

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE N.NAGARESH

WEDNESDAY, THE 27TH DAY OF SEPTEMBER 2023/5TH ASWINA, 1945

CRL.REV.PET NO. 136 OF 2023

AGAINST THE ORDER IN CMP 2833/2022 IN SC 87/2020 OF
ADDITIONAL DISTRICT COURT & SESSIONS COURT - V, KOTTAYAM
/ III ADDITIONAL MACT, KOTTAYAM

REVISION PETITIONER/PETITIONER/ACCUSED:

FINIL BIJU

BY ADVS.
TOM JOSE (PADINJAREKARA)
SUNNY JOSEPH
K.T.SEBASTIAN

RESPONDENT/RESPONDENT/STATE COMPLAINANT:

THE STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA
ERNAKULAM, COCHIN, PIN - 682031

SRI.M.P. PRASANTH, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR
ADMISSION ON 27.09.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

N. NAGARESH, J.

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Crl.R.P. No.136 of 2023
.....

Dated this the 27th day of September, 2023

O R D E R

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The revision petitioner is aggrieved by the dismissal of his application for discharge under Section 227 Cr.P.C.

2. The petitioner is the accused in SC No.87/2020. In the said case, the prosecution alleged that on 03.07.2018 at about 1.45 am, in front of the Private Bus Stand, Nagampadam, Kottayam, the petitioner/accused on account of his rash and negligent driving of motorcycle bearing registration No.KL-05AR-6350, that too at enormous speed, hit against a Police Constable attached to the Kottayam East Police Station, who was engaged in night patrol duty and caused his death. The petitioner was chargesheeted for

offences punishable under Sections 279 and 304 IPC.

3. The petitioner filed Crl.M.P.2833/2022 stating that there is absolutely no reason to frame charge against him under Section 304 IPC. Since he had no knowledge that his act would cause the death of the deceased, the charge under Section 304 IPC will not stand against the petitioner. The Additional Sessions Judge held that the petitioner drove the motorcycle in a rash and negligent manner at high speed at night and hit a Police Officer who was discharging his official duties. A prudent man never drives a vehicle at a high speed especially at night. The knowledge of the accused under Section 299 IPC is a question of fact. It can be ascertained at trial only. The Additional Sessions Judge dismissed the Crl.M.Application for discharge as per order dated 09.01.2023. It is against the said order dated 09.01.2023 that the petitioner has filed the Criminal Revision Petition invoking Sections 397(1) and 401 Cr.P.C.

4. The counsel for the revision petitioner urged that the petitioner did not drive the motorcycle rashly or

negligently. Assuming that there is rash and negligent driving, only an offence under Section 279 IPC can be alleged to have been committed by the petitioner. Even if such negligent driving results in death, only an offence under Section 304A can be alleged. Section 304A provides that 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 which may extend to two years or with fine or with both. When the Indian Penal Code provides for a specific offence and punishment for causing death by doing any rash or negligent act not amounting to culpable homicide, the prosecution is not justified in charging the petitioner under Section 304 IPC. The petitioner is therefore entitled to get discharge as far as the offence under Section 304 is concerned.

5. Relying on the judgment of the Apex Court in ***Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others*** [AIR 1990 SC 1962], counsel for the petitioner argued that all that is called upon to consider at the

stage of discharge is whether there is sufficient ground to frame the charge and for this limited purpose, the court must weigh the materials on records as well as the documents relied on by the prosecution. In the case of the petitioner, there is no material to show that the petitioner has caused death by doing an act with the intention of causing death or with the intention of causing such bodily injury as he is likely to cause death, or with the knowledge that he is likely by such act to cause death. Therefore, charge under Section 304 IPC is unsustainable.

6. The counsel for the petitioner pointed out that in somewhat similar circumstances the Hon'ble Apex Court in the judgment in ***Mahadev Prasad Kaushik v. State of U.P. and another*** [AIR 2009 SC 125] has held that no summons could have been issued by the trial court against the appellant for an offence punishable under Section 304 IPC.

7. The counsel for the petitioner also relied on the judgment of this Court in ***Raju P.M. v. State of Kerala and others*** [2021 (1) KLD 811] and argued that a mere

knowledge that there is a possibility of accident is not the required knowledge contemplated under Section 304 IPC to bring home a case of culpable homicide. In view of the law laid down by the Hon'ble Apex Court and this Court, the petitioner is entitled to discharge, in so far as the offence under Section 304 IPC is concerned, urged the counsel for the petitioner.

