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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 4183/2023**

RAJ KUMAR JAIN

.....Petitioner

Through: Mr. Lalit Kumar Vohra, Mr. N.K. Vohra, Advocates with petitioner in person.

versus

STATE & ORS.

.....Respondents

Through: Mr. Sanjeev Sabharwal, APP for State with SI Pradeep PS NFC and ASI Chaman Lal (IO).
Ms. Pooja Rajput, Advocate for respondent No.2.
Mr. D.K. Singh, Advocate for respondent Nos. 3, 4 and 5 with respondent No.3 in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

31.07.2024

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1. The present petition has been filed seeking quashing of FIRNo.153/2023 registered under Sections 288/337/304A IPC at P.S. New Friends Colony, Delhi and the consequent proceedings arising therefrom on the ground that the parties have settled their disputes.
2. As per the allegation in the FIR, the deceased got buried in mud and debris of the wall while working as a labour on a construction site.
3. Besides pressing for quashing on settlement, learned counsel for the petitioner also states that the ingredients of Section 304A IPC are not made out as all necessary precautions during construction had been made including deployment of necessary safety gear and the work was carried at a



very slow pace with necessary and regular site inspections.

4. Learned APP for the State, on instructions, submits that the petitioner is the only accused and respondent No.2 is the complainant and respondent No. 3, 4 and 5 are the legal heirs of the deceased in the present matter.

5. Learned counsel for the petitioner submits that the petitioner and the legal heirs of the deceased represented by their guardian (respondent No. 3) have settled their disputes vide Deed of Settlement dated 19.05.2023. Though, in terms of the settlement, the petitioner had paid Rs. 6,15,000 /- to respondents, however, today learned counsel appearing for the petitioner, on instructions submits that the petitioner volunteers to increase the settlement amount to Rs. 15 lacs for the betterment of the minor children of the deceased, which is acceptable to the respondent Nos. 3 to 5.

6. The petitioner, who is present in the Court, has been identified by his counsel as well as by the Investigating Officer. Respondent No.3, who is present in the Court, has also been identified by the Investigating Officer.

7. Respondent No.3, who is present in court states that they have entered into the aforesaid Deed of Settlement 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, subject to payment of Rs.15 lacs

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 the deceased while working on a construction site got caught in the mud and debris in a deep chasm. There does not appear to be material to establish that the petitioner was carrying on work in a dangerous manner. The incident had



occurred in the course of the work being performed by the deceased and other workers and appears to be purely accidental. Further, the respondent no. 2/complainant being a witness to the mishap has also confirmed that it was an act of God and accidental death. This Court is of considered opinion that the ingredients of offence punishable under Section 304A are not fully satisfied and the ingredient of 'negligence', in light of testimony of PW-2, is unlikely to be established against the petitioner.

12. Insofar as the quantum of compensation is concerned, since the petitioner has volunteered to increase the amount of compensation to Rs.15 lacs, it is directed that out of the total settlement amount of Rs. 15 lacs, Rs. 7.5 lacs each shall be deposited in the account of two minor children, having the following account details:

1) Mausami Kumar D/o Uday Mandal
Age: 15 Years
Account No.: 4014757422
Bank Name: Central Bank of India
IFSC Code: CBIN0281560

2) Suman Kumar S/O Uday Mandal
Age: 13 Years
Account No.: 5644057674
Bank Name: Central Bank of India
IFSC Code: CBIN0281560

13. Upon the aforementioned amount being deposited, the concerned Bank Manager is directed to convert the said amount into Fixed Deposit Receipts (FDRs) with the highest interest rate available exclusively in the name of minor child who shall be the sole beneficiary.



14. It is further directed that the withdrawal of these FDRs shall only be permitted to the beneficiary after due verification and only upon their attaining majority. The monthly interest accrued on the said FDRs be released to respondent no.3 who shall utilize the same only for the benefit, welfare and upkeep of the minor children (legal heirs of the Deceased) and under no circumstances, Respondent no. 3 shall misuse the compensation amount or any part thereof to the detriment of the minor children (respondent nos. 4 and 5). Respondent No.3 undertakes to do so.

15. The parties shall remain bound by the statements made in Court today.

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

17. Having examined the case on merits as well as considering the fact that the parties have reached on 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.

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

19. The I.O shall communicate the order passed today to the Branch Manager of the concerned bank.

MANOJ KUMAR OHRI, J

JULY 31, 2024

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