

# Ravinder Rathi vs State Of Nct Of Delhi & Ors on 24 May, 2024

**Author: Amit Sharma**

**Bench: Amit Sharma**

\$~14

\*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI  
CRL.M.C. 1517/2023  
RAVINDER RATHI

Through:

STATE OF NCT OF DELHI & ORS.

Through: Mr. Amit Ahlawat,  
with SI Deepak T  
Cantt.  
Mr. Sumit Mishra  
and R-3.  
Respondent nos.  
(through VC).

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA  
ORDER

% 24.05.2024

1. The present petition under Section 482 of the CrPC seeks quashing of FIR No. 317/2017, under Sections 279/304A of the Indian Penal Code, 1860, (for short, „IPC ), registered at PS Delhi Cantt., New Delhi and all other proceedings emanating therefrom including the chargesheet pending in the Court Sh. Rahul Jain, learned Metropolitan Magistrate, Patiala House Courts, Delhi.

2. The case of the prosecution is that on 22.12.2017, at around 04:30 P.M., vide DD No. 41A, an information was received at PS Delhi Cantt. regarding the happening of a road accident at Delhi Airport near NH-8, Near This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/05/2024 at 22:14:36 Runway, Delhi and the same was entrusted to ASI Bhopal Singh. After receipt of the information, ASI Bhopal Singh alongwith staff members reached the spot and found that one Auto bearing No. DL 1 RJ 04221 and one car bearing No. HR 26 AR 0439 (Maruti Suzuki Zen Astilo) had met with an accident. On inquiry at the spot, it was found that injured persons have been shifted to an unknown hospital. ASI Bhopal Singh made efforts to search for eyewitnesses of the accident however, none

were found. Thereafter, both the vehicles involved in the road accident were deposited in the Malkhana of the PS Delhi Cantt. On the same day, at 08:10 PM, vide DD No. 32A, information was received that „F (the deceased) s/o Sadre Alam, aged 2 years 6 months, has been admitted at Indian Spinal Injuries Centre, Delhi and the MLC No. 8465/17 was kept for obtaining the opinion of the nature of the injury. In pursuance of the aforesaid information, FIR No. 317/17 was registered under Sections 279/337 of the IPC and taken for investigation.

3. During the investigation, the documents of the offending vehicle were obtained and the same were verified from the concerned department. After verification of these documents present petitioner was found to be owner of the car bearing No. HR 26 AR 0439 and was arrayed as an accused in the present case FIR. On 25.12.2017, vide DD No. 23A information was received from Safdarjung Hospital, wherein it was stated that the injured „F has passed away and consequently, the offence punishable under Section 337 of the IPC was replaced with Section 304A. After completion of the investigation, chargesheet was filed before the Court of competent jurisdiction.

4. Learned counsel for the petitioner submitted that during the pendency This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/05/2024 at 22:14:36 of the proceedings in the present FIR, parties have entered into a Settlement Deed on 08.02.2023, pursuant to which Respondent Nos. 2 and 3 (Mother and Father of the deceased „F ) have no objection if the present FIR is quashed. It is further submitted that as per the said settlement, petitioner has agreed to pay a sum of Rs. 5 Lakhs to the Respondent no. 2 as full and final settlement towards the lump sum compensation amount for the death of her son, Late Master „F . Further as per the said settlement, an amount of Rs. 2 Lakhs has already been paid to the Respondent No. 2 on 07.02.2023 by way of a Demand Draft bearing No. 503085 drawn on ICICI Bank and the remaining amount of Rs. 3 Lakhs has been given to the Respondent no. 2 by way of a demand draft in the Court today. It is pointed out that respondent Nos. 2 and 3 have also been awarded compensation of Rs. 5,85,000/- alongwith interest of 7.5% per annum from the date of institution of the petition till the realization of whole of the compensation in MACP No. 06 of 19.12.2018 (MACP/57/2018) by the Court of Mr. Ravi Kumar Sondhi, Presiding Officer, Motor Accident Claims Tribunal-I, Gurugram.

5. Respondent Nos. 2 and 3 appear through video conferencing alongwith their counsel, who is present in the Court today and have been identified by the Investigating Officer and submitted that all the terms of the settlement have been complied with. It is further submitted that pursuant to the settlement arrived at between the parties, they have no objection if the present FIR is quashed.

