

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

BEFORE

HON'BLE SHRI JUSTICE PRANAY VERMA

ON THE 31st OF JANUARY, 2024

MISC. CRIMINAL CASE No. 1169 of 2023

BETWEEN:-

**HARISH SURYAVANSHI S/O PANNALAL JI, AGED
ABOUT 33 YEARS, OCCUPATION: SERVICE R/O 30
PUSHPANJALI COLONY AGAR ROAD UJJAIN
(MADHYA PRADESH)**

.....PETITIONER

(BY SHRI ATISHAY DHAKER - ADVOCATE)

AND

**1. THE STATE OF MADHYA PRADESH
STATION HOUSE OFFICER THROUGH
POLICE STATION MAKDONE, DISTRICT
UJJAIN (MADHYA PRADESH)**

**2. BADRILAL BAGRI S/O PARWATLAL
CHIRDI, MAKDON, UJJAIN (MADHYA
PRADESH)**

.....RESPONDENTS

***(BY SHRI ANENDRA SINGH PARIHAR- PANEL LAWYER
BY MS. RANJEETA GURJAR – ADVOCATE FOR RESPONDENT NO.3)***

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

ORDER

By this petition preferred under Section 482 of the Code of Criminal Procedure the petitioner/accused has prayed for quashment of FIR registered at Police Station Makdon, District Ujjain against him vide Crime No.238 of 2022 for offences punishable under Section 337 & 338

of the Indian Penal Code, charge sheet No.01/2022 and the consequential proceedings of the trial pending before the trial Court.

2. As per the prosecution, on 02.06.2022 a report was lodged by complainant Badrilal Bagari to the effect that he has been working as a helper in the electricity department at Rupakhedi for about three years. On 18.09.2021 at about 11:00 am he had reached the electricity office at Rupakhedi grid. There he was met by JE Harish Suryavanshi, the petitioner, who said that the electricity line of Rupakhedi is damaged and he has not repaired the same. The complainant said that when the lineman comes he will do the repair. The petitioner then told him that it is he who has kept him in the job and not the lineman and that he has taken the permit and the complainant should climb the pole and repair the line. The complainant then took his tools and climbed the pole and started working when the current from the electricity line hit him on his right hand and left leg as a result of which he fell down. He was taken to the hospital where he underwent extensive treatment for a considerable period of time and is still undergoing such treatment. The accident was a result of recklessness and negligence on part of the petitioner which has resulted in amputation of his right hand from below the joint.

3. On lodging of the report by the complainant, investigation was commenced by the Police during course of which statements of witnesses were recorded and documents were collected. 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 him.

4. This petition has been preferred on the ground that the allegations levelled against the petitioner even if taken to be true at their

face value do not make out any offence against the petitioner hence the continuation of proceedings against him would be gross abuse of process of law. There is no evidence against the petitioner and there is nothing to suggest that due to his negligence the complainant has suffered any injury. There has not been any recklessness on part of the petitioner as he could not have imagined that there would be electricity current in the electricity line. He had merely asked the complainant to climb the pole and to repair the line. His act was not which could have in the normal course endangered the life or personal safety of the complainant. It was not his duty to ensure that there was no current in the electricity line. It is hence submitted that the proceedings against the petitioner deserve to be quashed.

5. *Per contra*, learned counsel for the respondents/State as well as learned counsel for the complainant 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.

6. I have considered the submissions of learned counsel for the parties and have perused the entire charge sheet.

7. In *Jacob Mathew Vs. State of Punjab and Another, AIR 2005 SC, 3180*, concept of negligence has been explained by the 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."

8. In *PB Desai vs. State of Maharashtra and another (2013) 15 SCC 481* it was held by the Supreme Court as under:

"44. It follows from the above that as far as the sphere of criminal liability is concerned, as mens rea is not abandoned, the subjective state of mind of the accused lingers as a critical consideration. In the context of criminal law, the basic question is quite different. Here the question is: does the accused deserve to be punished for the outcome caused by his negligence? This is a very different question from the civil context and must be answered in terms of mens rea. Only if a person has acted in a morally culpable fashion can this question be answered positively, at least as far as non-strict liability offences are concerned.

45. The only state of mind which is deserving of punishment is that which demonstrates an intention to cause harm to others, or where there is a deliberate willingness to subject others to the risk of harm. Negligent conduct does not entail an intention to cause harm, but only involves a deliberate act subjecting another to the risk of harm where the actor is aware of the existence of the risk and, nonetheless, proceeds in the face of the risk. This, however, is the classic definition of recklessness, which is conceptually different from negligence and which is widely accepted as being a basis for criminal liability.

46. The solution to the issue of punishing what is described loosely, and possibly inaccurately, as negligence is to make a clear distinction between negligence and recklessness and to reserve criminal punishment for the latter. If the conduct in question involves elements of recklessness, then it is punishable and should not be described as merely negligent. If, however, there is nothing to suggest that the actor was aware of the risk deliberately taken, then he is morally blameless and should face, at the most, a civil action for damages."

9. When the facts of the present case are examined in light of aforesaid dictum it is observed that the allegation against the petitioner is that he had told the complainant to climb the electricity pole for repairing the electricity line. Nowhere has it been stated in the charge sheet that the petitioner was aware or could have been aware that electricity current is flowing in the electricity line yet he asked the complainant to climb the pole as a result of which his safety was jeopardized. It is not the allegation that despite knowing the fact of the current running in the electricity line the petitioner made the complainant climb the pole. There was no way the petitioner could have known that electricity current would be flowing in the electricity line and if the complainant would climb the pole he would be injured. The fact is that in the electricity line there should not have been electricity current running for the complainant to have come in contact with it. However, the said negligence or omission has not been attributed to the petitioner.

10. None of the witnesses examined on part of the prosecution have stated that the petitioner was aware that current is flowing in the electricity line and that if the complainant would climb the pole he would come in contact with it. There does appear to have been negligence in the matter in as much as electricity current ought not to have been running in the electricity line. However, there is no allegation that the said negligence or recklessness was on part of the petitioner. The act of petitioner can be said to be negligent at best for he did not ensure that current is not flowing in the line but he could not have imagined so. There was no legal duty upon the petitioner to have cross checked that there was no current in the electricity line and consequently it cannot be said that he was guilty of breach of that duty. The material on record also

does not show that such was the duty of the petitioner hence his act cannot be said to be a reckless act attracting criminal liability.

11. In view of the aforesaid discussion, even if the allegations levelled against the petitioner are taken to be true at their face value, no offence is made out against him and continuation of the proceedings against him would be gross abuse of process of law. Accordingly the petition deserves to be and is allowed and FIR No.238 of 2022 registered at Police Station Makdon, District Ujjain for offences punishable under Section 337 & 338 of the Indian Penal Code, the charge sheet dated 30.10.2022 and the proceedings pending before the trial Court against the petitioner are hereby quashed.

(PRANAY VERMA)
JUDGE

jjyoti