IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

ON THE 23rd OF JULY, 2024

MISCELLANEOUS CRIMINAL CASE No. 445 of 2007

P.D. AGRAWAL

Versus

THE STATE OF MADHYA PRADESH

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Appearance:

Shri Manish Datt – Senior Advocate with Shri Ishan Tignath – Advocate for the applicant.

Shri Mohan Sausarkar – Government Advocate for the respondent/State.

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"Reserved on : 18.07.2024"

"Pronounced on : 23.07.2024"

ORDER

This application under Section 482 of Cr.P.C. has been filed seeking following reliefs:

> "It is, therefore, prayed that this Hon'ble Court be kind enough to allow this petition and quash and set aside the first information report, charge sheet so filed and impugned order dt.29.12.2006 passed by the Court of Shri Sunil Kumar Jain, Judicial Magistrate First Class, Paten, district Jabalpur, in Criminal Case No.2021/2005 (State of M.P. V. N.D. Subramaniam Pillai and ors.), whereby cognizance has been taken against the petitioner for offence u/s 304/34 of the IPC and discharge the petitioner."

2. It is submitted by counsel for applicant that FIR in Crime No.66/2005 was registered at Police Station Katangi, District Jabalpur for offence under Sections 304-A, 34 of IPC on the allegation that widening of a culvert was being done by the applicant/contractor. No

warning sign was put by the contractor for giving any information to the commuters, as a result the deceased Charan Singh fell down in a ditch and lost his life.

3. The undisputed fact is that the contract was being executed by the applicant. The contract was originally awarded to TDM Infrastructure Pvt. Ltd, who sublet the said contract to M/s. P.D. Agrawal Infrastructure Ltd. and it is the case of applicant that he is the Managing Director of M/s. P.D. Agrawal Infrastructure Ltd. It appears from the order sheets of the Court below that the charge sheet was filed under Section 299 of Cr.P.C. by declaring the applicant as absconder and ultimately by order dated 30.03.2010, a perpetual warrant of arrest was issued. However, it is submitted by counsel for applicant that the applicant was granted anticipatory bail by order dated 06.11.2006 passed in M.Cr.C. No.7204/2006. Thus, it is clear that applicant never appeared before the investigating officer or before the trial Court and ultimately he was declared absconder by order dated 30.03.2010. However, it is submitted by counsel for the applicant that on 23.10.2018, the applicant surrendered before the trial Court and the case is being adjourned by the trial Court awaiting final order of this Court.

4. Challenging the registration of FIR against the applicant, it is submitted by counsel for applicant that since the applicant is the Managing Director of the company and the offence was committed by the company, therefore, in absence of any provision under the IPC, the Managing Director cannot be made vicariously liable for the offence committed by the company. It is further submitted that even the company has not been made an accused. To buttress his contention, the counsel for applicant has relied upon the judgments passed by the Supreme Court in the cases of **Maksud Saiyed Vs. State of Gujarat**

and Others reported in **(2008) 5 SCC 668**, **Sunil Bharti Mittal Vs. Central Bureau of Investigation** reported in **(2015) 4 SCC 609**, **Sharad Kumar Sanghi Vs. Sangita Rane** reported in **(2015) 12 SCC 781**, **Shiv Kumar Jatia Vs. State of NCT of Delhi** reported in **(2019) 17 SCC 193**, **Ravindranatha Bajpe Vs. Mangalore Special Economic Zone Limited and Others** reported in **(2022) 15 SCC 430** and the judgment passed by the High Court of Punjab and Haryana at **Chandigrah in the case of S. Rajgopal Vs. State of Haryana and others** decided on 02.04.2024 in **CRM-M-35036-2019.**

5. Per contra, application is vehemently opposed by counsel for the State. It is submitted that in the light of judgment passed by the Supreme Court in the case of **Sushil Ansal Vs. State Through Central Bureau of Investigation** reported in **(2014) 6 SCC 173**, the applicant is the owner of the contractor company and therefore, he can be made an accused.

6. In reply, it is submitted by counsel for applicant that there is nothing on record that the applicant had any role to play in not putting any warning sign on the road to indicate that the road is closed.

