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

+ **W.P.(CRL) 3336/2024**

OM PAL DHAMA & ANR.

.....Petitioners

Through: Mr. Sunil Kumar and Mr. Prashant
Rana, Advs.
P-1 is present in person

versus

STATE NCT OF DELHI & ORS.

.....Respondents

Through: Mr. Sanjay Lao, Standing Counsel for
State
ASI Devi Sharan, PS Farsh Bazar
R-1 and R-2 are present in person

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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31.01.2025

1. This petition has been filed under Article 226 of the Constitution of India read with Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') previously Section 482 of Code of Criminal Procedure, 1973 seeking quashing of FIR bearing No. 0177/2024 under Sections 288/304A/34 of Indian Penal Code, 1860 (IPC) registered at P.S. Farsh Bazar at the instance of Mr. Rajesh Raikwar/Respondent No. 2 ('subject FIR').

2. It is stated in the petition that the Respondent Nos. 2 and 3 were employed by the Petitioners to work at a construction site i.e. House No. 5/35 Gajju Katra, Farsh Bazar, Delhi. Apart from employing Respondent Nos. 2 and 3, the Petitioners allowed them to stay/live at the site along with their family. On 27.03.2024 when the R.C.C slab was being laid down to



make the roof, suddenly the support system which was erected to lay R.C.C slab collapsed and unfortunately the seven (7) years old son of Respondent Nos. 2 and 3 lost his life by getting buried under the debris; and consequently, the subject FIR was registered.

3. The learned counsel for the Petitioners submits that the victim's death was purely accidental and that there was no foul play on the part of the Petitioners. He states that the Petitioners provided all necessary assistance to Respondents No. 2 and 3 at the relevant time. In fact, the child was rushed to the hospital, where he was declared brought dead.

4. The present petition is filed on the ground that the death was caused by accident and the matter has been amicably settled between the parties by way of Memorandum of Understanding dated 30.09.2024, executed between the parties on their own free will, without any pressure, inducement, coercion, compulsion or fraud.

5. The proceedings today have been taken up in continuation of the order dated 24.01.2025, wherein this Court was not satisfied with the amount of compensation offered by the Petitioners for the said accidental death. With the assistance of Mr. Laksh Khanna, Advocate this Court directed the Petitioners to enhance the compensation amount to Rs. 3,75,000/- in accordance with the judgment of the Coordinate Bench in **Chetan Malhotra v. Lala Ram**¹. Further, the Court directed the Petitioners to assist Respondents No. 2 and 3 in opening their bank accounts.

6. Learned counsel for the Petitioners states that Petitioners in compliance of order dated 24.01.2025 had assisted Respondent nos. 2 and 3 in opening of a savings bank account with Bank of Baroda having Branch

¹ 2016 SCC OnLine Del 2981



MSME, Timber Market, Loni Road, Delhi.

7. He states that a sum of Rs. 1,75,000 each has been credited in the respective accounts of Respondent nos. 2 and 3. He states that apart from the aforesaid amount, Rs. 20,000/- has been paid in cash as recorded in the order dated 24.01.2025 and the balance amount of Rs. 5,000/- will be paid today in the presence of Investigation Officer ('IO').

8. Mr. Sanjay Lao, learned standing counsel, on instructions from the Investigating Officer (IO), states that the preliminary investigation confirms that the unfortunate incident on 27.03.2024 was purely accidental and that no foul play on the part of the Petitioners was found.

8.1 He further states that the IO has verified the opening of the two bank accounts with Bank of Baroda and the crediting of the aforesaid amount of Rs. 3,50,000/-. Additionally, a sum of Rs. 20,000/- has been paid in cash to Respondents No. 2 and 3, as recorded in the order dated 24.01.2025.

9. This Court has heard the learned counsel for the parties, interacted with Respondent nos. 2 and 3 and perused the record.

10. This Court has interacted with Respondents nos. 2 and 3, who are present in person and identified by the I.O. They have confirmed that they would like to close this matter. They state that they reside in their village in the State of Madhya Pradesh and had shifted back there after the incident. They also confirm having received the aforesaid amount of Rs. 3,70,000/- and executing the settlement dated 30.09.2024. They submit that they are satisfied with the compensation amount and confirm the version of the Petitioners with respect to the events as they transpired on the fateful day i.e. 27.03.2024. They confirm that they have filed their affidavits recording their no objection in support of this petition.



11. At the outset this Court notes that offences under Sections 288/304A of the IPC are non-compoundable. However, it is well settled that the High Court while exercising its powers under Section 528 of the BNSS, *erstwhile* Section 482 CrPC can compound offences which are non-compoundable on the ground that there is a compromise between the accused and the complainant. The Hon'ble Supreme 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 & Anr²**, 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.

² (2014) 6 SCC 466



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 statute like 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)

12. Similarly, in the case of **Parbatbhai Aahir & Ors. v. State of Gujarat & Anr.**³, 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

³ (2017) 9 SCC 641



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.

(emphasis supplied)

13. The present case relates to the offences under Sections 288/304A of the IPC where the Respondent nos. 2 and 3's child has died due to alleged negligence of the Petitioners at the construction site where both Respondent nos. 2 and 3 were working. Thus, while deciding whether proceedings relating to such an offence can be quashed on the basis of the settlement between the accused and parents 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.

14. The Hon'ble Supreme Court, in the case of **Jacob Mathew v. State of Punjab**⁴, while interpreting as to what constitutes a negligent act so as to constitute an offence under Section 304A of IPC held that gross negligence and an element of mens rea must be shown to exist. The Hon'ble Supreme 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.

⁴ (2005) 6 SCC 1



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”...”

(emphasis supplied)

15. From a bare perusal of FIR, it appears to be a case of accidental death. The victim and his family were permitted by the Petitioners to reside at the construction site and at the time when the parents of the victims were working at the site, the child was playing near the site where the R.C.C slab was being laid without any guardian and unfortunately the support system which was erected to lay R.C.C slab collapsed leading to the child being buried under the debris leaving to his unfortunate death. The learned standing counsel has also confirmed that there is no foul play suspected on part of Petitioners and the preliminary investigation indicates it was an accident. It is not alleged by the prosecution that there is any report of similar incidents occurring at the construction site of Petitioners and this also is indicative of the fact that the incident of 27.03.2024 was an isolated event. Considering the peculiar facts of this case and considering that the parents of the victim have already been compensated, it is unlikely that the Petitioners would be convicted for the offences under Sections 288 /304A of the IPC.

16. Keeping in view the aforesaid discussion, this Court feels that 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. Accordingly, this Court of the opinion that this is a fit case to exercise discretionary jurisdiction under Section 528 of the BNSS.

17. In view of the above, FIR bearing No. 0177/2024 under Sections 288/304A/ 34 of Indian Penal Code, 1860 registered at P.S. Farsh Bazar and proceedings emanating therefrom are quashed.

18. The Petitioner shall pay the balance payment of Rs. 5,000/- to Respondent nos. 2 and 3 during the course of the day in the presence of the I.O. The proof of payment of Rs. 5000/- shall be furnished to the I.O. The copy of the passbooks shall be placed on record by the I.O.

19. Parties shall abide by the terms of settlement.

20. Pending application is disposed of as infructuous.

21. Before parting, this Court would like to record its appreciation for the assistance rendered by Mr. Laksh Khanna, Advocate as an officer of the Court on 24.01.2025 in adjudicating the petition and safeguarding the rights of Respondent nos. 2 and 3.

22. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

JANUARY 31, 2025/hp/AKT

[Click here to check corrigendum, if any](#)