



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.160/2023

Ajinkya Vinod Ghaywat,  
aged about 21 Yrs., Occ. Student,  
R/o 75, Ghate Layout Hudkeshwar  
Road, Tapeswar Nagar, PS  
Hudkeshwar, Nagpur, Distt. Nagpur.

... Applicant

- Versus -

The State of Maharashtra,  
PSO PS Ajni, Nagpur,  
Distt. Nagpur.

... Non-applicant

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Mr. Mir Nagman Ali, Advocate for the applicant.  
Ms. Mayuri H. Deshmukh, A.P.P. for non-applicant/State.  
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CORAM: VINAY JOSHI & MRS.VRUSHALI V. JOSHI, JJ.  
DATED: 3.10.2024.

ORAL JUDGMENT (Per Mrs. Vrushali V. Joshi, J.)

Heard Mr. Mir Nagman Ali, Advocate for the  
applicant and Ms. Mayuri H. Deshmukh, A.P.P. for  
non-applicant/State. **Rule.**

2. This is an application under Section 482 of the Code of Criminal Procedure seeking to quash criminal prosecution being Juvenile Case No.522/2020 pending before the Juvenile Justice Board, Nagpur arising out of F.I.R. No.0248/2019 registered with Police Station Ajni, Nagpur, for the offence punishable under Section 304-A read with Section 34 of the Indian Penal Code.

3. The case of prosecution set out in the F.I.R. is as under:-

The F.I.R. is lodged by the Police Constable Vilas Sukhdeo Gajbhiye from Ajni Police Station, Nagpur. On 24.4.2019 the dead body was found in the swimming tank at Dr. Jichkar Swimming Pool, Medical Jimkhana, Nagpur. The deceased was a young boy namely Navin Shrirao. He was a trainee candidate for swimming of the batch of 18 Hrs. to 19 Hrs. in the evening. The contract to run swimming pool was assigned to Mr. Dilip Helchel and permission was granted for said batch.

On that day instead of his regular batch the deceased joined the batch of children. During enquiry, as per register, it revealed that 56 swimmers were in said batch on that day. The deceased was newcomer and it was his 10<sup>th</sup> day of swimming. Floaters were made available to the new swimmers. It is alleged that though the deceased was a newcomer he was swimming in deep area without floaters. During investigation statements were recorded and it was found that six Trainers were there and they were not having the certificate of coaching. The capacity of tank was of 30 persons per batch but it was found that on that day 56 persons were swimming in said batch.

4. As per the postmortem report the cause of death was due to drowning, therefore, blaming all the persons like contractor of swimming pool and the trainers for the death of deceased, the offence under Section 304-A read with Section 34 of Indian Penal Code is registered.

5. Mr. Ali, learned Advocate for the applicant submitted that the applicant was merely seventeen years of age at the

relevant time and, therefore, he cannot be appointed as an Instructor. More particularly, it is submitted that no criminal negligence is attributed to the applicant since it was purely an accidental death. He further submitted that perusal of Section 304-A of the I.P.C. shows that an element of *mens rea* is necessarily to be present for the offence to be made out, which in no manner appear here. He further submitted that the applicant is a student of Bachelor of Commerce (B.Com) and is pursuing the course of Chartered Accountant and if the prosecution is allowed to be continued it would adversely affect the future of the applicant.

6. *Per Contra*, Learned A.P.P. submitted that the capacity of the swimming tank in a batch, is of thirty members, however, on the date of the incident there were a total fifty six members along with the deceased in the tank, which is out of the said capacity. Moreover, the deceased was a new-learner who had merely attended ten days of swimming classes. The autopsy report showed the cause as “death due to drowning”. She further

submitted that there were total six instructors on the day of mishap, all of them failed to provide the young boy a floater made of rubber tube. Additionally, as per the agreement between the contractor and the management of the swimming pool, based on the terms and conditions, clause number 13 mentions about the arrangement of full-time availability of a lifeguard in the premises in case of an emergency, which the concerned authorities failed to comply with. It was also found that none of the trainers had any official certification regarding the work of saving lives of people. Therefore, all these factors were responsible for the loss of life of the deceased at such young age which mainly comprises of grave negligence and irresponsibility of the trainers.

7. Heard both sides and perused the record.

8. The offence under Section 304-A of I.P.C. is registered against this applicant who is alleged trainer at the time of said unfortunate incident. The applicant was at that time minor and the chargesheet is pending before the Juvenile Justice

Board for the offence under Section 304-A of I.P.C. As he was trainer at the time of incident, the allegations are made that along with others he is also responsible for the death of said young boy Navin who came there to learn swimming.