7. Considered the submissions made by counsel for the parties.

8. The allegations are that widening of a culvert was going on and accordingly, the road was diverted but there were no warning signs for diversion etc. as a result the deceased, who was on a motorcycle, went straight and fell in a ditch resulting in lost of his life.

9. Now the only question for consideration is as to whether the applicant can be held criminally liable for not putting warning signs on the spot as a result of which, the accident took place?

10. The case diary contains Power of Attorney, according to which applicant is the partner of M/s. P.D. Agrawal Infrastructure Ltd. because

in the said Power of Attorney it has been mentioned as "by virtue of this Power of Attorney, I, P.D. Agrawal, S/o Shri Gorelal Agrawal, Resident of 23, Joy Builders colony, Indore and partner of M/s. P.D. Agrawal Infrastructure Ltd, Indore.....".

11. As has already been pointed out by this Court in the previous paragraph that although applicant was granted anticipatory bail in the year 2006 but he never appeared before the investigating officer and ultimately a charge sheet in his absence was filed by declaring him as absconding and ultimately by order dated 30.03.2010 a perpetual warrant of arrest was issued. Although, it is the case of applicant that he is the Managing Director of the company but in fact as already pointed out, he is a partner of M/s. P.D. Agrawal Infrastructure Ltd. as evident from the Power of Attorney executed by the applicant. There is a difference between a partner and Managing Director. Partner is a co-owner of the company. Although, the Managing Director may share same responsibility as a partner but they are not the partner of the Firm but they are paid salary. The Managing Director is a paid employee with performance based bonuses whereas a partner is an owner with share in the profit. Thus, it is clear that applicant is the owner of the company and not the Managing Director of the company. Furthermore, the applicant was absconding, therefore, no material could be collected by the Police with regard to the extent of liabilities of the applicant. Being the owner of the company, he is responsible for execution of work. Further while subletting the contract for strengthening, widening and upgrading of Sagar-Damoh-Jabalpur Road on BOT basis in the State of Madhya Pradesh, the TDM Infrastructure Private Ltd. had specifically made it clear that it would be the duty of M/s. P.D. Agrawal Infrastructure Ltd. to take all safety precautions at site i.e. "during the

construction activities of shoulders and culverts, all precaution for safety of road user is to be taken in advance with respect to proper traffic signages, flags etc." Furthermore, specific site instructions were given to the contractor to put big coloured banners by putting flags etc. and the road users should be protected from accident of any kind and the safety arrangements were to be made at either ends of the culvert. However, nothing was done by the company and by the applicant.

12. The Supreme Court in the case of **Sushil Ansal (supra)** has held as under:-

> **"119.** For instance, both the courts have concurrently held the following breaches to have been established, by the evidence adduced by the prosecution:
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> **119.1.** That the Cinema did not have any functional public address system necessary to sound an alarm in the event of a fire or other emergency. The PA system of the Cinema was found to be dysfunctional at the time of the occurrence hence could not be used to warn or to sound an alarm to those inside the Cinema to exit from the hall and the balcony.
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> **119.2.** That the emergency lighting even though an essential requirement and so also the well-lit exits stipulated under the DCR, 1953 were conspicuous by their absence. The failure of the electric supply on account of tripping of the main supply lines consequently plunged the cinema hall and the balcony area into darkness leaving those inside the balcony panic-stricken and groping in the dark to find exits in which process they got fatally exposed to the carbon monoxide laden smoke that had filled the hall.
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> **119.3.** That blocking of the vertical gangway along the rightmost wall and the narrowing of the vertical gangway along the right side of the middle exit by installation of additional seats had the effect of depriving the patrons of the

facility to use the right side gangway and the gangway along the middle exit for quick dispersal from the balcony.

119.4. That the closure of the right side exit in the balcony area by installation of a private eight-seater box permanently cut off access to the right side staircase and thereby violated not only the DCR, 1953 but also prevented the patrons from using that exit and the right side stairway for quick dispersal from the balcony.

