

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRR No.2155 of 2022 (O&M)

Reserved on: 5th September, 2023
Pronounced on: 19th September, 2023

Ravi Kumar

... Petitioner

Versus

Rita Goyal & others

... Respondents

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present: Mr. Gaurav Garg Dhuriwala and Ms. Alisha Sharda,
Advocates for the petitioner.

Mr. A.P.S. Deol, Senior Advocate with
Mr. Aman Bansal and Mr. Karan Kalia, Advocates
for respondents No.1 to 4, 6 to 8, 10 to 15 & 18.

Mr. Brijender Kaushik, Advocate
for respondent No.5.

Mr. Rahul Mohan, Sr. Dy. Advocate General, Haryana
for the respondents/State.

MANJARI NEHRU KAUL, J.

1. The complainant is impugning the order dated 09.08.2022 passed by learned Additional Sessions Judge, Kurukshetra whereby the Court below dismissed an application filed under Section 319 Cr.P.C. for summoning the private respondents to face trial in case bearing FIR No.617 dated 22.07.2016 under Sections 114, 279, 304, 304-A IPC registered at Police Station Thanesar City, District Kurukshetra, along with the other accused, who were already facing trial.

2. Learned counsel for the petitioner has submitted that on 22.07.2016, son of the petitioner/complainant, Davis Girdhar aged 5

years (hereinafter referred to as, 'the deceased'), who was studying in Nursery Class at Aggarsain Public School, Kurukshetra, was crushed to death by School bus bearing registration No.HR-65-4501 (hereinafter referred to as, 'the offending bus') in the premises of the School itself, due to the negligence of not only the driver and attendant of the offending bus, but also the private respondents. It has been further submitted that the FIR in question was lodged without any delay, on the same day, however, the police officials in connivance with and under the influence of the private respondents, had arrayed only driver Ranjeet Singh and attendant Sunil Kumar as accused in the FIR in question. Aggrieved by the defective investigation carried out by the investigating agency, the complainant had then approached the National Commission for Protection of Child Rights, which in turn had marked his complaint to Superintendent of Police, Kurukshetra. Learned counsel, while drawing the attention of this Court to the Enquiry Report, which has been annexed as Annexure P-2, has vehemently argued that it finds mentioned therein that the private respondents had also been negligent in performing their duties and complainant had also been advised by the Enquiry Officer to move the Court of law against them. Learned counsel has vehemently asserted that the highhandedness of the police was obvious from the fact that it had ignored the Enquiry Report (Annexure P-2) by not even making it a part of the challan.

3. Learned counsel has, still further submitted that the complainant while stepping into the witness box during trial as PW-13, had referred to the Enquiry Report and detailed the role played by each of the private respondents with respect to the accident in question. As per the report of the Enquiry Officer (Annexure P-2) dated 26.08.2016, the Junior Wing Class Teacher, respondent No.2-Alpana Gupta was responsible for queuing up all the students upto the area where the School buses were parked and to see them off in their respective buses. However, respondent No.2 had been negligent as she had neither handed over the custody of the deceased child to the attendant of the School bus nor was she present anywhere in the area where the vehicles were parked. Furthermore, respondent No.4 – Sanjeev Kumar had been assigned to take care of the CCTV cameras which were installed within the School premises. However, on 23.07.2016, when the police directed the School authorities to produce the CCTV footage, it was found that 60 minutes recording of the CCTV footage, covering the accident in question had not been recorded in the camera. Not only this, the CCTV camera installed in the offending bus was also found to be not-working. Thus, learned counsel has asserted that Sanjeev Kumar - respondent No.4 had also been grossly negligent. Learned counsel has still further submitted that similarly Rupinder – respondent No.5 as well as Anil Puruthi – respondent No.6, who too were assigned duties in the Van area and to make the children board the School buses while ensuring their safety, had been negligent. Furthermore, there was no material on

record which could show that the driver and the attendant of the offending bus were medically fit. Still further, since there had not been any police verification of both, the driver and attendant of the offending bus, Rita Goyal Principal – respondent No.1 had also been negligent in discharging her duties. Learned counsel has vehemently asserted that the culpability of the respondent No.1 – Rita Goyal, Principal was evident from the fact that it was on her directions that blood of the deceased child had been removed from the place of accident.

4. Qua respondent No.7 – R.K. Aggarwal, Manager of the School Management Committee, learned counsel has submitted that he too owed a duty to ensure that the staff of the School was adhering to all the safety norms and other rules, particularly with respect to students of the primary classes.

