

Reserved on : 22.07.2024
Pronounced on : 06.08.2024



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 06TH DAY OF AUGUST, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.15958 OF 2024 (GM - RES)

BETWEEN:

- 1 . SRI DEBASHISH SINHA
PRESIDENT,
PRESTIGE LAKE SIDE HABITAT
HOME OWNERS ASSOCIATION
S/O MR. ALOK KUMAR SINHA,
AGED ABOUT 37 YEARS,
RESIDING AT 15273,
PRESTIGE LAKE SIDE HABITAT,
28/2, STATE HIGHWAY 35,
DEVASTHANAGALU, GUNJUR
BENGALURU – 560 087.
- 2 . SRI S.T.SURESH BABU
OWNER,
VISION INDIA MARKETING,
S/O MR. S.T.SAMBANDAN,
AGED ABOUT 56 YEARS,
RESIDING AT 120/35,
14TH A CROSS, TTK TEMPLE,
VYALIKAVAL MALLESHWARARM,
BENGALURU – 560 003.

- 3 . SANTOSH MAHARANA
S/O UPENDRA MAHARAN,
AGED ABOUT 28 YEARS,
RESIDING AT NEAR UDUPI HOTEL,
VINAYAKA NAGAR, GUNJURU
VARTHUR HOBLI,
BENGALURU – 560 087.

- 4 . GOBINDA MANDAL
S/O POORN MANDAL,
AGED ABOUT 32 YEARS,
RESIDING AT NO.385,
2ND CROSS, YAMALURU,
OLD AIRPORT ROAD,
BENGALURU – 560 087.

- 5 . BIKASHKUMAR PARIDH
S/O RATNAKAR PARIDH,
AGED ABOUT 32 YEARS,
RESIDING AT NO.324,
NEAR DHARMARAYA TEMPLE
RAAMAKONDANAHALLI VILLAGE,
VARTHUR HOBLI,
BENGALURU – 560 087.

6. BHAKTHA CHARAN PRADHAN
S/O KRISHNAMOHAN PRADHAN
AGED ABOUT 26 YEARS
RESIDING AT
NO.3, VINAYAK NAGAR
VARTHUR HOBLI
BENGALURU – 560 087.

... PETITIONERS

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W
SRI N.S.SRIRAJ GOWDA, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
BY VARTHUR POLICE STATION,
VARTHUR MARKET ROAD,
VARTHUR, NEAR GOVERNMENT HOSPITAL,
BENGALURU – 560 087.
REPRESENTED BY ITS
POLICE SUB-INSPECTOR.

- 2 . SRI RAJESH KUMAR DAMERLA
AGED ABOUT 40 YEARS,
RESIDING AT NO.17296,
PRESTIGE LAKESIDE HABITAT,
GUNJUR, VARTHUR,
BENGALURU – 560 087.

... RESPONDENTS

(BY SRI THEJESH P., HCGP FOR R-1)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO A. QUASH THE COMPLAINT AND FIRST INFORMATION REPORT DATED 08.02.2024, FOR OFFENCES PUNISHABLE UNDER SECTIONS 149 AND 304 OF THE INDIAN PENAL CODE, 1860 IN CRIME NO. 0074/2024 (ANNEXURE-A AND ANNEXURE B) AS AGAINST THE PETITIONERS; B. QUASH THE CHARGE SHEET DATED 01.04.2024, FOR OFFENCES PUNISHABLE UNDER SECTIONS 149 AND 304 OF THE INDIAN PENAL CODE, 1860 IN CC NO. 3071/2024 (ANNEXURE C), AS AGAINST THE PETITIONERS; C. QUASH THE ORDER DATED 11.06.2024, AND ALL PROCEEDINGS IN CRIMINAL CASE NO.3071 OF 2024, PENDING ON THE FILE OF THE IIND ADDITIONAL CHIEF JUDICIAL MAGISTRATE, BENGALURU RURAL DISTRICT, AT BENGALURU, (ANNEXURE D), AS AGAINST THE PETITIONERS

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

The petitioners/accused 1, 3 to 7 are before this Court calling in question proceedings in C.C.No.3071 of 2024 pending before the II Additional Chief Judicial Magistrate, Bengaluru Rural District arising out of a crime in Crime No.74 of 2024 registered for offences punishable under Sections 149 and 304 of the IPC.

