

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

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 9th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 55765 of 2022

BETWEEN:-

**RAMSINGH MODAVAT S/O SHRI BHEEMA
MODAVAT, AGED ABOUT 66 YEARS,
OCCUPATION: AGRICULTURE R/O VILLAGE
PIPALIYA MOLU UNHEL DISTT. UJJAIN
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI M.A. MANSOORI - ADVOCATE)

AND

**THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE STATION
UNHEL DISTT. UJJAIN (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI A. S. PARIHAR - PANEL LAWYER)

*This application coming on for admission this day, the court
passed the following:*

ORDER

With the consent of learned counsel for the parties, the matter is finally heard.

02. By this petition preferred under Section 482 of the Code of Criminal Procedure, the petitioner has prayed for quashment of FIR

registered by Police Station Unhel, District Ujjain against him vide Crime No.149/2020 for offences punishable under Sections 337, 338 and 304-A of the IPC, charge-sheet dated 30.08.2020 and the entire consequential proceedings of RCT No.908/2020 pending before the trial Court.

03. As per the prosecution, on 16.05.2020 deceased Lal Singh along with one Hakam Singh and others was extracting soil from Lal Singh's well. From the outside Ram Singh was running the machine while Hakam Singh and others were filling the soil from inside. During course of such work, due to sinking of the soil, Lal Singh along with the machine fell inside the well due to which he and Hakam Singh sustained injuries and eventually succumbed to the same. On receiving the information from the complainant Darbar Singh, two merg were registered and statements were recorded and subsequently it was found that the incident has occurred due to the negligence of the petitioner/accused. Thereafter, the FIR was registered against the petitioner and upon completion of the investigation, charge-sheet has been filed before the Magistrate for the offences as referred to above of which cognizance has been taken by the Judicial Magistrate.

04. This petition has been preferred by the petitioner on the ground that the allegations as leveled in the charge-sheet even if taken to be true at this stage do not make out any offence against the petitioner hence the continuation of the proceedings against him would be gross abuse of process of law. There is no evidence against the petitioner as there is nothing to suggest that due to his negligence the death of the deceased took place. The petitioner had no legal duty imposed upon him since the land on which the incident took place does not belong to him. The material available on record itself shows that the incident occurred due to

sinking of the soil hence no role can be attributed to the petitioner. There is no allegation of any haste or negligence on part of the petitioner. No witness examined by the prosecution has alleged that the petitioner was negligent or is responsible for the incident. It is hence submitted that it is a case of no evidence against the petitioner in view of which the proceedings against him deserve to be quashed. Reliance has been placed by the learned counsel for the petitioner on the decision of the Hon'ble Supreme Court in **Jacob Mathew Vs. State of Punjab and Another (2005) 6 SCC 1** and of the Gujrat High Court in **Kaushik Ambalal Oza and Others Vs. State of Gujarat and Another, ABC 2015(II) 66 Guj.**

05. Per contra, learned counsel for the respondent has submitted that there is sufficient material available on record to proceed with against the petitioner and it cannot be said that no offence as alleged has been committed by him in view of which the petition deserves to be dismissed.

06. I have heard the learned counsel for the parties and have perused the entire charge-sheet.

07. On the record against the petitioner is only the statement of one Wali Mohammad, the choukidar of the village, who has stated that when Ram Singh was digging his well, he had told him not to do so since there is a prohibition in that regard but even thereafter he got certain persons to dig the well. He has not stated that in the matter of drilling the well there was any negligence on part of the petitioner or that he did not exercise due care and caution for ensuring safety of the persons digging the well as a result of which the incident took place resulting in death of two persons. On the contrary, all the other witnesses examined on part of the prosecution have categorically stated that the machine fell into the well

on account of sinking of the soil. None of the witnesses have stated that there was any negligence on part of the petitioner as a result of which the machine fell into the well resulting in death of those persons. Even the statement of Wali Mohammad does not indicate that in the matter of digging of the well there was omission on part of the petitioner to perform any duty which he ought to have performed in the facts and circumstances of the case. At best the petitioner could be alleged to have violated certain rules and gone ahead with the digging of the well despite there being prohibition for doing the same. That by itself would not attract the provisions of Section 304-A of the IPC.

