of collapse of building and the applicants. There is no evidence on record to establish that the applicants were responsible for faulty structural drawing which resulted in collapse of building;

(e) The witnesses have not attributed any overt act to the applicants connecting them to the alleged incident;

(f) Mandatory sanction under section 197 of CrPC had not been obtained, though according to prosecution accused nos.2, 4, 5 and 6 act in furtherance of their official duty;

(g) Dereliction of duty is no ground to initiate criminal proceedings. The principal person responsible for the incident, i.e., Mr. D.M. Patel has not been made accused;

(h) Registration of offence under section 304 (II) after period of one (1) year was without any material in support thereof; and

(i) Considering the statements of witnesses and eyewitnesses, inquiry report dated 19 July 2006 and other material on record,

there is no evidence on record and, therefore, charge under section 304 (II), 304-A, 288, 337 and 338 of IPC were groundless.

9. Learned advocate for the respondent supported the impugned order. He submitted that at the stage of framing of charge it is not expected that the Trial Court should enter into mini trial. The Court is required to see that prima facie case is made out to proceed against the accused for framing charge. It is submitted that the statement of witnesses clearly shows the involvement of applicants in the said crime. The ground raised by the applicants cannot be appreciated at this stage and at the most same are their probable defenses which are to be adjudicated in trial. There is nexus between the role assigned to the applicants and collapse of building. The statement of witness Tulji Shankar Gond shows that the contractor was made aware of the cracks on the day of collapse, but he told the witness to perform the work of laying slab. Accused no.2 signed drawing on 25 May 2006 certifying work to be executed in accordance with drawing prepared by accused no.5. Misconduct against accused no.2 has been held to be proved in the inquiry report stating that he should have followed CPWD Manual before carrying out any construction work of building. Therefore, the accused persons had knowledge as contemplated under section 304(II).

10. I have perused the FIR as well as material in the form of charge-sheet produced on record.

11. It is well settled law that at the stage of framing of charge, the Court has to see as to whether or not the complaint and the

material collected by the police during the course of investigation which includes the statements recorded under Section 161 of Cr.P.C. as well as documents seized by the police, taken at their face value or accepted as they are, indicate the constitution of the offences alleged and make out a case to proceed further against the accused by framing a charge. It is only when the Court, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution, forms an opinion that there are no sufficient grounds for proceeding against the accused, the Court would be under a duty to discharge the accused for the reasons recorded in writing, as provided in section 227 of the Criminal Procedure Code, 1973. The expression “sufficient grounds” used in Section 227, Cr.P.C. suggests that the Court should not examine the material before it from the viewpoint as to whether the trial will end in conviction or acquittal. The perspective of such examination should be whether the material is of such a nature as to enable the Court to reasonably believe that there is something against the accused which would warrant his trial for the offences alleged against him. But, if two views are possible and one of them gives rise to suspicion only as distinct from grave suspicion, the trial Judge would be within his powers to discharge the accused. A useful reference in this regard may be made to the case of **Vijayan v. State of Kerala** reported in (2010) 2 SCC 398.

12. Before scrutinizing the material on record, it needs to be noted that the investigating agency has registered offence under section 304 (II) of IPC. To establish offence under Part II of section

304 of the IPC, it is necessary that the accused should have committed culpable homicide. The offence of culpable homicide is defined in section 299 of IPC as follows:

“299. Culpable homicide.

Whoever causes death by doing 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, commits the offence of culpable homicide.”

13. The reason for collapse of building, as per chargesheet, is faulty structural drawing that were given by accused no.5 for execution of the work. The drawings were not based on any design calculations. Accused no.5 was under an obligation to provide such structural drawing based on relevant BIS/National Building Code. Only material in the form of report by the Associate Professor of Indian Institute of Technology, Mumbai (hereafter “IIT, Mumbai”, for short) finds place in the charge-sheet. The conclusions by the Associate Professor are as under:

“Conclusions:

- (1) The design of the building is not appropriate.
- (2) The drawings of the building are not properly detailed and are lacking vital information. The drawings have not been numbered/titled properly.
- (3) The design/drawings have been prepared departmentally by PWD, without proper in-house design expertise.
- (4) The design/drawings have not been proof-checked by any consultant / reputed institution.
- (5) The slender Ground floor columns are inadequate in size to support load of two upper floors and have failed by

buckling.

(6) The floating columns have been provided in upper floor without proper design provisions.

(7) In order to avoid such accidents in future, the capacity of in-house design department should be enhanced and the designs should be proof-checked by a reputed institution for all specialized construction.”

14. As already noted, the technical investigation report on record dated 24 July 2006 concludes faulty structural drawing being sole reason for collapse of the building.

15. Ordinarily collapse of building would be the effect of number of factors relating to poor quality of construction work such as lack of knowledge and expertise on the part of the persons carrying out construction work, errors of wrong committed by them, poor quality of building material and lack of knowledge as to extent of poor quality. Combination of such factors may lead to collapse of building. However, report of IIT in the charge-sheet alleges faulty design as the sole cause for collapse of building. Neither statement of witnesses nor any other material on record indicate specific role of the applicants in the mishap. True it is that such mishap could not have occurred without gross negligence on the part those involved in designing and carrying out work of construction of the building. But in the absence of specific role assigned to each applicant supported by prima facie material on record, grounds to frame charges against applicant are not available.

