

**HIGH COURT OF MADHYA PRADESH PRINCIPAL SEAT**  
**AT JABALPUR**

**M.Cr.C. No.10350/2006**

Arun Kapur

Vs.

State of M.P. and Another

For the Petitioner : Mr.S.K.Gangrade, Advocate  
For Respondent No.1 : Mr. D.K.Paroha, Panel Lawyer  
Respondent No.2 : None present.

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Present : **Hon'ble Mr. Justice Atul Sreedharan**

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**O R D E R**  
**(29/9/2016)**

This is a petition under Section 482 of the Code of Criminal Procedure, 1973 filed for quash of criminal proceeding arising from Crime No. 218/2005 of P.S. Narsinghpur, District Narsinghpur pending in the Court of learned Chief Judicial Magistrate, Narsinghpur parties being ***State of Madhya Pradesh Vs. Arun Kumar and another***. The petitioner is the accused no.2 before the learned trial Court. The petitioner is a resident of New Delhi and at the time of filing this petition, was the President and CEO of Quipo Infrastructure Equipment Ltd. (known earlier as Indian Infrastructure Equipment Ltd.). It is also stated therein that the said company is a body corporate, duly registered under the relevant provisions of the Companies Act, 1956, and having its registered office at New Delhi and is involved in the of business of renting infrastructure equipment/vehicles.

2. It is the case of the Respondent No.1 that on 04.03.2005, at about 4:00 AM, a Roller machine (Ingersoll-Rand Model RTR-220), which was being used by M/s Tapi Prestress Products Ltd., in the construction of a road between Narsinghpur and Gotegaon, was alleged to have been driven negligently by its driver Arun Kumar Kahar, the respondent No.2 herein, on account of which three persons namely, Vishal Singh Lodhi, Sahab Singh Rajput and Mahsewari Sharma suffered injuries and Vishal Singh Lodhi eventually succumbed to the said injuries.

3. It is the case of the petitioner that he was not named in the FIR as an accused. The complainant in this case is shown as Vishal Singh Lodhi, who succumbed to the injuries. The police after investigation filed the charge-sheet before the learned trial Court, in which, the petitioner has been shown as an Accused No.2. Learned counsel for the petitioner has stated that there are no specific allegations at all against the petitioner herein and he has been made an accused only on account of being the President of Quipo Infrastructure Equipment Ltd. (earlier known as Indian Infrastructure Equipment Ltd.).

4. Learned counsel for the petitioner has stated that the petitioner has been sought to be roped in by a contorted application of vicarious liability, whereas, in a road accident case, it is only the driver who is liable to be prosecuted for an offence under Section 304-A of IPC. After investigation, the police has filed the charge-sheet against the Respondent No.2 as the Accused No.1 and the Petitioner as the Accused No.2. Charge sheet was filed under (a) Section 279 of IPC, which is an offence involving rash driving or riding on a public way and the person who

is liable to be tried and punished, is the person who was driving the vehicle, (b) under Section 337 of IPC which is an offence made punishable for causing hurt by an act endangering life or personal safety of others, where again it is the person who caused such hurt by doing anything so rashly or negligently so as to endanger human life or personal safety of others, who shall be held liable for the said offence, (c) under Section 338 of IPC which is for causing grievous hurt by an act endangering life or personal safety of the others which is, yet again only applicable on the person who does the act which endangers the life of any persons by causing grievous hurt to them and (d) section 304-A of IPC.

5. Besides the aforementioned, offences under Sections 180 and 181 of the Motor Vehicles Act has also being inserted in the charge-sheet. Section 180 is applicable only where the owner, or the person in-charge of motor vehicle allowed any other person to drive the said vehicle who does not satisfy the provisions relating to license as laid out in sections 3 and 4 of Motor Vehicles Act, punishable with imprisonment for a term which may extend to three months. As regard to section 181 of Motor Vehicles Act, it only provides for punishment for anyone who drives the motor vehicle in contravention of sections 3 or 4.

6. Learned counsel for the petitioner states that besides vicarious liability, the applicant has sought to be snared in this case using the provisions under Section 180 whereby the owner of the person in-charge of the vehicle becomes liable for allowing any person not so authorized otherwise drive the vehicle. It is undisputed that the petitioner

herein was not even remotely involved with the accident. It is also undisputed that he was a President of the company which leases out Infrastructure Equipment to those who required it and was based in Delhi during the material point of time. Learned counsel for the petitioner in order to show that on the date on which the accident taken place, the vehicle in question was actually rented out to Tapi Prestress Products Ltd., which is a company incorporate under the Companies Act, 1956. The said rental agreement is Annexure-A/3 from Page- 19 to 23. The said agreement was only for a period of 7 months which was extendable and commencement date is shown as 01.04.2014, however, the accident had taken place almost 11 months thereafter, therefore, on the basis of this document, it cannot be stated that on the date of the accident Tapi Prestress Products Ltd. was still in possession and use of the vehicle in question as no document pertaining to the extension of the agreement beyond 7 months has been placed on record by the petitioner.

7. The only question that arises before this Court whether the prosecution against the petitioner is maintainable. Looking into the facts and circumstances of the case and that the Petitioner was the President and CEO of Quipo Infrastructure Equipment Ltd. (known at the time of the incident as Indian Infrastructure Equipment Ltd.), which owned the offending vehicle which otherwise was being operated by the respondent No.2 on the date of the incident. All the witnesses whose statement have been recorded U/s. 161 Cr.P.C also suggest that it was the respondent No.2 who was a driving the vehicle and caused the accident.