8. The Public Prosecutor stoutly resisted the revision petition. The petitioner/accused drove the motorcycle in a rash and negligent manner at a very high speed at night, which caused death of a police officer who was on his duty. A prudent man never drives a vehicle at a high speed, especially at night. There cannot be any direct evidence to prove the knowledge of the accused. It can be gathered only through circumstantial evidence, contended the Public Prosecutor.

9. Relying on the judgment of the Apex Court in ***Alister Anthony Pareira v. State of Maharashtra*** [(2012) 2 SCC 648], the Public Prosecutor argued that presumption

regarding knowledge that an act is likely to cause death would be available when a person knows natural and likely consequences of his acts. At any rate, a roving enquiry about the knowledge of the petitioner cannot be made at the stage of framing charges. The Additional Sessions Judge rightly rejected the petition for discharge filed by the revision petitioner. No interference is called for at this stage of the proceedings, argued the Public Prosecutor.

10. I have heard the learned counsel for the revision petitioner and the learned Public Prosecutor representing the State.

11. The allegation against the petitioner is that while riding a motorcycle on 03.07.2018 at 1.45 am in front of Private Bus Stand, Nagampadam, Kottayam in a rash and negligent manner, the petitioner's motorcycle hit against a Police Constable engaged in night patrol duty and caused his death. Evidently, it is a death caused due to vehicular accident. Section 304A IPC provides that 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. There is no doubt that on the facts of the case, offence under Section 304A IPC will be attracted.

12. Nevertheless, the revision petitioner has been charged with Section 304 IPC alleging culpable homicide not amounting to murder. Section 299 IPC defines culpable homicide and states that whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as he is likely to cause death or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

13. Therefore, to constitute an offence under Section 304 IPC, it is necessary that the person accused should have an intention to cause death or an intention of causing bodily injury as is likely to cause death or knowledge that he is likely to cause death by such act. In the case of the petitioner, there is no allegation that the petitioner had the intention of

causing death or the intention of causing such bodily injury as is likely to cause death. There is no allegation of any previous enmity between the revision petitioner and the deceased. Then the question is whether the petitioner had knowledge that he is likely to cause death by riding the motorcycle in rash and negligent manner.

14. It is to be noted that the petitioner was driving the motorcycle during midnight time at 1.45 am. The roads will be ordinarily deserted during that time and therefore the likelihood of causing death by accident is far less. The petitioner was not driving the motorcycle during day time or during busy hours. In the judgment in ***Alister Anthony Pareira*** (supra), after considering various decisions dealing with the scope of Section 304 IPC, the Apex Court has held that the question whether the accused had the knowledge that he would cause death of others while driving a motorcycle ought to be decided on the basis of facts of the case. This proposition has been reiterated by the Apex Court in ***State through PS Lodhi Colony, New Delhi v.***

***Sanjeev Nanda* [2012 8 SCC 450].**

15. In the judgment in ***Mahadev Prasad Kaushik*** (supra), the Hon'ble Apex Court held that when there are no sufficient materials to presume an offence under Section 304 IPC, summons for offence under Section 304A IPC ought to have been issued.

16. In the case of the petitioner, the petitioner was riding the motorcycle during night hours and at about 1.45 am when ordinarily roads will be deserted. There is no allegation that the petitioner was drunk while riding the motorcycle. There is no allegation that the petitioner had any intention to cause death of the deceased. The petitioner's offence would clearly fall within the ambit of Section 304A IPC. In the circumstances, I am of the view that the petitioner ought to have been charged under Section 304A IPC instead of Section 304 IPC. The rejection of the application for discharge as far as Section 304 IPC is concerned is therefore unsustainable.

The Crl.R.P. is therefore partly allowed. The petitioner is discharged from the offence under Section 304 IPC. The court shall frame charge against the petitioner under Section 304A IPC, as the offence under Section 304A IPC is attracted.

Sd/-

N. NAGARESH, JUDGE

aks/26.09.2023

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APPENDIX OF CRL.REV.PET 136/2023

PETITIONER' S ANNEXURES

Annexure 1 CERTIFIED COPY OF THE ORDER DATED
09.01.2023 IN CRL M P 2833 OF 2022