

2024 LiveLaw (SC) 83

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

B.V. NAGARATHNA; J., AUGUSTINE GEORGE MASIH; J.

JANUARY 23, 2024

CRIMINAL APPEAL NO.369 OF 2024 [@ SLP (CRL) NO.3226/2023]

PETER VAN GEIT *versus* THE STATE REP. BY INSPECTOR OF POLICE & ANR.

The Indian Penal Code, 1860 - Sections 304A and 338 - Fire Accident - Trekking Expedition - Persons who were part of the trekking expedition died owing to a forest fire which is an instance of vis major. No negligence could have been attributed to the trek organiser who only facilitated the organization of the trekking expedition. The organiser and even the members of the trekking expedition were totally unaware of the forest fire as such. Accidentally they were engulfed in the forest fire and they died by sheer accident and not owing to any negligence or any criminal intent attributable to the trek organiser. The trek organiser had no role whatsoever in causing the death of the trekkers who died due to a forest fire which is a natural cause.

For Appellant(s) Mr. A Mohan Raj, Adv. Mr. Azhargasan, Adv. Ms. Charulata Chaudhary, AOR

For Respondent(s) Dr. Joseph Aristotle S., AOR Mr. V. Krishna Murthy, Sr. Adv. Mr. D. Kumanan, Adv. Ms. Deepa S., Adv.

ORDER

Leave granted.

The appellant is aggrieved by the order dated 30.08.2022 passed by the Madurai Bench of the Madras High Court in Crl. OP.(MD) No.3591 of 2019 in which Criminal M.P.(MD) No.2054/2019 was filed. The said criminal original petition was filed by the appellant herein under Section 482 of the Code of Criminal Procedure, 1973 (in short 'CrPC') seeking quashing of the FIR bearing No.18/2018, P.S. Kurangani, District Theni and proceedings in SC No.70 of 2019 on the file of the Additional District and Sessions Judge, FTC, Theni. The High Court dismissed the Criminal Original Petition and considering the fact that the appellant is a Belgian citizen and has been running a nonprofit organization, his personal appearance in the criminal trial court was dispensed with.

Being aggrieved by the dismissal of the criminal original petition, the appellant has assailed the same in this appeal.

We have heard learned counsel Shri A. Mohan Raj for the appellant and learned senior counsel for the respondent-State and perused the material on record.

The First Information Report filed on 12.03.2018 bearing FIR No.18/2018 admittedly was with regard to death of thirteen people in a forest fire that occurred on 11.03.2018. The appellant herein being the head of a Non-profit Organization (NGO) was in-charge of facilitating persons interested in trekking and he had a trek club called 'Chennai Trekking Club' and the main object of that club is to organize special trekking expeditions.

Consequent upon the filing of the aforesaid FIR, charge-sheet was filed invoking the very similar provisions which were invoked in the FIR namely, Sections 326, 337 338 and 304(2) of the Indian Penal Code, 1860 (in short 'IPC') and Section 21(d) of the Tamil Nadu Forest Act, 1882.

The incident of fire that happened on 11.03.2018 had resulted in the loss of 13 lives and others being injured owing to the said persons who were part of the trekking

expedition being trapped by the forest fire and being unable to escape from the forest fire which had engulfed the trekkers all around.

Learned counsel for the appellant contended that the very invocation of the aforesaid provisions is bad in law inasmuch as no overt criminal act as against the appellant has been found and role of the appellant was only in facilitating the trekking expedition through a tour agency namely 'Tour de India Holiday' in Thindal, District Erode. That there was no negligence on the part of the appellant herein and the death of the trekkers in the unfortunate accident was owing to a *vis major* inasmuch as the trekkers died in the forest fire which engulfed the area of the expedition on the fateful day. He therefore contended that the High Court ought to have quashed the FIR as well as the charge-sheet and the consequent proceedings and granted relief to the appellant herein.

Per contra, learned senior counsel appearing for the respondent supported the impugned order and contended that it is only during the trial that the exact role of appellant would be known and therefore there is no merit in the appeal.

We have perused in detail the First Information Report dated 12.03.2018 as well as the charge-sheet filed on 20.06.2018. The charges as against the appellant herein are only under Sections 304 A and 338 IPC. Section 304 A deals with causing death by negligence and Section 338 deals with causing grievous hurt by an act endangering life or personal safety of others. The said sections read as under:

304A. Causing death by negligence— 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.

338. Causing grievous hurt by act endangering life or personal safety of others— Whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

We fail to understand as to how these Sections could have been invoked against the appellant herein inasmuch as admittedly the persons who were part of the trekking expedition died owing to a forest fire which is an instance of *vis major*. No negligence could have been attributed to the appellant herein who only facilitated the organization of the trekking expedition. As already noted, the organizers as well as the appellant herein and even the members of the trekking expedition were totally unaware of the forest fire as such. Accidentally they were engulfed in the forest fire and they died by sheer accident and not owing to any negligence or any criminal intent attributable to the appellant herein. The appellant herein had no role whatsoever in causing the death of the trekkers who died due to a forest fire which is a natural cause.

On that short ground alone, we find that the invocation of Sections 304 A and 338 IPC as against the appellant herein was wholly unwarranted. The High Court ought to have quashed the FIR, the charge sheet as well as proceedings in SC No.70/2019.

In this regard, we place reliance on a judgment of this Court in the case of ***State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335***. The relevant portion of which reads as under:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

X X X

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused. X X X

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

In the circumstances, the order dated 30.08.2022 passed by the High Court is set aside. The F.I.R. bearing No.18/2018 and proceedings initiated against the appellant in S.C. No.70 of 2019 are quashed.

The appeal is allowed in the aforesaid terms.

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