5. Learned counsel has vehemently argued that the trial Court, while passing the impugned order, had erred in holding that there was no direct connection between the acts of the private respondents and the accident which had occurred, even though it was abundantly clear that had the private respondents been alert and not negligent, the accident in question, would have been averted. Learned counsel has submitted that the trial Court had also erred in not taking cognizance of the Enquiry Report (Annexure P-2) wherein also it had been found that the private respondents had been totally negligent while performing their duties.

6. Learned counsel has, still further, vehemently submitted that the petitioner was not seeking to summon the private respondents

for being vicariously liable for the death of his son Davis Girdhar, but for being directly liable under Section 304-A IPC, as it was solely on account of their negligence that a five year old child had lost his life. It was submitted that Section 304-A IPC, under which the FIR had been registered, does not provide for either mens-rea or even knowledge, but it talks only about an act of negligence. When a child is sent to the School, as long as he is within the four walls of the School, he is deemed to be in the custody of the School Management, and thus, the School Management and other staff owe a duty of care of the highest degree towards the child. If anything happens to the child within the School premises, due to the negligence of the School Management or the staff, as has been alleged in the case in hand, they cannot be permitted to go scot-free. Learned counsel has therefore, argued that in the facts and circumstances, there could be no manner of doubt that the private respondents being guardians of the deceased child, had shown blatant disregard to the onerous duty cast upon them, coupled with the fact that after the accident in question, the conduct of the Management as well as the School staff was most appalling, as they had not even bothered to remove the School bag from the shoulders of the deceased even after he had been run-over by the offending bus.

7. Learned counsel appearing for the petitioner, while concluding his submissions, has submitted that though the accident in question was dreadful, however, the trial Court was erroneously convinced that it was only on account of the negligence of the driver of

the offending bus and its attendant, that the deceased had met his end. Learned counsel has asserted that the case of the private respondents, in the above mentioned circumstances, could not have been segregated from the already challaned accused, more so when admittedly the accident in question had occurred inside the School premises.

8. Per contra, learned State counsel along with learned senior counsel appearing on behalf of the private respondents, while controverting the submissions made by the counsel opposite, has submitted that the issue and allegations against the private respondents have been agitated time and again by the complainant. While drawing the attention of this Court to Annexures R-5 and R-6, it has been submitted that the petitioner had earlier also approached this Court for reinvestigation of the case in hand by way of CRM-M No.1971 of 2017, wherein too, he had raised similar pleas. However, the petitioner had not pressed the aforesaid petition, which accordingly had been dismissed as withdrawn. It has been further submitted that even at the time of framing of charges, the petitioner had yet again raised the same pleas, which are being raised before this Court, but in vain. Now, yet again, when the trial was at its fag end, after the prosecution evidence had concluded, the petitioner was attempting to again resurrect the same allegations against the private respondents.

9. Learned senior counsel has vehemently argued that a perusal of the FIR in question, which as per the admitted case of the complainant himself, was lodged promptly, there was no allegation

much less by way of a whisper against any of the private respondents. No doubt, the complainant while stepping into the witness box, had relied upon Enquiry Report dated 26.08.2016, however a perusal of the said Enquiry Report which was prepared by DSP Shahabad, Kurukshetra, revealed that nothing had been stated therein about the role played by the private respondents with respect to the accident in question. Rather the Enquiry Officer, DSP Shahabad had only stated to the extent that in the CCTV footage produced before him, attendant Sunil Kumar could be seen taking the deceased child from his classroom and leaving him in the verandah. Learned senior counsel, still further submits that another School driver by the name of Ranbir Singh, who was an eye-witness to the accident in question, while stepping into the witness box as PW-21, had deposed that the deceased on seeing the School bus had himself rushed towards it. He submits that the Enquiry Report relied upon by the complainant, was not even a part of the challan, and even in the Enquiry Report only the driver and attendant of the offending bus were found to be negligent in causing the accident in question. Thus, there was no material, much less cogent, on record to even remotely suggest that the private respondents had in any manner been involved in the crime in question or even intentionally facilitated the same. Learned senior counsel has vehemently argued that the learned counsel for the petitioner was seeking to propound a new principle of criminal jurisprudence, wherein an act committed by an individual in personam would give rise to vicarious liability of his

employers. He has asserted that the arguments made by the counsel opposite that because the private respondents had been negligent in performing their official duties, they also be held responsible for the death of the deceased, who had been allegedly crushed to death by the offending bus, was not only unheard of, but could not be sustained in the eyes of law, as it pertained to offences under the Indian Penal Code and not vicarious liability for an offence under the Negotiable Instruments Act, 1881.

