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

+ CRL.REV.P. 422/2015 & CRL.M.A. 9829/2015

STATE (GOVT OF NCT OF DELHI)

.....Petitioner

Through: Ms. Shubhi Gupta, APP for the State.
SI Pankaj Kasani, P.S. Anand Vihar.

versus

GOPAL RAVINDRAN PILLAI

.....Respondent

Through: Saurabh Bhargavan, Mr. Nikhil S
Nair, Ms Chinju Saurabh, Mr.
Manveer Titus and Mr. Satvik K
Harita, Advs. (through VC).

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **22.04.2025**

1. This hearing has been done through hybrid mode.
2. The present petition under Section 397 read with Section 401 of the Cr.P.C. has been filed seeking the following prayers: -

“a) That this Hon'ble Court be pleased to set aside the order dated 21.4.2014 passed by Shri Pulastya Pramachala, ASJ, Karkardooma Courts qua Respondent Gopal Ravindran Pillai in a case titled as Gopal Ravindran Pillai Vs State in case FIR No. 370/2010 u/s 288/304A IPC PS. Anand Vihar and/or

b) That this Hon'ble be pleased to pass such other or further orders as it may deem fit and proper in the facts and circumstances of this appeal and in the interest of justice.”

3. The case of the prosecution is that on 14.08.2010, a PCR call was received regarding an accident involving the deceased person, namely, Shailender Kumar, who was working as a plumber with M/s. D.S. Gupta Construction Pvt. Ltd. on the 5th floor of Taj Hotel being constructed near



Cross River Mall, Delhi. At the time of the incident, other persons were also fitting pipes in the said building for the purposes of air-conditioning on the 7th floor during which a pipe of the air conditioner fell on the deceased person from the 7th floor and hit his head due to which he received serious injuries and, thereafter, he was taken to Deepak Memorial Hospital. Upon receiving the information regarding the accident, Head Constable Narender along with Head Constable Jitender reached the aforesaid Hospital and obtained the MLC No. 902/10 of the deceased. Thereafter, Head Constable Narender reached the Taj Hotel which was found to be under construction and no eye-witnesses were found at the site and neither any information was received in respect of the injuries suffered by the deceased person. Based on the said information, Head Constable Narender registered the case FIR under Sections 288/337 of the IPC and, subsequently, investigation was conducted in the present case. On 23.08.2010, the deceased passed away due to the injuries which had resulted in cerebral damage and spinal shock. A site plan of the spot was prepared and statements of witnesses were recorded.

4. During the investigation, it was revealed that installation work for air-conditioning pipes was assigned to M/s Voltas Ltd. who had further sub-contracted the work to one M/s Super Tech Engineers. Then, the Investigating Officer had issued a notice under Sections 160 of the Cr.P.C. to M/s Supertech Engineers, and another notice under Section 91 of the Cr.P.C. was issued for production of documents, upon which it was revealed that M/s Supertech Engineers had further assigned their work of fitting air-conditioner pipes to a contractor, namely, Sageer Ahmad.

5. After the investigation was complete, the said accused person- Sageer Ahmad was chargesheeted for the offences punishable under Sections



288/304A of the IPC. Upon further investigation, a supplementary chargesheet was filed by the Investigating Officer wherein, the present respondent, who was the proprietor of M/s Supertech Engineers, was also arrayed as an accused person.

6. On 03.09.2014, the matter was fixed for consideration on the point of charge wherein, the learned ACMM proceeded to frame charges against the co-accused Sageer Ahmad and the respondent for the offences punishable under Sections 288/304-A of the IPC.

7. Aggrieved by the said order, a Criminal Revision Petition No. 135/2014 was filed by the respondent before the learned ASJ, Shahdara, Karkardooma Courts. The learned ASJ while allowing the revision petition proceeded to discharge the respondent for the offences under Sections 288 and 304A of the IPC, and directed the learned Trial Court to proceed with framing of notice for the offence under Section 304A of the IPC against the co-accused Sageer Ahmad. Hence, the present revision petition has been filed by the State.

8. Learned counsel appearing on behalf of the respondent submits that the latter was the proprietor of M/s Supertech Engineers, and the electrical and air-conditioning work was subcontracted to the said firm by M/s. Voltas Ltd. Thereafter, the respondent had further subcontracted the air conditioning work to co-accused Sageer Ahmad. It is submitted that the deceased Shailender Kumar was not working under him but was employed by M/s D.S. Gupta Constructions Pvt. Ltd. who were incharge of plumbing work at the said construction site. It is also pointed out that neither the respondent was supervising the work on the date of the accident, nor was he directly involved in the accident, and it was M/s D.S. Gupta Constructions Pvt. Ltd. who were responsible for providing necessary safety equipment and measures to the



workers employed by them. It is his further submission that the learned ASJ has rightly concluded that the deceased was not employed by the respondent and discharged the respondent for the offences under Sections 288 and 304-A of the IPC. It has been further pointed out by learned counsel for the respondent that the co-accused Sageer Ahmad has since been acquitted for the offence punishable under Section 304A of the IPC by the learned Trial Court *vide* judgment dated 19.09.2024. In the said judgement, it has been recorded that there was no negligence on the part of Sageer Ahmad in fixation of the air conditioning pipe which had caused fatal injuries to the deceased.

