

Karnataka High Court
Dr K P Gopalkrishna vs Mustafa on 14 June, 2021
Author: H.P.Sandesh

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF JUNE, 2021

BEFORE

THE HON'BLE MR. JUSTICE H.P. SANDESH

CRIMINAL PETITION NO.4541/2016

BETWEEN:

Dr. K.P.GOPALKRISHNA
CHAIRMAN OF NATIONAL PUBLIC SCHOOL
INDIRA NAGARA
BENGALURU - 560 038.

... PETITIONER

(BY SRI AMIT DESHPANDE, ADVOCATE)

AND:

1. MUSTAFA
S/O YUSUF
AGED ABOUT 25 YEARS,
RESIDING AT NO.293,
NEAR MADINA MAHAL, D.J. HALLI,
BENGALURU - 560 045.
2. JEEVAN BHEEMANAGAR POLICE STATION
ULSOOR SUB-DIVISION, BENGALURU
REPRESENTED BY THE
STATE PUBLIC PROSECUTOR
Dr. AMBEDKAR VEEDHI
BENGALURU - 560 001.

... RESPONDENTS

(BY SRI MAHESH SHETTY, HCGP FOR R2;
SRI MABUSUBANI, ADVOCATE FOR R1)

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482
OF CR.P.C. PRAYING TO QUASH THE POLICE REPORT (CHARGE
SHEET) FILED BY THE POLICE INSPECTIOR OF JEEVAN

BHEEMANAGAR POLICE STATION IN CR.NO.93/2013 FOR THE OFFENCE PUNISHABLE UNDER SECTION 304(A) OF IPC AGAINST THE PETITIONER VIDE ANNEXURE-E AND THE PROCEEDINGS IN C.C.NO.54301/2015 FOR THE OFFENCE PUNISHABLE UNDER SECTION 304(A) OF IPC PENDING ON THE FILE OF X ACMM, MAYO HALL UNIT, BENGALURU VIDE ANNEXURE-F.

THIS CRIMINAL PETITION COMING ON FOR ADMISSION THROUGH 'VIDEO CONFERENCE' THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Though this matter is listed for admission today, with the consent of both the learned counsel it is taken up for final disposal.

2. This petition is filed under Section 482 of Cr.P.C, praying this Court to quash the police report (Charge Sheet) filed against the petitioner, who has been arraigned as accused No.2 for an offence punishable under Section 304-A of IPC in C.C.No.54301/2015 on the file of X ACMM., Mayo Hall, Bengaluru City and pass such other order/s as this Court deemed fit in the facts and circumstances of the case.

3. The factual matrix of the case is that this petitioner is a Chairman of National Public School ('NPS' for short), Bengaluru. The NPS has many branches and one of the branches is near BSNL office HAL second stage, Bengaluru City. Two huge rain trees were standing on the eastern side of the compound wall of the NPS leaning towards the sports ground of the school. The said leaning trees had already damaged the compound wall by crashing it to two to three feet and it was looking as though they might fall completely in the play area. Therefore to avoid an unpleasant calamity the senior principal of the said school requested the Assistant Conservator of Forest BBMP Bengaluru to grant necessary permission or to take necessary action to cut those trees.

4. In pursuance of the said request the tree officer / Assistant Conservator of Forest BBMP East, Bengaluru issued a permission to cut those trees vide permission letter dated 01.03.2013. There were some trees in the premises of the BSNL which is adjacent to the NPS School, Indira Nagara and the BSNL authorities had got cut those trees through one Syed Zakir, who is one of the charge sheet witnesses. Therefore, the petitioner also asked Sri Syed Zakir, to cut the trees which were in the premises of the NPS School, Sri Syed Zakir brought one Sri Firoz who is arraigned as accused No.1 and introduced to the petitioner and Firoz agreed to cut those trees for Rs.16,000/-. Sri Firoz has his own team of cutting the trees. The deceased Yusuf and other prosecution witnesses namely Nasir Ahmed and others were the members of the tree cutting team of accused No.1-Fayaz and Syed Zakir.

5. That on 17.03.2013 as usual at about 8:30 a.m, deceased Yusuf and accused No.1-Firoz Nasir Ahmed and others went to the premises of NPS School, Indira Nagara and they cut one rain tree with the help of the tree cutting machine. The other tree was by the side of the said cut tree. With a view to cut this tree a rope was tied to the upper portion of the tree and the deceased Yusuf tied the

other end of the rope to his waist and climbed the tree. The other end of the rope was held by P.Raju and Imtiyaz for the support. The deceased climbed the tree and thereafter Sri Zakir sent to the tree cutting machine to the deceased with the help of a rope.

6. During the course of cutting the branch of the tree, the said branch of the tree fell on the deceased and consequently the deceased fell down and thereafter he succumbed to the injuries. Hence, a case has been registered at the first instance against the Contractor and also the Management. The police after investigation while filing the charge sheet arraigned this petitioner, who is the Chairman of the School as accused No.2. Hence, the present petition is filed before this Court.

7. The main contention of learned counsel for the petitioner before this Court is that in order to attract Section 304-A, there must be a direct cause and after taking permission from the concerned Department only, the work was entrusted to accused N.1 to cut and remove the said trees. There is no nexus between the death of the deceased and this petitioner. The police have committed an error in implicating this petitioner, who is the Chairman of the School as accused No.2 and there is no any causa causans for the collapse to the building and also the death of the said Yusuf. Hence, it requires an interference of this Court.

