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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 2039/2024

LAKHAN

.....Petitioner

Through: Ms. Urvashi Bhatia and Mr. Paras Joshi, Advocates.

versus

STATE (NCT OF DELHI) & ORS.

.....Respondents

Through: Mr. Yasir Rauf Ansari, ASC (CrI.) for State with SI Paramjeet, PS Ranhola. R-2 to 6 in person.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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20.09.2024

CRL.M.A. 28534/2024 (early hearing application on behalf of petitioner)

1. By way of the present application, the applicant/petitioner seeks early hearing of the matter.
2. With the consent of the parties and for the reasons mentioned in the application, the same is allowed. The petition is taken up for hearing today itself.
3. In view of the above, the application is disposed of.

W.P.(CRL) 2039/2024

1. The present petition is filed on behalf of the petitioner seeking quashing of FIR No. 651/2016 registered under Sections 287/304A IPC at Police Station Ranhola, 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 worker named *Gayatri Devi* (deceased) met with the accident at petitioner's factory while operating grinding machine wherein her saree got entangled in the machine.
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 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 ASC (Crl.), on instructions, submits that the petitioner is the only accused and respondent Nos.2 to 6 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 have settled their disputes vide Settlement Agreement/Memorandum of Understanding dated 25.03.2024. It is stated that the petitioner has already paid a sum of around Rs. 7,50,000/- which includes the award passed in the proceedings initiated under Workman Compensation. It is further stated that the petitioner today in court volunteered to pay a further sum of Rs. 1,50,000/- to the legal heirs of the deceased.
6. The petitioner, who is present in the Court, has been identified by his counsel as well as by the Investigating Officer. Respondent Nos.2 to 6 i.e., the legal heirs of the deceased, who are also present in the Court, have also been identified by the Investigating Officer. Respondents have also handed over self-attested copy of their Aadhar Card as well as gate pass. The same is taken on record.



7. Respondent Nos.2 to 6 state that they have entered into the aforesaid Settlement Agreement/Memorandum of Understanding 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 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 met with an accident due to carelessness of the petitioner who did not cover the fan belt pulley of the machine. It is noted that the deceased was working with the petitioner as filler in plastic grinding machine for last more than 8 years and on that unfortunate day, her saree got entangled in the fan-belt of motor of the machine and she was trapped by the machine that led to her falling between the wall and the machine causing multiple injuries. The incident had occurred in the course of the work being performed by the deceased and other workers and appears to be purely accidental. This Court is of the considered opinion that the ingredients of offence punishable under Section 304A IPC are not fully satisfied and the ingredient of ‘negligence’ is unlikely to be established against the petitioner.
12. Considering the fact that the Respondent No.6, who is the only daughter of deceased, is dependent on her brothers and does not have



anyone else to take care of her, the amount of Rs. 1,50,000/- be provided to her. All the four sons of the deceased i.e., Respondent Nos.2 to 5 state that they have no objection if the amount of Rs. 1,50,000/- is released in favour of their sister i.e., respondent No.6 namely *Ms. Anita*.

13. In view of the above, it is directed that the said sum of Rs. 1,50,000/- would be paid to respondent No.6 within seven working days through the concerned IO. In case the said sum is not paid within the stipulated time, the IO would be at liberty to move an appropriate application before this court.

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

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

16. Having examined the case on merits as well as considering the fact that the parties have reached 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 the payment of the aforementioned amount.

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

18. The date already fixed i.e. 20.11.2024 stands cancelled.

MANOJ KUMAR OHRI, J

SEPTEMBER 20, 2024

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