



Judgment

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL APPLICATION [APL] No. 1291 OF 2024.

1. Prasad s/o Anil Kukekar,
Aged about 37 years, Occupation – Private,
resident of Wad No.30, Near Uday
Printing Press, S.T. Depot Road,
Ram Nagar, Wardha 442001.

2. Manu s/o George John,
Aged about 32 Years, Occupation -
Private, resident of A-3, Adya Habitate
Sos Balgram Gaon, Khajurikala, Hujur,
Bhopal, Madhya Pradesh 462022.

3. Syamsunder s/o Bansilal Mundada,
Aged about 45 years, Occupation – Private,
resident of Flat No.401, Rushabh
Apartment, Authankar Layout, Near
Anmol Nagar, Wardha 442001.

4. Ramesh Chandra Nath,
Aged about 52 years, Occupation
Private, resident of c/o. Shri Purushottam
Balkrushna Kamble, Saraswati Nagar,
Turak Layout, Sawangi Meghe,
Wardha 442001.

5. Brijesh s/o Ramdulkar Yadav,
Aged about 42 years, Occupation Private
resident of Door No.534/535, Ward no.31,
Opposite K.E.B. Nehru Colony,

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Bellary Hospet, Karnataka.

6.Ashish s/o Pyarelal Bhat,
Aged about 32 years, Occupation
Private, resident of C/o. 89/14 A, Shanti
Vihar, Dindaar Pur South East Delhi,
Delhi 110043.

7.Pratik s/o Premmohan Bindal,
Aged ab out 32 years, Occupation
Private, resident of Kamala Colony,
Shamali, Uttar Pradesh 247776.

... APPLICANTS.

VERSUS

1.State of Maharashtra,
through Police Station Officer,
Deoli, District Wardha.

2.Santosh s/o Ashokrao Kamdi,
Aged about 38 years, Occupation –
Private, resident of Ward No.07,
Deoli, Wardha, Maharashtra.

... NON-APPLICANTS.

Mr. V.Mishra, Advocate for Applicants.
Ms M. Deshmukh, A.P.P. for Non-applicant No.1/State.
Mr. D.M. Verma, Advocate for Non-applicant No.2.

CORAM : NITIN B. SURYAWANSHI AND
PRAVIN S. PATIL, JJ.

DATE : FEBRUARY 20, 2025.

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ORAL JUDGMENT (Per N.B. Suryawanshi, J.) :

Rule. Rule is made returnable forthwith. By consent of learned Counsel present for the parties, matter is taken up for final disposal.

2. This application filed under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 seeks quashing of First Information Report No.477/2024 registered with Deoli Police Station, District Wardha for offence under Section 304 read with Section 34 of the Indian Penal Code, read with Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986 and Section 92 of the Factories Act, 1948.

3. Non-applicant No.2 lodged first information report against 8 accused wherein, applicants are arrayed as accused nos. 1 to 7. They are working in a company namely SMW Ispat Pvt. Ltd. MIDC Deoli. Their designations are as follows :Applicant No.1 is Assistant

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Manager, Applicant No.2 is Chief Marketing Officer, Applicant No.3 is the Vice President (Corporate Affairs)/Plant Manager, Applicant No.4 is the Vice President (H.R./Admn), Applicant No.5 is Plant Head, Applicant No.6 is Procurement Head and Applicant No.7 is Chief Executive Officer, in the Company. Accused no.8 is the contractor through whom the deceased was engaged in the company.

4. It is alleged in the first information report that nephew of non-applicant no.2 namely Roshan @ Hritik Kamdi, aged 17 years was working in the construction site of the Company, and while doing his duty he expired. Applicants and accused no.8 – contractor, were aware of the fact that the deceased was a minor and he had no physical capacity of doing heavy work, still accused with deliberate intention deployed the deceased on heavy work of construction of pillar and due to that heavy work, the minor expired.

5. Heard learned Counsel for applicants, learned A.P.P. for

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Non-applicant no.1 and learned Counsel for Non-applicant No.2.
Perused the documents placed on record.

6. Perusal of first information report shows that that only allegation made against applicants is that though accused were knowing that deceased was a minor, and had no physical capacity of doing heavy work, still with deliberate intention he was deployed on heavy work of construction of pillars, due to which the minor has expired. As per inquest panchnama and contents in the postmortem report, the minor expired as he fell down due to giddiness. Applicants claim that he was engaged by accused no.8 – contractor and he expired due to sunstroke. There appears substance in the said contention. This contention is also not disputed by non-applicant no.2.

