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**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE**

**BEFORE  
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)**

**ON THE 9<sup>th</sup> OF DECEMBER, 2022**

**MISC. CRIMINAL CASE No. 49129 of 2022**

**BETWEEN:-**

**ANIL BANSAL S/O SHRI K.C. GUPTA, AGED ABOUT 57  
YEARS, OCCUPATION: BUSINESS R/O E2-80 ARERA  
COLONY BHOPAL (MADHYA PRADESH)**

**.....PETITIONER**

***(SHRI SUNIL KUMAR JAIN, LEARNED SENIOR COUNSEL WITH SHRI  
SIDDHARTHA KUMAR JAIN, LEARNED COUNSEL FOR THE PETITIONER)***

**AND**

**THE STATE OF MADHYA PRADESH STATION HOUSE  
OFFICER THROUGH POLICE STATION KASRAWAD  
DISTRICT KHARGONE (MADHYA PRADESH)**

**.....RESPONDENTS**

***(SHRI ANAND SONI, LEARNED ADDITIONAL ADVOCATE GENERAL FOR  
STATE***

.....  
*This application coming on for ADMISSION this day, with the consent  
of parties heard finally and the court passed the following:*

**ORDER**

The petitioner has filed the present petition under Section 482 of Cr.P.C for quashment of criminal proceedings pending before the Judicial Magistrate First Class, Kasrawad, Khargone in Criminal Case No. RCT/145/2022 arising out of Crime No.564/2021.

Facts of the case, on 18.09.2021, Merg No.89/2021 under Section 174 of Cr.P.C. was registered during enquiry, statement of Rahul were taken. In his statements he stated that he owned a Dhaba namely Panchmukh Dhaba on Khargone Kasrawad Road. On 18.09.2021 when he was sitting on a coat, a

motorcycle had come speedily and met with the debris which was lying on the road because the road was under Construction. When he reached on the spot, he seen the driver of the motorcycle alongwith the motorcycle were lying there and the pillion rider namely was lying in dug which was dug out due to the construction work on the work site. Blood was oozing out from his head and thereafter, he informed the the police and ambulance was called. Due to the head injury Bablu Verma was died on the spot. Thereafter, the police has lodged a report against the driver of the motorcycle namely Pritesh Verma under Section 304-B of IPC. During investigation, the witnesses Rahul has also narrated the police the safety measures were also not ensured by the contractor. Hence, the police impleaded the contractor and manager and safety manager of the company namely M/S Bansal Construction Company.

Learned Senior counsel for the petitioner submits that the learned Courts below failed to appreciate the fact that eye-witness who lodged the FIR has clearly stated that the vehicle was driven rashly and negligently by brother of the deceased Pritesh Veram, however, the Court below chose not to take cognizance against him and too cognizance against the petitioner instead. All the requisite sign boards and reflectors were adequately affixed on the work site to avoid any inconvenience to the passers byes. It is further submitted that there is no single complaint ever raised by the Madhya Pradesh road Development Corporation against the petitioner regarding non-compliance of the safety measures on the work site. Proper diversion along with diversion sign board was also affixed on the work site. Left side of the road was closed for construction, hence, the traffic was diverted on the right side of the road and sufficient space was available for the easy movement of the traffic. As per the

instructions of the State Government, sufficient safety measures were taken by the petitioner by putting good amount of debris around around the construction site so as to avoid any kind of fatal accident. The petitioner left no stone unturned for providing adequate safety measures on the work site, thus, the petitioner cannot be blamed for any kind of unfortunate mishap on the work site. The Courts below failed to appreciate the fact that after further investigation conducted by the Police, the final report under Section 173 Cr.P.C. was filed by the Police before the Court wherein one Pritesh Verma and one Mohan Pagare were made accused. The Courts below without appreciating the investigation and ignoring the statements and materials available on record discharged the rider of the vehicle and instead took cognizance against the present applicant. The petitioner is a Director of the Bansal Construction Company which was awarded the tender for up gradation and construction of two-lane with paved shoulders with flexible pavement on Khalghat to Sawardewala road. The petitioner has no direct role in commission of the offence, instead the cognizance has been taken against him that too without any material or allegation against him. The learned Judge of the trial Court failed in appreciating that to array a person as an accused, the basic principles of criminal jurisprudence has to be followed. The learned Judge failed to appreciate that the criminal liability is based on personal act and no person can be vicariously be held liable for the act of others. It has been specifically informed by the petitioner that one Mr. M.F. Sheikh has been appointed as supervisor/Manager for the project by the Company. The appointment letter of Mr. Sheikh was also provided by the petitioner to the authorities. As the petitioner has no direct/active role, taking cognizance against him is not in accordance with law. It was informed by Mr. M.F. Sheikh to the Police that Mr.

Mohan Pagare was appointed as safety manager for the project. As such it was the duty of Mr. Pagare to follow all the guidelines and to take all the safety measures during the construction. The courts below erroneously took cognizance against the petitioner and despite the fact that he has no active/direct role in commission of the offence. The learned JMFC failed in appreciating that to impose criminal liability under Section 304-A IPC, it is necessary that the death should have been the direct result of a rash and negligent act of the accused and that must be proximate and efficient cause without the intervention of another's negligence. It is settled position of law that the principle of vicarious liability cannot be made applicable in criminal jurisprudence. As such the petitioner cannot be held guilty for something which he didn't do. The petitioner cannot be made to suffer without there being any fault on his part. Hence, prays for quashment of the criminal proceedings pending against the petitioner.

