
(2010) 07 MP CK 0005
In the Madhya Pradesh High Court
Case No : M. Cr. C. No. 3654 of 2010

Ram Kishore

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 228(1), 482
Penal Code, 1860 (IPC) — Section 304, 304A, 32, 34, 43

Citation : (2010) ILR (MP) 1836 : (2010) 2 MPHT 447 : (2010) 2 MPLJ 230

Hon'ble Judges : Rakesh Chandra Mishra, J

Bench : Single Bench

Judgement

R.C. Mishra, J.

With consent, matter is finally heard.

This petition, u/s 482 of the Code of Criminal Procedure, has been preferred against the order-dated 23.10.2009 passed by Special Judge, Katni, in Criminal Revision No. 70/09 affirming the order-dated 12.05.2009 passed by Chief Judicial Magistrate, Katni in Criminal Case No. 4540/2008 whereunder his plea of not guilty in answer to the charge of the offence punishable u/s 304A of the IPC was recorded.

Background facts may be summarized as under-

(i) On 05.10.2008 at about 5.30 p.m., three children namely Nagendra, Swapnil and Krishna Kumar, respectively aged about 5, 3 and 5 years, fell down in about 4-feet deep tank meant for collection of water at the site for construction of school building in village Bhatgawan and died due to drowning. Accordingly, morgue (death) cases were registered at P.S. Umariya Pan. After due inquiry, the SHO registered a case u/s 304 read with Section 34 of the IPC against the Petitioner to whom contract for construction of building was awarded by the Gram Panchayat.

(ii) Upon completion of the investigation, the charge sheet was submitted against the Petitioner and co-accused Ramkishore Barman and Uday Kumar, respectively Sarpanch and Secretary of the Gram Panchayat, before the CJM, Katni who committed the case to the Court of Session for trial. However, by virtue of the order-dated 17.04.2009 passed by a co-ordinate Bench of this Court in MCrC No. 1835/2009, the petition filed by the Petitioner and the co-accused Ramkishore, u/s 482 of the Code, was allowed and their prosecution for the offence u/s 304 of the IPC was quashed. But, the trial Judge was directed to frame necessary charges against the Petitioners. Accordingly, learned First ASJ, Katni vide order-dated 08.05.2009 framed charge u/s 304A of the IPC and transferred the case, u/s 228(1)(a) of the Code, to the CJM for trial.

Learned Counsel for the Petitioner has strenuously contended that in absence of allegations as to any positive act of criminal negligence, the offence punishable u/s 304A of the IPC would not be made out. However, the contention is apparently misconceived as, u/s 32 of the IPC, the term "act" includes "illegal omission".

The word "illegal" is defined in Section 43 of the IPC and as already explained in *Ganeshgir and Another Vs. The State of Madhya Pradesh*, omission is not like an act, a real event, but is merely an artificial conception, consisting of the negation of a particular act. Moreover, in the words of Straight J., criminal negligence is the gross and culpable neglect or failure to exercise reasonable care and precaution to guard against injury either to public generally or to an individual in particular (*Empress v. Idu Beg* ILR (1881) All 776 quoted with approval in *Mahadev Prasad Kaushik Vs. State of U.P. and Another*,

In this view of the matter, the omission on the part of the Petitioner in leaving the tank uncovered and unsafe for the small children prima facie amounted to criminal negligence.

This apart, the inherent powers, u/s 482 of the Code, are to be exercised *ex debito justitiae* to prevent abuse of the process of Court but not to stifle a legitimate prosecution, when the issue involved, whether factual or legal, can not be decided without sufficient material. Accordingly, it is not a fit case for interference under the inherent powers.

The petition, therefore, stands dismissed.