10. While placing reliance upon **‘Sham Sunder vs. State of Haryana’ 1989 AIR (SC) 1982**, **‘Hira Lal Hari Lal Bhagwati vs. CBI New Delhi’ 2003 AIR (SC) 2545** and **‘Shiv Kumar Jatia vs. State of NCT of Delhi’ 2019 AIR (SC) 4463**, learned senior counsel has further contended that at best, though not admitted, it can be a case of negligence under the Civil Law, for which the remedy available to the petitioner would be to seek damages, which had already been resorted to as it was a matter of record that he had instituted a suit for recovery of damages against the private respondents; since summoning of a person to face trial was a serious matter, a penal statute had thus to be strictly construed. Furthermore, by no stretch of imagination, could the acts of omissions attributed to the private respondents, even in the Enquiry Report, could be said to be such that it was they who caused the death of the deceased.

11. Learned senior counsel has lastly asserted that even if the petitioner was seeking to summon the private respondents under

Section 304-A IPC, no material had been brought forth which could even establish proximate, much less a direct, connection between acts of the private respondents and the death of the deceased, Davis Girdhar.

12. I have heard learned counsel for the parties and perused the relevant material on record.

13. Before proceeding further, it would be relevant here to reproduce the provisions of Section 319 Cr.P.C.

“319. Power to proceed against other persons appearing to be guilty of offence:-

(1) Where, in the course of any inquiry into, or trial of an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial or, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses reheard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of

the offence upon which the inquiry or trial was commenced.”

14. Thus, what flows from a meticulous reading of the provision of Section 319 Cr.P.C. is that if at the time of inquiry or trial, it appears from the evidence led before the trial Court that a person other than the accused, who already stands challaned by the investigating agency, has also committed an offence, the powers under Section 319 Cr.P.C. can certainly be invoked by the Court to summon such person(s) as an additional accused because the object behind this provision is to ensure that no one, who appears guilty, escapes trial in relation to that guilt.

15. Since the power under Section 319 Cr.P.C. is an extraordinary discretionary power vested in the Courts, it has to be exercised with a great deal of circumspection and due caution, only in cases where the facts and circumstances so warrant. In this regard, it would be apposite to refer to the ratio of law laid down by a five-Judge Bench of the Hon'ble Supreme Court, in '**Hardeep Singh v. State of Punjab**' 2014(3) SCC 92, wherein it has been held as under:

“98. Power under Section 319 Cr.P.C. is a discretionary and an extra-ordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led

before the court that such power should be exercised and not in a casual and cavalier manner.

99. Thus, we hold that though only a prima facie case is to be established from the evidence led before the court not necessarily tested on the anvil of Cross-Examination, it requires much stronger evidence than mere probability of his complicity. The test that has to be applied is one which is more than prima facie case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence, if goes unrebutted, would lead to conviction. In the absence of such satisfaction, the court should refrain from exercising power under Section 319 Cr.P.C. In Section 319 Cr.P.C. the purpose of providing if ‘it appears from the evidence that any person not being the accused has committed any offence’ is clear from the words “for which such person could be tried together with the accused.” The words used are not ‘for which such person could be convicted’. There is, therefore, no scope for the Court acting under Section 319 Cr.P.C. to form any opinion as to the guilt of the accused.”

16. The petitioner has sought summoning of the private respondents to face trial under Section 304-A IPC along with the other accused, i.e. the driver and attendant of the offending bus. It would also be, thus, relevant to discuss the necessary constituents of offence punishable under Section 304-A IPC, which deals with culpability arising out of rash and negligent act leading to the death of a person.

“304-A. *Causing death by negligence:*

Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide,

shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

To prove negligence under criminal law, the prosecution must thus prove:

- (i) the existence of duty
- (ii) breach of duty causing death
- (iii) breach of the duty must be characterized as gross negligence.

17. In order to hold a person liable under Section 304-A IPC, the amount and degree of negligence would be the decisive factor and unless there is ‘gross or very high degree of negligence’, on the part of accused, the prosecution is bound to fail. Negligence, which could not be said to be gross or of a very high degree, may be a ground to proceed against the negligent person under Civil law for damages, but it would not in any manner make him liable for punishment under Criminal law. The word ‘gross’ though, does not find mentioned in Section 304-A IPC, but it is now well settled that the expression ‘rash and negligent act’ has to be qualified by the word ‘grossly’.

18. Further, for inviting the mischief of an offence under Section 304A IPC, death must be the direct result of the alleged negligent act of the accused and mere remote nexus between the two would not be sufficient to constitute an offence. Furthermore, negligent

act must be proximate and efficient cause of the death, without there being negligence on the part of any other person(s).

