



\$~17

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

+ **CRL.M.C. 6410/2024**

**AFZAL & ANR.**

**.....Petitioners**

Through: Sr. Adv. Viraj Dattar with  
Adv. Kunal Madan & Mr.  
Shyam Baby, Advs. along  
with both the petitioners.

**versus**

**STATE NCT OF DELHI AND ANR .....Respondents**

Through: Mr. Naresh Kumar  
Chahar, APP for the State  
along with Ms. Anjani  
Kumar Rai, Ms. Akanksha  
V. Ingole, Mr. Dilip  
Kumar & Mr. Nitesh  
Kumar Naveen, Advs.  
ASI Vinod Kumar, PS B.  
Nagar.  
R-2 & R-3 in person.

**CORAM:**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

**ORDER**

**29.08.2024**

%

1. The present petition is filed seeking quashing of FIR No. 445/2024 dated 19.07.2024, registered at Police Station Bharat Nagar, for offences under Section 106 of the Bharatiya Nyaya Sanhita, 2023 ('BNS') and Section 9 of the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 ('the Act'). Chargesheet has not been filed in the present case.

2. The FIR was registered on a PCR Call received on 19.07.2024. It is alleged that on 19.07.2024 at about 4:15 pm, Md. Amir, the deceased, was working underground in the sewer and was carrying out some repair work when he suddenly



became unconscious, and suffered injuries. It is alleged that due to the nature of the injuries, he later succumbed to his death.

3. The present petition is filed on the ground that the matter has been mutually and amicably settled between Petitioner No. 2 and the legal heirs of the deceased. It is averred that the police officials erred in lodging FIR No. 445/2024 as there was no negligence on the part of the petitioners. The legal heirs of the deceased have already been adequately compensated by the Petitioner No. 2 on humanitarian grounds and a sum of ₹10 lakhs has been paid to the legal heirs of deceased.

4. The learned Senior Counsel for the petitioners submits that Petitioner No. 1 is the real brother of the deceased. He submits that Petitioner No. 2 was a Site Manager, who had employed Petitioner No. 1 as a labour contractor for carrying out the site work. He submits that certain repair work was being carried out in the underground sewer by the brother of Petitioner No. 1, during which he fell unconscious.

5. He submits that the provision of Section 9 of the Act even otherwise are not made out. He submits that the Act prohibits persons from being engaged or employed for hazardous cleaning of the sewers and septic tanks, whereas in the present case, Petitioner No. 1 was employed for the purpose of carrying out repair work and not the cleaning of the sewer. He further submits that Petitioner No. 1 had not employed the deceased for carrying out such work since he was his real brother.

6. He further contends that even though no case is made out, Petitioner No. 2 as a gesture of goodwill has already paid a sum of ₹10 lakhs to the family of the deceased which also includes Petitioner No. 1 and a further sum of ₹3 lakhs would be paid after the present FIR is quashed.



7. He further, on instruction, submits that Petitioner No. 2 has further agreed to pay a sum of ₹2 lakhs.
8. Considering the peculiar facts that one of the accused, that is, Petitioner No. 1 is the real brother of the deceased, *prima facie*, the provisions of Section 9 of the Act will not be attracted.
9. Moreover, Petitioner No. 2 has adequately compensated the family of the deceased who are also satisfied with the compensation.
10. Petitioner No. 1 is one of the family members and contends that no wrong doing can be alleged since the deceased had gone in the sewer for the purpose of carrying out repair work. The petitioners have also relied upon the agreement entered into with the employer which categorically mentions that the services of Petitioner No. 1 were engaged to carry out restoration / repair of the sewer line, and the purpose was not the hazardous cleaning of the sewer.
11. Both the petitioners and Respondent Nos. 2 & 3 are present in Court and have been duly identified by the Investigating Officer.
12. Respondent Nos. 2 & 3, on being asked, state that they do not wish to pursue the proceedings arising out of the present FIR, and have no objection if the proceedings are quashed.
13. Offence under Section 106 of the BNS is non-compoundable in nature.
14. It is well settled that the High Court while exercising its powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') (erstwhile Section 482 of the CrPC) can compound offences which are non-compoundable under the Code on the ground that there is a compromise between the accused and the complainant. The Hon'ble Apex Court has laid



