

(2011) 07 BOM CK 0082

In the Bombay High Court

Case No : Criminal Application No. 258 of 2011

Pundlik Nikhare

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482
Penal Code, 1860 (IPC) — Section 304A, 34

Citation : (2011) 07 BOM CK 0082

Hon'ble Judges : A.P. Bhangale, J

Bench : Single Bench

**Advocate : R.M. Daga, for the Appellant; A.S. Parihar, Assistant Public
Prosecutor, for the Respondent**

Final Decision : Allowed

Judgement

A.P. Bhangale, J.—Heard Mr. R.M.Daga, Adv. for the applicant and Mr. A.S.Parihar, A.P.P. for the Respondent/State.

2. ADMIT.

3. By this application, the applicant has prayed for to quash and set aside the proceedings in Summary Criminal Case No. 279 of 2010 pending on the file of the learned Judicial Magistrate, First Class (3rd Court), Gondia instituted pursuant to lodging of Crime No. 17 of 2010 at Police Station Gondia (Rural) on 28.1.2010, u/s 304-A r/w. Section 34 of the Indian Penal Code. In an unfortunate incident/accident, Vishal @ Vilas Umesh Lamkase, a boy aged about 10 years, fell in a cooking pan on or about 15.10.2008 and while receiving medical treatment in the New Gondia Hospital, Gondia, he died on 27.10.2008 as a result of 80 % burn injuries. On that basis, accidental death was registered as Marg Intimation No. 35 of 2008 on 10.12.2008. It appears that earlier Jayatrabai w/o. Umesh Lamkase had filed Criminal Writ Petition No. 652 of 2009 against the State of Maharashtra as well as against the applicant in the capacity of Secretary of Adiwasi Ashram Shala, Pandhrabodi, Tq. and Distt. Gondia. In the said Writ

Petition, the Investigating Officer Dilip Bapuraoji Kundojwar, P.S.I. from Police Station, Gondia sworn in an affidavit dt.13/14th January, 2010 in which, in para 5 thereof, it was averred that, after holding enquiry of Merg report, it was concluded that the offence of negligence was not made out. Therefore, the FIR was not registered against the present applicant. Same Police Officer, while filing additional reply on behalf of the Respondent/State of Maharashtra, on 29.1.2010, submitted that investigation is in progress in view of registration of crime against the accused as Crime No,17 of 2010 on 28.1.2010, u/s 304-A r/w. Section 34 of the Indian Penal Code.

4. My attention is also invited to the statement made by Jayatrabai in connection with Special Civil Suit No. 18 of 2010 instituted in the Court of Civil Judge (Sr.Dn.), Gondia for compensation in the sum of Rs. 10 Lacs against Sant Gnyaneshwar Adiwasi Ashramshala, Pandharabodi. It is stated in para 10 of the plaint as under:

That, on 15.10.2008 when Vishal @ Vilas with other students was being distributed food, in utter chaotic situation, Plaintiff's son Vishal @ Vilas fell in the hot cooking pan of Cevels which was boiling hot. That, Vilas sustained burn injuries.

5. Jayatrabai in her statement recorded on 16.10.2008 u/s 161 of the Code of Criminal Procedure before the Police appears to have stated that she came to know from Ku. Ramadevi Katare about the burn injuries received by Vishal and about the fact that he was taken to Gondia for admission in the hospital. Thus, she is not witness as to direct evidence of the incident. She had visited the hospital in Gondia. The boy was sleeping on bed with burn injuries received on hands, legs, face and abdomen. But, he did not speak anything. Katare Madam had informed her that the boy had accidentally fell in the cooking pan and that, since the accident had happened suddenly, she had No. accusation against anybody. In the course of investigation, statement of Jayatrabai was also recorded on 30.1.2010, wherein it is specifically stated by Jayatrabai that Vishal was admitted in Gondia hospital and while receiving treatment for 10 to 12 days, he died on 27.10.2008 at about 2 P.M. at Gondia. Further, it is stated by her that, in the ground of the school, pots with meals were kept for serving food to the children. But, all of a sudden, accidentally, Vishal fell in one of the pots and received burn injuries which led to his death. Thus, the learned Advocate for the applicant submitted that it was purely an accident which resulted in burn injuries sustained by Vishal, who was taken to hospital where he had received medical treatment for 10 to 12 days, but, unfortunately, he met with death. Under these circumstances, it is submitted that there was No. question of commission of any offence punishable u/s 304-A of the Indian Penal Code.

6. The learned Advocate made a reference to the three Judges Bench ruling in the case of Rakesh Ranjan Gupta Vs. State of U.P. and Another, , in which the Apex Court observed that the allegations did not disclose even prima facie the case of rash or negligent act on the part of the accused so as to attract the penal

provision u/s 304-A of the Indian Penal Code. Considering the admitted facts, it was held that there was No. case for to proceed against the accused in Criminal Court for the offence punishable u/s 304-A of the Indian Penal Code. The Apex Court, therefore, was pleased to quash the charge-sheet holding that, at the worst, it was a case of civil negligence and not one of culpable negligence falling within the ambit of Section 304-A of the Indian Penal Code. The learned Advocate submitted that the observations which were made by the Apex Court are attracted in the facts and circumstances disclosed in the present case. It cannot be disputed that, for to establish commission of the offence punishable u/s 304-A of the Indian Penal Code, there has to be a rash and negligent act which results into or which causes death of any person. Looking into the material collected during investigation and pointed out to me, one cannot say that the applicant has committed any rash or negligent act which is culpable under the penal law so as to amount an offence punishable u/s 304-A of the Indian Penal Code.

7. The learned A.P.P. opposed the application submitting that an unfortunate incident of death of a child had taken place, which was investigated and the applicant/accused is required to face the criminal proceedings on account of his negligence. It is further submitted that the exceptional powers u/s 482 of the Code of Criminal Procedure ought not to be used for to quash the proceedings as the same would amount to abuse of process of law.

8. Hearing the submissions made on behalf of the respective parties, considering the material collected during the course of investigation and the ruling in the case of Rakesh Ranjan Gupta (cited supra), I think that this is a fit case in which powers u/s 482 of the Code of Criminal Procedure ought to be exercised. There is No. case even prima facie to fasten criminal liability on the applicant for the alleged offence punishable u/s 304-A of the Indian Penal Code. In such facts-situation, if the proceedings in question are not quashed and set aside, it would be nothing but sheer harassment to the applicant. It is futile to continue such prosecution Hence, the F.I.R. registered against the applicant dt. 28.1.2010 at Police Station, Gondia (Rural), Distt. Gondia and the chargesheet pending on the file of the Judicial Magistrate, First Class (3rd Court), Gondia vide Summary Criminal Case No. 279 of 2010 is hereby quashed and set aside, as prayed for. Application is allowed accordingly.