08. In **Ambalal D. Bhatta Vs. State of Gujarat, AIR 1972 SC 1150**, it has been held by the Hon'ble Supreme Court in paragraph No.8 as under:-

"8. It appears to us that in a prosecution for an offence under Section 304A, the mere fact that an accused contravenes certain rules or regulations in the doing of an act which causes death of another, does not establish that the death was the result of a rash or negligent act or that any such act was the proximate and efficient cause of the death. If that were so, the acquittal of the appellant for contravention of the provisions of the Act and the Rules would itself have been an answer and we would have then examined to what extent additional evidence of his acquittal would have to be allowed, but since that is not the criteria, we have to determine whether the appellant's act in giving only one batch number to all the four lots manufactured on 12-11-62 in preparing batch No. 211105 was the cause of deaths and whether those deaths were a direct consequence of the appellants' act, that is, whether the appellant's act is the direct result of a rash and negligent act and that act was the proximate and efficient cause without the intervention of another's negligence. As observed by Sir Lawrence Jenkins in **Emperor v. Omkar Rampratap (1902) 4 Bom LR 679 the act causing the deaths "must be the cause causans; It is not enough that it may have been the causa sine qua non". This view has been adopted by this Court in several decisions. In **Kurban Hussein Moham-medali Rangwala v. State of Maharashtra**, the**

accused who had manufactured wet paints without a licence was acquitted of the charge under **Section 304A** because it was held that the mere fact that he allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it would be a negligent act, would not be enough to make the accused responsible for the fire which broke out. The cause of the fire was not merely the presence of the burners within the room in which varnish and turpentine were stored though this circumstance was indirectly responsible for the fire which broke out, but was also due to the overflowing of froth out of the barrels. In **Suieman Rahiman Mulani v. State of Maharashtra** the accused who was driving a car only with a learner's licence without a trainer by his side, had injured a person. It was held that that by itself was not sufficient to warrant a conviction under **Section 304A**. It would be different if it can be established as in the case of **Bhalchandra v. State of Maharashtra** that deaths and injuries caused by the contravention of a prohibition in respect of the substances which are highly dangerous as in the case of explosives in a cracker factory which are considered to be of a highly hazardous and dangerous nature having sensitive composition where even friction or percussion could cause an explosion, that contravention would be the causa causans."

09. In **Kurban Hussain Mohammadalli Vs. State of Maharashtra, AIR 1965 SC 1616**, it has been held by the Hon'ble Supreme Court as under:-

"3. We shall first take up **s. 304-A** which runs thus :-

"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."

The main contention of the appellant is that he was not present when the fire broke out resulting in the death of seven workmen by burning and it cannot therefore be said that he caused the death of these seven persons by doing any rash or negligent act. The view taken by the Magistrate on the other hand which appears to have been accepted by the High Court was that as the appellant allowed the manufacture of wet paints in the same room where varnish and turpentine were stored and the fire resulted because of the proximity of the burners to the stored

varnish and turpentine, he must be held responsible for the death of the seven workmen who were burnt in the fire. 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 the 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 [s. 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 or negligent act. It appears that the direct or proximate cause of the fire which resulted in seven deaths was the act of Hatim. It seems to us clear that Hatim was apparently in a hurry and therefore he did not perhaps allow the rosin to cool down sufficiently and poured turpentine too quickly.”

10. In **Jacob Mathew Vs. State of Punjab and Another**, AIR 2005 SC 3180, it has been held by the Hon’ble Supreme Court as under:-

"11. The jurisprudential concept of negligence defies any precise definition. Eminent jurists and leading judgments have assigned various meanings to negligence. The concept as has been acceptable to Indian jurisprudential thought is well-stated in the Law of Torts, Ratanlal & Dhirajlal (Twenty-fourth Edition 2002, edited by Justice G.P. Singh). It is stated (at p.441-442) ___ "Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) breach of the said duty; and (3) consequential damage. Cause of action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort."

11. In the present case, the allegation against the petitioner is that he did not listen to the gram choukidar who told him that there is prohibition for digging the well and went ahead with the same. The act attributable to the petitioner would thus only be that he went ahead with the digging of the well in contravention to the prohibition on the same but it cannot be said that there was any negligence on his part in the matter of digging of the well which resulted in death of two persons. On the contrary, the record emphatically shows that the machine fell into the well on account of the soil sinking around the well. Thus, it cannot be held that there was any negligence or rashness on part of the petitioner in the performance of his duties which he ought to have performed. Even if it is assumed that there was some negligence on part of the petitioner, it cannot be said to be the direct or proximate cause of death of the deceased.

12. Thus, on the basis of the allegations as contained in the FIR and in the charge-sheet, no case whatsoever is made out against the petitioner. Accordingly, this petition is allowed and FIR No.149/2020 registered at Police Station Unhel, District Ujjain for the offences punishable under Section 337, 338 and 304-A of the IPC, the charge-sheet dated 30.08.2020 and the entire consequential proceedings of RCT No.908/2020 pending before the Court below against the petitioner are hereby quashed.

(PRANAY VERMA)
JUDGE