6. A demand draft bearing No. 502933 dated 03.07.2024 for Rs. 3,00,000/- drawn on ICICI Bank, Connaught Place, New Delhi, has been handed over to Mr. Sumit Mishra, Advocate for respondent Nos. 2 and 3. Respondent nos. 2 and 3, who appear through video conferencing, This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/05/2024 at 22:14:37 acknowledge the receipt of the aforesaid demand draft as compensation.

7. Per contra, learned APP for the State submitted that allegations made in the present case are serious in nature as the accident had occurred on account of negligence on part of the petitioner. It is further submitted that the aforesaid settlement deed has been verified and the statements of the respondent Nos. 2 and 3 have been placed on record whereby they have stated that they have entered into the settlement with the petitioner out of their own free will and without any coercion, undue influence or pressure from any other person and have already received a sum of Rs. 2 Lakhs in view of the same.

8. Heard learned counsel for the parties and perused the record.

9. It is settled principle of law that in cases of non-compoundable offences where the parties have arrived at a settlement, the High Court has inherent power to quash a criminal proceeding in exercise of powers under Section 482 of the CrPC as well as Article 226 of the Constitution of India. Time and again, it has been reiterated that the inherent powers of the High Court are of a wide plenitude, but in exercise of such powers, the guiding factor has to be - (i) to secure the ends of justice, or (ii) to prevent the abuse of process of any Court. It is also well settled that before proceeding to quash an FIR, the High Court must duly consider the nature and gravity of an offence.

10. This Court is of the considered opinion that there is no bar to quash an FIR under Section 304A of the IPC in exercise of inherent powers under Section 482 of the CrPC. However, it has also been reiterated that such powers have to be exercised sparingly and with caution. In *State of Madhya Pradesh v. Laxmi Narayan and Ors.*, (2019) 5 SCC 688, it has This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/05/2024 at 22:14:37 been held as under:

"15. Considering the law on the point and the other decisions of this Court on the point, referred to hereinabove, it is observed and held as under:

\*\*\* \*\* 15.2. Such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

\*\*\* \*\* 15.5. While exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused,

namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise, etc."

11. This Court while dealing with a petition seeking quashing of an FIR under Section 304A of the IPC, in *Sunil Malhotra & Anr. v. The State NCT of Delhi & Anr.*, 2023:DHC:8374, observed and noted as under, "12. Section 304A of the IPC finds mention in Chapter XVI of the IPC under the heading „of offences affecting the human body'. The provision provides for a situation where death of a person has been caused by an act that is „rash or „negligent . It is in the nature of an exception to „culpable homicide as defined in Section 299 of the IPC. Therefore, the issue is what constitutes culpable rashness or negligence?

12.1. Culpable rashness is doing or omitting to do something, with the knowledge or consciousness that such wanton act or omission can lead to illegal consequences. Culpability, in a case of rashness, lies in acting with consciousness and doing so with indifference as to the consequences of such act.

12.2. Culpable negligence, on the other hand, constitutes a breach of duty to do something which an ordinary reasonable man, in those This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/05/2024 at 22:14:37 circumstances would have done. Criminality in case of negligence arises when there is no consciousness as to the consequences which may follow but circumstances are such that shows it was incumbent upon the actor to take certain precautions. It is further settled law that for a negligent act to give rise to a criminal liability, the negligence ought to be „gross , which is a standard to be decided on the basis of facts and circumstances of each case.

12.3. In *Rathnashalvan v. State of Karnataka*, (2007) 3 SCC 474, the Hon ble Supreme Court held as under:

"7. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Sections 299 and 300 IPC. The provision applies only to such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304-A. Culpable negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of each case. Rashness means doing an act with the consciousness of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused s conduct amounted to culpable rashness or negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is

dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

8. As noted above, "rashness" consists in hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/05/2024 at 22:14:37 and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted."