down parameters and guidelines to be adhered to by the High Court while accepting settlement and quashing the proceedings. In the case of **Narinder Singh & Ors. v. State of Punjab & Anr. : (2014) 6 SCC 466**, the Hon'ble Supreme Court had observed as under :-

*"29. In view of the aforesaid discussion, we sum up and lay down the following principles by which the High Court would be guided in giving adequate treatment to the settlement between the parties and exercising its power under Section 482 of the Code while accepting the settlement and quashing the proceedings or refusing to accept the settlement with direction to continue with the criminal proceedings:*

*29.1. Power conferred under Section 482 of the Code is to be distinguished from the power which lies in the Court to compound the offences under Section 320 of the Code. No doubt, under Section 482 of the Code, the High Court has inherent power to quash the criminal proceedings even in those cases which are not compoundable, where the parties have settled the matter between themselves. However, this power is to be exercised sparingly and with caution.*

*29.2. When the parties have reached the settlement and on that basis petition for quashing the criminal proceedings is filed, the guiding factor in such cases would be to secure:*

- (i) ends of justice, or*
- (ii) to prevent abuse of the process of any court.*

*While exercising the power the High Court is to form an opinion on either of the aforesaid two objectives.*

*29.3. Such a power is not to be exercised in those prosecutions which involve heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society. Similarly, for the*



*offences alleged to have been committed under special statutes under the Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender.*

*29.4. On the other hand, those criminal cases having overwhelmingly and predominantly civil character, particularly those arising out of commercial transactions or arising out of matrimonial relationship or family disputes should be quashed when the parties have resolved their entire disputes among themselves.*

*29.5. While exercising its powers, the High Court is to examine as to whether the possibility of conviction is remote and bleak and continuation of criminal cases would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal cases.”*

*(emphasis supplied)*

15. Similarly, in the case of ***Parbatbhai Aahir & Ors. v. State of Gujarat & Anr. : (2017) 9 SCC 641***, the Hon’ble Supreme Court had observed as under :-

*“16. The broad principles which emerge from the precedents on the subject, may be summarised in the following propositions:*

*16.1. Section 482 preserves the inherent powers of the High Court to prevent an abuse of the process of any court or to secure the ends of justice. The provision does not confer new powers. It only recognises and preserves powers which inhere in the High Court.*

*16.2. The invocation of the jurisdiction of the High Court to quash a first information report or a criminal proceeding on the ground that a settlement has been arrived at between the offender and the victim is not the same as the invocation of jurisdiction for the purpose of compounding an offence. While compounding*



an offence, the power of the court is governed by the provisions of Section 320 of the Code of Criminal Procedure, 1973. The power to quash under Section 482 is attracted even if the offence is non-compoundable.

**16.3.** In forming an opinion whether a criminal proceeding or complaint should be quashed in exercise of its jurisdiction under Section 482, the High Court must evaluate whether the ends of justice would justify the exercise of the inherent power.

**16.4.** While the inherent power of the High Court has a wide ambit and plenitude it has to be exercised (i) to secure the ends of justice, or (ii) to prevent an abuse of the process of any court.

**16.5.** The decision as to whether a complaint or first information report should be quashed on the ground that the offender and victim have settled the dispute, revolves ultimately on the facts and circumstances of each case and no exhaustive elaboration of principles can be formulated.

