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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 9185/2024 and CRL.M.A. 35168/2024**
PRAVEEN KUMAR ARYA @ PRAVEEN ARYA AND ANR

.....Petitioners

Through: Mr.Jatin Teotia, Mr.Sudesh, Mr.Samarth
Talesara, Advocates with petitioners in person

versus

STATE GOVT OF NCT OF DELHI AND ANRRespondents

Through: Mr.Laksh Khanna, APP for State with
SI Rajiv Ranjan

Mr.Mohit Bangwal and Mr.Jai Prakash, Advocates
for respondent No.2 with respondent No.2 in
person

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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25.11.2024

1. The present petition is filed on behalf of the petitioners seeking quashing of FIR No.31/2017 registered under Sections 288/304A IPC at Police Station Mayapuri, Delhi and the consequent proceedings arising therefrom, on the ground that the parties have 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 05.07.2017, when respondent No. 2's husband, who was employed as a labourer by the petitioners at the construction site for digging a water tank, was injured upon a mud wall collapsing on him. Subsequently, respondent No.2's husband was taken to the hospital for treatment, however, he succumbed to the injuries.



3. Learned counsel for the petitioners contends that though the parties have been able to reach an amicable settlement, even otherwise the ingredients of Section 304A IPC are not made out against the present petitioners and that the incident was purely accidental, inasmuch as the deceased was injured due to a sudden collapse of the mud wall and he was also immediately rushed to the hospital for treatment.

4. Learned APP for the State, on instructions, submits that the petitioners are the only accused persons and respondent No.2 is the wife of the deceased in the present matter. He further submits that the matter is pending trial. It is also submitted that although petitioner No.2, being the contractor at the construction site, was initially put under Column 12 of the chargesheet, he was later summoned vide order dated 22.01.2020 by the Trial Court.

5. Learned counsel for the petitioners submits that the petitioners and the wife of the deceased have settled their disputes amicably vide Memorandum of Understanding dated 03.10.2024. It is stated that the petitioner No.1 has already paid a sum of around Rs.3,50,000/- to the respondent No.2, including Rs.1,50,000/- towards construction of her house and Rs.2,00,000/- towards marriage of her daughter in 2022. Moreover, in terms of the aforesaid settlement, respondent No.2/ *Santoshi Bai Raikwar* has also been employed in the office of the company of petitioner No.1 on a daily wage of Rs.600 per day. Learned counsel, on instructions from petitioner No.1, submits that respondent No.2 will continue to be employed at the petitioner No.1's office. Petitioner No.1, who is present in person, undertakes to the said effect. The undertaking is accepted and petitioner is made bound by the same.



It is further submitted by the learned counsel for the petitioners that over and above the compensation already paid to the legal heirs/wife of the deceased, a further sum of Rs.2,00,000/- is being paid today by way of a Demand Draft bearing No.760480 dated 25.11.2024 drawn on Punjab National Bank to the wife of the deceased (*Santoshi Bai Raikwar*).

6. The petitioners, who are present in Court, are identified by their counsel as well as by the Investigating Officer. Respondent No.2 i.e., the wife of the deceased, who is also present in Court, is identified by her counsel as well as by the Investigating Officer.

7. Respondent No.2 states that she has entered into the aforesaid Memorandum of Understanding out of her own free will, volition and without any coercion. She further states that she has no objection if the present FIR and consequent proceedings are quashed, subject to the encashment of the aforesaid demand draft.

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 a mud wall had collapsed on the deceased while he was employed as a labourer at the construction site of the petitioner No.1 and was digging earth for a water tank and upon being taken to the hospital, had expired thereafter. The incident had occurred in the course of the work being performed by the deceased as well as the other workers, who were not injured at the time of the incident, and from the material filed on record appears to be purely accidental. This Court is of the 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 petitioners.

12. Be that as it may, the petitioners have also entered into a settlement with the wife of the deceased, who is present in Court and is identified by the I.O. She states that she has no objection to the quashing of the instant FIR and confirms that she continues to be gainfully employed at petitioner No.1's office.

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

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

15. Having examined the case on merits as well as considering the facts and circumstances including the factum of settlement arrived at between the parties as well as the fact that the petitioners have volunteered to pay an additional cost of Rs.2,00,000/- to the wife of the deceased/respondent No.2, handed over to her today by way of the aforementioned demand draft, this Court is of the considered opinion that no useful purpose will be served in continuance of the present criminal proceedings. Accordingly, it is directed that the aforesaid FIR and the consequent proceedings arising therefrom are hereby quashed, subject to encashment of the said demand draft.

16. With the above directions, the petition is disposed of alongwith the pending application.

MANOJ KUMAR OHRI, J

NOVEMBER 25, 2024

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