16. While considering the validity of order refusing discharge for offence under section 304(II), it needs to be scrutinized as to whether the applicants had knowledge that the construction

undertaken by them could cause death. The knowledge as contemplated by section 299 of IPC requires certainty and not mere a probability. Ordinarily, intention and awareness of risk involved in culpable act must be distinguished. The material in the charge-sheet does not indicate that the applicants were aware or were made aware of the risk of collapse of the building. Awareness as inferred by learned sessions judge, in the facts of the case, need not be confused with the knowledge as contemplated by section 299. The degree of knowledge as contemplated by section 299 is different from the degree of criminal negligence. The statement of witnesses does not assign any role to any applicant in relation to the knowledge as contemplated under section 299 of IPC nor there is any material on record to indicate fulfillment of ingredients of section 299 of IPC. Therefore, charge against the applicant in relation to offence under section 304(II) is groundless.

17. In relation to offence under section 304-A is concerned, there is no material on record to indicate the applicants contravened certain rules or regulations resulting in the death of workers. The material on record does not establish that the death of workers was result of rash or negligent act applicants. As discussed above, the inquiry report concludes that the cause of building collapse was faulty design and the applicants had not designed the building.

18. A perusal of charge-sheet demonstrates that the applicants have been charged with offences under sections 288, 337, 338 and 34 of IPC. A careful reading of charge-sheet shows that no specific

role has been attributed to the applicants and fulfill ingredients of offence alleged against the applicants. Accused nos.1 and 3 are described as contractors of the building. Accused no.2 is described as Junior Engineer in PWD. Accused no.4 is stated to have performed duty of Deputy Engineer and Assistant Surveyor and accused no.6 was Junior Engineer. Except bald statement in the charge-sheet that accused nos.2, 4 and 5 were holding responsible posts, prepared faulty structural design plan and approved it, there is no other material produced on record to show that respondent nos.2, 4, 5 and 6 had prepared faulty structural design plan and approved it. There is no material in the charge-sheet that accused no.1 was given responsibility of construction of building and he delegated it to his brother. The statement of the witnesses and panchanama do not assign any role attributed to the applicants. None of the witnesses have stated that the applicants were grossly negligent in performing their duty while sanctioning the plan of the collapsed building or were grossly negligent in execution of work as per plan. All the statement of witnesses demonstrate that they saw the building falling down and the injured persons were admitted in the hospital or some of them got crushed in the rubble. Apart from the statement of eyewitnesses, report of the Associate Professor, Department of Civil Engineering, IIT, Mumbai forms part of the charge-sheet. In the entire report, no specific role has been attributed to the applicants alleging them to be grossly negligent while performing their duty. The conclusions drawn in the report would show that the design of the building was not appropriate. The conclusion in the report is that slender ground

floor columns were inadequate in size to support load of two (2) upper floors and have fell by buckling. It also states that the floating columns have been provided in upper floor without proper design provisions. The design/drawing have not been proof-checked by any consultant/reputed institution. Neither in the statement of witnesses nor in the report submitted by IIT, negligent acts of the applicants have been alleged. If statement of all witnesses recorded by the prosecution in respect of its case regarding offences under section 304(II), 304-A, 288, 337 and 338 of IPC are considered, there is no material to indicate either knowledge or negligence on the part of the applicants resulted in collapse of the building.

19. Applying the above referred settled principles of law to the facts of the instant case, I find that the offences punishable under Sections 304(II) , 304A, 337 ,338, 288 read with Section 34 of I.P.C. are not at all made out against all the applicants as there is no material on record to indicate involvement by any of the accused persons in this case. Similarly, I find that there is neither any role specifically assigned against the applicants nor there is any material prima facie attributing any role to them in commission of offences alleged in FIR. There is no prima facie material demonstrating sufficient ground for proceeding against the applicants in respect of the offences alleged against them. There is nothing to create grave suspicion against the applicants in respect of their complicity in the offence alleged against them. The entire material found against the applicants if taken at its face value does not disclose existence of all ingredients constituting

alleged offence.

20. The result is that there are no sufficient grounds for proceeding against applicants/ petitioners for offences specifically referred to against them in the impugned order. The learned Sessions Judge, it is seen, has completely ignored these aspects of the case which are fundamental to the exercise of jurisdiction under Section 227 of the Cr.P.C. and thus committed an illegality in rejecting application for discharge.

21. In the light of foregoing discussion, following order is passed:

- i) Writ Petition No.2309 of 2018 and Revision Application Nos.331 of 2018, 297 of 2018 and 342 of 2018 are allowed;
- ii) Impugned order dated 21 April 2018 passed below Exhibits 8, 9, 10 and 22 in Sessions Case No.20 of 2016 by the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa rejecting applications for discharge of the applicants is quashed and set aside;
- iii) Petitioners/Applicants (original accused nos.1 to 4 and 6) are discharged from Sessions Case No.20 of 2016 pending before the learned Sessions Judge, Dadra and Nagar Haveli, Silvassa arising out of Crime No.118 of 2006 dated 28 April 2006.

22. No costs.

(AMIT BORKAR, J.)