**16.6.** In the exercise of the power under Section 482 and while dealing with a plea that the dispute has been settled, the High Court must have due regard to the nature and gravity of the offence. **Heinous and serious offences involving mental depravity or offences such as murder, rape and dacoity cannot appropriately be quashed though the victim or the family of the victim have settled the dispute. Such offences are, truly speaking, not private in nature but have a serious impact upon society. The decision to continue with the trial in such cases is founded on the overriding element of public interest in punishing persons for serious offences.**

**16.7.** As distinguished from serious offences, there may be criminal cases which have an overwhelming or predominant element of a civil dispute. They stand on a distinct footing insofar as the exercise of the inherent power to quash is concerned.



*16.8. Criminal cases involving offences which arise from commercial, financial, mercantile, partnership or similar transactions with an essentially civil flavour may in appropriate situations fall for quashing where parties have settled the dispute.*

*16.9. In such a case, the High Court may quash the criminal proceeding if in view of the compromise between the disputants, the possibility of a conviction is remote and the continuation of a criminal proceeding would cause oppression and prejudice; and*

*16.10. There is yet an exception to the principle set out in propositions 16.8. and 16.9. above. Economic offences involving the financial and economic well-being of the State have implications which lie beyond the domain of a mere dispute between private disputants. The High Court would be justified in declining to quash where the offender is involved in an activity akin to a financial or economic fraud or misdemeanour. The consequences of the act complained of upon the financial or economic system will weigh in the balance.”*

*(emphasis supplied)*

16. The present case relates to an offence under Section 106 of the BNS (erstwhile Section 304A of the IPC) where a person has died due to alleged negligence of the accused persons. Thus, while deciding whether proceedings relating to such an offence can be quashed on the basis of the settlement between the accused and family of the victim, it is necessary to consider whether it is probable that the presented facts would constitute gross negligence and whether the element of *mens rea*, which is required for the purpose of conviction, is present.

17. The Hon’ble Apex Court, in the case of **Jacob Mathew v. State of Punjab : (2005) 6 SCC 1**, while interpreting as to what constitutes a negligent act so as to constitute an offence under Section 304A of IPC (now Section 106 of the BNS) held that



gross negligence and an element of *mens rea* must be shown to exist. The Hon'ble Apex Court observed as under:

*“48. We sum up our conclusions as under: ...(5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.*

*The word “gross” has not been used in Section 304A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be “gross”. The expression “rash or negligent act” as occurring in Section 304A of the IPC has to be read as qualified by the word “grossly”...”*

18. From the perusal of chargesheet, it appears to be a case of an accident. Admittedly, there was no eye witness to the incident. It is not alleged that such accidents occurred on a regular basis at the construction site and despite that no steps were taken to rectify the errors. It is also not the case of the prosecution that the accused persons had shown criminal negligence or that they deliberately omitted to take necessary precautions due to which the accident took place. Moreover, the conviction of the petitioners in the present case does not appear to be probable given the fact that the petitioners and Respondent Nos. 2 and 3 have already settled the matter.

19. This Court, thus, is of the view that the payment of compensation would serve the ends of justice and no useful purpose would be served by keeping the dispute alive and continuance of the proceedings would amount to abuse of the process of Court. I am of the opinion that this is a fit case to exercise discretionary jurisdiction under Section 528 of the



BNSS.

20. Petitioner No.2 is directed to pay a further sum of ₹5,00,000/- to the family of the victim.

21. In view of the above, FIR No. 445/2024 and all consequential proceedings arising therefrom are quashed, subject to payment of a total cost of ₹20,000/- by the petitioners, out of which ₹10,000 to be deposited with the Delhi Police Welfare Society and ₹10,000/- to be deposited with Chhatravas Chandra Arya Vidya Mandir, Des Raj Campus, C Block, East of Kailash, New Delhi, within a period of eight weeks from date.

22. Let the proof of deposit of cost be furnished to the concerned SHO/IO.

23. The present petition is allowed in the aforesaid terms.

24. Pending applications also stand disposed of.

**AMIT MAHAJAN, J**

**AUGUST 29, 2024**

**“SK”**