8. The learned counsel appearing for the petitioner in support of his contention he relied upon the judgment of the Apex Court in the case of *Ambalal D. Bhatt v. the State of Gujarat* reported in (1972) 3 SCC 525, wherein, the Apex Court held that, the death must be direct result of rash and negligent act of accused without intervening negligence of another person. In a prosecution for an offence under Section 304A, IPC 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. The Apex Court also in this judgment observed that in all cases under Section 304A there is a casual chain which consists of many links, it is only that which contributes to the cause of all causes, namely, the causa causans and not causa sine qua non which fixes the culpability. In other words, it is submitted that it is not enough for the prosecution to show that the appellant's action was one of the causes of death. It must show that it is the direct consequence, which in this case has not been established.

9. The learned counsel in support of his arguments, he relied upon the judgment of this Court passed in Criminal Petition No.3186/2011 in the case of *Lakshmi Devi v. State* (D.D. 07.08.2018); judgment of the High Court of Judicature at Bombay passed in Criminal Writ Petition No.4501/2014 in the case of *Shri. Shivkumar Ramdeo Singh v. The State of Maharashtra and another* (D.D. 10.02.2017); judgment of the Madras High Court in the case of *Public Prosecutor v. Pitchaiah Moopnar alias Pitchaian Pillai* reported in AIR 1970 MADRAS 198; judgment of the Gujarat High Court in the case of *Yunusbhai Anwarbhai Karodia v. State of Gujarat* reported in (2018) Cri.L.J. 3264; judgment of this Court in the case of *B.E. Chandrashekar and others v. State of Karnataka* reported in 2007 Cri.L.J. 486 and the judgment of the Madhya Pradesh High Court in the case of *B.P. Ram and another v. State of M.P.* reported in 1991 Cri.L.J. 473.

10. The learned counsel referring to these judgments would vehemently contend that in these cases also, the respective High Courts have held in order to invoke Section 304A, there must be a direct cause and involvement of the accused and no such involvement in the present case.

11. Per contra, learned High Court Government Pleader appearing for respondent No.2/State would vehemently contend that the work entrusted by this accused to accused No.1 in order to cut and remove the trees, which were hanging on the school building. He is the master for the act of the servant, hence, he is liable for the same. The police have investigated the matter and filed the charge sheet against this petitioner arraigning him as accused No.2. Hence, there is no merit in the petition to quash the proceedings.

12. Having heard the arguments of the respective counsel and on perusal of the records, admittedly, an FIR is filed against the Contractor at the first instance and against the school management and while filing the charge sheet, the name of this petitioner has been implicated as accused No.2. It is also not in dispute that the school management wrote a letter to the Forest Department and obtained the permission to cut and remove the trees. It is also not in dispute that the material discloses that the work was entrusted to accused No.1 to cut and remove the trees and an amount of Rs.16,000/- was paid towards cutting and removing of the trees. It is also important to note that in order to invoke Section 304-A, there must be a direct causa causans as held by different Courts and also the Apex Court and there must be direct cause to implicate a person to invoke Section 304-A.

13. The Apex Court in Ambalal's case (supra), categorically held that in a case under Section 304-A, there is a casual chain which consists of many links, it is only that which contributes to the cause of all causes, namely, the causa causans and not causa sine qua non which fixes the culpability. In other words, it is held that it is not enough for the prosecution to show that the appellant's action was one of the causes of death.

14. No doubt, in this case also work was entrusted to accused No.1 and there must be direct result of rash and negligent act of the accused to bring him within the ambit of Section 304-A. In the absence of any direct result of rash and negligent act of the accused, the petitioner cannot be prosecuted for the offence punishable under Section 304A.

15. This Court in Criminal Petition No.3186/2011 (supra), held that for the offence punishable under Section 304A read with Section 34 of IPC, the petitioner has been arraigned as accused No.2 in the said case. The petition is filed when the work was entrusted and the victim was died on account of electrocution and the proceedings has been quashed.

16. The Division Bench of High Court of Judicature at Bombay in Criminal Writ Petition No.4501/2014 (supra), held that, one of the essential ingredients of Section 304A is that the rash and negligent act on the part of the accused must result in causing death. It is also observed that the said ingredient is completely absent in the present case as far as the office bearers and members of the Managing Committee of the Society are concerned.

17. Having taken note of the principles laid in the judgments referred supra and also taking into consideration the facts and circumstances of the case, he being the Chairman of the Institution cannot be prosecuted for an offence punishable under Section 304-A of IPC and there is no any direct cause and he was also not present at the spot when the work was going on and he was not supervising the work and the work was entrusted to accused No.1, who was doing the work. On the basis of entrustment of work, he should have taken more care while cutting and removing the tree as entrusted to him. Hence, I am of the opinion that it is a fit case to exercise the powers under Section 482 of Cr.P.C., to quash the proceedings against the petitioner herein in view of the fact that there is no any direct result of rash and negligent act of accused in the case on hand.

18. In view of the discussions made above, I pass the following:

ORDER

(i) The petition is allowed.

(ii) The proceedings initiated against the petitioner in C.C.No.54301/2015 on the file of X ACMM., Mayo Hall, Bengaluru City, is hereby quashed.

(iii) The observations made in this order shall not influence the Trial Court while considering the case against the other accused on merits.

In view of allowing the main petition, I.A.No.2/2016 for direction does not survive for consideration and the same stands disposed of.

Sd/-

JUDGE cp*