9. Heard learned counsel for the parties and perused the records.

10. Learned ASJ *vide* the impugned order in the revision petition while discharging the present respondent for the offences punishable under Sections 288/304A of the IPC had passed the following order: -

“8. First of all, I shall deal with the charges under Section 288 IPC. Section 288 IPC reads as under :-

“Negligent conduct with respect to pulling down or repairing buildings - Whoever, in pulling down or repairing any building, ner with the building a suite neto such against any probable danger to human life from the fall of that building, or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

9. The language used in this section makes it amply clear that this provision is limited to the acts of pulling down or repairing any building. As per facts of the present case, a new building was being constructed and it is not a case of pulling down or repair of a building. Therefore, on the face of facts pleaded by the prosecution, ingredients of Section 288 IPC are not satisfied Hence, 1 do find that the trial court over-looked this aspect, while ordering for framing of notice



under Section 288 IPC. In fact this charge cannot be framed against any of the accused persons.

10. Now coming to the question of liability of the revisionist for offence under Section 304-A IPC, from the materials produced by the prosecution, I find that the work of air-conditioning was assigned by the revisionist to co-accused Sageer Ahmed. Though, the revisionist was assigned this job by the Principal Contractor i.e. M/s Voltas, however, for the purpose of fastening criminal liability, the Court has to see that who was directly responsible for the accident, which resulted into the death of the deceased. A person cannot be vicariously held liable for offence under Section 304-A IPC. As per contract between revisionist and co-accused Sageer Ahmed, the job of installation of pipes was entrusted to Sageer Ahmed. In that situation, if any of the pipe was not properly fixed at the site, then the revisionist cannot be held responsible for the same. It was to be ensured by the person working at the site that pipes were properly fitted. Therefore, the revisionist cannot be held responsible for falling of the pipe on the head of the deceased.

11. The other question is that whether it was duty of the revisionist to provide safety tools to the deceased. Once again, the answer has to be 'no', for simple reasons that the deceased was not working for revisionist. Deceased was working for a different firm i.e. M/s D.S. Gupta Constructions and therefore, there was no relationship between the revisionist and the deceased. Furthermore, the incident took place, due to falling of an iron pipe, which was the reason for causing fatal injuries to the deceased. Therefore, the safety norms are to be seen in respect of installation of the pipe. Such norms were to be followed by the contractor, who was actually working at the site. In these circumstances, the revisionist cannot be held responsible for the mis-happening at the site, under criminal law.

12. In view of my forgoing discussions, I do find that the impugned order suffers from illegality in respect of framing of charge U/s 288 IPC against both the accused persons, as well as in respect of framing of charge against the revisionist for offence U/s 304-A IPC. Hence, the impugned order is partially set aside and the revisionist Gopal Ravindran Pillai is discharged for offences U/s 288 IPC and 304-A IPC. Even co-accused (who is not petitioner before this Court), is discharged for offence U/s 288 IPC. The trial court shall frame notice U/s 304-A IPC only, against co-accused Sageer Ahmed and shall proceed further with the trial in accordance with law.

13. The revision petition is accordingly allowed. Trial court record



along with copy of this order be sent back to the trial court.”

11. As per the case of the prosecution, the present incident had occurred where a new building was constructed and the present is not a case where repair or pulling down of any building was going on. The deceased was not directly working for the present respondent. He was employed by a different firm, *i.e.*, M/s D.S. Gupta Constructions, who was looking after the work of plumbing at the construction site and the responsibility of providing safety measures to the deceased was not on the present respondent. It has also come on record that the other co-accused, Sageer Ahmed, against whom similar charges were levelled has been acquitted by the learned Trial Court in the present FIR.

12. This Court in **Sunil Malhotra & Anr. v. The State NCT of Delhi & Anr., 2023:DHC:8374**, had recorded as under: -

"12. Section 304A of the IPC finds mention in Chapter XVI of the IPC under the heading '*of offences affecting the human body*'. The provision provides for a situation where death of a person has been caused by an act that is 'rash' or 'negligent'. It is in the nature of an exception to 'culpable homicide' as defined in Section 299 of the IPC. Therefore, the issue is what constitutes culpable rashness or negligence?

12.1. Culpable rashness is doing or omitting to do something, with the knowledge or consciousness that such wanton act or omission can lead to illegal consequences. Culpability, in a case of rashness, lies in acting with consciousness and doing so with indifference as to the consequences of such act.