9. On perusal of F.I.R it clearly reflects that the offence is registered against in all seven persons. Accused No.1 is the Contractor while applicant is accused No.7. The deceased was 21 years of age and he entered the deep water on his 10<sup>th</sup> day of learning swimming that too without floaters. Nobody has observed including the applicant who was minor at that time. As per the statement of witnesses including staff members who were working there, the name of applicant is mentioned as trainer. Except said statement nothing is there in chargesheet to show that the applicant was allotted there as trainer to deceased. Total 56 swimmers were there in said swimming pool which was having capacity of 30 swimmers. It is not fault of the applicant. He is not responsible for giving entries to the swimmers more than the capacity of tank. The only role attributed to the applicant is that

he has not noticed that the deceased entered the deep water area without floaters and he was not attended by any of the trainers. It is also not the case of prosecution that the applicant was appointed or allotted as trainer to said deceased and it was his responsibility to teach or attend him.

10. In case of offence under Section 304-A of I.P.C. it is imperative for the prosecution to establish the negligence with which the accused is charged and it is also necessary that the negligence is gross in nature. Section 304-A I.P.C. though does not use the expression 'gross negligence', it would depend upon the fact and situation of each case and it has to be decided independently what has to be considered gross negligence in a given situation. On this basis, in our opinion, the ordinary principles of law of negligence apply to ascertain whether or not the applicant has been in breach of a duty to care towards victim who has died. If such breach of duty is established, the next question would be whether or not breach of duty has caused the

death of the victim. If so, the Court must go on to consider whether that breach of duty should be characterized as gross negligence and therefore a crime. This will depend on the seriousness of the breach of duty committed by the applicant in all circumstances in which the applicant was placed when it occurred. The Court will have to consider whether the extent to which the applicant's conduct departed from the proper standard of care incumbent upon him.

11. The applicant has placed reliance on judgment in case of Pavneet Singh Sethi & Ors. V/s. The State of Maharashtra & Ors. reported in **2018 ALL MR (Cri) 1007** wherein it is observed by this Court that to attract the ingredients of the offence under Section 304-A of I.P.C. something more positive than mere omission, lapse or negligence on the part of accused will have to be present. In case in hand such facts are absent in the F.I.R. against this applicant. Same is also observed by the Hon'ble Apex Court in Shantibhai J. Vaghela & Anr. V/s. State of Gujarat & Anr. reported in **2013 ALL SCR 249**.

12. The Hon'ble Apex Court in the case of Sushil Ansal V/s. State through CBI reported in **2014 ALL SCR 1162** has observed as under:-

*“..... It is true that to a certain extent this involves an element of circularity, but in this branch of the law I do not believe that is fatal to its being correct as a test of how far conduct must depart from accepted standards to be characterised as criminal. This is necessarily a question of degree and an attempt to specify that degree more closely is I think likely to achieve only a spurious precision. The essence of the matter, which is supremely a jury question, is whether, having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission.....”*

13. In the case in hand if we consider the role of the applicant, who was 17 years of age at the time of incident, there is no document to show that he was working as a trainer. Moreover, he was minor at the time of incident and he cannot be appointed as trainer. There is no document to show that he was appointed and, therefore, he was responsible for the death of the deceased.

The deceased was not under the training of the applicant. There was no negligence on the part of this applicant.

14. Learned A.P.P. has placed reliance on the judgment in case of *Alister Anthony Pereira V/s. State of Maharashtra* reported in **(2012) 2 SCC 648**. It is about rash and negligent act with knowledge and if such act would likely to cause death, the offence under Section 304-II will be attracted.

15. Each case obviously has to be decided on its own facts. Here in this case nothing is brought on record about the rash and negligent act of this applicant.

16. Considering the judicial pronouncements as stated aforesaid and keeping the facts of the present case in mind and having regard to the parameters laid down by the Hon'ble Supreme Court in the case of *State of Haryana V/s. Bhajan Lal* reported in **AIR 1992 SC 604** we do not find any impediment in

quashing the proceedings in hand qua the applicant. The *means rea* necessary to constitute the offence is missing. Apart from the allegations made in the F.I.R. nothing is there incriminating against the present applicant.

17. *Prima facie* F.I.R. does not disclose the crime under Section 304-A of I.P.C. against this applicant. Hence the application is allowed. The criminal prosecution being Juvenile Case No.522/2020 pending before the Juvenile Justice Board, Nagpur arising out of F.I.R. No.0248/2019 registered with Police Station Ajni, Nagpur, for the offence punishable under Section 304-A read with Section 34 of the Indian Penal Code are quashed and set aside.

(MRS.VRUSHALI V. JOSHI, J.)

(VINAY JOSHI, J.)