

* IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 6402/2019 & CRL.M.A. 42481/2019

Reserved on : 21.03.2022

Date of Decision : 05.08.2022

IN THE MATTER OF:

JASPRIYA BHASIN Petitioner

Through: Mr. Anshul Sehgal, Advocate

Versus

THE STATE (NCT OF DELHI) & ORS Respondents

Through: Mr. Sanjeev Sabharwal, APP for State
with SI Surender, P.S. Vasant Kunj North.

Mr. Sanjeev Malik, Advocate for Complainant

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present petition has been filed under Section 482 Cr.P.C. on behalf of the petitioner seeking quashing of FIR No. 104/2018 registered under Sections 279/337 IPC at Police Station Vasant Kunj North, Delhi, as well as the consequent proceedings including filing of chargesheet.

2. Although initially the grounds urged in support of quashing of the FIR were limited to the settlement arrived at between the parties, during the course of submissions, learned counsel for the petitioner in the alternative also addressed submissions on the merits of the case.

3. Learned counsel for the petitioner raised doubts on the credibility and reliability of the statement of the alleged eye-witness/*Bhim Sen*. It was

contended that even though the said witness claimed to be working near the site of accident, neither the investigating officer made any local enquiry nor the said witness came forward. Rather, his statement came to be recorded later, after a period of 38 days, that too under mysterious circumstances. He further argued that on reading of the entire prosecution case, the ingredients of the alleged offences are not made out against the petitioner.

4. In support of his submissions, learned counsel for the petitioner placed reliance on the decisions of the Supreme Court in Naresh Giri v. State of M.P. reported as **(2008) 1 SCC 791**, Rathnashalvan v. State of Karnataka reported as **(2007) 3 SCC 474** and State of Karnataka v. Satish reported as **(1998) 8 SCC 493** and the decisions of this Court in Rawal Singh & Ors. v. State & Anr., **CRL.M.C. 2511/2022**, Bhavna Arora v. State of Delhi & Anr., **CRL.M.C. 1836/2022** and Birender @ Virender Ram v. State & Anr., **CRL.M.C. 3459/2021**.

5. Learned APP for the State, on the other hand, submitted that the present FIR having been registered under Section 304A IPC and the alleged offence being serious in nature, the case cannot be quashed merely on the basis of settlement between the parties.

6. I have heard learned counsels for the parties as well as perused the material placed on record.

7. The FIR in question came to be registered on 01.03.2018 on the complaint of sister of the deceased, who stated that though a resident of *Jaipur, Rajasthan*, she had come to Delhi for her medical treatment and was staying with her brother (the deceased). On 01.03.2018 at 7:30 a.m., while she alongwith her brother was crossing the *Nelson Mandela Road* towards Vasant Vihar, a Car came at speed from the Vasant Kunj side & hit her

brother. As a result of the impact, he fell down and the Driver of the offending Car ran away. After some time, a CATS Ambulance came at the spot, whereafter her brother was taken to AIIMS Trauma Centre Hospital.

Initially, the case was registered under Sections 279/337 IPC, however, later on receipt of information regarding demise of the injured/*Rajpal Singh Rawat* on 14.03.2018, Section 304A IPC was added to the case.

8. Before proceeding further, it is deemed expedient to recapitulate the scope of powers of this Court under Section 482 Cr.P.C., as repeatedly expounded by the Supreme Court, including in State of Haryana and Others v. Bhajan Lal and Others reported as **1992 Supp (1) SCC 335**, where the parameters for exercise of powers of quashing under Section 482 Cr.P.C. have been outlined as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge".

9. Coming to the facts of the present case, it is noted that though the incident in question is stated to have occurred on 01.03.2018, the FIR came to be registered on 10.03.2018 when statement of the PCR caller, namely *Pallavi Chaturvedi*, was recorded under Section 161 Cr.P.C., who stated that on the said date she had left her house at about 08:00 a.m. to attend a

meeting and when her Cab was near the DLF Mall, Nelson Mandela Road, she saw a lady, and a man who was injured, whereafter she made a call at 100 number. By the time she took a U-turn from the red light and came to the spot however, the complainant and the injured had already left.

A perusal of the statement indicates that *Ms. Pallavi Chaturvedi* had only made a PCR call and not witnessed the incident. Till that date, neither the description of the Car nor its Driver was available on the records of the investigation.

10. The investigating officer had also recorded the statement of the sister of the deceased, who stated that the incident took place due to impact with a Car. However, neither description of the Car nor of the Driver was given.

11. The prosecution also cited *Bhim Sen* as the alleged eye-witness. He stated that he runs a *Parantha* stall on the opposite side of DLF Mall at Nelson Mandela Road near Western Gate of JNU. On 01.03.2018 at about 08:00 a.m., when he was going to take water for his shop, he saw a lady and a man crossing the road. At that time, someone from the side of Vasant Kunj came at fast speed and hit the man. After the impact, the driver of the Car stopped and turned back, on which the witness came to know that Driver of the Car was a lady. He had noted the number of the Car. Though by-standers tried to stop the Car, the Driver fled away. After some time, the injured was taken by the Ambulance.

