

Kishor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 6207 OF 2024

Sudeep Bholanath Saha

..Petitioner

Versus

Truptesh Dutta Belose and Anr.

..Respondents

Mr. Rahul Pandey a/w. Mr. Shivam Dubey, Advocates for Petitioner.

Mr. Shashank Dubey, Advocate for Respondent No.1.

Mr. M. M. Deshmukh, APP for Respondent No.2-State.

Mr. B. E. Satam, PSI, Meghwadi Police Station.

**CORAM :- SARANG V. KOTWAL &
S. M. MODAK, JJ.**

DATE :- 29th JANUARY 2025

P. C. :-

1. This is a petition for quashing of the C.R. No.233 of 2018 registered at Meghwadi Police Station, Mumbai on 12th August 2018 under Section 336 r/w. 34 of the Indian Penal Code and the resultant C.C. No.1584/MISC/2021 pending before the learned Judicial Magistrate First Class, Railway Mobile Court, Andheri, Mumbai.

2. Heard.

3. The FIR is lodged by one Truptesh Belose who is Respondent No.1 herein. He has stated that he was residing at Jogeshwari (East) with his family consisting of his wife, elder brother, brother's wife, his old mother and his nephew who is nine years old. On 9th August 2018 at about 11:30 a.m. one stone fell on the roof of their house. It was a cement roof. The the roof consisted of cement sheet. The stone fell from an under construction building where the construction was carried out by M/s. Awant Builders. Because of that stone there was a hole in the roof. The stone and pieces of roof fell inside the house which was dangerous to the mother and the Respondent's nephew who were in the house. On this basis the FIR is lodged.

4. The allegations are that the Petitioner who was the owner of building alongwith his Supervisor, Manager, Engineer and other employees were responsible for this negligent act. The safety net was torn. On this basis the FIR is lodged. The investigation was carried out and charge-sheet is filed. The spot panchanama does not show that any stone was recovered from the spot though there was mention of a hole in the roof. There are statements of the

mother of the informant and neighbours of the informant corroborating the allegations in the FIR.

5. Learned Counsel for the Petitioner submitted that, if at all, it could be a mistake on the part of the Contractor. The Petitioner cannot vicariously be held liable for the negligent act of the Contractor. He submitted that, inspite of that towards compensation to Respondent No.1 he is paying Rs. 2,00,000/- (Two Lakhs) through Demand Draft. The Respondent No.1 is present in the Court. Respondent No.1 on his part, has filed consent affidavit giving his no objection for quashing of the FIR. The Demand Draft of Rs.2,00,000/- (Two Lakhs) is handed over to the Respondent No.1 in the Court. Respondent No.1 is identified by his learned Counsel. The Respondent No.1 stated before the Court that he has no objection for quashing of the FIR. He stated that no injury was caused to any of his family member.

6. We have considered these submissions. The Respondent No.1 and his family are adequately compensated. No injury was caused to anybody. There is some force in the submissions of the learned Counsel for the Petitioner that the Contractor could be responsible

for the negligence, if any. The spot panchanama does not show that any stone was recovered from the house though there was a hole on the cement sheet roof of the Respondent No.1's house.

7. Considering the over all situation and in particular considering the consent affidavit filed by the Respondent No.1 and his consent for quashing of the FIR, we are inclined to allow this petition. Hence the following order :

ORDER

(i) The FIR No.233 of 2018 dated 12th August 2018 registered at Meghwadi Police Station and C. C. No.1584/MISC/2021 pending before the Judicial Magistrate, Railway Court at Andheri, Mumbai is hereby quashed and set aside qua the Petitioner only, subject to the Petitioner depositing costs of Rs.25,000/- (Twenty Five Thousand) with the Police Welfare Fund within a period of eight weeks from today. The details of the bank account are as follows :

Bank Name	: Axis Bank Limited
Branch Name	: Worli, Mumbai (H.H.) Mumbai-400025
Account Name	: Central Police Welfare Fund
Account No.	: 914010029005759
IFSC Code	: UTIB0000060

(ii) If such an amount is deposited as costs within a period of eight weeks from today, there shall be no further reference to the Court. If such amount is not paid and proof is not shown to the Registry, matter be placed before the Court for further consideration and in that case this order shall be liable to be set aside.

8. With these directions the Writ Petition is disposed of.

(S. M. MODAK, J.)

(SARANG V. KOTWAL, J.)

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