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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 09th August, 2023

Pronounced on: 22nd November, 2023

+ CRL.M.C. 2167/2023 & CRL.M.A. 8194/2023 (Stay)

SUNIL MALHOTRA & ANR.

..... Petitioners

Through: Mr. Ilesh Shukla, Mr. Chetan Sharma,
Mr. Chetanya Singh and Ms. Ria S.,
Advocates.

versus

THE STATE NCT OF DELHI & ANR.

..... Respondents

Through: Mr. Aman Usman, APP for the State.
SI Lovely Priyanka, PS Connaught
Place.
Mr. Manav Jain, Advocate for R-2.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks quashing of FIR No. 0231/2017 under Section 304A of the Indian Penal Code, 1860 ('IPC') registered at PS Connaught Place and all other consequential proceedings emanating therefrom including the chargesheet pending in the Court of Sh. Yashdeep Chahal, Metropolitan Magistrate – 01, Patiala House, New Delhi.



Background

2. Briefly stated, the facts of the case are as under:

- i. On 25.11.2017, information was received at PS Connaught Place that one Rakesh had been brought LHMC Hospital at 11:30 AM by the workers of Embassy Hotel, Connaught Place, New Delhi. The said person had fell unconscious after suffering an electric shock and had burn marks on his abdomen, forearm and foot. The MLC reflected that he had been declared brought dead to the hospital. It was informed that the deceased worked in the kitchen of Embassy Hotel and was electrocuted while he was lifting a cylinder.
- ii. A team of police personnel reached the hotel and inspected the crime scene. Two electrical wires and a cylinder was seized and CCTV footage of the alleged incident was obtained.
- iii. Post-mortem of the deceased was conducted and his cause of death was opined as “*electrocution and its complications*”.
- iv. During the course of investigation, the scene was investigated by the Electrical Inspector and in his report, he stated as under:

“Since electric wires for feeding supply to sensor of sewage treatment plant were found laid directly on the floor in a quite temporary manner and partially put in PVC conduit pipe which was found in broken/ damaged condition, hence usage of such electric wires in unsafe and it does not ensure safety of human beings, animals and property in contravention of the provisions of Regulation 12(1) of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010.”
- v. During the course of investigation, the petitioners who are the Managing Partners of Embassy Hotel were arrested and interrogated.



Under interrogation, the petitioners stated that the hotel is managed by them and they are responsible for the maintenance and day to day affairs related to the hotel. After interrogation, the petitioners were released on bail.

- vi. Upon completion of investigation, a chargesheet was filed *qua* the petitioners under Section 304A of the IPC.

Submissions of behalf of the Petitioners

3. Learned counsel for the petitioner submitted during the pendency of the trial in the present case, the petitioners have arrived at a settlement with respondent no. 2, who is the father of the deceased *vide* Memorandum of Settlement dated 31.01.2023 (Annexure-P3). It was submitted that pursuant to the said settlement, respondent no. 2 has no objection if the FIR is quashed and he has also given an affidavit to that effect (Annexure-P5). It was submitted that in terms of the settlement, respondent no. 2 has been duly compensated and the amounts that he was legally entitled to like life insurance, provident fund, pension, gratuity etc. have also been released to him. Respondent no. 2 was present in Court alongwith counsel on a previous date of hearing, i.e., 27.07.2023 and submitted that all the terms of the Memorandum of Settlement have been complied with and nothing else remains to be paid.

3.1. In support of his contentions, learned counsel for the petitioner placed reliance on the following judgments/orders:

- i. Suresh Kumar v. State & Anr., Order dated 19.04.2022 passed by a coordinate bench of this Court in CRL.MC. 1761/2021.



- ii. Taranjeet Singh & Ors. v. State (Govt. of NCT of Delhi) & Ors., 2020:DHC:1707.
- iii. Kamal Kishore v. The State (NCT of Delhi) & Ors., 2020:HDC:454.
- iv. Babu Khan and Anr. v. State & Ors., 2019:DHC:4392.
- v. Ashok Kumar Singhla v. Govt of NCT of Delhi & Anr., 2016:DHC:4048.

Submissions of behalf of the State

4. *Per contra*, learned APP for the State opposed the present petition and submitted that the report of the Electrical Inspector *prima facie* discloses the gross negligence of the petitioners inasmuch as live electric wires were not properly covered and concealed. It was submitted that even though the parties have arrived at a settlement, the fact that the said gross negligence on part of the petitioners resulted in the death of a person cannot be lost sight of. It was submitted that the actions of the petitioners amount to ‘culpable negligence’, as they were very much conscious of the fact that not taking appropriate precautions can lead to certain consequences.

