

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-13123-2018

Decided on:-26.04.2023

Piara Singh and others

....Petitioners

vs.

State of Punjab and another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Dinesh Mahajan, Advocate,
for the petitioners.

Mr. Vinay Kumar Gupta, AAG, Punjab.

Mr. Saleem Malik, Advocate for
Mr. Rimple Saini, Advocate,
for respondent No.2.

HARKESH MANUJA J.

By way of present petition filed under Section 482 Cr.P.C, prayer has been made for quashing of FIR No.24 dated 09.12.2017, under Section 304-A IPC, registered at Police Station Narot Jaimal Singh, District Pathankot on the basis of compromise.

2. Brief facts of the case are that the FIR in question was registered on the basis of statement made by respondent No.2, wherein it was stated that on 08.12.2017 at about 5:15 p.m., when he along with his son (Mangal Singh) and brother (Satnam Singh) were coming back to their home after attending a marriage ceremony and reached near the house of Piara Singh, then the complainant asked him about the balance money for having harvested his crop and started a fight with his son. In the meantime, Rajni Devi wife of Piara Singh, neighbour Malkiat Singh @ Sonu and his wife Sukhwinder Kaur also reached there and started

beating his son. During the scuffle, they reached on the road and a jeep bearing registration No.PB-06F-9740 driven by Asha Nand @ Bittu (petitioner No.5) suddenly came and the son of the complainant came under the front wheel of the jeep. The jeep driver ran away from the spot, thereafter, complainant, along with his brother, took his son to the Civil Hospital, Gurdaspur, who succumbed to his injuries on the way.

3. Although, the petition was filed for quashing of FIR on the basis of compromise, however, learned counsel for the parties made their submissions on merits.

4. Learned counsel for the petitioners submits that the petitioners have been wrongly implicated in the present case due to some past grudge and no offence is made out under Section 304-A IPC. It has also been submitted that neither there was any allegation in the FIR about any rash or negligent driving of Jeep by petitioner No.5; nor any rash or negligent act was attributed to the other petitioners except fight between the parties. He further submits that even now, with the intervention of the respectables and elders of both the parties, matter has already been compromised between the parties and respondent No.2 has been adequately compensated.

5. On the other hand, learned State counsel opposes the prayer made in the present petition while submitting that there are serious allegations against petitioners No.1 to 4 of having given beatings to the son of the complainant as a result thereof, he fell down and came under the front wheel of the Jeep driven by petitioner No.5. He further submits that it would be premature at this stage to go into the veracity of the

allegations, while learned counsel for complainant- respondent No.2 has supported the petitioners.

6. I have heard learned counsel for the parties and gone through the paper book. I find substance in the submissions made on behalf of the petitioners.

7. For the purpose of adjudication of the present petition, the primary issue to be determined is as to whether the allegations levelled in the FIR, if taken, at their face value make out a case of culpable negligence. In this regard, relevant portion from FIR is reproduced hereunder:-

"They all four started to beat my son altogether. In the meanwhile one Jeep bearing Regd. No.PB 06F 9740 driven by Asha Nand @ Bittu son of Nanak Chand resident of village Sahota Kalan. Then they all while scuffling together reached in front of the Jeep. Due to that my son Mangal Singh has come under the front tire of the Jeep from driver side. The driver of the jeep has rolled the front tire of the Jeep over my son and then reversed it back."

8. Before proceeding further, it may be beneficial to point out here that as per the settled law, an act of negligence to be culpable in criminal law, the degree of negligence has to be higher than what is sufficient to prove a case of negligence in civil action. It has been repeatedly held that in order to constitute an offence, negligence must be gross in nature. For reference, reliance can be placed on the judgment of Hon'ble Supreme Court in **Sushil Ansal Vs. State through CBI**, (2014) 6 SCC 173 and relevant para 73 thereof, is reproduced hereunder:-

“73. Conceptually the basis for negligence in civil law is different from that in criminal law, only in the degree of negligence required to be proved in a criminal action than what is required to be proved by the plaintiff in a civil action for recovery of damages. For an act of negligence to be culpable in criminal law, the degree of such negligence must be higher than what is sufficient to prove a case of negligence in a civil action. Judicial pronouncements have repeatedly declared that in order to constitute an offence, negligence must be gross in nature. That proposition was argued by Mr. Ram Jethmalani at great length relying upon English decisions apart from those from this Court and the High Courts in the country. In fairness to Mr. Salve, counsel appearing for the CBI and Mr. Tulsi appearing for the Association of Victims, we must mention that the legal proposition propounded by Mr. Jethmalani was not disputed and in our opinion rightly so. That negligence can constitute an offence punishable under Section 304A of the IPC only if the same is proved to be gross, no matter the word “gross” has not been used by the Parliament in that provision is the settled legal position. It is, therefore, unnecessary for us to trace the development of law on the subject, except making a brief reference to a few notable decisions which were referred to at the bar.”

