

Rahisuddin Madni vs Govt. Nct Of Delhi Through Standing ... on 8 January, 2021

Author: Yogesh Khanna

Bench: Yogesh Khanna

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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(CRL) 1504/2020

RAHISUDDIN MADNI

Through : Mr.Amit Bhatia, Advocate
versus

GOVT. NCT OF DELHI THROUGH

STANDING COUNSEL CRIMINAL & ORS.

Through : Ms.Richa Kapoor,
Ms.Shivani Sharma, Advocate
State.
Mr.Sushil Kumar Gupta
for respondents No.2
respondents in person

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% 08.01.2021

1. The hearing has been conducted through Video Conferencing.

2. This petition is filed for quashing of the FIR 49/2020 under Sections 336/304A IPC registered at police station Govind Puri, New Delhi.

3. The facts of the case are on 20.02.2020 a child of respondents No.2 and 3 while playing in the property RZ-3047, Gali No.34, Tuglakabad Extension, New Delhi-110019 fell in the underground water - storage tank being built for meeting out the water consumption of the residents of the building. Because of the unfortunate death of the child, respondent No.3 viz. the mother of the child lodged a complaint resulting into the present FIR. Chargesheet is yet to be filed in the matter. The petitioner joined the investigation and placed all relevant facts - the child was residing in a nearby building and entered into the premises while playing and accidentally fell in the pit. It is submitted that there was no reason for the child to come to the premises and play there since the property was under construction but he without noticing of anyone entered into this property, being renovated and in the absence of the others, accidentally fell in the pit.

4. It is submitted that there was no occasion for the child to enter the property of the petitioner and it was merely an unfortunate incident.

5. In Crl.M.C.2959/2014 - Ramanand vs. The State & Anr, in the similar circumstances, the FIR was quashed vide judgment dated 22.07.2014 of this Court.

6. Learned counsel for the petitioner also referred to W.P.(Crl.) No.550/2020 - Taranjeet Singh & Ors. Vs. State (Govt. of NCT of Delhi) & Ors. wherein the following was held :

5. If one peruse the charge sheet one may find the only material public witnesses are the parents and grandfather of deceased. Since admittedly they have entered into a compromise hence framing of charge and examining them later to declare them hostile would only be a futile exercise.

6. In the circumstances, I see no impediment as to why such FIR cannot be quashed. In Kamal Kishore vs. The State (NCT of Delhi) and Ors. Cr.LM.c.3878/2019 decided on 22.01.2020, FIR under Section 304-A of IPC was quashed by this Court. Further in Babu Khan and Ors. Vs. State and Ors. In W.P.(CRL.) 2227/2019 decided on 05.09.2019, FIR under Section 288/304A of IPC was quashed. Further in C.R.R. No.1173/2018 Kolkata High Court had quashed a FIR under Section 304 (1) of IPC, registered under other sections too.

7. In Pankaj Bhardwaj and Ors. Vs. State and Ors. The following was held:

"9. It is a well settled law that where the High Court is convinced that the offences are entirely personal in nature and therefore do not affect public peace or tranquillity and where it feels that quashing of such proceedings on account of compromise would bring about peace and would secure ends of justice, it should not hesitate to quash them. In such cases, pursuing prosecution would be waste of time and energy. Non-compoundable offences are basically an obstruction in entering into compromise. In certain cases, the main offence is compoundable but the connected offences are not. In the case of B.S. Joshi and others v State of Haryana and another 2003 (4) SCC 675. The Hon'ble Apex Court observed that even though the provisions of Section 320 Cr.P.C. would not apply to Such offences which are not compoundable, it did not limit or affect the powers under Section 482 Cr.P.C. The Hon' ble Apex Court laid down that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 Cr.PC. would not be a bar to the exercise of power of quashing. In the nutshell, the Hon'ble Apex Court justified the exercise of powers under Section 482 Cr.P.C. to quash the proceedings to secure the ends of justice in view of the special facts and circumstances of the case, even where the offences were non compoundable."

7. Learned ASC for the State submits that the FIR can be quashed only if it is prima facie shown that the applicant/petitioner was not negligent.

8. As already submitted by the learned counsel for the petitioner, the petitioner was not negligent in the manner the child was never residing in the same property and there was no reason to know that

the child would enter the property, being under renovation and would start playing near the pit and would accidentally fall in it. It is stated the pit was constructed to store the water as the property was under renovation/re-construction. In the circumstances, the benefit of doubt can be granted to the petitioner herein.

9. It is further submitted the petitioner has already settled the matter with the parents of the child and has paid total of Rs.5 lacs in terms of Compromise dated 28.08.2020.

10. Respondents No.2 and 3 are also present along with their counsel and submit that they have no intention to take the matter further and it is stated the FIR be quashed.

11. In the circumstances, since the offence is entirely personal in nature and does not affect the public peace and since the quashing of the proceedings on account of compromise would bring about peace to the mind of the parents and since they are only one to depose about the negligence of the petitioner, and hence once they have settled the matter, pursuing the prosecution would be a waste of time.

12. Accordingly, the petition is allowed. Consequently, FIR 49/2020 under Sections 336/304A IPC registered at police station Govind Puri and the proceedings emanating therefrom are quashed. Pending application, if any, also stands disposed of.

YOGESH KHANNA, J.

JANUARY 08, 2021 VLD