5. It was further submitted that the offence under Section 304A of the IPC is not merely a private offence. It is a public offence, with far reaching consequences on the social fabric. It was further submitted that the fact that Section 304A of the IPC is not a compoundable offence in terms of Section 320 of the CrPC itself reflects that the legal representatives of the deceased have no inherent right to compound the offence. Learned APP for the State has also placed on record the statements of other employees of the hotel recorded under Section 161 of the CrPC to demonstrate that at the Embassy Hotel, the box controlling supply of electricity to the premises was installed



right outside the kitchen. From the said box, a wire concealed inside a white pipe was supplying electricity to the sensor of the ETV Sewage Treatment Plant. The pipe was broken and the un-covered electrical wires were passing from under the cylinder as a result of which, the deceased had suffered an electric shock. In support of his contentions, learned APP for the State placed reliance on the following judgments:

- i. Namadevan v. The State of Madras, 1972 CriLJ 1414.
- ii. Hari Kishan v. Sukhbir Singh & Ors., 1988 AIR 2127.
- iii. Sadha Singh and Anr. v. State of Punjab, AIR 1985 SC 1130.

Submissions of behalf of Respondent No. 2

6. Respondent no. 2 herein is the father of the deceased. Learned counsel for respondent no. 2 submitted that the latter has given an affidavit to the effect that he has no objection if the FIR is quashed. It was further submitted that all the terms of the Memorandum of Settlement dated 31.01.2023 have been complied with by the petitioners. It is noted that the said fact was recorded by this Court *vide* order dated 27.07.2023, when respondent no. 2 was present before the Court in person.

Analysis and Findings

7. Section 304A of the IPC provides for the offence of ‘causing death by negligence’. The provision provides as under:

“**304A. 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.”



Cases Dealing with Quashing of FIR under Section 304A of the IPC

8. The issue of quashing of FIR, *inter-alia* under Section 304A of the IPC on the ground that a settlement had been arrived at between the accused and the legal heirs of the deceased has been dealt with by various coordinate benches of this Court. Some of the cases are as follows:

8.1. In Iris Park Leisures Pvt. Ltd. v. State of Delhi and Ors., 2011 SCC OnLine Del 5545 (dated 22.12.2011), a learned Single Judge of this Court was dealing with a case where an FIR under Section 304A of the IPC was registered on account of death being caused after sustaining a fall from the fourth floor to the ground floor of the Hotel after he opened the door adjacent to his room marked emergency exit. The said person was not taken to the hospital for about 3 hours after he sustained the fall. After a compromise had been arrived at between the parties, the learned Single Judge exercised inherent powers under Section 482 of the CrPC and quashed the FIR observing the continuation of the proceedings would not serve any purpose.

8.2. In Satyam Kaushik v. State and Ors., 2015 SCC OnLine Del 8108 (dated 13.03.2015), a learned Single Judge of this Court quashed an FIR under Section 279/304A of the IPC, since there was no culpable negligence on part of the petitioner, a settlement had been arrived at between the parties and legal heirs of the deceased had been duly compensated.

8.3. In Bhajan Lal Sharma v. State (Govt. of NCT of Delhi), 2016 SCC OnLine Del 4234 (dated 01.08.2016), a learned Single Judge of this Court was dealing with a case where an FIR under Sections 288/337/304A of the IPC was registered after a worker died due to excavation of a basement that was being carried out without taking any safety measures. The learned Single



Judge, while taking note of the judgment of the Hon'ble Supreme Court in **Narinder Singh and Others v. State of Punjab, (2014) 6 SCC 466**, dismissed the petition seeking quashing of the FIR based on a compromise and observed and held as under:

“**32.** In my view, quashing the FIR in question at this stage would certainly send a very wrong signal not only to the petitioner, but the whole society at large and particularly to other builders, contractors and other agencies engaged in undertaking construction work, that even if they are grossly negligent in taking preventive measures so as to prevent predictable accidents-which may lead to serious injury and even loss of life, they could get away by paying some compensation to the heirs of the injured/deceased. In fact, such like contractors/builders/agencies may find it more economical to risk the lives of their workforce, and in the eventuality of an accident occurring, to pay compensation, than to undertake all safety measures which, if taken, would prevent such accidents in the first place.

33. As observed by the Supreme Court in *Sheonandan Paswan* (supra), criminal proceedings are not a proceeding for vindication of private grievance. They are initiated for the punishment of the offender in the interest of the society. It is for maintaining stability and orderliness in the society that certain acts are constituted offences and the right given to any citizen to set the machinery of criminal law into motion for the purpose of bringing the offender to book.

34. In *A.R. Antulay v. Ramdas Srinivas Nayak*, (1984) 2 SCC 500, the Supreme Court held that punishment of the offender in society is in the interest of the society. It is one of the objects of the penal statutes enacted for the larger good of the society.

35. I am of the view that quashing of criminal proceedings in the present case would create and set an unhealthy precedent, and send wrong signals to the society at large.”

8.4. In Hitachi Payment Services Ltd. v. State and Others, 2018 SCC OnLine Del 8131 (dated 23.03.2018), a learned Single Judge of this Court was presented with a situation where an FIR under Section 304A of the IPC



was registered after a person had lost his life due to non-compliance of necessary provisions of the Central Electricity Authority (Measures relating to Safety and Electric Supply) Regulations, 2010. The learned Single Judge, while placing reliance on **Bhajan Lal Sharma** (*supra*), dismissed the petition seeking quashing of the FIR based on the compromise that had been arrived at between the parties.

