HC-KAR

NC: 2026:KHC:59930
CRL.RP No. 280 of 2024

CNR: KAHC010099592024

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF OCTOBER, 2026

BEFORE

THE HON'BLE MRS. JUSTICE GEETHA K.B.

CRIMINAL REVISION PETITION NO. 280 OF 2024

BETWEEN:

SRI. RAMESH KUMAR P.S @ RAMESH BABU
S/O LATE SHANKAR ROY
AGED ABOUT 68 YEARS
R/A NO.3218, 2ND CROSS
ACHAR STREET, DODDABALLAPURA TOWN
BENGALURU RURAL DISTRICT - 561 203.

...PETITIONER

(BY SRI. KALYAN R, ADVOCATE)

AND:

1. THE STATE BY KOLAR TOWN POLICE
KOLAR SUB DIVISION,
KOLAR - 563 101.

2. SHRI. ANISH KUMAR
S/O VIJAY PILLAI
AGED ABOUT 25 YEARS
R/AT KAVOOR, PANJI
MOARU POST, MANGALORE TALUK,
DAKSHINA KANNADA,
KARNATAKA - 575 001.

...RESPONDENTS

(BY SRI. VINAY MAHADEVAIAH, HCGP FOR R1;
SMT. HALEEMA AMEEN, ADVOCATE FOR
SRI. ASHOK KUMAR SHETTY K, ADVOCATE FOR R2)

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THIS CRL.RP IS FILED U/S. 397 R/W 401 OF CR.P.C PRAYING TO SET ASIDE THE IMPUGNED ORDER DATED 22.08.2023 ON APPLICATION FILED U/S 239 OF THE CR.P.C. IN C.C.NO.905/2022 PASSED BY THE PRINCIPAL SENIOR CIVIL JUDGE AND CJM, AT KOLAR AS PER ANNEXURE-A TO THE PETITION AND CONSEQUENTLY TO ALLOW THE APPLICATION U/S 239 OF THE CR.P.C. AND TO DISCHARGE THE ACCUSED.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MRS. JUSTICE GEETHA K.B.

ORAL ORDER

This is the revision petition filed under Section 397 and 401 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) challenging the order of dismissal of the application dated 22.08.2023 filed under Section 239 of Cr.P.C in CC No.905/2022 on the file of Prl. Senior Civil Judge and CJM, Kolar and to allow the application and to discharge the accused.

2. The case of prosecution in nutshell is that there was a written agreement between CW.11 and the accused No.1 to paint Ganesha Healthcare Hospital building belonging to CW.11 situated at Gowripete, Kolar and accordingly accused No.1 and accused No.2 have brought

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deceased Vinod Kumar, CW.2 and CW.3 from Mangaluru and were getting painting work being done by them from 16.02.2022 onwards; On 23.02.2022 in morning hours, when the deceased Vinod Kumar was painting in the third floor of the building, he slipped, fall down and sustained grievous injuries on backside of the head, and provided treatment at Ganesha Healthcare Hospital, at R.L. Jalappa Hospital, at Victoria Hospital, but he succumbed to those injuries at 08:45 p.m. on the same day. The aforesaid incident had taken place because the accused Nos. 1 and 2 have not provided the proper safety measures like helmet, belt, safety jacket and thread to the deceased and thereby committed the aforesaid offence.

3. Heard arguments of both sides.

4. The learned counsel for the revision petitioner Sri Kalyan R would submit that the accused Nos.1 and 2 were similarly placed before the trial Court. There are similar allegations against accused Nos.1 and 2. The accused No.2 is discharged by the trial Court and on the

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same analogy, accused No.1 also to be discharged. There is no allegation in the charge-sheet, complaint or annexures to the charge-sheet that accused No.1 has not provided the safety measures.

5. The learned counsel for the revision petitioner would further submit that in the order passed on behalf of accused No.2, there is an observation by the trial Court that the statements of witnesses is nothing but hearsay evidence, which applies even to accused No.1. There is no proximity and immediate cause of death between the accused No.1 and the deceased. There is no negligent act alleged against accused No.1 in the complaint. In this regard, he places reliance on the judgments of Co-ordinate Benches of this Court in ***Deepak Kumar and Anr. vs. the State and Anr[1],*** *and* ***Vishwas V vs. State of Karnataka and Anr[2].*** Hence, prayed for allowing the revision petition.

