

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

REVISION APPLICATION NO. 104 OF 2024

Dharmendra Yugalkishor Jha

... Applicant
Org. Accused No.2

vs.

The State of Maharashtra

...Respondent

Ms. Priyanka H. Chavan	Advocate for the Applicant
Mr. A. S. Gawai, APP	for the Respondent-State

CORAM : S. M. MODAK, J.

DATE : 11th SEPTEMBER 2024

P. C. :-

1. The issue involved in this revision is whether the present Applicant/Accused No.2 can be prosecuted for committing an offence under Section 304, part II of Indian Penal Code, 1860 (IPC) by invoking the Section 34 of IPC along with Accused No.1-Rajeev Pramod Chaudhary. Both of them run a transport business in the name and style as Takon Courier. They own a pick-up vehicle bearing No.

MH 12-SX-8562. Laden weight is 2750 kg. Whereas, unladen weight is 1600 kg.

2. The charge against Accused No.1, Mr. Chaudhary is, he drove that pick-up van on 27th November 2021 about 6:45 am on old Mumbai-Pune Highway, near Hotel Satkar, and knowingly he drove the pick-up van in such a manner that it has caused the death of five persons and others were injured. All of them were proceeding in a procession, which was going to Pandharpur on account of Kartiki Ekadashi. It is the Accused No.1, Mr. Chaudhary who is driving the vehicle at that time, that procession was going to the direction of Pune, whereas the Accused No.1 was also proceeding towards the direction of Pune. There is a road divider. The procession was going on left-hand side. The Accused No.1 was also going by the side of the procession. Instead of proceeding further, he entered into the procession and gave a dash to the female processionist. Whereas the charge against the present Applicant is, he allowed Accused No.1 to drive that pick-up van. In fact, Accused No.1 was not holding a valid driving license to drive a pick-up van and knowingly fully well he allowed him to drive that vehicle.

3. Initially, an offence was registered on the complaint of one Mr.Laxman Yeram, he is the member of that procession. The procession was going from village Umbre to Pandharpur. The offence is registered with Vadgaon-Maval Police Station bearing C.R. No. 226 of 2021 under Section 304 of IPC only against Accused No.1. Later on, the police have added Section 34, considering the involvement of this Applicant/Accused No.2. Report was submitted to the Court of JMFC on 2nd December 2021, page No.424. Finally, the charge-sheet was filed for the offence under Section 304 read with Section 34 of the IPC. He applied for the discharge before the Court of Additional Session Judge Vadgaon-Maval. It was rejected as per the order dated 5th October 2023. I have found the reasoning only in paragraph 5 of the said order. In fact, the order contents only reproducing the submissions. Learned Judge observed thus:

“It is to be noted that if really, there was no fault of applicant/accused No.2 in the present crime, then why he fled away from the spot of incident as he alleged to be sitting in a passenger seat. No plausible reason given to that effect by Ld. Counsel for the applicant/accused No.2. It is

further to be noted that the Ld. Counsel for accused No.1 disputed in respect of driving of vehicle by accused No.1, Rajeev Chaudhari. Therefore, at this juncture for the reason stated above I am of the view that applicant/accused No.2 is not entitled for discharge in the present offence.”

4. The law on the point of discharge is well settled. Detailed examination of materials is not expected. It does not mean that the Trial Court should not refer to the materials. Reproducing the submissions, does not amount to performing the duty while dealing with an application under Section 227 of the Code of Criminal Procedure, 1973. Except the reason stated above, the learned Trial Judge has not discussed the materials. This Court has noticed a trend which is being followed by the Trial Courts. They are hesitating to discuss the materials under the grab that this is not permissible at the time of deciding discharge application. This Court wants to emphasize the difference in between two aspects. First, dessecting the materials is one thing and referring the material is another thing. Even the learned Trial Judge has not referred about what is the materials collected by the police during investigation.