8.5. In Amit Kumar v. State (Govt. of NCT of Delhi), 2016:DHC:2709 (dated 01.04.2016), a learned Single Judge of this Court quashed an FIR under Sections 279/304A of the IPC in a case where a person had succumbed to injuries sustained as a result of a motor-cycle accident. It was observed that since the matter had been compromised between the parties amicably, so, *'there would be an extraordinary delay in the process of law if the legal proceedings between the parties are carried on.'*

8.6. In Amiya Achariya v. State Govt. of NCT of Delhi and Ors., 2016 SCC OnLine Del 2655 (dated 04.05.2016), a learned Single Judge of this Court quashed an FIR under Section 304A of the IPC and held as under:

“8. The inherent powers of the High Court ought to be exercised to prevent the abuse of process of law and to secure the ends of justice. The respondent nos. 2-8 agreed to the quashing of the FIR in question and stated that the matter has been settled out of their own free will. As the matter has been settled and compromised amicably, so, there would be an extraordinary delay in the process of law if the legal proceedings between the parties are carried on. So, this Court is of the considered opinion that this is a fit case to invoke the jurisdiction under Section 482 Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.

9. The incorporation of inherent power under Section 482 Cr.P.C. is meant to deal with the situation in the absence of express provision of law to secure the ends of justice such as, where the process is abused or misused; where the ends of justice cannot be secured; where the process



of law is used for unjust or unlawful object; to avoid the causing of harassment to any person by using the provision of Cr.P.C. or to avoid the delay of the legal process in the delivery of justice. Whereas, the inherent power is not to be exercised to circumvent the express provisions of law.

10. It is settled law that the inherent power of the High Court under Section 482 Cr.P.C. should be used sparingly. The Hon'ble Apex Court in the case of *State of Maharashtra through CBI v. Vikram Anatri Doshi* and in the case of *Inder Singh Goswami v. State of Uttaranchal* has observed that powers under Section 482 Cr.P.C. must be exercised sparingly, carefully and with great caution. Only when the Court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the Court if such power is not exercised, Court would quash the proceedings.

11. It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of *B.S. Joshi v. State of Haryana* (2003) 4 SCC 675 the Hon'ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon'ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.P.C. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non-compoundable."

8.7. In Ashok Kumar Singla v. Govt. of NCT of Delhi & Anr., 2016 SCC OnLine Del 3098 (dated 18.05.2016), the petitioners had approached the High Court seeking quashing of an FIR under Section 304A of the IPC in a



case where the complainant was residing in a temporary jhuggi and the contractor who had constructed the said jhuggis was also supplying electricity through temporary naked wires. The husband of the complainant was repairing the jhuggi, which got damaged due to heavy rain and while carrying out the repair work, a naked electricity wire fell on him. The complainant's husband fell unconscious and was taken to the hospital, where he was declared brought dead. A learned Single Judge of this Court, while placing reliance on the judgements of the Hon'ble Supreme Court in **Gian Singh v. State of Punjab, (2012) 10 SCC 303** and **Narinder Singh (supra)**, proceeded to quash the FIR on the ground that the parties have arrived at a settlement. It was observed that even though Section 304A of the IPC is a non-compoundable offence, there is no impediment in quashing of the FIR in exercise of inherent powers under Section 482 of the CrPC, if the facts and circumstances of the case so warrant.

8.8. In Babu Khan and Anr. v. State and Others, 2019 SCC OnLine Del 10007 (dated 05.09.2019), a co-ordinate bench of this Court was dealing with a petition seeking quashing of an FIR under Sections 288/304A of the IPC, on the ground that a settlement had been arrived at between the parties. In the said case, the deceased was involved in the work of removing shuttering iron sheets and transporting them by a shaft. His death was caused when one of the said iron sheets hit him. The deceased was taken to the hospital where he was brought dead. In the said case, learned Standing Counsel who was appearing on behalf of the State opposed the petition and placed reliance on Bhajan Lal Sharma (*supra*). The co-ordinate bench observed that the decision in Bhajan Lal Sharma (*supra*) was rendered in the peculiar facts of the said case and was



not an authority for the proposition that an FIR under Section 304A of the IPC cannot be quashed under any circumstances. While quashing the FIR, the co-ordinate bench observed and held as under:

“12. The question whether an FIR, alleging an offence under Section 304A of the IPC, can be quashed under Section 482 Cr. P.C. on the basis of a settlement arrived at between the accused and the victims of the incident, is required to be examined on the facts of each case. In a recent decision in *State of Madhya Pradesh v. Laxmi Narayan*, (2019) 5 SCC 688, the Supreme Court had referred to various other decisions and had summarized the law relating to the powers exercised under Section 482 of the Cr. P.C. for quashing criminal proceedings..

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21. Thus, while evaluating whether a proceeding relating to an alleged offence, under Section 304A of the IPC, be quashed on the basis of a settlement between the accused and the victim, it would also be necessary to consider whether it is probable that the facts presented would constitute gross negligence and an element of *mens rea*, which is likely to secure a conviction.

