

# Francis Thomas And Ors vs The State (Govt Of Nct Of Delhi) on 6 December, 2023

**Author: Amit Sharma**

**Bench: Amit Sharma**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CRL.M.C. 2549/2023  
FRANCIS THOMAS AND ORS

Through: Mr. Ajay Burman, Sr  
Mr. Romy Chacko, Mr  
Mudgal & Mr. Varun  
for Petitioner No.  
Mr. Ravi Prakash, A  
Petitioner No. 2 (t  
alongwith Petitione  
Mr. Pradeep Sharma,  
Petitioner No. 3 al  
No. 3 in person.  
Mr. Durga Vashisht,  
Petitioner No. 4 (t

versus

THE STATE (GOVT OF NCT OF DELHI)

Through: Mr. Aman Usman, A  
with SI Kuldeep S  
North.  
Mr. Ankit Mutrej,  
complainant along  
in person.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

OR

% 06.12.2023

1. The present petition under Section 482 of the CrPC seeks quashing of FIR No. 79/2016 under Sections 304A/34 of the IPC registered at PS Vasant Kunj North and all other consequential proceedings emanating therefrom including the chargesheet pending in the Court of Sh. Animesh Bhaskar Mani Tripathi, learned Metropolitan Magistrate, Patiala House Courts, This is a digitally signed order.

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2. The case of the prosecution is that on 30.01.2016, at 02:45 PM, a PCR call was received at PS Vasant Kunj regarding the admission of a 06 year old boy at Indian Spinal Injury Centre. The MLC of the boy reflected that he was found in a water tank beneath the amphitheatre at Ryan International School at 01:50 PM and that he was declared brought dead at the hospital. The present FIR was registered at the instance of respondent no. 2 i.e., father of the deceased boy, who alleged that the death of his son was caused due to negligence of the management of Ryan International School.

3. Petitioner no. 1/Mr. Francis Thomas, is the Administrator of St. Xavier's Education Trust. Petitioner no. 2/Ms. Sandhya Sabu was the Principal of the school on the date of incident, petitioner no. 3/Ms. Meenakshi Kappor was the class teacher of the deceased child and petitioner no. 4/Mr. Yogesh Kholiya was the pump operator of the school on the date of incident.

4. Learned Senior Counsel for petitioner no. 1 submits that during the pendency of the proceedings in the present FIR, parties arrived at a settlement dated 05.04.2023 before the Delhi High Court Mediation and Conciliation Centre, pursuant to which respondent no. 2 has no objection to quashing of the present FIR. It is submitted that as per the said settlement deed, a sum of Rs. 61,00,000/- has been paid by St. Xavier's Education Trust to respondent no. 2 as compensation today by way of a demand draft bearing no.276718 dated 21.11.2023 drawn on Union Bank of India, New Delhi- Mahipalpur.

5. Learned Senior Counsel submits that upon completion of investigation, a chargesheet was filed qua the present petitioners, Mr. This is a digitally signed order.

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i. Narinder Singh and Others v. State of Punjab and Anr., (2014) 6 SCC ii. Ashok Kumar Sharma v. State & Ors., 2016:DHC:372. iii. Sanjay v. The State (NCT of Delhi) and Ors., 2016:DHC:2753. iv. Rohit Kumar Gupta and Anr. v. State NCT of Delhi & Anr., Order dated 22.07.2022 passed by a coordinate bench in CRL.MC. 1864/2022.

v. Anup Rohilla & Ors. v. The State Govt of NCT of Delhi & Ors., Order dated 04.10.2023 passed by a coordinate bench in CRL.MC. 7028/2023.

vi.	Ashish Dev v. State & Ors., 2023/DHC/363
vii.	Vinay Hans v. State (NCT of Delhi) & Ors
viii.	Babu Khan and Anr. v. State & Ors., 2019
ix.	Ramgopal & Anr. v. The State of Madhya P
x.	Kamal Kishore v. The State (NCT of Delhi

- xi. Ashok Kumar Singa v. Govt of NCT of Delhi, 2016:DHC:4048.
- xii. Amiya Acharya v. State Govt of NCT of Delhi, 2016:DHC:3499.
- xiii. Iris Park Leisures Pvt. Ltd. v. State of Delhi, 2016:DHC:3499.

