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

+ **CRL.M.C. 2641/2024**

SURESH KUMAR SAINI Petitioner

Through: **Mr. Anmol Arya, Advocate.**

versus

STATE OF NCT OF DELHI & ORS. Respondent

Through: **Mr. Sunil Kumar Gautam, APP for
State with SI Shubham Giran & ASI
Chaman Lal, P.S. N.F.C.
Md. Sakhawat Rezd & Ms. Shabnam,
Advocates for R-2 to 6 with R-3 & 6
in person.**

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

03.05.2024

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1. The present petition under Section 482 of the Cr.P.C. seeks the following prayer:

“It is, therefore, most respectfully prayed that this Hon’ble Court may kindly be pleased to: -

(a) Quash the FIR No. 0331/2023 dated 30.09.2023, under Sections 285/304-A IPC registered at P.S. New Friends Colony, New Delhi , and any of the relevant and subsequent proceedings in terms of the Settlement Deed dated 15.03.2024 arrived at between the Petitioner and the Respondents, and;

(b) Pass any Order/Relief/Direction(s) that may deem fit and proper in the interest of justice in favor of both the parties.”

2. The brief facts of the case as per the Status Report dated 29.04.2024 authored by Station House Officer, PS New Friends Colony, New Delhi are as follows:

“2. That the brief facts of the case are that on 20/09/2023, GD No. 50A regarding a person has been burned while working in the shop



was received at PS NFC and same was marked to ASI Chaman Lal who along with HC Pawan reached at the place of incident i.e. Jagan Nath Market, Tyre Shop Near Ashram Chowk, where the shop was found closed. On enquiry, it was found that while working at the tyre shop, a worker had suffered burns injury due to a tyre caught fire and co-workers have taken the injured to an unknown hospital. PCR caller was contacted who told that he is working as guard and only called PCR and he does not know about the injured. No information regarding MLC was received from any hospital about the injured. On repeated visits at the incident site, the tyre shop was found closed and no eyewitness of the incident was found.

3. That on 30/09/23 information regarding the death of Nizamuddin (@ Nizam S/O Abdul Rehman R/o Ashram Delhi was received in PS NFC vide MLC No. 30605/23 from Safdarjung Hospital. On which, ASI Chaman Lal reached hospital and collected MLC wherein it was mentioned A/H/O Sustaining Electric Flash Burn 60% and Result was mentioned Dangerous. After this ASI Chaman Lal came at the place of incident where Suresh Kumar Saini S/ O Nanne Ram, owner of Durga Tyre was found and another person namely Ismail Sheikh S/O Late HosilDar was also found who told himself as an eye-witness of the incident.

4. Thereafter statement of Ismail Sheikh S/O L. HosilDar RO House No. 706, A-14, Pocket B-Block, Kalkaji Extn. New Delhi was recorded who stated that he works at Shop No. 68/1, Bhusha Mandi. Jagannath Market near Ashram Chowk, New Delhi and he has been doing work of tyre repair at that shop for the last about 2 years. From last one month, Nizamuddin alias Nizam S/O Abdul Rehman was also doing tyre repair work at the shop. On 20/09/2023. he and Nizamuddin (@ Nizam were doing tyre repair work. Nizamuddin a Nizam applied silochon on the tyre and was heating the tyre with the help of electric heater. He had gone to nearby shop for some work. Meanwhile, at about 3.45 PM. he saw fire and smoke in the shop where Nizamuddin @ Nizam was working. When he reached there, he saw that the tyre which Nizamuddin @ Nizam was repairing was on fire and the clothes worn by Nizamuddin @ Nizam also had caught fire. He doused the fire of Nizamuddin (@ Nizam's clothes with the help of a jute sack and shifted him to Safdarjung Hospital for treatment by auto. When he returned to the shop, owner of shop Suresh Kumar Saini S/O Nanne Ram R/O H. No. E/3 Mathura Road, Bhogal, New Delhi told him that let the shop remain closed for a few days and he would call, when to come at the shop. Thereafter he



went home. He further stated that the owner did not provide any safety equipments to them while they were working in the shop due to which this incident happened. If the shop owner had given them safety equipments, his friend's life would not have been lost.

5. Thereafter on his statement present case was registered and investigation was taken up. Body of the deceased Neyamuddin @ Nizam in preserved in Safdarjung Hospital Mortuary.

6. That during investigation statement of son of deceased was recorded and incident place got inspected by crime team. Exhibits were lifted from incident site and seized.

7. That during investigation, owner of the shop Suresh kumar Saini S/O Nanne Ram R/O H. No. E/3 Mathura Road, Bhogal, New Delhi was arrested in present case and was released on police bail.

8. That during investigation, on 01/10/2023, post-mortem of Deceased Neyamuddin @ Nizam S/o Abdul Rehman was got conducted at Safdarjung Hospital and dead body was handed over to the family.

9. That during investigation, on 12/10/23 incident place got inspected from assistant electrical inspector and report was collected.

