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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 3502/2023**

MAHINDER PAL SINGH & ANR.Petitioners
Through: **Mr.Sandeep Mishra, Advocate**

versus

STATE OF NCT OF DELHI & ORS.Respondents
Through: **Mr. Sanjeev Sabharwal, APP for State**
with SI Raghuvir Prasad, P.S. Khyala
and Insp. Arvind Kumar, P.S.
DIU/SED.
Mr. Amit Kumar, Mr. C.P. Singh and
Mr. Hemant Kr. Srivastava,
Advocates for husband and minor
child of deceased/Dimple @ Timple.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER
14.08.2024

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1. The present petition has been filed seeking quashing of FIR No.1032/2020 registered under Sections 288/304A/34 IPC at P.S. Khyala, Delhi, and the consequent proceedings arising therefrom on the ground of settlement having been arrived at between the petitioners and respondent Nos. 2 to 7.
2. The allegations in the present FIR pertain to a negligent death which was caused as a result of roof slab falling on the four deceased workers employed in a factory.
3. Learned Counsel for the petitioners submits that the parties have amicably settled all their disputes vide a Memorandum of Understanding



dated 04.03.2023. He further submits that in terms of the settlement, the respondents are now left with no claim against the petitioners and thereby prays that the present proceedings be quashed.

4. The petition is opposed by learned APP for the State along with the husband and minor child of one of the deceased/*Dimple Devi* who were not even impleaded as parties. He further submits that the present case involves an incident of glaring negligence where the allegations are serious in nature and ought not to be quashed. He further submits that the chargesheet in the present case has been filed.

4. I have heard the learned counsels for the parties and also gone through the material placed on record.

3. 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.

4. 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”.

5. A perusal of the FIR would show that on 19.12.2020, workers were working on the ground floor of a factory which was owned by the petitioners. At about 9.15 in the morning, the temporary roof slab of the factory fell on the workers consequent to which four workers were died and others were injured. The incident had occurred in the course of the work being performed by the deceased persons and other workers. There are allegations that the workers repeatedly requested the factory owner/petitioner to repair the roof. Four persons have died due to alleged negligence attributed to the petitioners.

7. Considering the fact that the allegations in the above case are of gross negligence and are grave in nature, I find no ground to entertain the present



petition consequently, the petition is dismissed.

AUGUST 14, 2024

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MANOJ KUMAR OHRI, J