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

+ **CRL.M.C. 3644/2024**

SUMIT KUMAR

.....Petitioner

Through: **Mr. Sourav Goel, Advocate with
petitioner in person.**

versus

STATE THROUGH SHO PS

BINDAPUR AND ORS

.....Respondents

Through: **Mr. Sanjeev Sabharwal, APP for State
with SI Shaym Nandan PS Bindapur,
New Delhi.**

**Father and brother of the
victim/deceased in person.**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

12.08.2024

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1. The present proceedings are instituted on behalf of the petitioner seeking quashing of FIR No. 0256/2022 registered under Sections 288/304A IPC at Police Station Bindapur, Delhi on the ground that the parties have amicably settled their disputes.

2. Notably, the present case came to be registered on account of an accident that was alleged to have taken place on 25.03.2022 at plot No. H-22, Arya Samaj Road, Uttam Nagar, New Delhi. In the said incident, one *Jeevan Vanshkar*, a labourer who was staying there, fell down from the first floor and later succumbed to his injuries.

3. During investigation, statements of witnesses were recorded and charge-sheet came to be filed. The charges are yet to be framed.



4. Learned counsel for the petitioner contends that though the parties have been able to reach an amicable settlement, even otherwise ingredients of Section 304A are not made out against the present petitioner. He further contends that the present petitioner is a contractor and was responsible for construction of a building at H-8, Arya Samaj Road, Uttam Nagar, New Delhi, which was owned by one *Dr. B.M. Gupta*. He states that under the agreement, the petitioner's job was to carry out the construction at house no. H-8. He submits that the wife of *Dr. B.M. Gupta* namely *Smt. Meera Gupta* was the owner of another house being H-22, Arya Samaj Road, Uttam Nagar, New Delhi, which was constructed by another contractor namely *Tarun Vohra*. He submits that as per the prosecution case, while the deceased worked at H-8, he, with the consent of the owner, was residing at house No. H-22 where the incident had occurred.

5. The petition is resisted by learned APP for State who submits that not only the statement of the brother of the deceased but also the owner of the building namely *Mrs. Meera Gupta* has been recorded, as per which it is the present petitioner who was responsible for construction at house no.H-22. He also submits that the brother of the deceased had stated that the accident had occurred as there was no railing on the staircase, which led to the fall of the deceased.

6. I have heard learned counsel for the parties and perused the material placed on record, including the charge-sheet.

7. 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.

8. 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”.”



9. A perusal of the charge-sheet would show that during investigation, statement of one *Mr. Tarun Vohra* was recorded, who had stated that he was appointed as the builder, who had entered into agreement with *Mrs. Meera Gupta* and her husband *Dr. B.M. Gupta* for construction of their house at H-22, Arya Samaj Road, Uttam Nagar, New Delhi. He has further stated that he had fully constructed the house and handover the same back to the owner prior to the incident.

10. From the above, it appears that the present petitioner's job was confined to construction of House No.H-8, Arya Samaj Road, Uttam Nagar, New Delhi and only his labour was living at H-22, Arya Samaj Road, Uttam Nagar, New Delhi, and that too with the consent of the owner. The charge-sheet is also accompanied by the FSL report indicating that the blood sample of the deceased was examined and ethyl alcohol content was found to be 19.9 mg per 100 ml. It is evident that that the responsibility for ensuring that guard rails were installed at the place of accident lay with the owner and the contractor who was responsible for the construction of the said house and not the petitioner, who was an independent contractor responsible for construction of another property. The duty of care in the present instance did not lie with the petitioner, and there was no rash or negligent conduct on account of the petitioner which could be said to have attributed to the demise of the deceased. Thus, it is clear that the ingredients of Section 304A IPC have not been made out in the present case against the petitioner.

11. Be that as it may, the petitioner has also entered into a settlement with the father of the deceased, who is present in the Court and is identified by



the IO. He states that his son was unmarried and he has no objection to the quashing of the instant FIR.

12. Considering the merits as well as the factum of settlement having been arrived at between the parties, and that the petitioner has voluntarily offered to pay further sum of Rs.50,000/- to the legal heirs, it is directed that the aforesaid FIR and the consequent proceedings arising therefrom are hereby quashed.

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

14. In case the proof of payment is not filed within two weeks, the IO shall be at liberty to move an appropriate application in this regard.

MANOJ KUMAR OHRI, J

AUGUST 12, 2024/rd