12. In the chargesheet, after recording of the statements of the sister of deceased and *Pallavi Chaturvedi* (the PCR caller), no steps relating to any investigation undertaken are mentioned. After a gap of 38 days, the investigating officer is stated to have reached west gate of JNU near DLF

Mall, Nelson Mandela Road where he reportedly became acquainted with the *Parantha* stall owner, who claimed himself to be an eye-witness.

13. While referring to the chargesheet and the aforementioned statements of the witnesses, learned counsel for the petitioner had highlighted that there is a stark contradiction in the statement of sister of the deceased on one hand and that of the alleged eye-witness/*Bhim Sen* on the other. While the sister of deceased has stated that after the collision, the Car had not stopped, *Bhim Sen* claimed that the Driver had stopped the Car and looked back, when he saw the face of the Driver as well as noted the number of Car. *Bhim Sen* had further stated that there were other people who also tried to stop the car.

14. It is also worth noting that upon mechanical inspection of the Car, no damage was found on it indicating involvement in any accident.

15. Learned counsel for the petitioner also highlighted that another alarming fact apparent from the record is that though the injured had already succumbed to his injuries prior to recording of statement of *Bhim Sen*, *Bhim Sen* statedly went to the police station on his own on 10.08.2018 in order to check the status of the injured, where incidentally, he identified the petitioner as well as the Car, which already stood released on *superdari* by the concerned Court vide order dated 26.07.2018. It is also worth taking note that *Bhim Sen* was never called by the investigating officer for the TIP of either the Driver or the Car.

16. In the present case, the petitioner is accused of committing offence under Sections 279 and 304A IPC. In order to constitute an offence punishable under Section 279 IPC, the following ingredients must be made

out:-

- i) there must be rash or negligent driving or riding;
- ii) it must be on a public way; &
- iii) the driving or riding must be in a manner so rash or negligent so as to endanger human life or to be likely to cause hurt or injury to any person other than the driver.

17. Similarly, to constitute an offence punishable under Section 304A IPC, it is necessary that the element of '*rash or negligent act*' is established.

In addition-

- i) there must be death of the person in question;
- ii) the accused must have caused such death; and
- iii) the act of the accused must have been rash or negligent, though not amounting to culpable homicide.

18. In Rathnashalvan (Supra), the Supreme Court has elaborated on the law surrounding cases of rash and negligent acts and distinguished between 'rashness' and 'negligence' in the following terms:-

"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.*

9. *The distinction has been very aptly pointed out by Holloway J. in these words:*

"Culpable rashness is acting with the consciousness that the mischievous and illegal consequences may follow, but with the hope that they will not, and often with the belief that the actor has taken sufficient precautions to prevent their happening. The immutability arises from acting despite the consciousness (luxuria). Culpable negligence is acting without the consciousness that the illegal and mischievous effect will follow, but in circumstances which show that the actor has not exercised the caution incumbent upon him, and that if he had he would have had the consciousness. The imputability arises from the neglect of the civic duty of circumspection." (See Nidamarti Nagabhushanam, In re, Mad HCR pp. 119-20.)"

19. The nature and scope of Section 304A IPC was also discussed in Naresh Giri (Supra), wherein the Supreme Court held as follows:-

“8. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence; a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.

9. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edn.), Vol. 34, Para 1 (p. 3) as follows:

"1. General principles of the law of negligence.-Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done

either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger; the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two".

20. In Jacob Mathew v. State of Punjab and Another reported as (2005) 6 SCC 1, while holding that the rashness or negligence punishable under Section 304A IPC should be of such a high character as to be 'gross', the Supreme Court observed:-

"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. 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.

(6) The word “gross” has not been used in Section 304-A 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 304-A IPC has to be read as qualified by the word “grossly”.

21. Considering the facts of the present case, I deem it apposite to also refer to the observations made by the Supreme Court in State of Karnataka v. Satish (Supra), wherein the importance of the prosecution establishing guilt of the accused in a case of rash and negligent driving was discussed:-

“4. Merely because the truck was being driven at a ‘high speed’ does not bespeak of either ‘negligence’ or ‘rashness’ by itself. None of the witnesses examined by the prosecution could give any indication, even approximately, as to what they meant by ‘high speed’. ‘High speed’ is a relative term. It was for the prosecution to bring on record material to establish as to what it meant by ‘high speed’ in the facts and circumstances of the case. In a criminal trial, the burden of providing everything essential to the establishment of the charge against an accused always rests on the prosecution and there is a presumption of innocence in favour of the accused until the contrary is proved. Criminality is not to be presumed, subject of course to some statutory exceptions. There is no such statutory exception pleaded in the present case. In the absence of any material on the record, no presumption of ‘rashness’ or ‘negligence’ could be drawn by invoking the maxim ‘res ipsa loquitur’. ...”

(emphasis added)

22. This Court as well has time and again taken the view that the allegation of offending vehicle being driven in a high speed/fast manner does not *ipso facto* establish commission of a rash and negligent act for the purposes of Sections 279/304A IPC. [Refer: Abdul Subhan v. State (NCT of Delhi) reported as **2006 SCC OnLine Del 1132**, Raj Kumar v. State (NCT

of Delhi), **CRL.REV.P. 402/2006** and Ram Chander v. State, **CRL.REV.P. 686/2017**].