5. Learned APP, with all his efforts has pointed out the following materials against this Applicant:

- (1) The copy of driving license issued in the name of the Accused No.1. It is in respect of the Light Motor Vehicle (LMV), Non Transport vehicle. It is permanent license.
- (2) A copy of learning license to drive LMV, Transport vehicle.
- (3) The statement given by one Ugam Suresh Chaudhary dated 2nd December 2021, and one by Rahul Pandharinath Ubale on the same date. Both are working in Takon Courier Company.

6. According to them, on 26th November 2021, at about 7:00 pm, Accused No.1 had left Mumbai with the pick-up van MH 12-SX-8562. The present Applicant was also accompanying him. According to them till Varsoli Octroi Post, Lonavala, the present Applicant drove that pick-up van and thereafter it was given to Accused No.1, Mr.Chaudhary. Both these witnesses have not stated anything about type of licenses possessed by Accused No.1.

7. Apart from the above materials, there are statements of witnesses from that procession. They have explained how the accident took

place. There is also statement of one of the witness Mrs. Shobha Sawant. She has explained clothes wore by the driver of that pick-up van. It was of blue colour, page No. 93. Whereas panchanama about the arrest and personal search of Accused No.1, there is description of the clothes wore by him. According to Mr. Gawai, it is Accused No.1 only, who was driving the pick-up van at the material time, page No. 396.

8. There are the injury certificates and post-mortem report. There are also photos of that pick-up van. Now issue is, on the basis of above materials, whether it can be said that there is a sufficient ground to proceed against that Applicant/Accused No.2. So the allegations is, this Applicant allowed Accused No.1 to drive that pick-up van. It has come on record that Accused No.1 was possessing two licenses. **One** is the permanent license to drive LMV, non transport and another is a learner license to drive transport vehicle. To rebut the contentions of Mr.Gawai, learned Advocate Ms.Chavan made following submissions:

- (1) Allowing Accused No.1 to drive the pick-up van will not amount to sharing the intention so as to attract provisions of 34 of IPC.

- (2) At the material time, Accused No.1 was driving the pick-up van, but he was the occupant of that van. It will not amount to criminality.
- (3) Thus, holding a license to drive LMV (Transport Vehicle) also permits the holder to drive LMV, transport vehicle.
- (4) To buttress her submission, she relied upon the observation in case of *Mukund Dewangan Vs. Oriental Insurance Company Limited*¹.

9. It is true that Section 304, part II of IPC is invoked, when death is caused with knowledge without any intention. Section 299 of IPC lays down the meaning of culpable homicide. There are three types. In first two types, the intention is important, whereas knowledge is important in third type. Whereas, if the act falls within either of four clauses of Section 300 of IPC, it amounts to murder. For first three clauses, the intention is important, whereas clause 4, the knowledge is important. The knowledge must be by committing that act, it will result into death or cause injury which will in all probability cause death and the act is imminently dangerous. It is true that there are five

1 (2017) 14 SCC 663

exceptions to Section 300. Wherein even though death is there, it will not amount to murder, but it will amount to culpable homicide not amounting to murder. Section 304 part II of IPC will come into picture, when there is a knowledge that by committing that act death will be caused, and the act is not imminently dangerous, and it may result into death or it may not result into death.

10. Whereas, Section 34 of IPC talks about the acts done by several persons in furtherance of common intention. So that there has to be a common intention. One may assume that for applying Section 34, there has to be a common intention. So how this section can be invoked, when there is an offence under Section 304, part II of IPC. Because, for that offence knowledge is important and not the intention. There are judgments dealing with this issue. But I am not making any comment on legal aspect. I restrict myself to factual aspect. On facts, I am with the Applicant.

