

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 01<sup>ST</sup> DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.5609 OF 2022 (GM-RES)

**BETWEEN:**

SRI VISHWAS V.,

... PETITIONER

(BY SRI P.N.NANJA REDDY, ADVOCATE)

**AND:**

1. THE STATE OF KARNATAKA  
REPTD. BY ITS STATION HOUSE OFFICER  
NANDINI LAYOUT POLICE  
BENGALURU – 560 096.
2. HARI CM GAUTHAM

... RESPONDENTS

(BY SRI K.S.ABHJITH, HCGP FOR R1;  
SRI NISHAD, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.28916/2021 ON THE FILE OF THE CHIEF METROPOLITAN MAGISTRATE, BENGALURU AT ANNEXURE-D AS THE SAME ARE ILLEGAL, ARBITRARY AND IN VIOLATION OF ARTICLE 21 OF THE CONSTITUTION OF INDIA AND THE RIGHT TO LIBERTY HAS BEEN INFRINGED AND ETC.,

THIS WRIT PETITION COMING ON FOR ADMISSION THIS DAY, THE COURT MADE THE FOLLOWING:

**ORDER**

The petitioner is before this Court calling in question proceedings in C.C.No.28916 of 2021 pending before the Chief Metropolitan Magistrate, Bangalore arising out of Crime No.249 of 2020 registered for offences punishable under Section 304A r/w Section 34 of the IPC.

2. Heard Sri P.N.Nanja Reddy, learned counsel for the petitioner, Sri K.S.Abhijith, learned High Court Government Pleader for respondent No.1 and Sri Nishad, learned counsel for respondent No.2.

3. Brief facts leading to the filing of the present petition, as borne out from the pleadings are as follows:-

The petitioner is an Architect Engineer by profession and is the co-founder of Crest Architects, Bangalore. One Chandrashekar, owner of a residential site situated at 20<sup>th</sup> Main, 4<sup>th</sup> Block bearing No.403 of Nandini Layout approaches the petitioner to design his house. Upon inspecting the property personally, the petitioner took the dimensions of the property and owner's requirements for drawing up a design. The owner of the site agreed to the terms of the petitioner and entered into an agreement to design his house on 25-09-2019. In terms of the agreement, the petitioner fulfilled the requirement of the owner as per law. The construction of the building and the plan of action for such construction was entrusted to a contractor by the site owner. The petitioner had only drawn up the design and had also visited the site on several occasions to see whether the construction was coming up according to the design. The visits, according to the petitioner were once in a month.

4. On 10-10-2020 an employee by name Mukesh who was working under the contractor died due to electrocution while

undertaking construction in the site. It is averred by the petitioner in the petition that he came to know about the incident so happened on 10-10-2020 only when he attended house warming ceremony of the house on an invitation by the owner in the month of February 2021. On 17-02-2022 the petitioner comes to know of a crime registered against him by the Police in Crime No.249 of 2020. The petitioner was accused No.2 and the owner of the building Mr. Chandrashekar was accused No.3. The allegation in the crime was concerning the incident that happened on 10-10-2020 i.e., the death of the employee Mr. Mukesh due to electrocution. After registration of the crime, the Police conducted investigation and filed a charge sheet only against the petitioner dropping the owner who was accused No.3 for offences punishable under Section 304A r/w 34 of the IPC. It is at that juncture the petitioner has knocked the doors of this Court in the subject petition calling in question the entire proceedings in C.C.No.28916 of 2021.

5. The learned counsel appearing for the petitioner would vehemently argue and contend that the allegation for offence punishable under Section 304A IPC cannot be laid against the petitioner, as the petitioner was only an Architect who designed the house and it was for the contractor or the owner of the property to have taken such caution to prevent such mishap viz., death of the employee. The owner of the property is let off while filing the charge sheet against the petitioner who is the Architect and has nothing to do with the mishap. He would seek quashment of the proceedings.

6. On the other hand, the learned counsel appearing for the 2<sup>nd</sup> respondent/complainant who is the relative of the employee would seek to justify the action of the police in filing the charge sheet against the petitioner, as according to him the design provided by the petitioner was the cause for the death of the worker and would submit that since charge sheet is filed, it is for the petitioner to come out clean.

7. The learned High Court Government Pleader would also toe the lines of the 2<sup>nd</sup> respondent.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

9. The afore-mentioned facts are not in dispute. On 10.10.2020 an unfortunate incident takes away the life of a worker who was working under a contractor entrusted with the work of construction of the house of accused No.3, owner. The petitioner was one who had initially visited the property and had drawn up design of the house and had nothing to do after the act of the petitioner giving the design in terms of the agreement so entered into between the owner and the petitioner. The crime is registered for offences punishable under Section 304A arraigning the petitioner/charged Architect as accused No.2, owner of the house as accused No.3 and the contractor as accused No.1 under whom the worker was performing the duty on that day. The police after investigation filed a charge sheet

dropping the name of accused No.3/owner of the property while hauling up the petitioner as accused No.2 for offences punishable under Section 304A of the IPC.