8. The principle of vicarious liability cannot be applied in a contorted manner just to implicate the top echelons of a corporate entity where their prima facie involvement is not apparent. If such a situation is acceptable only on the ground that the owner of the offending vehicle is liable to be prosecuted along with the driver for an offence under Section 304-A of the IPC, in every case of a motor vehicle accident, the owner of the vehicle would automatically be roped in for the offence U/s. 304-A. Such does not seem to be intention of the legislature in relation to those offences where the elements of rashness or negligence is required for the fulfillment of the offence. The statute, on the other hand makes it evidently unambiguous that it is only the person to whom the negligent or rash act is attributable to, who is liable to be prosecuted for an offence involving the elements of rashness or negligence. Liability for an offence having the element of negligence or rashness is always direct and restricted in its application only to the person to whom the impugned act is directly attributed. No one can be made constructively liable for an offence involving negligence or rashness if that person did not cause the effect of such rash or negligent act by his own actions. In short, there can be no vicarious liability for an offence involving negligence or rashness under the general law like the Indian Penal Code. Special Laws may have provisions to the contrary. In the case under consideration, Sections 279, 337, 338 and 304-A of the IPC all involve the element of negligence or rashness which must be imputable to the actions of the person so sought to be made punishable under these sections.

9. It is undisputed that the petitioner, at that relevant point of time was the President of Quipo Infrastructure Equipment Ltd., (earlier known as Indian Infrastructure Equipment Ltd.) a company registered under the relevant provisions of the Companies Act, 1956. The offending vehicle which was involved in the accident belonged to the abovesaid company and was not the personal property of the Petitioner. Therefore, the provisions U/s. 180 and 181 of the Motor Vehicles Act also will not be applicable on the Petitioner as the State has failed to show that the Petitioner was either the owner of the vehicle and/or he was in charge of the said vehicle at the time of the accident or later. Besides, Section 199 of the Motor Vehicles Act provides for the prosecution of the Companies for offences under the said Act. The Director or any person involved in the affairs of the company can only be proceeded against if the company itself is made an accused. It is also undisputed that the Company has not been made an accused in this case. In this regard, the judgment of the Hon'ble Supreme Court in the case of ***Sharad Kumar Sanghi Vs. Sangeeta Rane***, 2015(12) SCC 781 is squarely applicable. The Petitioner in that case was the Director of Sanghi brothers and was sought to be prosecuted for an offence, inter-alia, under Section 420 of IPC, on the basis of a complaint case under Section 200 of Cr.P.C filed in the Court of learned Judicial Magistrate, First Class, Betul. A quash petition preferred before this Court was dismissed on account of which the petitioner approached the Supreme Court in which, while quashing the complaint before the Court of learned Judicial Magistrate First Class, Betul, the Supreme Court held in paragraph 13, that when the company has not been

arrayed as an accused, the order summoning the Managing Director of that company could not have been passed and so the Supreme Court was pleased to quash the said complaint against the Director of the company. In the instant case also the company has not been made an accused, so therefore, on that ground also, besides the merits of the case, the case against the petitioner is liable to be quashed.

10. The Ld. Counsel for the State has pointed out that the instant being a quash petition U/s. 482 Cr.P.C, the Complainant ought to be heard before deciding the same. This Court after considering the said submission on the part of the Respondent State considers the same as not relevant in this particular case. Usually, giving an opportunity to the *de facto* Complainant to oppose a quash petition is a *sine qua non* in most cases. In cases where it is evident from the FIR and the evidence gathered in the course of investigation (if any) that the Complainant has levelled specific allegations against a person in the FIR or in the statements U/s. 161 Cr.P.C, a quash petition moved by such a person against whom there is a direct imputation by the Complainant of having committed the offence or has been named in the FIR or the statements of the witnesses under section 161 Cr.P.C, it becomes imperative to involve the Complainant as a Respondent to a quash petition filed by the such an accused person. However, in this case, the Petitioner has not been named in the FIR and neither has there be any imputation against him for being involved in the offence which has been committed by the Respondent No.2. Besides, the *de facto* complainant died as a result of the injuries received by him in the accident and now, making someone from his

family a Respondent, only to fulfill a requirement under the common law, which in the considered opinion of this Court has to be seen and applied in the facts and circumstances of the case which is seen to have been pending since the year 2006 and that there has been a stay of the proceedings before the Court of the Ld. JMFC, it is not practical or in the interest of justice to now implead the Complainant or someone from his family as a Respondent to oppose this petition. It is also relevant to mention here that the Petitioner has been arrayed as an accused in the charge sheet by the police after completion of investigation and not by the Complainant.

11. Under the circumstances, the charge-sheet arising from Crime No.218/2005 of P.S. Narsinghpur, pending before the learned Chief Judicial Magistrate, Narsinghpur, is quashed insofar as it relates to the petitioner herein. As far as the respondent No.2 is concerned who is the Driver alleged to have caused the accident, the Ld. Trial Court is requested to proceed against him in accordance with the law.

12. Accordingly, the petition is finally disposed of.

**Atul Sreedharan  
Judge**

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