22. It is clear that the deceased and other persons were involved in the manual labour of carrying the iron sheets. There does not appear to be much material to establish that the contractor was carrying on work in a dangerous manner. The accident had occurred in the course of the work being performed by the deceased and other workers. This Court is of the view that given the account rendered by the persons, it is improbable to secure a conviction. Thus, this Court is of the view that the ends of justice would be served in ensuring that the petitioners pay the compensation and the FIR be quashed.”

8.9. In Kamal Kishore v. State (NCT of Delhi) and ors., 2020 SCC OnLine Del 438 (dated 22.01.2020), while placing reliance on **Gian Singh** (*supra*) and **Narinder Singh** (*supra*), a co-ordinate bench of this Court quashed the FIR under Section 304A of the IPC, in a case where the deceased had died due to an electric shock.



8.10. In Bhanwar Singh v. State and Anr., 2021 SCC OnLine Del 2624 (dated 28.05.2021), a co-ordinate bench of this Court quashed an FIR under Section 288/304A of the IPC, where the deceased, while carrying out some construction work had fell down from the third floor of the petitioner's house which was under construction and died on the spot. It was observed that the incident in question was purely accidental and since the parties have amicably resolved the dispute, no useful purpose would be served in continuing with the proceedings.

8.11. In Manisha Grover v. State and Others, 2021 (283) DLT 6 (dated 04.10.2021), a learned Single Judge of this Court quashed an FIR under Section 279/304A of the IPC based on a compromise in a case where it was found that the video footage of the incident revealed that the petitioner therein was in fact, driving at a slow speed and the deceased suddenly came from behind a barricade as a result of which the accident was caused.

8.12. Vide order dated 18.05.2022 passed in **CRL.MC. 1836/2022** titled **Bhavna Arora v. State of Delhi and Another**, a coordinate bench of this Court allowed a petition seeking quashing of an FIR under Sections 279/304A of the IPC observing that the petitioner, who was driving the vehicle was neither rash or negligent and had taken all possible care of the victim. It was observed as under:

“10. I am convinced that quashing of such proceedings would bring about peace and would secure ends of justice, specially, when the respondent No.2 does not attribute any fault to the respondent. The proceedings are quashed as the respondent has decided to put a quietus to the matter. The Court does not see any fruitful purpose if criminal proceedings are continued to be prosecuted any further. It is a fit case for quashing..”



8.13. In Jaspriya Bhasin v. State (NCT of Delhi) and Ors., 2022 SCC OnLine Del 2345 (dated 05.08.2022), an FIR under Sections 279/337/304A of the IPC was registered after the petitioner's speeding car had hit the deceased and subsequently, after a few days in the hospital the deceased had succumbed to his injuries. In the said case, though the parties had initially approached the High Court seeking the quashing of FIR purely on the basis of compromise, however, during the course of hearing, arguments on merits were also addressed. While quashing the FIR, a co-ordinate bench of this Court observed and held as under:

“**23.** This Court as well has time and again taken the view that the allegation of offending vehicle being driven in a high speed/fast manner does not *ipso facto* establish commission of a rash and negligent act for the purposes of Sections 279/304A IPC. [Refer : Abdul Subhan v. State (NCT of Delhi) reported as **2006 SCC OnLine Del 1132**, Raj Kumar v. State (NCT of Delhi), **CRL. REV.P. 402/2006** and Ram Chander v. State, **CRL. REV.P. 686/2017**].

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26. From the exposition of law outlined hereinabove, it is apparent that for the offences punishable under Sections 279/304A IPC, the commission of a ‘rash and/or negligent act’ is a necessary ingredient. In the present case, none of the witnesses has stated that the Car was driven in a rash, hazardous or reckless manner knowing that the result of such driving was most likely to cause injury to any person. Even though as per settled law, the material placed on record is to be appreciated only to a limited extent at this stage; this Court, in the peculiar facts of the case and on an entire conspectus, is of the *prima facie* opinion that not only the circumstances surrounding the recording of statement of *Bhim Sen* are shrouded in suspicion but also his statement does not inspire confidence. As such, the necessary ingredients of the offences charged are not made out and conviction of the petitioner is unlikely.

27. Accordingly, the petition is allowed and the FIR in question alongwith the consequent proceedings arising therefrom are quashed qua the petitioner.



28. Irrespective of the conclusion reached, this Court deems it apposite to take notice of the voluntary statement made on behalf of the petitioner to pay additional compensation to the family of the deceased.”

8.14. In Sawhney Buildwell LLP v. State of NCT of Delhi and Ors., 2022 SCC OnLine Del 3187 (dated 21.09.2022), the FIR under Section 288/304A of the IPC was registered where a construction worker slipped, fell and died on the way to the hospital on account of an accident which took place because safety apparatus was not provided by the project manager. A co-ordinate bench of this Court observed that the petitioner undertook the construction work at the site and had been provided adequate safety apparatus. It was observed that the deceased had died as he had fallen from a height and no negligence could be attributed to any person. In the facts and circumstance of the said case, the co-ordinate bench quashed the FIR as settlement had already been arrived at between the parties.