10. Section 304A of the IPC reads as follows:

*“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.”*

Section 304A of the IPC has two components in it. The result of death should be out of rash or negligent act by the accused. Section 304A of the IPC mandates that whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide be punished. Therefore, the act should be either rash or negligent.

11. The petitioner, as stated earlier, is an Architect who had designed the building and had given it to the owner in terms of the agreement. The owner had entrusted the work of construction to accused No.1 under whom the worker on the day working and unfortunate incident of his death happened. It

cannot be said that design of the house by the petitioner was an act of rash or negligence that had caused the death of the worker. It would be too far to stretch Section 304A of the IPC to contend that a person who had designed the house is responsible for death of a worker while undertaking construction under a contractor. In this regard reference is made to the three Judge Bench judgment of the Apex Court in the case of **AMBALAL D.BHATT v. STATE OF GUJARAT**<sup>1</sup> wherein it is held as follows:

*“10. It appears to us that in a prosecution for an offence under Section 304-A, 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. If that were so, the acquittal of the appellant for contravention of the provisions of the Act and the Rules would itself have been an answer and we would have then examined to what extent additional evidence of his acquittal would have to be allowed, but since that is not the criteria, we have to determine whether the appellant's act in giving only one batch number to all the four lots manufactured on November 12, 1962, in preparing Batch No. 211105, was the cause of deaths and whether those deaths were a direct consequence of the appellants' act, that is, whether the appellants' act is the direct result of a rash and negligent act and that act was the proximate and efficient cause without the intervention of another's*

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<sup>1</sup> (1972) 3 SCC 525



negligence. As observed by Sir Lawrence Jenkins in *Emperor v. Omkar Rampratap* [(1902) 4 Bom LR 679] the act causing the deaths “must be the *causa causans*; it is not enough that it may have been the *causa sine qua non*”. This view has been adopted by this Court in several decisions. In *Kurban Hussein Mohammedali Rangwala v. State of Maharashtra* [(1965) 2 SCR 622] the accused who had manufactured wet paints without a licence was acquitted of the charge under Section 304-A because it was held that the mere fact that he allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it would be a negligent act, would not be enough to make the accused responsible for the fire which broke out. The cause of the fire was not merely the presence of the burners within the room in which varnish and turpentine were stored, though this circumstance was indirectly responsible for the fire which broke out, but was also due to the overflowing of froth out of the barrels. In *Suleman Rehiman Mulani v. State of Maharashtra* [(1968) 2 SCR 515] the accused who was driving a car only with a learner's licence without a trainer by his side, had injured a person. It was held that that by itself was not sufficient to warrant a conviction under Section 304-A. It would be different if it can be established as in the case of *Bhalchandra alias Bapu v. State of Maharashtra* [(1968) 3 SCR 766] that deaths and injuries caused by the contravention of a prohibition in respect of the substances which are highly dangerous as in the case of explosives in a cracker factory which are considered to be of a highly hazardous and dangerous nature having sensitive composition where even friction or percussion could cause an explosion, that contravention would be the *causa causans*.”

The Apex Court clearly holds that cause of death should be a direct consequence of the act of the accused and that should be an act either rash or negligent and proximate to the cause of

such death. By no stretch of imagination the petitioner can be hauled into the proceedings for offences punishable under Section 304A of the IPC in the light of the fact that he was in any way neither responsible for construction nor was he present at the place of construction nor even had any proximity to the act which was either rash or negligent. The Apex Court in the case of **STATE OF HARYANA v. BHAJAN LAL**<sup>2</sup> has clearly held the parameters of exercise of jurisdiction under Section 482 of the Cr.P.C. The Apex Court at paragraph 102 holds as follows:

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

**(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**

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<sup>2</sup> (1992 Supp. 1 SCC 335)

**entirety do not prima facie constitute any offence or make out a case against the accused.**

(2) *Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

(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*

(4) *Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a noncognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(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.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking*

*vengeance on the accused and with a view to spite him due to private and personal grudge.”*

*(Emphasis supplied)*

The first clause, as held by the Apex Court in the aforesaid judgment, is clearly applicable to the facts of the case at hand, as taking note of the fact cannot be construed to become an offence as alleged. The facts of the case at hand clearly indicate that no offence under Section 304A of the IPC could be laid against the petitioner and, therefore, there is need to exercise jurisdiction of this Court under Section 482 of the Cr.P.C. to terminate such proceedings against the petitioner.

12. For the aforesaid reasons, I pass the following:

**ORDER**

- (i) Writ Petition is allowed and the proceedings in C.C.No.28916 of 2021 pending before the Chief Metropolitan Magistrate, Bangalore stand quashed qua the petitioner.

- (ii) It is made clear that the observations made in the course of the order would not influence or bind any proceedings or trial against any other accused in C.C.No.28916 of 2021.

**Sd/-  
JUDGE**

bkp  
CT:MJ