[1] Crl.P.No.3721/2021 decided on 05.04.2022

[2] W.P.No.5609/2022 decided on 01.06.2022

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6. The learned HCGP supports the order passed against accused No.1. There is clear obligation on the part of accused No.1 in providing safety measures which were not provided as per the statements of the witnesses. Thus, there is *prima facie* material against accused No.1 to frame charge for the offence under Section 304-A IPC. Hence, prayed for dismissal of the revision petition.

7. The learned counsel for respondent No.2 Smt. Haleema Ameen would submit that there are *prima facie* materials before the trial Court to take cognizance against the accused. The arguments canvassed by the learned counsel for revision petitioner could be considered only after full fledged trial. Hence, prayed for dismissal of the revision petition.

8. The learned counsel for respondent No.2 would further submit that the citations relied by learned counsel for revision petitioner are not applicable to the facts of the present case.

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9. Having heard arguments of both sides, verifying the revision petition papers and trial Court records, the point that arises for consideration is:

> "*Whether there is erroneous finding of the trial court in dismissing the discharge application on behalf of accused No.1 when the said Court has allowed the discharge application on behalf of accused No.2?*"

10. Finding is in ***'Negative'*** for the following:

REASONS

11. While deciding the application under Section 239 Cr.P.C., the Court has to look into only the prosecution papers i.e., the charge-sheet and its annexures and not the defence that might have been taken by the accused at the time of trial.

12. The revisional jurisdiction of this Court is very limited. In this regard, this Court places reliance on the Judgment of the Hon'ble Apex Court in the case of ***Kuntegowda v/s Thurubaiah in Criminal Appeal***

No.3654/2026, (Arising out of Special Leave Petition (Criminal) No.2247 of 2024 dated 04.08.2026 reported in ***2026 SCC OnLine SC 1485***. In the aforesaid judgment, the Hon'ble Apex Court at paragraph No.7.3 has discussed the revisional jurisdiction of this Court, which reads as follows:

> *"7.3. The contours for exercise of revisional jurisdiction has been well settled by the judicial dicta of this Court wherein time and again it has been observed that the High Court shall not interfere with the orders of the lower Court unless:*
>
> *i. The order or finding of the lower Court is perverse, grossly erroneous, glaringly unreasonable or wholly unreliable or untenable in law.*
>
> *ii. The lower Court has passed the impugned order after considering an immaterial or irrelevant material or no material at all.*
>
> iii. *There is a non-consideration of any relevant material or the judicial discretion has been exercised arbitrarily or capriciously."*

13. With this background, the facts alleged in the present case are to be examined.

14. In the charge-sheet, it is alleged that accused No.1 is the contractor who has taken contract from CW.11 to paint the building belongs to CW.11. In that context, accused No.2 has provided labourers to accused No.1. The deceased was one of the labourers provided by accused No.2. According to the case of prosecution, on 23.02.2022 in the morning, when the deceased was painting on third floor of the hospital, he slipped and fell on the ground, because of that he sustained grievous injury on back side of his head; immediately he was taken to Ganesh Health Care Hospital and provided first aid treatment and then took to R.L. Jalapa Hospital and as per the advice of the doctor, he was shifted to Victoria Hospital, Bengaluru wherein the doctor declared that he was dead at 08:45 p.m. It is alleged that accused No.1 being the mestri of painting have not provided safety measures like helmet, belt, safety jacket and thread and because of their negligence, this act has committed.

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15. The alleged offence against accused No.1 is punishable under Section 304-A IPC.

16. Section 304-A of the IPC reads as follows:

> *"304A. Causing death by negligence.- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*

17. Thus, according to this Section, when the death of any person is caused due to rash or negligent act not amounting to culpable homicide, then the offence under Section 304A would be attracted. Thus, *prima-facie,* two factors are essential; firstly, there shall be death of a person, secondly, the death was due to rash or negligent act of the accused.