10. That during investigation, post mortem report was collected and the cause of death was given as "Death is due to septic shock as a result of ante- mortem thermal burn involving about 62% of total body surface area."

11. That after completion of investigation, charge-sheet against accused Suresh Kumar Saini was filed before Ld. Trial Court on 12/04/24 and NDOH of same is 01/08/24. Case is at stage of Misc./Apparance.

12. That as per directions of Hon'ble court respondents (Family Members of deceased Neyamuddin @ Nizam) were enquired about the settlement deed between them and accused Suresh Kumar Saini. They told that they have settled the matter with accused Suresh Kumar Saini at their free will for an amount of Rs 550000/- and have received Rs 2 lakhs through DD and one lakh through cash. Remaining amount is to handed over at the time of quashing of present FIR."

3. The learned counsel for the petitioner submits that the latter maintained communication with the deceased Nizamuddin @ Nizam routinely and extended assistance to him to the best of his abilities fulfilling



his moral obligation as a owner of the shop. It is further submitted that the petitioner undertook to cover all medical expenses incurred and even offered the deceased's family members (the respondent nos. 3 to 6) the option to transfer the deceased to a private medical facility for enhanced treatment; however, the respondents declined the request to the same.

4. It is further submitted that the statement recorded by Respondent no. 2, i.e., Sh. Ismile Khan with respect to the petitioner not providing adequate safety equipment to the deceased was non-voluntary and based on the same, the above FIR was registered.

5. It is further submitted that the petitioner is a law-abiding citizen with clean antecedents. It is also submitted that with the intervention of the elders and well-wishers, the matter has been amicably settled between the petitioners and the respondents vide Settlement Deed dated 15.03.2024 (Annexure P-2).

6. *Per contra*, learned APP for the State submits the charges are serious in nature. He further submits that the post-mortem report notes that “*Death is due to septic shock as a result of ante-mortem thermal burn involving about 62% of total body surface area*”, which indicates the absence of safety equipment being used at the time of the incident.

7. Heard the learned counsel for the parties and perused the record.

8. 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.

9. 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. However, 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.”

10. This Court while dealing with a petition seeking quashing of an FIR under Section 304A of the IPC, in **Sunil Malhotra & Anr. v. The State**



NCT of Delhi & Anr., 2023:DHC:8374, observed and noted as under,

"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."

11. In view of above, to bring the present case within the definition of 'gross negligence' there must be wanton disregard to the consequences of an act or omission on part of the petitioners which resulted in the accident. In the present case, the petitioner is being prosecuted on account of the fact that the deceased was working at his shop. A perusal of the chargesheet reflects that the Inspection Report dated 16.10.2023 records as under:

"At the time of inspection, most of the electrical wiring/fixtures were found replaced with new one and the electrical installation of the said shop were found altered so that exact cause of the said accident could not be ascertained."

12. Be that as it may, respondent nos. 3 to 6 have entered into a settlement with the petitioner *vide* a settlement deed/Memorandum of Settlement (MoS) (Annexure P-2). In pursuance of the said settlement, petitioner no. 1 has agreed to pay a sum of Rs. 5,50,000/- as compensation to respondent nos. 3 to 6 as full and final settlement. It is pertinent to note that the present petition is also supported by respondent no. 2 (author of the FIR).

13. As per the said settlement, a sum of Rs. 4,00,000/- have already been paid to the respondent Nos. 3 to 6 and remaining amount of Rs. 1,50,000/-



has been paid to them in Court today, by way of a demand draft.

14. A demand draft bearing No. 433377 of Rs. 1,50,000/- dated 01.05.2024 drawn on Punjab National Bank, Jangpura, New Delhi has been handed over to the respondent no. 3 who acknowledges the receipt of the same.

15. Petitioner, complainant/respondent no. 2 and respondent nos. 3 to 6 are present before the Court and have been duly identified by their respective counsel, as well as the Investigating Officer, SI Shubham Giran and ASI Chaman Lal, P.S. N.F.C.

16. In view of the aforesaid circumstances, and the fact that the parties have put a quietus to the unfortunate episode, no useful purpose will be served in continuing with the present FIR No. 0331/2023 under Sections 285/304A IPC at PS New Friends Colony, New Delhi and all other consequential proceedings emanating therefrom including the chargesheet pending in the Court of Ms. Shriya Agrawal, learned Additional Chief Metropolitan Magistrate, Saket Court, Delhi.

17. In totality of facts and circumstance of the case and in the interests of justice, FIR No. 0331/2023 under Sections 285/304A IPC at PS New Friends Colony, New Delhi and all other consequential proceedings emanating therefrom including the chargesheet pending in the Court of Ms. Shriya Agrawal learned Additional Chief Metropolitan Magistrate, Saket Court, Delhi, are hereby quashed.

18. The petition is allowed and disposed of accordingly.

19. Pending application(s), if any, also stand disposed of.



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

AMIT SHARMA, J

MAY 3, 2024/nk

Click here to check corrigendum, if any