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

+ CRL.M.C. 9678/2024 and CRL.M.A. 37144/2024

ATUL WASAN & ANR.

.....Petitioners

Through: Mr.Rakesh Chahar, Mr.Lalilt Kumar and
Ms.Babita, Advocates with petitioners in person

versus

STATE GOVT. OF NCT OF DELHI AND ANR.Respondents

Through: Mr. Shoaib Haider, APP for State with
SI Awadhesh

Mr.Sumita Mann, Advocate for respondent No.2
with respondent No.2 in person

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

% **10.12.2024**

1. The present petition is filed on behalf of the petitioners seeking quashing of FIR No.135/2022 registered under Sections 304A/34 IPC at Police Station Rajinder Nagar, 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, one *Sagar Thapa* (deceased) was working on an electric pole when he slipped from the ladder and fell, sustaining some injuries.
3. Besides pressing for quashing on settlement, learned counsel for the petitioner also argues that the ingredients of Section 304A IPC are not made out, as all necessary precautions were made including deployment of necessary safety gear and the deceased fell after slipping from the ladder, which was purely an accident.



4. Learned APP for the State, on instructions, submits that the petitioners are the only accused persons and respondent No.2 is the legal heir of the deceased in the present matter.
5. Learned counsel for the petitioners submits that the petitioner and the legal heir of the deceased have settled their disputes vide Agreement for Financial Help and Settlement dated 18.03.2023. It is stated that the petitioners have already paid a sum of around Rs.4,00,000/- which includes the award passed in the proceedings initiated under Workman Compensation and the balance amount of Rs.3,50,000/- is being paid today through demand draft bearing No.411846 dated 07.12.2024 drawn on Kotak Mahindra Bank to respondent No.2/complainant. It is further stated that the petitioners today in court volunteered to pay a further sum of Rs.2,50,000/- which is being paid today through demand draft bearing No.198364 dated 10.12.2024 drawn on State Bank of India to the legal heirs of the deceased.
6. The petitioners, who are present in the Court, have been identified by their counsel as well as by the Investigating Officer. Respondent No.2 i.e., the legal heir of the deceased, who is also present in the Court, has also been identified by the Investigating Officer.
7. Respondent No.2 states that she entered into the aforesaid Agreement for Financial Help and Settlement 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.
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, as per the FIR, the deceased was employed as a technician and on the date of the incident, he slipped from the ladder, resulting in his fall and subsequent injuries. The incident occurred in the course of his work and appears to be purely accidental. In the peculiar facts of the case, this Court is of the considered opinion that the ingredients of offence punishable under Section 304A are not fully satisfied and the offence of ‘negligence’ is unlikely to be established against the petitioner.

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

13. Learned counsel for the petitioners submits that no other proceedings are pending between the parties.

14. 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.

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

MANOJ KUMAR OHRI, J

DECEMBER 10, 2024

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