119.5. That the introduction of the new exit in the left wing of the balcony in lieu of the closed right side exit did not make up for the breach of Para 10(4) of the First Schedule to the DCR, 1953 which mandates exits on both sides of the auditorium/balcony.

119.6. That failure to introduce fourth exit even when the total number of seats in the balcony had gone above 300 with the addition of 15 more seats installed in 1980, further compromised the safety requirements statutorily prescribed under the DCR.

119.7. That bolting of the middle entry/exit doors leading into the foyer obstructed the flow of patrons out of the balcony exposing them to poisonous gas that spread into the hall for a longer period than what was safe for the patrons to survive.

119.8. That the absence of any staff members to open the exit gates and to generally assist the patrons in quick dispersal from the balcony resulted in the patrons inhaling poisonous gas and dying because of asphyxiation.

119.9. That the bolting of the door leading from the foyer into the right side staircase and outside which had to be forced open also prevented the quick dispersal and led to a large number of casualties.

119.10. That construction of the refreshment counter near the exit gate of the first floor and

another near the second floor inhibited free passage of the patrons.

119.11. That the breaches enumerated above have been proved by the evidence adduced at the trial is concluded by the concurrent findings recorded by the two courts below. There is, in our opinion, no perversity in the conclusions drawn by the courts below on the aspects enumerated above. In the light of those conclusions it can be safely said that the occupiers had committed a breach of their duty to care and were, therefore, negligent.

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125. We have at some length dealt with the ingredients of the offence punishable under Section 304-A IPC in the earlier part of this judgment. One of those ingredients indeed is that the rash or negligent act of the accused ought to be the direct, immediate and proximate cause of the death. We have in that regard referred to the decisions of this Court to which we need not refer again. The principle of law that death must be shown to be the direct, immediate and proximate result of the rash or negligent act is well accepted and not in issue before us as an abstract proposition. What is argued and what falls for our determination is whether the causa causans in the case at hand was the fire in DVB transformer as argued by the defence or the failure of the victims to rapidly exit from the balcony area. Two aspects in this connection need be borne in mind:

125.1. The first is that the victims in the instant case did not die of burn injuries. All of them died because of asphyxiation on account of prolonged exposure to poisonous gases that filled the cinema hall including the balcony area. Fire, whatever may have been its source, whether from DVB transformer or otherwise, was the causa sine qua non for without fire there would be no smoke possible and but for smoke

in the balcony area there would have been no casualties. That is not, however, the same thing as saying that it was the fire or the resultant smoke that was the causa causans. It was the inability of the victims to move out of the smoke filled area that was the direct cause of their death. Placed in a smoke filled atmosphere any one would distinctively try to escape from it to save himself. If such escape were to be delayed or prevented the causa causans for death is not the smoke but the factors that prevent or delay such escape. Let us assume for instance that even when there are adequate number of exits, gangways and all other safety measures in place but the exits are locked preventing people from escaping. The cause of death would in such case be the act of preventing people from exiting from the smoke filled hall, which may depending upon whether the act was deliberately intended to cause death or unintended due to negligence, amount to culpable homicide amounting to murder or an act of gross negligence punishable under Section 304-A. Similarly take a case where instead of four exits required under the relevant Rules, the owner of a cinema provides only one exit, which prevents the patrons from exiting rapidly from the smoke filled atmosphere, the causa causans would be the negligent act of providing only one exit instead of four required for the purpose. It would in such circumstances make no difference whether the fire had started from a source within the cinema complex or outside, or whether the occupiers of the cinema were responsible for the fire or someone else. The important question to ask is what the immediate cause of the death was. If failure to exit was the immediate cause of death nothing further need be considered for that would constitute the causa causans. That is what happened in the case at hand. Smoke entered the cinema hall and the balcony but escape was prevented or at least delayed

because of breach of the common law and statutory duty to care.