18. There shall be direct proximate relationship between the negligent act of the accused and the death of the deceased. In this regard, in the judgment of Co-ordinate Bench in ***Deepak Kumar's*** case cited supra in

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paragraph No.11, the judgments of Hon'ble Apex Court were discussed in length and it is held that:

> " .....*we are however of opinion that this view of the Magistrate is not correct. The mere fact that the appellant allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it might be a negligent act, would not be enough to make the appellant responsible for the fire which broke out. The cause of fire was not merely the presence of burners in the room in which varnish and turpentine were stored, though this circumstance was indirectly responsible for the fire which broke out. But what Section 304-A requires is causing of death by doing any rash or negligent act, and this means that death must be the direct or proximate result of the rash and negligent act.*
>
> *…….*
>
> *Therefore, the mere fact that the fire would not have taken place if the appellant had not allowed burners to be put in the same room in which turpentine and varnish were stored, would not be enough to make him liable under Section 304-A, for the fire would not have taken place, with the result that seven persons were burnt to death, without the negligence of Hatim. The death in this case was therefore in our opinion not directly the result of a rash or negligent act on the part of the appellant and was not the proximate and efficient cause without the intervention of another's negligence.*

The appellant must therefore be acquitted of the offence under Section 304-A."

19. Further, in another judgment of Co-ordinate Bench of this Court in ***Vishwas case*** cited supra in paragraph No.11, the judgment of Hon'ble Apex Court in ***Ambalal D.Bhatt V. State of Gujarat***[3] was discussed in length and further held as follows:

"……. The Apex Court clearly holds that cause of death should be a direct consequence of the act of the accused and that should be an act either rash or negligent and proximate to the cause of such death. By no stretch of imagination the petitioner can be hauled into the proceedings for offences punishable under Section 304A of the IPC in the light of the fact that he was in any way neither responsible for construction nor was he present at the place of construction nor even had any proximity to the act which was either rash or negligent……."

20. Thus, there shall be proximity between the death and the negligent act of the accused in causing the death of deceased.

[3] (1972) 3 SCC 525

21. In the present case, there is no dispute that Vinod Kumar died in the incident. Hence, the first ingredient of Section 304-A IPC exists. The second ingredient of this Section is there shall be rash or negligent act of the accused in causing the death.

22. In the present case, rashness is not at all alleged against the accused No.1; only the negligence is alleged against accused No.1. The facts alleged in the charge-sheet *prima facie* reveal that the accused No.1 has taken contract from CW.11 to paint the building of CW.11 and while painting the third floor, deceased fall on the ground which resulted in his death. There is specific allegation of negligence on the part of accused No.1 in not providing safety measures to the labourers while getting painting work from them.

23. In the statements of eyewitnesses i.e., CWs.2 and 3, it is stated that accused No.2 has brought the deceased from Mangaluru to Kolar for work under accused No.1 and the safety measures were not provided by the

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painting mestri which results in the death of deceased Vinod Kumar. There is specific averment in their statements that accused No.2 has brought the deceased to accused No.1.

24. While discharging accused No.2, the trial Court made an observation that the statements of witnesses were hearsay. However, it is to be noted here that CWs.2 and 3 were not hearsay witnesses but they were present at the time of incident as per their statement and thus the observation regarding hearsay may be correct against accused No.2 and that observation of the trial court does not holds good against accused No.1.

25. While discharging accused No.2, the trial Court has made an observation that the accused No.2 had only provided the services of labourers and there are no material to show that there was any agreement in writing between the accused No.1 and accused No.2. On these grounds, accused No.2 was discharged. However, that is not so against accused No.1. The charge-sheet papers and

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its annexures were that accused No.1 had the contract with CW.11 wherein accused No.1 has executed the contract agreement; *prima-facie* recitals of the said agreement were that accused No.1 has taken the contract of painting the building and it is his entire responsibility of labourers; if any accident happened, then he is completely responsible.

26. The learned counsel for revision petitioner would submit that the said agreement is not admissible as said agreement is only a secondary evidence.

27. Whether the secondary evidence produced by the prosecution is admissible or not can be adjudicated at the time of trial and not at this juncture. Hence, his said argument is not acceptable. Any comment made in this order about the agreement shall not impact the trial Court when disposing the case on merits.

28. Always an act includes omission. When there is an omission from the side of accused No.1 in not providing safety measures, *prima facie* it amounts to negligence and

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because there is proximity between not providing safety measures and fall on the ground, which resulted in the death of the accused. Hence, the above said citations relied by learned counsel for revision petitioner are in no way helpful to revision petitioner.

29. For the above reasons, this Court holds that the application filed by accused No.1 for discharge dismissed by the trial Court is on proper and cogent reasons, which requires no interference.

30. Hence, this Court passes the following:

ORDER

Criminal Revision petition is ***dismissed***. However, while determining the case on merits, the trial court should remain uninfluenced by the remarks made in this order.

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(GEETHA K.B.)
JUDGE

SSD
List No.: 1 Sl No.: 23