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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 11/12/2023 at 22:15:07 xiv. Ambalal D. Bhatt v. The State of Gujarat, AIR 1972 SC 1150. xv. Jacob Mathew v. State of Punjab & Anr. 2005 [2] JCC 1242. xvi. Sawney Buildwell LLP v. State of NCT of Delhi and Ors., 2022/DHC/3885.

xvii. Satyam Kaushik v. State & Ors., 2015:DHC:2549. xviii. Mr. Shoib Kohli v. State GNCTD of Delhi, 2023/DHC/000734.

6. Complainant/respondent no. 2 is present in person alongwith counsel, identified by the Investigating Officer and submits 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, he has no objection if the present FIR is quashed. He also acknowledges the receipt of the aforesaid demand draft as compensation.

7. Per contra, learned APP for the State opposes the present petition and submits that the following role has been attributed to the petitioners:

i. Petitioner no. 1/Mr. Francis Thomas was responsible for the entire administration and civil works undertaken at the school. ii. Petitioner no. 2/Ms. Sandhya Sabu, in her capacity as the Principal, was required to ensure the safety of the students at the school. iii. Petitioner no. 3/Ms. Meenakshi Kapoor failed to notice that the deceased student had been absent from her class for a few hours. iv. Petitioner no. 4/Mr. Yogesh Kumar, i.e., the pump operator was required to keep the pump room locked and he failed to do so.

8. It is further submitted that the scene where the incident occurred was not under CCTV surveillance. No caution/signage/warning etc. was placed outside the pump room to keep students out of there. The attendant deputed 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 11/12/2023 at 22:15:07 to remain outside the pump room at all times was absent at the time of incident. It is further submitted that the school staff failed to locate the child after he had disappeared from his class.

9. It is submitted that the aforesaid acts/omissions prima facie disclose that the petitioners acted negligently and failed to ensure a safe surrounding for students at the school. It is further submitted that an offence under Section 304A of the IPC is not merely private in nature and the same cannot be quashed solely on the ground of a settlement arrived at between the parties.

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

11. Respondent no. 2 preferred a writ petition, i.e., W.P.(C) 1450/2019 seeking compensation of Rs. 10 Crores for negligence committed by Ryan International School and others, including the present petitioners. The said petition was disposed of by a learned Single Judge of this Court, holding as under:

"4. As is apparent from the above, this is not the case of *res ipsa loquitur*, and this Court cannot readily conclude that respondent nos.1 to 15 have been negligent. The allegations made herein raise several issues of fact. In this view, this Court does not consider it apposite to examine the petitioner's claim in these proceedings. It would be open for the petitioner to institute an appropriate action, if so advised."

The said order was challenged by respondent no. 2 by way of LPA 164/2019 and vide order dated 10.10.2022, a learned Division Bench of this Court referred the parties to the Delhi High Court Mediation and Conciliation Centre, to attempt a settlement. In pursuance thereof, petitioners and respondent no.2 have entered into a settlement agreement dated 05.04.2022.

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12. 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.

13. After examining the various cases decided by coordinate benches of this Court cited hereinabove and scope of powers under Section 482 of the CrPC, 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 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 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 11/12/2023 at 22:15:07 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."

14. 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 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 This is a digitally signed order.

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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 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 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 11/12/2023 at 22:15:07 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 "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 This is a digitally signed order.

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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.""

15. 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 act or omission on part of the petitioners which resulted in the accident. In the present case, the petitioners are being prosecuted on account of the positions held in the management and by way of employment in the school on the date of the unfortunate incident. A perusal of the chargesheet reflects that the unfortunate incident occurred on account of the fact that underground water tank near the pump room was left open. It is not the case of the prosecution that there was no grill or a mechanism to lock the said water tank. In fact, it has come on record that persons were deputed to This is a digitally signed order.

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16. Be that as it may, respondent no. 2/father of the deceased boy has settled with the petitioners as well as the school authorities and has put a quietus to the unfortunate episode. It is relevant to note that respondent no. 2 is the author of the FIR.

17. In view of the foregoing discussion, no useful purpose will be served in continuing with the proceedings in the present FIR.

18. In view thereof, FIR No. 79/2016 under Sections 304A/34 of the IPC registered at PS Vasant Kunj North and all other consequential proceedings emanating therefrom including the chargesheet pending in the Court of Sh. Animesh Bhaskar Mani Tripathi, learned Metropolitan Magistrate, Patiala House Courts, Delhi, is hereby quashed.

19. The petition is allowed and disposed of accordingly.

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

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

AMIT SHARMA, J DECEMBER 06, 2023/nk This is a digitally signed order.



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