



2024:DHC:6387

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

Reserved on: 30th July, 2024
Pronounced on: 22nd August, 2024

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CRL.M.C. 4544/2024**ASHA BUDHANI**

.....Petitioner

Through: Mr. Kshitij Sharda, Adv.

versus

STATE & ANR.

.....Respondents

Through: Mr. Hemant Mehla, APP for the State
with SI Rekha Chauhan PS Pandav Nagar
Ms. Sunita Arora, Advocate for R-2

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CRL.M.C. 4454/2024 & CRL.M.A.16859/2024**NAWAB SINGH BHATI**

.....Petitioner

Through: Mr. Kshitij Sharda, Adv.

versus

STATE NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Hemant Mehla, APP for the State
with SI Rekha Chauhan PS Pandav Nagar
Ms. Sunita Arora, Advocate for R-2**CORAM:****HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA****J U D G M E N T****NEENA BANSAL KRISHNA, J.**

1. The present petition is preferred under Section 482 of Cr.P.C. against the impugned Order dated 09.10.2023 passed by the Ld. ASJ-05, Delhi, upholding the framing of Notice under Section 304A IPC by Ld. CMM on 20.09.2021, in FIR No. 23/2012 P.S. Pandav Nagar.

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2. Briefly stated, the case of the prosecution relates to the unfortunate incident which occurred on 24.01.2012, when a 12 year old student of Rishabh Public School, Mayur Vihar, Delhi while leaning over the railing on the second floor of the school building, lost his balance and accidentally fell. The child was rushed to the hospital but by then he had expired.

3. The FIR was registered on DD No. 29A dated 24.01.2012 at PS Pandav Nagar. The investigations were completed and the Charge Sheet was filed against Nawab Singh Bhati, the Chairman of the School and Asha Budhani, the teacher in charge and on bus duty, on the date of the incident.

4. The learned CMM framed the Notice under Section 304-A IPC on 20.09.2021. A Revision was preferred against the said Order, which was dismissed by the learned ASJ vide Order dated 09.10.2023.

5. Aggrieved by the Order of framing the Notice under Section 304-A IPC against the two petitioners, the present Petition under Section 482 Cr.P.C has been filed separately by Nawab Singh Bhati and Asha Budhani.

6. **Learned counsel on behalf of the Petitioner**, Nawab Singh Bhati has relied upon the W.P.(C).11802/2015 which was filed by the parents of the child seeking compensation. This Court *vide* Order dated 18.07.2017 had observed that there cannot be any negligence attributable to the school Authority and the compensation was denied. It is claimed that Nawab Singh Bhati, the Chairperson of the school cannot be held negligent in any manner.

7. Furthermore, the parapet wall where the incident occurred was constructed in two parts, i.e. the lower part upto the height of 1.9 feet was of the brick and cement portion, and above it there was a 2 feet iron grill.

8. The FSL Report dated 07.05.2012 has opined that *“keeping view of the height and structure of the railing, a boy cannot fall from the suspected place in normal condition. Possibility of the falling from the suspected place cannot be ruled out if the boy puts his feet on top of the cemented portion of the*



railing”

9. It is further submitted that the allegations as leveled against the petitioner are based on wisdom gained in hindsight by the IO. The accusations made against the petitioner in regard to the height of the railing and that a net or a grill should have been placed are factors which have been suggested subsequently. All necessary Certificates for constructing the school, had been obtained and the construction had been done in accordance with the approved Plans.

10. It is further argued that there is no element of *mens rea* nor any act of rashness that is attributable to the petitioners. Reliance has been placed on Jacob Mathew vs. State of Punjab, (2005) 6 SCC 1 wherein it was held for the existence of criminal rashness or negligence, it has to be found that it was of such a degree to amount to taking a hazard knowing that injury was most likely imminent.

11. Hence, it claimed that the Order of framing Notice under Section 304 A is liable to be set aside.

12. Ld. Counsel on behalf of Asha Budhani in CRL.M.C. 4544/2024, has likewise, argued that there is no incriminating evidence against her. The only allegations are that the child went to the second floor unattended which became a cause for his death. The class room of the child was on the second floor and he used to daily go to his class room and spent his entire day there. The death therefore, cannot be attributed to the petitioner who was present on duty on the ground floor or for any act of the child who went up to the second floor. It was not the duty of the petitioner Asha Budhani to accompany the child every time he went up to their class room on the second floor. There is no proximate and live link between the alleged act of the petitioner to the fall of the child. It is thus, claimed that the impugned Order is liable to be set aside.