8.15. In Vijay Hans v. State (NCT of Delhi) and Ors., 2023 SCC OnLine Del 3127 (dated 12.05.2023), the deceased who was working as a helper of the petitioner was injured during an incident and died due to electric shock while fitting a flex board. The petitioner tried hard to save the life of the deceased but could not succeed. In the said case, a co-ordinate bench of this Court quashed the FIR under Section 287/304A of the IPC on the ground that settlement had been arrived at between the parties and in the interest of justice, it was fit case for exercise of powers under Section 482 of the CrPC.

8.16. In Ashish Dev v. State and Anr., 2023 SCC OnLine Del 3123 (dated 12.05.2023), the FIR under Sections 288/304A of the IPC was lodged where the deceased was welding the diesel tank at a spot where metro work was



going on and due to a sudden thunderstorm and heavy rains, a vertical pump installed with its movable frame which had been installed from the past 18 months suddenly toppled and fell on the deceased. After arriving at a compromise, the parties approached the High Court seeking quashing of the FIR. A co-ordinate bench of this Court while quashing the FIR observed and held as under:

“6. The inherent power under Section 482 Cr. P.C. is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guidance engrafted in such power viz. : (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court. In the case of *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, the Supreme Court has observed that in the exercise of its inherent power under Section 482, the High Court can quash FIR/Charge-sheet on the basis of alleged settlement except in cases of rape, murder, dacoity or the cases under the Special Statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity etc.

7. It has also been repeatedly held that the High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused in great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite a full and complete settlement and compromise with the victim. Reliance can be placed upon *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojiroo Angre*, (1988) 1 SCC 692.

8. In the present case, it appears from the interaction with respondent no. 2/Complainant that he is not going to support the case of the prosecution and the possibility of conviction is remote and bleak. In view of the matter, the continuation of the criminal proceedings would be an exercise in futility and it is an abuse of the process of the court. There would be no purpose in continuing with the present proceedings and accordingly, FIR No. 0262/2016 registered at PS Najafgarh under Section 288/304A IPC and all the proceedings emanating therefrom are quashed.”



8.17. *Vide* order dated 16.05.2023 passed in **CRL.MC. 2899/2018** titled ‘**Ajay Agarwal v. State of NCT of Delhi & Anr.**’, a coordinate bench of this Court quashed an FIR registered under Sections 366/304A of the IPC. After considering the general principles in respect of quashing of criminal proceedings in exercise of powers under Section 482 of the CrPC and taking note of various decisions of coordinate benches, including **Babu Khan (supra)** and **Jaspriya Bhasin (supra)**, the coordinate bench observed and held as under:

“11. On an assessment of the aforementioned decisions and having heard the Ld. Senior Counsel as also the Ld. APP, in the considered opinion of this Court, whenever a court is approached with a petition for quashing of an FIR registered for offence u/s 304A, IPC, it may not reject the petition at the very threshold, merely because the said offence is not predominantly of civil character or private in nature. Instead they be assessed and weighed on the anvil of following principles or tenets that can be safely culled out from the decisions cited above. These have been extracted from the said decisions, to avoid repetitive exposition and headings have been given merely for the purposes of convenient reading:

- (a) **Special power of the High Court:** Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence;
- (b) **Abuse of process/ends of justice:** The High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an *abuse of the process* of the Court or that the *ends of justice* require that the proceeding ought to be quashed. The ends of justice are higher than the ends of mere law, and sometimes it is prudent and wise to put a *quietus* to a matter;
- (c) **Conviction remote and bleak:** The High Court may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is *remote and bleak* and continuation of the criminal case would put the accused to *great oppression and prejudice and extreme injustice would be caused to him* by not



quashing the criminal case despite full and complete settlement and compromise with the victim. The proceeding against the accused ought *not to be permitted to degenerate into a weapon of harassment or persecution*;

(d) **Care and caution**: Inherent jurisdiction under the section though wide has to be *exercised sparingly, carefully and with caution*. The formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record and *would depend on the facts and circumstances of each case* and no category can be prescribed;

(e) **Exclusions**: *Heinous and serious offences of mental depravity* or offences like murder, rape, dacoity, etc. cannot be fittingly quashed even though the victim or victim's family and the offender have settled the dispute. Such offences are not private in nature and have a serious impact on society, as also any compromise between the victim and the offender in relation to the *offences under special statutes* like the Prevention of Corruption Act or the offences committed by public servants while working in that capacity, etc. cannot provide for any basis for quashing criminal proceedings involving such offences;

(f) **Stage of settlement**: If the *settlement is arrived at immediately* after the alleged commission of the offence when the matter is still under investigation, the High Court may be somewhat liberal in accepting the settlement and quashing the proceedings/investigation;

12. It would be worthy to note that the exclusionary category for quashing i.e. *'heinous and serious offences of mental depravity'* ought not to import offences punishable under Section 304-A which applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. It is not a pre-meditated act. Negligence is a breach of duty imposed by law. In any event, as propounded in *Babu Khan (supra)* - for negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and



circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case.

