

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL WRIT PETITION NO. 1710 OF 2014**

Dr. Sanjay Rajaram Manjalkar
Age- 43 years, occupation- Medical Practitioner,
Resident of Saidham Tower, 'D' Wing
Flat No. 102,
Saidham Tower Co-operative Housing Society Limited
Achole Road, Nalasopara (East),
Taluka- Vasai, District- Thane. Petitioner

Versus

1. The State Of Maharashtra.
At the instance of the Senior Inspector of Police,
Nalasopara Police Station,
Taluka- Vasai, District- Thane.
2. Mr. Mohammed Rashid Shaikh.
Age- 43 years, Occupation- business,
Resident of Saidham Tower, 'B' Wing
Flat No. 405,
Saidham Tower Co-operative Housing Society Limited
Achole Road, Nalasopara (East),
Taluka- Vasai, District- Thane.Respondents

JYOTI
RAJESH
MANE

Digitally signed
by JYOTI RAJESH
MANE
Date: 2024.01.29
11:04:01 +0530

Mr. Pravin B Gole i/b Mr. Nimesh S Parekh For Petitioner.
Mrs. A. A. Takalkar APP For the Respondent-State.
Mr. Suraj Rajguru API Lonikand Police Station Pune City.

**CORAM : A. S. GADKARI AND
SHYAM C. CHANDAK, JJ.**

RESERVED ON : 15th JANUARY, 2024.

PRONOUNCED ON : 24th JANUARY, 2024.

JUDGMENT [PER: SHYAM C. CHANDAK, J.]

1) Present Petition is filed under Article 226 of the Constitution of India, 1950 and Section 482 of the Criminal Procedure Code, 1973, seeking to quash F.I.R.No.I-721/2013 registered with Nalasopara Police Station, Taluka Vasai, District Thane under Section 304A R/W. 34 of Indian Penal Code, 1860, on the report lodged by Respondent No.2.

2) Heard Mr.Gole, learned Counsel for the Petitioner and Mrs.A.A.Takalkar, learned APP for Respondent-State. Perused the record.

3) Record reveals that, by Order dated 16th March 2017 this Court had directed to issue notice to Respondent No.2 for final disposal at admission stage. By way of an ad-interim relief, it was directed that no further steps shall be taken. Thereafter, the notice issued to Respondent No.2, was duly served. However, none appeared for Respondent No.2 when the matter was taken up for final hearing.

4) Facts giving rise to this Petition are as under:-

The Respondent No.2 is residing in 'B' Wing of a building known as *Saidham* Tower, Achole, Nalasopara along with his family. On 19th

November, 2013 at about 5.00p.m., Respondent No.2's on Ali Hyder Rashid Shaikh, aged 10 years, was going alone to the 4th floor of the Society from the ground floor in a lift of B-Wing of the building. Unfortunately, he got trapped between the lift and the shaft and crushed to death.

4.1) It is alleged that, said lift was installed about 12 years back. For the last one year, the lift had developed various problems such as getting an electric current, damage to lock, non-opening of the lift door, sudden starting of the lift on closing its door, sudden stoppage of the lift etc. About 10 months before the incident, suddenly the lift directly landed upon the ground from the 7th floor. About 15 days prior to the incident, lock of outer door of the lift at the ground floor suddenly stopped working. At the relevant time, the Petitioner and one Mr.Shivkumar Singh were the Chairman and Secretary. Even though the Petitioner and Mr.Shivkumar Singh were repeatedly requested to look into the problems faced by the Society members due to the malfunctioning lift and to replace it by new one, they deliberately did not pay attention to the problems nor they did any effort in that regard. Thus, the accidental death of the deceased caused due rashness and negligence on the part of the Petitioner and Mr. Sanjay Manjalkar. Therefore, the respondent No.2 lodged a report. In turn, the police registered the impugned FIR No. I-721-23 against the Petitioner and

Mr.Shivkumar Singh.

5) As stated in the F.I.R., M/s.Das Electric Works, at Bhayandar was given the job of repairing the lift. There is no dispute that, at the relevant time, the Petitioner was Chairman of the Managing Committee of the society and the co-accused Mr.Shivkumar Singh was the secretary. Therefore now question is, whether the offence under Section 304A of the I.P.C. is attracted against the Petitioner or not. Section 304A of the I.P.C. reads thus:-

“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.”

6) In so far as the Petitioner and the said Secretary are concerned, at the most, the allegations against them are that, they failed to ensure that the contractor appointed by the Society have properly maintained the lift and to replace the malfunctioning lift with the new one. Even if these omissions on the part of the Petitioner are taken as it is, the same have no direct connection with the unfortunate incident that occurred in the lift and caused death of the son of Respondent No.2. Because the most essential ingredient of Section 304A of the I.P.C. is ‘rash and negligent’ act on the part of an accused and it must result in causing

a death in question. In the present case, said ingredient is completely absent in so far as the office bearers and members of the Managing committee of the Society are concerned. For these reasons only, this Court quashed this very F.I.R against Mr.Shivkumar Singh, the then Secretary in Cril.Writ Petition No.4501 of 2014 *vide* order dated 10th February 2017. The allegations against the Petitioner and Mr.Shivkumar Singh are same. Hence, the impugned F.I.R. is required to be quashed against the Petitioner and is accordingly quashed and set aside.

7) Criminal Writ Petition is allowed in the aforesaid terms.

(SHYAM C. CHANDAK,J.)

(A. S. GADKARI, J.)