19. Coming to the case in hand, the questions which arise for the consideration of this Court are:

- (i) Whether the death of deceased was caused by any negligent act on the part of the private respondents, i.e. *causa causans*?

Causa causans, in legal parlance, is used to identify the main or proximate cause that can be held to be legally responsible for an injury, harm as a consequence of such act.

- (ii) Whether the said negligent act can be termed to be 'grossly negligent or of a very high degree' to attract the mischief of an offence under Section 304-A IPC?

20. The FIR in question was lodged at the instance of petitioner Ravi Kumar (i.e. the father of the deceased). As per the allegations levelled by the petitioner, his son went to attend the school in the morning. At about 12:30 p.m., when he was near the playground of the school, the offending bus driven by accused Ranjit Singh in a rash and negligent manner, took a turn and hit his son, as a result of which he received injuries and later-on, succumbed to them. After causing the accident, both the driver and attendant of the offending bus fled away from the spot. Apart from the above, neither any other allegations were levelled in the FIR against any of the private respondents, nor any

suspicion raised qua the involvement of any third person, much less, of the private respondents. Similarly, while stepping into the witness box as PW-13, the petitioner did not allege any negligence on the part of the private respondents.

21. The petitioner, while moving an application under Section 319 Cr.P.C., sought to summon the respondents only on the ground that they were negligent in their duties as the deceased was studying in their school and still further, during school hours, they being guardians of the deceased were duty bound to take care of him and ensure his safety. Therefore, on account of their negligence towards the deceased, they too were liable along with co-accused Ranjit Singh and Sunil under Section 304-A IPC.

22. Learned counsel for the petitioner has not disputed that even as per his own version given in the FIR, the deceased was hit by the offending bus being driven by accused Ranjit Singh. Therefore, it is evident that even as per the petitioner himself, the direct cause of death of the deceased was the alleged rash and negligent driving of the driver of the offending bus and alleged negligence of attendant Sunil.

23. This Court does not find any merit in the submissions made by the learned counsel for the petitioner that class-teacher respondent No.2 – Alpana Gupta had been negligent as she had failed to accompany the students to the bus and ensure their safety. It would be relevant to refer to the deposition of PW-12 DSP Gurmail Singh, which has been attached as Annexure R-2, who conducted the enquiry

(Annexure P-2). During his deposition, he categorically stated that he visited the place of accident and joined all the witnesses including the Principal and other employees/staff of the School. Besides, during enquiry he also collected CCTV footage of the day of accident i.e. 22.07.2016, which were installed both in the classroom as well as in the verandah of the School. He deposed that in the CCTV footage, it was clearly visible that accused Sunil was taking the deceased from his classroom and thereafter, he had left him in the verandah, after which the deceased, who was a five-year old child, ran towards the playground. Therefore, in the above facts and circumstances, respondent No.2 – Alpana Gupta cannot be said to have been grossly negligent in any manner under the criminal law.

24. Besides the class-teacher, respondent No.2 – Alpana Gupta, the petitioner has also sought to summon the other private respondents, who are Principal, Headmistress as well as the entire Management/staff of the School for allegedly being negligent, due to which his son had lost his life. The petitioner is thus, essentially trying to make all the private respondents vicariously liable for the alleged acts of driver and attendant of the offending bus, which cannot be permitted under the criminal law. This Court concurs with the submissions made by the learned senior counsel appearing on behalf of the private respondents that the concept of vicarious liability is alien to criminal jurisprudence. The private respondents, i.e. the Principal, Headmistress, the Managing Committee and the other School staff, who have been arraigned as

private respondents, cannot be held vicariously liable for the alleged acts of some employees of the School. Further, even if the submissions made by the learned counsel for the petitioner, as noticed in preceding paragraphs of this judgment, are to be accepted, the alleged negligent acts of the private respondents cannot be said to be proximate, much less efficient cause of death of the deceased, nor can the degree of negligence on their part be said to be so high or gross so as to hold them liable under Section 304-A IPC.

25. It needs to be reiterated that the standard of proof required for negligence under Criminal law is much higher than the standard of proof required under the Civil law. Therefore, in the light of the above discussion, both the questions framed in para No.19, are answered in the negative.

26. This Court, thus, does not find any illegality or perversity in the impugned order dated 09.08.2022 passed by learned Additional Sessions Judge, Kurukshetra. The revision petition, being devoid of any merit, stands dismissed. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

(MANJARI NEHRU KAUL)
JUDGE

September 19, 2023

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No