12.4. In *Syed Akbar v. State of Karnataka*, (1980) 1 SCC 30, the Hon ble Supreme Court held as under:

"28. In our opinion, for reasons that follow, the first line of approach which tends to give the maxim a larger effect than that of a merely permissive inference, by laying down that the application of the maxim shifts or casts, even in the first instance, the burden on the defendant who in order to exculpate himself must rebut the presumption of negligence against him, cannot, as such, be invoked in the trial of criminal cases where the accused stands charged for causing injury or death by negligent or rash act. The primary reasons for non-application of this abstract doctrine of *res ipsa loquitur* to criminal trials are:

Firstly, in a criminal trial, the burden of proving everything essential to the establishment of the charge against the accused always rests on the prosecution, as every man is presumed to be innocent until the contrary is proved, and criminality is never to be presumed subject to statutory exception. No such statutory exception has been made by requiring the drawing of a mandatory presumption of negligence against the accused where the accident "tells its own story" of negligence of somebody. Secondly, there is a marked difference as to the effect of evidence viz. the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral certainty as convinces the mind of the Court, as a reasonable man beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment. As pointed out by Lord Atkin in *Andrews v. Director of Public Prosecutions* [(1937) 2 All ER 552 : 1937 AC 576] , "simple lack of care such as will constitute civil liability, is not enough"; for

liability under the criminal law This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/05/2024 at 22:14:37 "a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied „reckless most nearly covers the case".

29. However, shorn of its doctrinaire features, understood in the broad, general sense, as by the other line of decisions, only as a convenient ratiocinative aid in assessment of evidence, in drawing permissive inferences under Section 114 of the Evidence Act, from the circumstances of the particular case, including the constituent circumstances of the accident, established in evidence, with a view to come to a conclusion at the time of judgment, whether or not, in favour of the alleged negligence (among other ingredients of the offence with which the accused stands charged), such a high degree of probability, as distinguished from a mere possibility has been established which will convince reasonable men with regard to the existence of that fact beyond reasonable doubt. Such harnessed, functional use of the maxim will not conflict with the provisions and the principles of the Evidence Act relating to the burden of proof and other cognate matters peculiar to criminal jurisprudence.

30. Such simplified and pragmatic application of the notion of *res ipsa loquitur*, as a part of the general mode of inferring a fact in issue from another circumstantial fact, is subject to all the principles, the satisfaction of which is essential before an accused can be convicted on the basis of circumstantial evidence alone. These are: Firstly, all the circumstances, including the objective circumstances constituting the accident, from which the inference of guilt is to be drawn, must be firmly established. Secondly, those circumstances must be of a determinative tendency pointing unerringly towards the guilt of the accused. Thirdly, the circumstances shown make a chain so complete that they cannot reasonably raise any other hypothesis save that of the accused's guilt. That is to say, they should be incompatible with his innocence, and inferentially exclude all reasonable doubt about his guilt."

12. In view of above, to bring the present case within the definition of „gross negligence there must be wanton disregard to the consequences of an This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/05/2024 at 22:14:37 act or omission on part of the petitioner which resulted in the accident. In the present case, the petitioner is being prosecuted as he was driving the offending vehicle on the date of the unfortunate incident. The facts of the case reflect that the incident was purely accidental in nature. On perusal of the statement under Section 161 of the CrPC of the present respondents, it is noted that after the accident the petitioner himself took the injured child and respondents (parents of the deceased) to the Indian Spinal Injuries Centre for treatment. It is also a matter of record that the petitioner himself had called the PCR reporting the accident.

13. Be that as it may, the respondent Nos. 2 and 3, parents of the deceased boy, have settled with the petitioner and have put a quietus to the unfortunate accident. Therefore, in view of the foregoing discussion, no useful purpose will be served in continuing with the proceedings in the present FIR.

14. In totality of the facts and circumstances of the case, FIR No. 317/2017, under Sections 279/304A of the IPC, registered at PS Delhi Cantt., New Delhi and all other proceedings emanating therefrom including the chargesheet pending in the Court Sh. Rahul Jain, learned Metropolitan Magistrate, Patiala House Courts, Delhi, is hereby quashed.

15. The petition is allowed and disposed of accordingly.

16. Pending applications, if any, also stand disposed of.

17. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

AMIT SHARMA, J MAY 24, 2024/bsr Click here to check corrigendum, if any This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 28/05/2024 at 22:14:37