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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.M.C. 5970/2023
SHAMIM AHMADPetitioner

Through: Mr. Anish Kumar, Advocate
versus

THE STATE GNCT OF DELHIRespondent
Through: Mr. Laksh Khanna, APP for State
Mr.Arif Mansoori and Mr.Raj Kumar, Advocates
for respondent Nos.2 to 5

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

% **ORDER**
07.08.2024

1. The present proceedings are instituted on behalf of the petitioners seeking quashing of FIR No. 414/2022 registered under Section 304A/337 IPC at Police Station Dayal Pur, Delhi on the ground that the parties have amicably settled their disputes.
2. The allegations in the present FIR pertain to a negligent death caused on account of an accident wherein the house in which the victim was residing collapsed. The petitioners herein are the landlords of the property in question and Respondent Nos. 3-5 are the tenants in the said property.
3. Learned counsel for the petitioners in addition to pressing for quashing on the basis of settlement also states that the ingredients of Section 304A IPC are not made out as all necessary precautions during construction of the house in question had been made and that the parties had been sharing the relationship of landlord and tenant for nearly 4 years. Further, at no point of time, the deceased or any of his family members alleged that the building was in dangerous condition. The roof collapse was purely accidental.



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.s 3-5 are the victims in the present matter.

5. Learned counsel for the petitioner submits that the petitioner and the respondents have settled their disputes vide Compromise Deed dated 28.09.2022. In terms of the settlement, the petitioners have paid a compensatory sum of Rs. 10,00,000/- to respondent No.s 3-5 which is acceptable to them.

6. The petitioner, who is present in the Court, has been identified by his counsel as well as by the Investigating Officer. Respondent No.3-5, who are present in the Court, have also been identified by the Investigating Officer.

7. Respondent No.3-5, who are 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.

8. I have heard the learned counsels for the parties and have perused the relevant documents placed on record..

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 pertains to an accident wherein the roof of the house that was tenanted by victims, collapsed. There does not appear to be material to establish that the house was in such a detrimental condition that the lives of the tenants were in danger. The incident seems to be purely accidental. I have perused the statements of Respondent No. 4 and 5 i.e. Layba and Shabnam that were recorded during investigation. In their statements, the respondents had alleged that they asked the petitioner to



carry out repairs, however there is neither mention of the fact that the said house was is in a detrimental condition or dangerous to live nor there was any prior complaint to any authority regarding the same. It is also noted that the respondents were residing in the property in question for about four years prior to the incident. In light of the aforementioned, this Court is of 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 petitioner.

12. 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, subject to cost of Rs.50,000/- to be deposited by the petitioner with the Delhi State Legal Services Authority (A/c No. 18580110053263, UCO Bank, Branch : Rouse Avenue, IFSC : UCBA0003364) within a period of four weeks from today. The amount so deposited shall be utilized by the DSLSA for providing counselling/psychological support to POCSO victims requiring such assistance.

13. Proof evidencing receipt of deposit shall be filed with the I.O. failing which, the I.O. shall be at liberty to move appropriate application.

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

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

MANOJ KUMAR OHRI, J

AUGUST 7, 2024/js