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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 600/2024**

SH.RAJESH KUMAR & ORS.

.....Petitioners

Through: Mr.Rakesh Beniwal, Ms.Jaspreet Kaur
and Mr.Varun Seth, Advocates with petitioners in
person

versus

THE STATE GOVT. OF NCT OF DELHI AND ORS.

.....Respondents

Through: Ms.Rupali Badhopadhya, ASC for State
with Mr.Abhijeet Kumar, Advocate
Ms.Anjali Jangra, Mr.Paras and Mr.Varun
Ahlawat, Advocates for respondent Nos.2 to 4
with respondent Nos.2 to 4 in person

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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08.10.2024

1. The present petition is filed on behalf of the petitioners seeking quashing of FIR No.261/2023 registered under Sections 287/304A IPC at P.S. Krishna Nagar, Delhi and the consequent proceedings arising therefrom on the ground that the parties have settled their disputes.
2. As per the allegations levelled in the FIR, while the cleaning work was going on in the drain by the JCB machine, it hit the wall of the drain, causing the wall to collapse and thereby trapping the deceased named *Mithalesh Kumar* underneath.
3. Besides pressing for quashing on settlement, learned counsel for the petitioners also states that the ingredients of Section 304A IPC are not made out as all necessary precautions had been made including deployment of



necessary safety gear on the site. The petitioners were awarded the work of desilting the *nala* and while petitioner No. 1 was operating the JCB machine, a wall on the brink of the *nala* collapsed. The deceased was sitting on the other side of the wall and was not even visible to the petitioner No. 1 while operating the machine.

4. Learned ASC (Crl.), on instructions, submits that besides the present petitioners, another person namely, *Ankur Sharma*, J.E. was also added as an accused and the chargesheet has also been filed against him. Petitioner No.4 being the J.E. is also arrayed in the present petition.

5. Learned counsel for the petitioners submits that the petitioners and legal heirs of the deceased/respondent Nos.2 to 4 have settled their disputes vide Compromise/Settlement Deed dated 19.01.2024. It is stated that the petitioners have already paid a sum of around Rs.5,50,000/-. It is stated that on the last date of hearing, the factum of settlement between the parties was recorded. It is further stated that the petitioner today in court volunteered to pay a further sum of Rs.1,50,000/- to the legal heirs of the deceased/respondent Nos.2 to 4.

6. The petitioners and respondent Nos.2 to 4, who are present in the Court, have been identified by their respective counsels as well as by the Investigating Officer.

7. Respondent Nos.2 to 4 state that they have entered into the aforesaid Compromise/Settlement Deed out of their own free will, volition and without any coercion. They further state that they have no objection if the present FIR and consequent proceedings are quashed.

8. I have heard learned counsels for the parties and examined the merits of the case.



9. To constitute an offence punishable under Section 304A IPC, it is necessary that the element of ‘rash or negligent act’ is established. In addition-

- i) there must be death of the person in question;
- ii) the accused must have caused such death; and
- iii) the act of the accused must have been rash or negligent, though not amounting to culpable homicide.

10. The nature and scope of Section 304A IPC was also discussed in Naresh Giri v. State of M.P. reported as **(2008) 1 SCC 791**, wherein the Supreme Court held as follows:-

“8. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence; a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section



304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.

9. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edn.), Vol. 34, Para 1 (p. 3) as follows:

“1. General principles of the law of negligence.-Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the



plaintiff, together with a demonstrable relation of cause and effect between the two”.”

11. In the present case, the FIR was registered with the allegations that while the petitioners were carrying out the work of cleaning the drain, the wall of the drain suddenly collapsed and one *Mithalesh Kumar (deceased)* got trapped under the bricks/debris and sustained some injuries. There does not appear to be any material to establish that the petitioners were carrying out the work in a dangerous manner or even had any knowledge of the deceased sitting on the other side of the wall. The incident had occurred during the course of the work being performed by the petitioners and appears to be purely accidental. This Court is of the considered opinion that the ingredients of offence punishable under Section 304A are not fully satisfied and the ingredient of ‘negligence’ is unlikely to be established against the petitioners.

12. In view of the above, it is directed that the said sum of Rs.1,50,000/- would be paid to respondent No.2 to 4 within seven working days through the concerned I.O. In case the said sum is not paid within the stipulated time, the I.O. would be at liberty to move an appropriate application before this court.

13. The parties shall remain bound by the statements and undertaking made in Court today.

14. Learned counsels for the parties submit that no other proceedings are pending between the parties.

15. Having examined the case on merits as well as considering the fact that the parties have reached an amicable settlement, this Court is of the considered opinion that no useful purpose will be served in continuance of



the present criminal proceedings, it is directed that the aforesaid FIR and the consequent proceedings arising therefrom are hereby quashed, subject to the payment of the aforementioned amount.

16. With the above directions, the petition is disposed of.

MANOJ KUMAR OHRI, J

OCTOBER 8, 2024

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