11. It is true that this Applicant was not driving the vehicle. It is true that in case of *Mukund Dewangan [supra]*, three judge bench of Hon'ble Supreme Court has dealt with the issue as to whether LMV includes a Transport Vehicle. The provisions of Section 2(21), Section

2(15) and 2(48) were considered, which reads thus:

“2(21) “light motor vehicle” means a transport vehicle or omnibus the gross vehicle weight of either of which or a motor car or tractor or road-roller the unladen weight of any of which, does not exceed [7500] kilograms;”

“Section 2{15) talks about “gross vehicle weight” means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle;”

“Section 2(48) talks about “unladen weight” means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative part or body;”

12. Whereas a Transport Vehicle means a public service vehicle as per Section 2(47). Section 10 of the Motor Vehicles Act, 1988 deals

with form and contents of the license to drive. Sub-Section 2 clause b deals with learning license to driving LMV. After considering the provisions, the Full Bench observed a holder of driving license to drive a class of LMV is competent to drive the transport vehicle. Gross vehicle weight does not exceed 7500 kg or unladen weight does not exceed 7500 kg. In this case, the laden weight is 2750 kg and unladen weight is 1600 kg, not exceeding 7500 kg. The contention is if Accused No.1 was possessing LMV learner license (Transport), he can drive a transport vehicle having a weight up to 7500 kg. Then, it cannot be said that Accused No.1 was not holding a license as contemplated under Section 3 of the Motor Vehicles Act, 1988. Further contention is, if this is an interpretation of law, it cannot be said that Accused No.2, the present Applicant committed wrong in allowing Accused No.1 to drive the pick-up van.

13. It is true that in a subsequent order, the view taken by the Hon'ble Supreme Court is referred to a larger bench. This order is passed in case *Bajaj Alliance General Insurance Company Ltd vs. Rambha Devi and Others*². It is also true that the Hon'ble Supreme

2 2019 (12) SCC 816

Court has clarified till the time larger bench will decide the reference. The view taken by three Judge bench will hold good. This order passed in case of *M.S. Bhati vs. National Insurance Company Ltd³*.

14. As on today, we are bound by the view taken in *Mukund Dewangan's [supra]* case. Except the allegations, that Applicant allowed Accused No.1 to drive the vehicle, even though not holding a valid license, there are no other allegations against the present Applicant. Even if we go by the statements of the employees of the company, what we gather is, up-to Varsoli Toll post Lonavala, the present Applicant was driving and subsequently Accused No.1 was driving. On the basis of these materials, it is difficult to gather that the knowledge can be imputed on this Applicant, that death will be caused by driving that pick-up van by Accused No.1. Mainly, because he was sitting by the side of Accused No.1, we cannot attribute the knowledge to Accused No.1. It also cannot be said that this applicant has shared common intention with accused No.1 to cause death. No doubt it is true that both of them are owners of that company. No doubt it is true that both of them have travelled together and also driven the vehicle in

3 (2019) 12 SCC 248

part. But for want of materials, I am unable to agree that the present Applicant/Accused No.2 can be prosecuted for an offence under Section 304 part II read with 34 of the IPC. At the most, it can be said that the person is driving the vehicle is responsible. Because, it is his act of driving, whether with proper license or without the proper license, which will make him responsible.

15. So, it cannot be said that there is sufficient ground against this Applicant. Mere because the Applicant run away from the spot as referred by the Trial Court can be no ground to frame a charge against him. There is reliance is placed on the observations in the case of *Sekaran vs. State of Tamil Nadu*⁴, paragraph No. 23.

16. For the above discussion, I find that the observations of the learned Trial Judge are erroneous. The observations made by me, are on the basis of considering the materials at the *prima-facie* stage. So, the Applicant/Accused No.2 needs discharge. Hence, the order:

ORDER

(a) Revision is allowed.

(b) The order dated 5th October 2023 passed by the Court of

4 2023 SCC Online SC 1653

Additional Sessions Judge, Vadgaon-Maval, in Sessions Case No. 17 of 2023, is set aside.

- (c) The Applicant/Accused No.2-Dharmendra Yugalkishor Jha, is discharged for an offence punishable under Section 304, part II read with Section 34 of the IPC.
- (d) Bail bond stand cancelled.
- (e) The Court of Additional Session Judge is at liberty to proceed with the case against Accused No.1.
- (f) These are my *prima-facie* observations.

17. The Trial Court to decide the case against Accused No.1 on the basis of the evidence without being influenced by these observations.

18. The Criminal Revision Application No.104 of 2024 is disposed of.

[S. M. MODAK, J.]

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