13. What therefore also needs to be seen by the courts, and has been in multitude of decisions (including those adverted to above), as part of the assessment of ‘ends of justice’, is whether the complainant would be better served by receiving compensation which he/she may deem adequate considering the circumstances of their life, their socio-economic status, rather than awaiting a long trial and a remote possibility of conviction. Even if the conviction is successful in the final run, the complainant would still have to possibly await the culmination of rounds of appeal in order to reach a legal conclusion. Even at that stage, whether there would be any compensation for the complainant, or not, is open to speculation. There is an argument that by providing compensation, an encouragement is being made for the accused to simply be exonerated by paying monetary compensation. Even though this is a legitimate concern, it needs to be weighed and measured in a balance; sifted, winnowed and filtered using the sieve of principles culled out above. It requires both analytical and intuitive assessment by the court, since it involves both legal assessment and awareness of the social and practical reality.”

8.18. In Shoaib Kohli v. State GNCTD of Delhi and Ors., 2023 SCC OnLine Del 527 (dated 21.09.2023), a co-ordinate bench of this Court quashed an FIR under Section 279/304A of the IPC which was registered after the deceased had died in a motor accident. The parties had arrived at a settlement and legal heirs of the deceased had been compensated.

Power of the High Court to Quash Non-Compoundable Offences

9. The Hon’ble Supreme Court in **Ramgopal and Anr. v. The State of Madhya Pradesh, 2021 SCC OnLine SC 834**, after examining principles of law enunciated in various judgments regarding the scope of Section 482 of the CrPC observed and held as under:

“**11.** True it is that offences which are ‘non-compoundable’ cannot be compounded by a criminal court in purported exercise of its powers under Section 320 Cr.P.C. Any such attempt by the court would



amount to alteration, addition and modification of Section 320 Cr.P.C, which is the exclusive domain of Legislature. There is no patent or latent ambiguity in the language of Section 320 Cr.P.C., which may justify its wider interpretation and include such offences in the docket of ‘compoundable’ offences which have been consciously kept out as non-compoundable. Nevertheless, the limited jurisdiction to compound an offence within the framework of Section 320 Cr.P.C. is not an embargo against invoking inherent powers by the High Court vested in it under Section 482 Cr.P.C. The High Court, keeping in view the peculiar facts and circumstances of a case and for justifiable reasons can press Section 482 Cr.P.C. in aid to prevent abuse of the process of any Court and/or to secure the ends of justice.

12. The High Court, therefore, having regard to the nature of the offence and the fact that parties have amicably settled their dispute and the victim has willingly consented to the nullification of criminal proceedings, can quash such proceedings in exercise of its inherent powers under Section 482 Cr.P.C., even if the offences are noncompoundable. The High Court can indubitably evaluate the consequential effects of the offence beyond the body of an individual and thereafter adopt a pragmatic approach, to ensure that the felony, even if goes unpunished, does not tinker with or paralyze the very object of the administration of criminal justice system.”

10. It is settled principle of law that in cases of non-compoundable offences where the parties have arrived at a settlement, the High Court has inherent power to quash a criminal proceeding in exercise of powers under Section 482 of the CrPC as well as Article 226 of the Constitution of India. Time and again, it has been reiterated that the inherent powers of the High Court are of a wide plenitude, but in exercise of such powers, the guiding factor has to be – (i) to secure the ends of justice, or (ii) to prevent the abuse of process of any Court. It is also well settled that before proceeding to quash an FIR, the High Court must duly consider the nature and gravity of an offence.



11. After examining the various cases decided by coordinate benches of this Court cited hereinabove and scope of powers under Section 482 of the CrPC, this Court is of the considered opinion that there is no bar to quash an FIR under Section 304A of the IPC in exercise of inherent powers under Section 482 of the CrPC. At this stage, it is also pertinent to observe that Section 320 of the CrPC, which provides for compounding of the offences through legal heirs. Section 320(4) provides as under:

“320. Compounding of offences.—

(4) (a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf may, with the permission of the Court, compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court, compound such offence.”

(emphasis supplied)

Since the scheme of CrPC permits compounding through legal heirs in respect of offences ‘compoundable’ in terms of Section 320 of the CrPC, the extraordinary and inherent powers under Article 226 of the Constitution of India or Section 482 of the CrPC can be invoked to quash FIRs through legal heirs in cases of non-compoundable cases as well. It would also be significant to note that exercise of such powers may also be justifiable, in a given case, where legal heirs of the deceased, who were otherwise dependent on an income of the latter, would be benefitted on account of monetary compensation or other benefits in terms of the compromise. However, it has also been reiterated that such powers have to be exercised sparingly and with



caution. In **State of Madhya Pradesh v. Laxmi Narayan and Ors., (2019) 5 SCC 688**, it has been held as under:

“**15.** Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc.”

Therefore, before arriving at a finding in that regard, this Court deems it expedient to examine Section 304A of the IPC and the interpretation accorded to it.

Rash and Negligent Act

12. Section 304A of the IPC finds mention in Chapter XVI of the IPC under the heading ‘*of offences affecting the human body*’. The provision provides for a situation where death of a person has been caused by an act that is ‘rash’ or ‘negligent’. It is in the nature of an exception to ‘culpable homicide’ as defined in Section 299 of the IPC. Therefore, the issue is what constitutes culpable rashness or negligence?