13. The learned counsel for the Petitioners has placed reliance on the cases namely; Jacob Mathe vs. State of Punjab & Anr., (*Supra*), Kusum Sharma and



Ors. vs. Batra Hospital and Medical Research Centre, (AIR 2010 SC 1050), Ambalal D. Bhatt vs. The State of Gujarat, (AIR 1972 SC 1150), State of Karnataka vs. Muralidhar, (AIR 2009 SC 1621), Syed Akbar vs. State of Karnataka (1980) 1 SCC 30 and Ataur Rehman vs. State, (2009) XAD (Delhi) 798.

14. The **learned counsel for the Respondent No. 2** has vehemently opposed the present petition, and has placed reliance on M.S Grewal vs. Deep Chand Sood, (2001) 8 SCC 151 to ascribe culpability to the teacher for the unfortunate incident.

15. Submissions heard.

16. At the outset, it must be stated that this is a very unfortunate case where the cruel hands of fate led to the death of a 12 year old child Master Varun, because of a fall from the second floor of the school building. The grief of the parents at the loss of their son, is reasonable and justified. Their quest for justice is also understandable. However, to make the petitioners liable, culpability of the petitioners need to be established.

17. The **Factual matrix** is that on the fateful day of 24.01.2012, the child was waiting in the class room on the ground floor for the second trip of the bus to take them back home. Varun left the room by stating that he was going to his class room on the second floor, as he had to get his Notebook.

18. It was further revealed during the investigations, that Varun after reaching the second floor climbed up the cement portion of the railing and while peeping down, he tried to adjust his heavy bag on his shoulder in the process, lost his balance had fell from over the railing and suffered injuries which proved to be fatal.

19. The statement of two eye witnesses namely Shivani and Pooja were recorded under Section 164 Cr.P.C, who explained the manner in which the child hadtoppled over the railing. According to their statements, as the child



stood over the parapet, he leaned over the railing. He then tried to pull up his heavy school bag and in this attempt, his coat covered his face due to which he lost balance and fell.

20. It is evident that Asha Budhani, the teacher in Charge to ensure that children board the school bus safely, was present on the ground floor awaiting the bus for taking the children back home. Varun went up to his class room on the second floor for getting his notebook. The duty of Asha was confined to the ground floor. Moreover, the child went on his own to collect the Notebook from his class room on the second floor. The child had been regularly doing so and class being on the second floor, is not the proximate cause of the death. It was not in the duty of Asha Budhani to ensure that no child leaves the room unattended nor was she responsible in any manner to accompany the child to the second floor. From the manner in which the accident happened, it cannot be said that the teacher was in any way directly or indirectly responsible for negligence or rashness of any kind.

21. The *second aspect* which has been vehemently agitated is that the height of the parapet was not sufficient to prevent any such accidents. However, the parapet wall was cemented of 1.9 feet, over which there was a two feet iron grill. The total height of the parapet was about 4 feet and it cannot be said that the fall of the child was on account of the height of the parapet not being appropriate.

22. The FSL Report also corroborates that the height of the parapet was sufficient to prevent the fall, in the normal course. Unfortunately, it is not the height of the Parapet which was the cause of the fall but the child but because he lost his balance while leaning over the railing and adjusting his school bag.

23. It is also pertinent to observe that in the W.P.(C).11802/2015 *vide* Order dated 18.07.2017, the Coordinate Bench of this Court had categorically observed that this was not a case where the school has been negligent.



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Undeniably, there is a scope of making the building safer, but it cannot lead to any conclusion of the school being negligent.

24. As has been discussed above, it is not a case where the accident happened because of the inappropriate height of the parapet, for which Nawab Singh Bhati can be held negligent. Likewise, no negligence in any manner can be attributed to Asha Budhani, the teacher, in discharge of her duty, in the fall of the child.

25. The evidence, as collected by the IO clearly establishes that it was a case of pure accident that the child lost his balance while balancing his school bag and fell. Neither any negligence or recklessness can be attributed to the petitioners.

26. The judgement M.S. Grewal(Supra) relied upon by the Respondent, is distinguishable both on the facts and law. The case involved two teachers who led a group of 14 students into river and found themselves in the midst of an sudden 'dibber' from which they were able to save themselves but not the children. In this case, there is no individual who led the child to either the second floor or the railing, and none can be held responsible for this unfortunate accident.

27. Hence, the impugned Order framing the Notice against the Petitioners under Section 304-A is hereby set aside. The petitioners are hereby discharged and the Bail bond and the Surety bond stand discharged.

28. The petitions are allowed and accordingly disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 22, 2024/PT

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