In support of his contention, learned Senior counsel for the petitioner has placed reliance over the judgment of High Court of Madras in the case of **Geetha Ramesh & Ors. vs. Sub-Inspector of Police, Udagamandalam in Cri.O.P. No.9452 of 2009 decided on 05.10.2009** whereby the Court has held that to impose criminal liability under Section 304-A of IPC, it is necessary that the death should have been direct result of a rash and negligent act of the accused and that act must be the proximate and efficient cause without the intervention of another's negligence. It must be the *causa causans*; it is not enough that it may have been the *causa sine qua non*."

Learned Senior counsel further placed reliance over the judgment of Hon'ble Apex Court passed in the case of **Sham Sunder And Others vs.**

**State of Haryana [1989 (4 SCC 630)].**

On the other hand, learned Additional Advocate General appeared on behalf of the State has submitted that Section 190(1) of C.r.P.C. empowers the Magistrate to take cognizance of any offence upon receiving a complaint of facts which constitute such offence; or a police report of such facts or information received from any person other than the police officer or upon his own knowledge that such offence has been committed. The Court below has conducted a detailed assessment of the investigation and material on record and concluded that there is no *prima facie* evidence against the deceased's brother Pritesh Verma to be made accused in the case instead he is an eye-witness and essentially a victim. The Court assessed the roles of everyone connected with the incident and on the basis of principles laid down in different cases similar to the present case, the Court took cognizance against the petitioner, M.F. Sheikh and Mohan Pagare being the responsible individuals for construction at work site for the company. It is also submitted that under Section 304-A is based upon the principles of "constructive liability" where the accused is made liable on account of him being a participant in the chain of causation. Hence, the assertions of petitioner are mere unsupported and uncorroborated facts and cannot be considered at this stage by the Hon'ble Court exercising jurisdiction under Section 482 of Cr.P.C. The petitioner is having liberty to apply for discharge before the Court below pleading these assertions. Hence, the petitioner is not entitled for any relief from this Court at this stage.

In support of his contention, learned counsel Additional Advocate General for the State has placed reliance over the judgment of Hon'ble Apex Court passed in the case of **State of Rajasthan vs. Chhittarmal 2007 (10) SCC 792, Nitichandra Somnath Raval vs. State of Gujarat & Ors. 2019**

**(14) SCC 676 and in the case of Kolishetty Venkateshwarlu vs. Bandaru Venkat Reddy 2010 (2) Crimes 14 (A.P.) passed by High Court of Andhra Praesh.**

I have heard the counsel for the parties at length and perused the record.

In the present case, from the face of record it is clear that the petitioner is Director of the Company namely M/S Bansal Construction Company. What is to be seen in the present case, whether the proprietor of M/S. Bansal Construction Company had taken taken the reasonable care to prevent any untoward incident on the road which was under construction at the time of incident, whether there was any person with specific directions to observe and to provide sufficient safety measures to avoid any inconvenience to the passengers/vehicle owners/ or by passers. To answer these questions, there is nothing on record to show that the safety norms were being taken by the company at the time of incident on the work site.

In the case of **Sham Sunder (supra)**, Hon'ble the Apex Court has observed that the concerned for the Court was with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in the criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partenrs liable for the offence wither they do business or not.

In the case of **State of Rajasthan (supra)**, Hon'ble Apex Court has observed that coming to the plea of the applicability of Section 304-A, it is to be noted that the said provision relates to death caused by negligence. 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 relates to offences outside the range of Section 299 and 300 of IPC. It applies only to such acts which are rash and negligent and are directly the cause of death of another person. Rashness and negligence are essential elements under Section 304-A. It 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 in Section 300 of IPC. 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 of IPC has to make room for the graver and more serious charge of culpable homicide. In order to be encompassed by the protection under Section 304-A there should be neither intention nor knowledge to cause death. When any of these two elements is found to be present, Section 304-A has no application, which means Section 302 shall apply directly.

In the case of **Keshub Mahindra vs. State of M.P. [1996 (6) SCC 129]**, Hon'ble the Apex Court has observed that the entire material which the prosecution relied upon before the trial court for framing the charge and to which we have made a detailed reference earlier, in our view, cannot support such a charge unless it indicates *prima facie* that on the fateful night when the plant was run at Bhopal it was run by the accused concerned with the knowledge that such running of the plant was likely to cause deaths of human beings.

Now, whether the safety measures/ norms regarding safety measures have been followed by the petitioner/company at the work site or not; it is a matter of evidence, *prima facie*, it is evident that the spot map made by the police during investigation and the statement of the eye-witness Rahul that the radium

indicators or banners were far away from the prescribed distance and on the other side his statement regarding speed of the motorcycle, are matter of evidence and can not be considered at this stage and the same can be ascertained after proper trial only. Hence, the learned Courts below have also rightly discarded the version of the petitioner and co-accused person.

Therefore, in view of the foregoing discussion, in the considered opinion of this Court, at this stage, no case for quashment of the criminal proceedings pending against the petitioner is made out. The MCRC stands dismissed.

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**(RAJENDRA KUMAR (VERMA))**  
**JUDGE**