



2025:DHC:1251



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

Date of decision: 20.02.2025

+ **W.P.(CRL) 3400/2024 & CRL.M.A. 32719/2024**

SUDESH KUMAR

.....Petitioner

Through: Mr. Viraj R. Datar, Senior Advocate
with Mr. Ankit Rana, Mr. Tushar
Rohmetra and Mr. Srikant Singh,
Advocates

versus

THE STATE GOVT. OF NCT OF DELHI AND ORS.

.....Respondents

Through: Mr. Yasir Rauf Ansari, ASC

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. The present petition has been filed under Article 226 of the Constitution of India read with section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS') seeking quashing of FIR No. 0612/2024 dated 07.10.2024 registered at P.S. Alipur, Delhi for offences under Section 106(1) of the Bharatiya Nyaya Sanhita, 2023 on basis of the Compromise Deed dated 19.10.2024 executed between the Petitioner, and Respondent Nos. 2 and 3.

2. It is stated in the petition that the petitioner was awarded the tender of the construction work for the construction of RCC drain from Village Jindpur (GT Road) to village Mukhmelpur (Drain No. 86) Distt North vide

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agreement No. EE/CD-VI/ACS- 17/2023-24/1568 dated 15.06.2023. It is stated that on 07.10.2024 unfortunately a five years old boy namely Rahul, fell into the sewer near MCD School Jindpur and lost his life, pursuant to which the subject FIR was registered against the Petitioner.

3. Learned senior Counsel for the Petitioner states that the victim's death was purely accidental and that there was no foul play on the part of the Petitioner.

3.1 He states that the unfortunate incident took place on the footpath side which goes from Alipur to Jindpur. He states that the said footpath side of the drain had already been completed as per CPWD specification; and the drain was properly covered at the points of opening pit of drain area by placing 100MM thick factory made pre cast RCC rectangular covers on drain of 400.00 Sqm. He states that after the due inspection by the Assistant Engineer, CPWD the Petitioner had also been released the part payment of the project. He states that the said drain was being used by the general public and Municipal Corporation of Delhi was solely liable to clean the said drain. He states that there was no negligence on the part of the Petitioner.

3.2 He however, states that Petitioner on humanitarian grounds has agreed to enter into a compromise with the family of the victim. He states that in pursuance thereof, the Petitioner has entered into a Compromise Deed dated 19.10.2024 with the parents of the victim child i.e. Respondent nos. 2 and 3 and in pursuance thereof the present petition has been filed for the quashing of the subject FIR.

3.3 He states that as recorded in the order dated 30.01.2025 the Petitioner in deference to the observations made by the predecessor Bench and in accordance with the judgment of the Coordinate Bench in **Chetan Malhotra**



vs. Lala Ram¹ has agreed to pay an enhanced compensation of a total amount of Rs. 5 lakhs to Respondent Nos. 2 and 3. He states that this Court had directed the Petitioner to assist Respondents No. 2 and 3 in opening a zero-balance account with a nationalized bank and/or post office so that the compensation amount can be transferred directly to said bank accounts.

3.4 He states that however despite the best endeavour made by the Petitioner in compliance of order dated 30.01.2025, he could not assist Respondent Nos. 2 and 3 in opening their bank accounts as the mandatory documents required for opening an account are not available with Respondent Nos. 2 and 3.

3.5 He states that a sum of Rs. 4 lakhs in cash have already been paid over to Respondent No. 3 as Respondent no. 2 has been taken ill. He states that the Petitioner be permitted to pay the remaining amount of Rs. 1 lakh in cash to Respondent No.3.

4. In addition, learned counsel for Respondent Nos. 2 and 3 states that he confirms that Respondent Nos. 2 and 3 prefer to receive the entire amount in cash. He confirms that Rs. 4 lakhs have already been received in cash. He confirms that Respondent no. 2 and Respondent no. 3 do not have the bank accounts.

5. The Investigating Officer ('IO') has identified Respondent no. 3. He states that Respondent no. 2 and Respondent no. 3 were found present at the spot on the date of the incident and it is on this basis that he can identify them.

6. This Court has interacted in vernacular with Respondent No. 3, who is present in Court accompanied with her brother Shiv Shankar. She as well

¹ 2016 SCC OnLine Del 2981



confirms the submissions of the counsels for the Petitioner as well as Respondent Nos. 2 and 3 to the effect that she has amicably settle the matter, received Rs. 4 lakhs and does not own a bank account.

7. This Court has considered the submissions of the parties.

8. At the outset this Court notes that offences under Sections 106 of the BNS (erstwhile Section 304-A IPC) is 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 in peculiar facts of the case. The 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 **Parbatbhai Aahir & Ors. v. State of Gujarat & Anr.**², 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 the court is

² (2017) 9 SCC 641



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)

9. The present case relates to the offences under Section 106 BNS erstwhile Section 304A IPC where the Respondent nos. 2 and 3's child has died due to alleged negligence of the Petitioner. 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.

10. The Supreme Court, in the case of **Jacob Mathew v. State of Punjab**³, 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 Apex Court observed as under:

“48. We sum up our conclusions as under: ...(5) The jurisprudential concept of negligence differs in civil and criminal

³ (2005) 6 SCC 1



law. What may be negligence in civil law may not necessarily be negligence in criminal law. **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)

11. The FIR records that the victim fell into the sewer near MCD School Jindpur and lost his life however, a perusal of the record reveals that it was the drain in which the victim fell and lost his life. The Petitioner has contended that he had already completed execution of the work and handed over the site to MCD; and was, therefore, not responsible for maintaining the drain. The prosecution has not disputed this submission of the Petitioner.

12. It is also not alleged by the prosecution that there is any other report of similar incidents occurring at the site of the Petitioner or any foul play on the part of the Petitioner. These facts are indicative of the fact that the incident of 07.10.2024 was an isolated event. The parents of the victim have also not alleged any negligence or foul play against the Petitioner. The parents of the victim have accepted the compensation amount.

13. In the facts noted above the chances of Petitioner being convicted for the offences under 106 BNS appears to be bleak. Thus, keeping in view the aforesaid discussion, this Court feels that no useful purpose would be served



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by keeping the dispute alive and continuance of the proceedings would lead to unnecessary cost to the public exchequer and, therefore, it would be in the interest of justice if the prayer for quashing is allowed. Accordingly, this Court of the opinion that this is a fit case to exercise discretionary jurisdiction under Section 528 of the BNSS.

14. In view of the above, petition is disposed of directing that the FIR. No. 0612/2024 dated 07.10.2024 P.S. Alipur for offences under Sections 106(1) BNS and proceedings emanating therefrom are hereby quashed.

15. The Petitioner is directed to pay the balance payment of Rs. 1,00,000/- in cash 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. 1,00,000/- shall be furnished to the I.O.

16. Parties shall abide by the terms of settlement.

17. Pending application is disposed of as infructuous.

18. 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
(JUDGE)

FEBRUARY 20, 2025/hp/MG/AKT

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

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Signed By:HEMANT PRATAP
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