12.1. Culpable rashness is doing or omitting to do something, with the knowledge or consciousness that such wanton act or omission can lead to illegal consequences. Culpability, in a case of rashness, lies in acting with consciousness and doing so with indifference as to the consequences of such act.

12.2. Culpable negligence, on the other hand, constitutes a breach of duty to do something which an ordinary reasonable man, in those circumstances would have done. Criminality in case of negligence arises when there is no consciousness as to the consequences which may follow but circumstances are such that shows it was incumbent upon the actor to take certain precautions. It is further settled law that for a negligent act to give rise to a criminal liability, the negligence ought to be 'gross', which is a standard to be decided on the basis of facts and circumstances of each case.

12.3. In **Rathnashalvan v. State of Karnataka, (2007) 3 SCC 474**, the Hon'ble Supreme Court held as under:

“7. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304-A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused's conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of



the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

8. As noted above, “rashness” consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.”

12.4. In **Syed Akbar v. State of Karnataka, (1980) 1 SCC 30**, the Hon’ble Supreme Court held as under:

“28. In our opinion, for reasons that follow, the first line of approach which tends to give the maxim a larger effect than that of a merely permissive inference, by laying down that the application of the maxim shifts or casts, even in the first instance, the burden on the defendant who in order to exculpate himself must rebut the presumption of negligence against him, cannot, as such, be invoked in the trial of criminal cases where the accused stands charged for causing injury or death by negligent or rash act. The primary reasons for non-application of this abstract doctrine of *res ipsa loquitur* to criminal trials are: Firstly, in a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused always rests on the prosecution, as every man is presumed to be innocent until the contrary is proved, and criminality is never to be presumed subject to statutory exception. No such statutory exception has been made by requiring the drawing of a mandatory presumption of negligence against the accused where the accident “tells its own story” of negligence of somebody. Secondly, there is a marked difference as to the *effect* of evidence viz. the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a



moral certainty as convinces the mind of the Court, as a reasonable man beyond all reasonable doubt. **Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. As pointed out by Lord Atkin in *Andrews v. Director of Public Prosecutions* [(1937) 2 All ER 552 : 1937 AC 576] , “simple lack of care such as will constitute civil liability, is not enough”; for liability under the criminal law “a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied ‘reckless’ most nearly covers the case”.**

29. However, shorn of its doctrinaire features, understood in the broad, general sense, as by the other line of decisions, only as a convenient ratiocinative aid in assessment of evidence, in drawing permissive inferences under Section 114 of the Evidence Act, from the circumstances of the particular case, including the constituent circumstances of the accident, established in evidence, with a view to come to a conclusion at the time of judgment, whether or not, in favour of the alleged negligence (among other ingredients of the offence with which the accused stands charged), such a high degree of probability, as distinguished from a mere possibility has been established which will convince reasonable men with regard to the existence of that fact beyond reasonable doubt. Such harnessed, functional use of the maxim will not conflict with the provisions and the principles of the Evidence Act relating to the burden of proof and other cognate matters peculiar to criminal jurisprudence.

30. Such simplified and pragmatic application of the notion of *res ipsa loquitur*, as a part of the general mode of inferring a fact in issue from another circumstantial fact, is subject to all the principles, the satisfaction of which is essential before an accused can be convicted on the basis of circumstantial evidence alone. These are: *Firstly*, all the circumstances, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. *Secondly*, those circumstances must be of a determinative tendency pointing unerringly towards the guilt of the accused. *Thirdly*, the circumstances shown make a chain so complete that they cannot reasonably raise any other hypothesis save that of the accused’s guilt. That is to say, they should be incompatible with his innocence, and inferentially exclude all reasonable doubt about his guilt.”



Examination of Facts of the Present Case

13. Bearing the aforesaid principles in mind, this Court shall now proceed to examine the facts of the present case.

14. Statements of witnesses who worked at the restaurant at which the deceased was employed have been recorded under Section 161 of the CrPC. The said statements reflect that the deceased died because he was electrocuted due to a broken PVC pipe exposing a live wire. The said witnesses have stated that the PVC pipe was broken thereby exposing the live wire, but do not say that said pipe had been broken for some days and or that it was broken on the day of the incident itself. None of the said witnesses had stated that the factum of the exposure of the live wires on account of the broken PVC pipe was brought to the notice of the petitioners and they failed to take corrective action. In other words, there is nothing on record to establish as to how and when did the PVC pipe break.

