

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

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 20th OF OCTOBER, 2023

CRIMINAL REVISION No. 2461 of 2023

BETWEEN:-

**RAJENDRA S/O SHRI SITARAM KUSHWAH,
AGED ABOUT 48 YEARS, OCCUPATION:
BUSINESS, R/O 223, TAPESHWARI BAG,
INDORE, POLICE STATION KHAJRANA,
DISTRICT INDORE. (MADHYA PRADESH)**

.....PETITIONER

***(BY SHRI AVINASH SIRPURKAR - SENIOR ADVOCATE WITH SHRI
RASHI SIRPURKAR - ADVOCATE)***

AND

**THE STATE OF MADHYA PRADESH STATION
HOUSE OFFICER THROUGH POLICE
STATION MANPUR DISTT. INDORE (MADHYA
PRADESH)**

.....RESPONDENT

(BY SHRI KAPIL MAHANT - PANEL LAWYER)

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

ORDER

1. This Revision under Sections 397/401 of the Cr.P.C. has been preferred by the petitioner/accused being aggrieved by the order dated 01.05.2023 passed in Sessions Trial No.65/2022 by the 6th Additional Sessions Judge, Dr. Ambedkar Nagar, Indore whereby charges have been framed against him for commission of alleged offences punishable under Section 34(2) of M.P. Excise Act, 1915 and Sections 304, 308 of the Indian Penal Code.

2. As per the prosecution, on 15.01.2021, at about 7.30 a.m., on A.B. Road, Kuwalifata a Maruti Swift Dzire Car bearing registration No.MP-09-CR-1277 was coming from towards Manpur. About 200 meters prior to the spot of incident there was a sign board to the effect that ahead is a residential area and barricades were also put up by the traffic Police to highlight the said fact. However, the driver of the vehicle drove the same at a great speed, rashly and negligently and dashed the same against one Pooja and Jagdish. As a result of the impact, they were thrown into a deep culvert and eventually succumbed to their injuries. The driver of the vehicle managed to flee after stopping the car. On death of Pooja and Jagdish merger was registered and investigation was commenced during the course of which the petitioner was arrested on the allegation that it is he who was driving the vehicle from which accident has been caused. Upon completion of the investigation, chargesheet was filed by the Police before the Court concerned and eventually the impugned order has been passed by the

Court below framing charges as aforesaid against the petitioner.

3. Learned counsel for the petitioner has submitted that the charge as framed by the Court below under Section 304 of the IPC is wholly erroneous. It cannot be said that the petitioner had any intention or knowledge of causing any bodily injury to the deceased since the incident took place all of a sudden. The petitioner and the deceased did not know each other, hence it cannot be said that the petitioner had any intention of causing their death or any bodily injury to them. Only the charge under Section 304-A of the IPC could have been framed against the petitioner at best and not under Sections 304 and 308 of the IPC. It is further submitted that the essential ingredients for framing of charge against the petitioner under Sections 304 and 308 of the IPC being absent the impugned order deserves to be set aside. Reliance has been placed by him on the decisions of the Supreme Court in **Satnam Singh V/s. State of Rajasthan 2000 (1) SCC 662, Mahadev Prasad Kaushik V/s. State of U.P. and another, Cr.A. No.1625/2008 decided on 17.10.2008** and of this Court in **Narendra Kumar V/s. State of M.P., M.Cr.C. No.17834/2023 decided on 10.05.2023** and **Ajeet Lalwani V/s. State of M.P., M.Cr.C. No.21336/2023 decided on 16.06.2023**.

4. Per contra, learned counsel for the respondent/State has submitted that the essential ingredients for framing of charge against the petitioner for offences punishable under Sections 304, 308 of the IPC

are very much present in the case hence the charges have correctly been framed against him in view of which the petition deserves to be dismissed.

5. I have considered the submissions of the learned counsel for the parties.

6. The issue in the present matter is as to whether on the allegations of speedy, rash and negligent driving on part of the petitioner resulting in death of two persons, charge could have been framed against him for offences punishable under Sections 304 and 308 of the IPC or whether the same ought to have been under Section 304-A thereof. Under similar fact situation the Supreme Court had the occasion of considering this precise question in the case of **State of Maharashtra V/s. Salman Saleem Khan and Another (2004) 1 SCC 525** in which charge under Section 304 Part II of the IPC was framed against the accused, who challenged the same before the High Court which set aside the same and directed the trial Court to frame *de novo* charges including one under Section 304-A of the IPC. The Supreme Court observed that it is always open for the Courts to alter the charge at any stage of proceedings depending upon the evidence. In paragraph No.4 it was observed as under:

“4. The law governing the trial of criminal offences provides for alteration of charges at any stage of the proceedings depending upon the evidence adduced in the case. If the trial is being held before a Court of Magistrate, it is open to that court at any stage of trial if it comes to the conclusion that the material on record indicates the commission of an

offence which requires to be tried by a superior court, it can always do so by committing such case for further trial to a superior court as contemplated in the Code of Criminal Procedure (the Code). On the contrary, if the trial is being conducted in a superior court like the Sessions Court and if that court comes to the conclusion that the evidence produced in the said trial makes out a lesser offence than the one with which the accused is charged, it is always open to that court based on evidence to convict such accused for a lesser offence. Thus, arguments regarding the framing of a proper charge are best left to be decided by the trial court at an appropriate stage of the trial. Otherwise, as has happened in this case, proceedings get protracted by the intervention of the superior courts.”

7. It further observed that neither of the side would be prejudiced in the trial by framing of a charge either under Section 304-A or Section 304 Part II except for the fact that the forum trying the charge might be different which would not cause any prejudice because at any stage of trial it would be open for the Court concerned to alter the charge. It was held in Paragraph No.11 as under:-

“11. But for the fact that two courts below i.e. the Sessions Court and the High Court having gone into this issue at length and having expressed almost a conclusive opinion as to the nature of offence, we would not have interfered with the impugned order of the High Court because, as stated above, neither of the sides would have been in any manner prejudiced in the trial by framing of a charge either under Section 304-A or Section 304 Part II IPC except for the fact that the forum trying the charge might have been different, which by itself, in our opinion, would not cause any prejudice. This is because at any stage of the trial it would have been open to the court concerned to have altered the charge appropriately depending on the material that is brought before it in the form of evidence. But now by virtue of the impugned judgment of the High Court, even if in the

course of the trial the Magistrate were to come to the conclusion that there is sufficient material to charge the respondent for a more serious offence than the one punishable under Section 304-A, it will not be possible for it to pass appropriate order. To that extent the prosecution case gets pre-empted.”

8. Eventually it was held in paragraph No.13 as under :-

“13. Therefore, we think it appropriate that the findings in regard to the sufficiency or otherwise of the material to frame a charge punishable under Section 304 Part II IPC of both the courts below should be set aside and it should be left to be decided by the court trying the offence to alter or modify any such charge at an appropriate stage based on material produced by way of evidence.”

9. In the present case also, charges have been framed by the Sessions Judge. If in course of trial it comes to the conclusion that the evidence produced makes out a lesser offence than the one regards with charges have been framed against the petitioner, it shall always be open for it to convict the petitioner for a lesser offence based on the evidence adduced before it. Both the sides particularly the petitioner would not be prejudiced in the trial by framing of a charge under Section 304 Part II of the IPC. If charge under Section 304-A of the IPC had been framed against him, the forum trying the charge might have been different which would however not cause any prejudice to him. This would be for the reason that at any stage of the trial it would be open for the trial Court to alter the charge appropriately depending on the material that is brought before it in the form of evidence. It would hence be best left to

be decided by the trial Court to alter or modify the charge framed against the petitioner at an appropriate stage based on material produced by way of evidence.

10. The judgment relied upon by the learned Senior Counsel for the petitioner in the matter of **Satnam Singh (supra)** was arising out of an appeal against conviction hence it would not be proper to give any finding based upon it as was done by the Supreme Court itself in the case of **State of Maharashtra V/s. Salman Saleem Khan and Another (supra)**. The case of **Mahadev Prasad Kaushik (supra)** was arising out of medical negligence and the facts thereof are totally distinguishable to the facts of the present case. The cases of **Narendra Kumar (supra)** and **Ajeet Lalwani (supra)** were in respect of grant of bail to the accused under Section 439 of the Cr.P.C. hence cannot be pressed into service for challenging the charge framed by the trial Court.

11. Thus, in view of the aforesaid observations, I do not find any necessity to interfere in the impugned order framing charges against the petitioner at this stage. The trial Court would proceed with the trial in accordance with law as laid down by the Supreme Court as aforesaid. It is however made clear that this Court has not made any observation as to the acceptability or otherwise of the material available on record nor has any opinion on merits of the case been expressed. The observations herein are solely for the purpose of disposal of this petition.

12. With the aforesaid observations and directions, this petition stands disposed off.

(PRANAY VERMA)
JUDGE

ns