23. Recently, in State (NCT of Delhi) v. Jagbir Singh reported as **2019 SCC OnLine Del 8401**, a Co-ordinate Bench of this Court, while holding ‘rashness and negligence’ to be crux of offences under Sections 279/304A IPC, took note of the infirmities in the prosecution case and held that the charges were not established. It was observed:-

“19. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it may cause injury but done without any intention to cause injury that it would probably cause injury. The criminality lies in such an act or indifference to the consequences.

20. The question whether the conduct of the accused amounted to culpable rashness or negligence depends directly on the question as to what amount of care and circumspection which is prudent and reasonable man considered to be seen considering all the circumstances of the case. It is necessary to avoid being influenced by the prejudice arising out of the loss of a life which is a dominant factor in cases of accident.

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27. The prosecution had to prove that the respondent had acted with recklessness and therefore a failure to exercise reasonable and proper care in person, but in the instant case the mere fact that an innocent died in a road accident, the presumption of rashness and negligence against the respondent cannot be drawn. In order to impose criminal liability on the respondent, it must be found as a fact that the accident was entirely or at least mainly due to the rashness or negligence on the part of the person who was driving the vehicle. Rashness and negligence being the crux of an offence under Section 279/304A IPC, the prosecution has to prove that the act by which the accident had occurred was rash and negligent because any admission on causing death by driving a vehicle cannot attract the offences punishable under Section 279/304A IPC.

28. In the present case, on a cumulative reading and appreciation of the entire evidence on record, I am of the considered view that the evidences on record have been held to be unworthy of acceptance because the same is found to be replete with infirmities. There are considerable inconsistencies and discrepancies in the statement of the witnesses, which consequently makes the version of the prosecution fabricated and unreliable. Therefore, the prosecution has failed to disclose the true genesis of the crime and establish the charges against the respondent punishable under Section 279/304A IPC.”

24. In Babu Khan and Another v. State and Others reported as **2019 SCC OnLine Del 10007**, another Co-ordinate Bench of this Court was in seisin of a case where an FIR registered under Section 304A IPC was sought to be quashed on the basis of settlement arrived at between the legal heirs of the deceased and the accused. While underlining the importance of determining in such circumstances whether the facts presented constituted gross negligence and the element of *mens rea*, the Court exercised jurisdiction under Section 482 Cr.P.C. and quashed the FIR. It was held:-

“21. Thus, while evaluating whether a proceeding relating to an alleged offence, under Section 304A of the IPC, be quashed on the basis of a settlement between the accused and the victim, it would also be necessary to consider whether it is probable that the facts presented would constitute gross negligence and an element of mens rea, which is likely to secure a conviction.

22. It is clear that the deceased and other persons were involved in the manual labour of carrying the iron sheets. There does not appear to be much material to establish that the contractor was carrying on work in a dangerous manner. The accident had occurred in the course of the work being performed by the deceased and other workers. This Court is of the view that given the account rendered by the persons, it is improbable to secure a conviction. Thus, this Court is of the view that the ends of justice would be served in ensuring that the petitioners pay the compensation and the FIR be quashed.”

25. From the exposition of law outlined hereinabove, it is apparent that for the offences punishable under Sections 279/304A IPC, the commission of a 'rash and/or negligent act' is a necessary ingredient. In the present case, none of the witnesses has stated that the Car was driven in a rash, hazardous or reckless manner knowing that the result of such driving was most likely to cause injury to any person. Even though as per settled law, the material placed on record is to be appreciated only to a limited extent at this stage; this Court, in the peculiar facts of the case and on an entire conspectus, is of the *prima facie* opinion that not only the circumstances surrounding the recording of statement of *Bhim Sen* are shrouded in suspicion but also his statement does not inspire confidence. As such, the necessary ingredients of the offences charged are not made out and conviction of the petitioner is unlikely.

26. Accordingly, the petition is allowed and the FIR in question alongwith the consequent proceedings arising therefrom are quashed qua the petitioner.

27. Irrespective of the conclusion reached, this Court deems it apposite to take notice of the voluntary statement made on behalf of the petitioner to pay additional compensation to the family of the deceased.

28. Learned counsels for the parties have submitted that the petitioner has already made a payment of Rs.10,25,000/- to the family of the deceased in terms of settlement agreement/addendum dated 21.05.2019/26.05.2019, who have also received Rs.6,27,285/- in the proceedings before the Motor Accidents Claim Tribunal from the Insurance Company.

29. Considering however the facts and circumstance of the case, especially that the incident in question relates to the year 2018 and the deceased is survived by his wife and 5 children (who all are statedly major),

it is directed that additional compensation of Rs.6,00,000/- be paid by the petitioner to the wife of the deceased by way of a demand draft through the Investigating Officer within a period of two weeks from the date of passing of this judgment.

30. The petition is disposed of in the above terms. Miscellaneous application is disposed of as infructuous.

(MANOJ KUMAR OHRI)
JUDGE

AUGUST 5, 2022
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