15. It is not the case of the prosecution that the petitioners did not take appropriate measures to ensure the safety of the employees of the restaurant despite having knowledge of the broken PVC pipe. To bring the present case within the definition of 'gross negligence' it is incumbent upon the prosecution to establish that there was a wanton disregard to the consequences of an act or omission on part of the petitioners which resulted in the accident or that there was a deliberate breach of duty to take ordinary care and precaution. The report of the expert, i.e., the Electricity Inspector relied upon by the prosecution relates to an inspection conducted at the spot after the incident. There is nothing on record to suggest that the PVC conduit pipe was



broken prior to the incident or at the time of incident on account of some circumstances which can be attributed to the petitioners. As pointed out hereinabove, there is nothing on record to show that the said pipe was broken and the same had been brought to the knowledge of the petitioners prior to the date of incident. In these facts and circumstances, this Court is of the opinion that from the material placed on record by the prosecution, the present case is not one which would come under the category of ‘gross negligence’.

16. This Court has also examined the terms of the settlement arrived at between the parties, which are as under:

**“UPON MUTUAL DISCUSSIONS AND REPRESENTATIONS,
THE PARTIES AGREE AS FOLLOWS:**

1. That the SECOND PARTY i.e. father of the -deceased person has already received an amount of Rs.8,00,000 /- (Rupees Eight . Lakhs) vide account payee Demand Draft bearing No. 562733 dt.19. 01.2018 drawn on Kotak Mahindra Bank Ltd. situated at K.G. Marg Branch, New Delhi from the FIRST PARTY as a way of compensation towards the settlement agreement.
2. It is stated that apart from the above stated, the FIRST PARTY has also paid an amount of Rs. 2,00,000/- (Rupees Two Lacs) vide Cheque No. 112660 dated 31.01.2023 drawn on Punjab National Bank to the SECOND PARTY towards the full and final compensation. Furthermore, the FIRST PARTY has paid an amount of Rs.1,94,370.00 (Rupees One Lakh Ninety Four Thousand Three Hundred and Seventy) vide Demand Draft No. 580977 dated 29.08.2022 (further revalidated upto 3 months i.e. 31.01.2023) drawn on Punjab National Bank to the SECOND PARTY towards gratuity of Late Sh. Rakesh Bahadur.
3. In addition to the above-stated, the SECOND PARTY i.e. father of the deceased person has received the below stated amounts in his personal bank accounts.
 - A. An amount of Rs.6,02,000 /- (Rupee Six Lacs Two Thousand Rupees only) towards EDLI (Employee Deposit Linked Insurance) from LIC duly received in Account No. 3092000100229950 maintained in Punjab National Bank, Connaught Place, New Delhi.



- B. An amount of Rs.19,502/- (Rupees Nineteen Thousand Five Hundred and Two only) towards Provident Fund Contribution Payments duly received an account no. 3092000100229950 maintained in bank Name situated at Punjab National Bank, Connaught place, New Delhi.
- C. An amount of Rs.30,165/- (Rupees Thirty thousand One Hundred and Sixty Five) towards arrears of Provident Fund Pension duly received all account no. 663701700817 maintained in bank Name situated at ICICI Bank, Regal Building, Parliament Street, New Delhi. Furthermore, an amount of Rs. 18,599 /- (Rupees Eighteen Thousand Five Hundred Ninety Nine only) has also been paid cheque No. 112658 dated 31.01.2023.
- D. An amount of Rs.36,072 (Rupees Thirty Six Thousand and Seventy Two only) and an amount of Rs.16,956/- (Rupee Sixteen Thousand Nine Hundred and Fifty Six) respectively received on 07.03.2019 and 05.04.2019 towards ESI in Bank Account No. 37762852116 maintained in bank Name situated at State Bank of India, Jawahar Vyapar Bhawan, Ground Floor, Connaught Place, New Delhi.
4. It is stated that Second Party has also been receiving an amount of Rs. 2,291/- (Rupees Two thousand Two Hundred and Ninety One only) per month in A.C. No. 663701700817 maintained in bank Name situated at ICICI Bank, Regal Building, Parliament Street, New Delhi and an approximately amount of Rs. 3,348/- (Rupees Three Thousand Three Hundred and Forty Eight only) per month towards the pension in his personal Bank Account No. 37762852116 maintained in BANK NAME situated at State Bank of India, Jawahar Vyapar Bhawan, Ground Floor, Connaught Place, New Delhi.
5. That the FIRST PARTY has paid the above-stated sum to the SECOND PARTY towards full and final settlement.”

It is pertinent to note that the petitioners have complied with the statutory requirements in relation to payments to be made to the deceased. Another aspect which has to be given due consideration is the fact that the petitioners have already complied with the terms of the settlement and paid



the compensation to respondent no. 2, without prejudice to the outcome of the present petition.

Conclusion

17. In view of the foregoing discussion, this Court is of the considered opinion that the interest of justice would be better served if the present FIR alongwith all consequent proceedings is quashed.

18. In view thereof, FIR No. 0231/2017 under Section 304A of the IPC registered at PS Connaught Place and all other consequential proceedings emanating therefrom including the chargesheet pending in the Court of Sh. Yashdeep Chahal, Metropolitan Magistrate – 01, Patiala House, New Delhi, is hereby quashed.

19. The petition is allowed and disposed of accordingly.

20. Pending applications, if any, also stand disposed of.

21. Copy of the judgment be sent to the concerned learned Trial Court for necessary information and compliance.

22. Judgment be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA
JUDGE**

NOVEMBER 22, 2023/bsr