7. Section 304 of the Indian Penal Code prescribes punishment for commission of offence of culpable homicide not amounting to murder. Section 299 of the Indian Penal Code defines

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culpable homicide as “*whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commit the offence of culpable homicide.*” Intention to cause death or knowledge that by such act he is likely to cause death are essential ingredients to attract Section 299 of the Indian Penal code. Therefore, *mens rea* is an essential ingredient for conviction under Section 304 of the Indian Penal Code.

8. Even if the allegations made in the first information report are taken as it is, they do not make out any ingredients of Section 299 of the Indian Penal Code against applicants. Admitted position on record is that the deceased was engaged by the Company through contractor – accused no.8. While he was engaged in the work of construction of pillar, he fell down due to giddiness and expired. In these facts applicants have not committed any act with an intention to cause death of the deceased, nor they had any knowledge that by engaging the deceased for work of construction of pillar, he is likely to

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die, therefore, none of the essential ingredients of Section 299 are made out against applicants, and no *mens rea* can be attributed to them. Therefore, Section 304 of the Indian Penal Code which is culpable homicide not amounting to murder, is not at all attracted in the facts of the present case.

9. The first information report does not contain any allegation against applicants, who are part of management of the Company, that they engaged the deceased with an intention or knowledge that engaging him in the work of construction of pillar through accused no.8 is likely to cause his death. In this view of the matter also, even if the allegations made in the first information report are accepted in their entirety, they do not attract charge under Section 304 of the Indian Penal Code against the applicants.

10. The Apex Court in case of **Shantibhai J. Vaghela and another .vrs. State of Gujarat and others – (2012) 13 SCC 231**, in paragraph nos.24 and 25 observed as under :

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“24. Section 299 IPC defines culpable homicide as causing of death by doing an act with the intention of causing of death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that by such act death is likely to be caused. Under Section 300 IPC all acts of culpable homicide amount to murder except what is specifically covered by the exceptions to the said Section 300. Section 304 of the Penal Code provides for punishment for the offence of culpable homicide not amounting to murder.

25. Commission of the offence of culpable homicide would require some positive act on the part of the accused as distinguished from silence, inaction or a mere lapse. Allegations of not carrying out a prompt search of the missing children; or delay in the lodging of formal complaint with the police and failure to take adequate measures to guard the access from the ashram to the river; which are the principal allegations made in the FIR, cannot make out a case of culpable homicide not amounting to murder punishable under Section 304 IPC. To attract the ingredients of the said offence something more positive than a mere omission, lapse or negligence on the part of the named accused will have to be present. Such statements are conspicuously absent in the FIR filed in the present case”

Case of applicants is squarely covered by the above observations.

11. In-disputedly the deceased was 17 years old at the time of his death, therefore, he does not fall within the definition of 'Child' given in Child Labour (Prohibition and Regulation) Act, 1986 therefore, Section 14 of the said Act is also not attracted to the facts of the present case.

12. Non-applicant no.2 is present in the Court and is identified by his Advocate. He has filed an affidavit stating that the matter is amicably settled and father of deceased namely Prakashrao s/o Ashokrao Kamdi has received compensation of Rs.4.50 lakhs and mother of the deceased has received an amount of Rs.4.50 lakhs, and both of them have no objection to quash the proceeding.

13. In the light of above, Criminal Application is allowed.

The First Information Report No.477/2024 registered

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with Deoli Police Station, District Wardha for offence under Section 304 read with Section 34 of the Indian Penal Code, read with Section 14 of the Child Labour (Prohibition and Regulation) Act, 1986 and Section 92 of the Factories Act, 1948 is hereby quashed and set aside to the extent of applicants namely - [1] Prasad s/o Anil Kukekar, [2]Manu s/o George John, [3]Syamsunder s/o Bansilal Mundada, [4] Ramesh Chandra Nath, [5]Brijesh s/o Ramdulkar Yadav, [6]Ashish s/o Pyarelal Bhat and [7]Pratik s/o Premmohan Bindal.

14. Rule is made absolute in the aforesaid terms.

JUDGE

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