125.2. The second aspect is that while the rash or negligent act of the accused must be the causa causans for the death, the question whether and if so what was the causa causans in a given case, would depend upon the fact situation in which the occurrence has taken place and the question arises. This Court has viewed the causa causans in each decided case, in the facts and circumstances of that case. If Hatim's failure to stir the hot wet paint while rosin was being poured into it was held to be causa causans, in *Kurban Hussein case* [*Kurban Hussein Mohamedalli Rangawalla* v. *State of Maharashtra*, AIR 1965 SC 1616 : (1965) 2 Cri LJ 550 : (1965) 2 SCR 622] , the failure of the motorist to look ahead and see a pedestrian crossing the road even when the motorist was driving within the speed limit prescribed was held to be the causa causans for the death in *Bhalchandra Waman Pathe* v. *State of Maharashtra* [*Bhalchandra Waman Pathe* v. *State of Maharashtra*, 1968 ACJ 38 : 1968 Mah LJ 423 (SC)] . In *Bhalchandra* v. *State of Maharashtra* [*Bhalchandra* v. *State of Maharashtra*, AIR 1968 SC 1319 : (1968) 3 SCR 766 : 1968 Cri LJ 1501] where an explosion in a factory manufacturing crackers claimed lives, this Court found that use of explosives with sensitive compositions was the immediate cause of the explosion that killed those working in the factory. In *Rustom Sherior Irani case* [*Rustom Sherior Irani* v. *State of Maharashtra*, 1969 ACJ 70 (SC)] , this Court found the new chimney of the bakery was being erected without the advice of a properly qualified person and that the factory owner was responsible for neglect that caused the explosion and not the mason employed by him for erecting

the chimney. The decision in *Kurban Hussein case* [*Kurban Hussein Mohamedalli Rangawalla* v. *State of Maharashtra*, AIR 1965 SC 1616 : (1965) 2 Cri LJ 550 : (1965) 2 SCR 622] was cited but distinguished on facts holding that the choice of the low diameter pipe and engaging a mere mason not properly qualified for doing the job were the cause of the accident resulting in casualties.

126. It is in that view, not correct to say that the causa causans in the present case ought to be determined by matching the colours of this case with those of *Kurban Hussein case* [*Kurban Hussein Mohamedalli Rangawalla* v. *State of Maharashtra*, AIR 1965 SC 1616 : (1965) 2 Cri LJ 550 : (1965) 2 SCR 622] . The ratio of that case lies not in the peculiar facts in which the question arose but on the statement of law which was borrowed from the judgment of Sir Lawrence Jenkins in *Emperor* v. *Omkar Rampratap* [(1902) 4 Bom LR 679] . The principle of law enunciated in that case is not under challenge and indeed was fairly conceded by Mr Salve and Mr Tulsi. What they argued was that when applied to the facts proved in the present case, the causa causans was not the fire in the transformer but the breaches committed by the occupiers of the Cinema which prevented or at least delayed rapid dispersal of the patrons thereby fatally affecting them because of carbon monoxide laden gas in the smoke filled atmosphere. The causa causans indeed was the closure of the exit on the right side, the closure of the right side gangway, the failure to provide the required number of exits, failure to provide emergency alarm system and even emergency lights or to keep the exit signs illuminated and to provide help to the victims when they needed the same most, all attributable to the Ansal brothers, the occupiers of the Cinema. We have, therefore, no hesitation in rejecting the argument

> of Mr Jethmalani, which he presented with commendable clarity, persuasive skill and tenacity at his command."

13. In present case also there is a breach of safety by the company partially owned by the applicant as they had miserably failed in putting safety signs on either side of the culvert so as to prevent any accident of a road user. The accident took place on account of non-putting of safety signs, as a result the deceased went straight and fell down in a ditch resulting in his death. Therefore, this case is duly covered by judgment passed by the Supreme Court in the case of **Sushil Ansal (supra).**

14. So far as non impleadment of company as accused is concerned, there is no bar in impleading the company as an offender at later stage. The Court in exercise of power under Section 190, 193 and 319 of Cr.P.C. can always summon an additional person as an accused.

15. Considering the totality of the facts and circumstances of the case, this Court is considered opinion that no case is made out warranting interference.

16. The application fails and is hereby **dismissed**.

17. The interim order dated 09.03.2007 is hereby **vacated**.

(G.S. AHLUWALIA)
JUDGE

SR*