9. Besides it, even the doctrine of *res ipsa loquitur* which literally means; the things or events speak for itself cannot be made applicable against the petitioners in the facts and circumstances of the present case so as to attract the offence under Section 304-A IPC. Before applying the same to the facts of the present case, it may be relevant to refer to certain observations from paras 19 and 20 of the judgment of Supreme Court in

case of **"Syad Akbar vs. State of Karnataka", 1979 (AIR) (SC) 1848**, which are reproduced hereunder:-

"19. As a rule, mere proof that an event has happened or an accident has occurred, the cause of which is unknown, is not evidence of negligence. But the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. It is to such cases that the maxim *res ipsa loquitur* may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. To emphasise the point, it may be reiterated, that in such cases, the event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. But, according to some decisions, satisfaction of this condition alone is not sufficient for *res ipsa* to come into play and it has to be further satisfied that the event which caused the accident was within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing caused the injury, he is in a better position than the plaintiff to explain how the accident occurred. Instances of such special kind of accidents which "tell their own story" of being off-springs of negligence, are furnished by cases, such as where a motor vehicle mounts or projects over a pavement and hurts somebody there or travelling in the vehicle; one car ramming another from behind, or even a head-on-collision on the wrong side of the road. See per Lord Normand in *Barkway v. South Wales Transport Co.*(1); *Cream v. Smith*(2) and *Richlev v. Fanll*(3).

20. *Thus, for the application of the maxim res ipsa loquitur "no less important a requirement is that the res must not only be speak negligence, but pin it on the defendant."*

In the present case, there is nothing in the entire FIR so as to suggest that deceased was pushed towards the jeep by petitioners No.1 to 4 or they had any meeting of mind with petitioner No.5 so as to cause the incident, rather, he was from a different village and was unfortunately present at the place of incident. In these circumstances, cause of accident can not be prima facie attributed to the petitioners. Rather, from the perusal of the FIR, it is apparent that deceased accidentally came under the front tyre.

10. Applying the aforestated principles, in the facts and circumstances as mentioned in the FIR, it is made out that no gross criminal negligence can be attributed to the petitioners. In the case in hand, the parties came on street as the result of a sudden fight without there being any deliberations in mind; risking life of any person. During the incident, the deceased unfortunately fell down on the road and the offending vehicle i.e. the Jeep which was being driven by petitioner No.5 ran over him, however, it is apparent that these two incidents were merely accident. Even as per the allegations, the Jeep Driver ran over the front wheel over the body of the deceased and reversed it back as well, which means that the driver was conscious enough while driving the vehicle and even tried to save the deceased, however, as the incident happened in the split second probably leaving no room to the petitioners to take any remedial action. Accordingly, no gross rashness or negligence to be

culpable in criminal law can be attributed to the petitioners thereby constituting an offence under Section 304 A IPC.

11. In view of the facts and circumstances narrated hereinabove, even if the allegations made in the FIR are taken at their face value and accepted in their entirety, the same do not prima facie constitute any offence or make out a case against the petitioners, thus, continuation of proceedings arisen therefrom would result in miscarriage of justice being an abuse of the process of law.

12. Consequently, the petition is allowed. Impugned FIR No.24 dated 09.12.2017, under Section 304-A IPC, registered at Police Station Narot Jaimal Singh, District Pathankot as well as the consequential proceedings arising therefrom, are hereby quashed.

13. The aforesaid order shall be subject to payment of costs of Rs.10,000/- to be deposited with the Punjab and Haryana High Court Association Lawyer's Welfare Fund having Account No.41564846387 with State Bank of India, High Court Branch, Chandigarh, within a period of five weeks from today. The petitioners are further directed to pay a sum of Rs.1 lakh to the complainant as compensation.

14. Pending misc. application(s), if any, shall also stand disposed of.

26.04.2023
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(HARKESH MANUJA)
JUDGE

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