12.2. Culpable negligence, on the other hand, constitutes a breach of duty to do something which an ordinary reasonable man, in those circumstances would have done. Criminality in case of negligence arises when there is no consciousness as to the consequences which may follow but circumstances are such that shows it was incumbent upon the actor to



take certain precautions. It is further settled law that for a negligent act to give rise to a criminal liability, the negligence ought to be ‘gross’, which is a standard to be decided on the basis of facts and circumstances of each case.

12.3. In Rathnashalvan v. State of Karnataka, (2007) 3 SCC 474, the Hon’ble Supreme Court held as under:

“7. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304-A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused’s conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

8. As noted above, “rashness” consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted.”



12.4. In Syed Akbar v. State of Karnataka, (1980) 1 SCC 30, the Hon'ble Supreme Court held as under:

“28. In our opinion, for reasons that follow, the first line of approach which tends to give the maxim a larger effect than that of a merely permissive inference, by laying down that the application of the maxim shifts or casts, even in the first instance, the burden on the defendant who in order to exculpate himself must rebut the presumption of negligence against him, cannot, as such, be invoked in the trial of criminal cases where the accused stands charged for causing injury or death by negligent or rash act. The primary reasons for non-application of this abstract doctrine of *res ipsa loquitur* to criminal trials are: Firstly, in a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused always rests on the prosecution, as every man is presumed to be innocent until the contrary is proved, and criminality is never to be presumed subject to statutory exception. No such statutory exception has been made by requiring the drawing of a mandatory presumption of negligence against the accused where the accident “tells its own story” of negligence of somebody. Secondly, there is a marked difference as to the effect of evidence viz. the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. As pointed out by Lord Atkin in *Andrews v. Director of Public Prosecutions* [(1937) 2 All ER 552 : 1937 AC 576] , “simple lack of care such as will constitute civil liability, is not enough”; for liability under the criminal law “a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied ‘reckless’ most nearly covers the case”.

29. However, shorn of its doctrinaire features, understood in the broad, general sense, as by the other line of decisions, only as a



convenient ratiocinative aid in assessment of evidence, in drawing permissive inferences under Section 114 of the Evidence Act, from the circumstances of the particular case, including the constituent circumstances of the accident, established in evidence, with a view to come to a conclusion at the time of judgment, whether or not, in favour of the alleged negligence (among other ingredients of the offence with which the accused stands charged), such a high degree of probability, as distinguished from a mere possibility has been established which will convince reasonable men with regard to the existence of that fact beyond reasonable doubt. Such harnessing, functional use of the maxim will not conflict with the provisions and the principles of the Evidence Act relating to the burden of proof and other cognate matters peculiar to criminal jurisprudence.

30. Such simplified and pragmatic application of the notion of *res ipsa loquitur*, as a part of the general mode of inferring a fact in issue from another circumstantial fact, is subject to all the principles, the satisfaction of which is essential before an accused can be convicted on the basis of circumstantial evidence alone. These are: Firstly, all the circumstances, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. Secondly, those circumstances must be of a determinative tendency pointing unerringly towards the guilt of the accused. Thirdly, the circumstances shown make a chain so complete that they cannot reasonably raise any other hypothesis save that of the accused's guilt. That is to say, they should be incompatible with his innocence, and inferentially exclude all reasonable doubt about his guilt."

13. In view of above, to bring the present case within the definition of 'gross negligence' there must be wanton disregard to the consequences of an act or omission on part of the respondent which resulted in the accident. In the present case, the respondent was being prosecuted on account of the fact that he was proprietor of M/s Supertech Engineers. It has also come on record that the said proprietorship firm was assigned/subcontracted the work of the



installation of air conditioners at the under construction building by M/s Voltas Ltd. As per the case of the prosecution, the respondent had further assigned the said work of fitting air-conditioner pipes to a contractor, namely, Sageer Ahmad. The deceased was not under direct employment of the present respondent and the present incident was accidental in nature.

14. The Hon'ble Supreme Court in **Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4**, had observed and held as under:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) **That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.**

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. **By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.**

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

(emphasis supplied)



15. The Hon'ble Supreme Court in **Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368**, while analysing the role of a Court at the stage of framing of charge, has observed and held as under: -

“Exercise of jurisdiction under Sections 227 and 228 Cr.P.C.

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

- (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
- (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
- (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
- (iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
- (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
- (vi) **At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.** For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the



broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

(emphasis supplied)

In view of the aforesaid facts and circumstances of the present case and the law laid down by the Hon’ble Supreme Court, this Court finds that the impugned order does not suffer from any legal infirmity or perversity and thus, no grounds for interference with the impugned order are made out.

16. The present petition is dismissed and disposed of accordingly along with all pending applications, if any.

17. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

18. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

APRIL 22, 2025/nk/sc

Click here to check corrigendum, if any