2. Heard Sri Sandesh J.Chouta, learned senior counsel appearing for the petitioners and Sri P.Thejesh, learned High Court Government Pleader appearing for respondent No.1.

3. Facts, in brief, germane are as follows:-

The 2nd respondent is the complainant. The petitioners are the Members of Prestige Lake Side Habitat Home Owners Association ('the Association' for short), who are voted by the owners of the

apartment complex, which manages an apartment complex at Gunjur, Varthur, Bengaluru. It is the case of the prosecution that on 28-12-2023 the daughter of the 2nd respondent slips into the swimming pool in the apartment complex and dies by drowning. On 8-02-2024, a complaint comes to be registered against the President and office bearers of the Association. The police conduct investigation and file a charge sheet against these petitioners and the builder of the apartment complex in C.C.No.3071 of 2024. The concerned Court takes cognizance of the offence and issues summons. It is then the petitioners are before this Court calling in question the entire proceedings in the criminal case.

4. A coordinate Bench of this Court in a companion petition i.e., Writ Petition No.8996 of 2024 has stayed further proceedings against the builder on the ground that the builder has handed over the apartment complex to the possession of the Association. The stay is granted on that score and the same is subsisting in the said writ petition is the submission of the learned senior counsel for the petitioners.

5. The learned senior counsel would contend that both the offences alleged which are punishable under Sections 304 and 149 of the IPC are not applicable to the facts of the case at hand. He would contend that there is no intention of the petitioners to commit homicide, which is the necessary requirement of Section 304 of the IPC. He would contend that if further proceedings are permitted to be continued it would become an abuse of the process of law. On the merit of the matter, the learned senior counsel would contend that the complainant has taken close to 40 days to register the complaint that too alleging that his daughter died of electric shock. He would, on this ground, seek quashment of the entire proceedings.

6. The learned High Court Government Pleader would contend that the petitioners are primarily responsible for the negligent act which has led to the death of the child. They are responsible for the affairs of the apartment complex, as they are the office bearers of the Association. The post-mortem report clearly indicates that the death was caused due to drowning of the child in the swimming

pool. He would, therefore, contend that the petitioners/office bearers of the Association will have to come out clean in the trial.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The incident happens on 28-12-2023 and the complaint comes to be registered on 08-02-2024. Since the entire issue has now sprung from the complaint, I deem it appropriate to notice the complaint. It reads as follows:

*To
Sub-inspector of Police,
Varthur Police Station,
Bengaluru-560 087.*

Date:8-02-2024

*From:
Rajesh Kumar Damerla,
S/o D.L.Kantha Rao, Aged 40 years,
Flat 17296,Prestige Lakeside Habitat,
Gunjur Varthur, Bengaluru-560 087,
Phone 79955661.*

Sub: Request to register FIR against 'Prestige Lakeside Habitat Home Owners Association' (PLH-HOA) and its deployed contractor 'Prestige property management and Services (PPMS), Swimming Pool maintenance team of Prestige Lakeside Habitat Society, Gunjur, Bangalore East and

other concern persons who have the knowledge of electricity flowing in the decorative water body of the Swimming Pool who caused the death of my daughter Manya Dameria (9 years) in the shallow (4 inches of water only) decorative water body.

Dear Sir,

In connection with the above subject, I was a resident of the above address with my wife and daughter Manya. On 28-12-2023 at night around 8 p.m. I received a phone call from my friend Mr. Hitesh (residing at Flat No.17231) that my daughter fell into the decorative water body and became unconscious. I rushed immediately towards decorative water body around the swimming pool. Before I reached the place of incident, I was informed by gathered residents that my daughter Manya had been shifted to Sahasra Hospital through the Ambulance with the help of residents, one of them was Sandeep. I arrived at SAHASRA HOSPITAL at around 8.15 p.m. and doctor tried to revive her heartbeat and later declared that she was brought dead. I have given a complaint on 28-12-2023 the same night at 11.30 p.m. which came to be registered as suspicious unnatural death under the Cr.P.C, 1973 (U/s 174.c)

In this connection, I would like to draw your attention to a few facts about the above incident. My daughter left the house at 7.29 p.m. (CCTV footage reference). After going down, she was playing with her friends viz., Aarna Rai, Vivaan and others near the above mentioned decorative water body with water depth of just 4 inches near the swimming pool. We were told by her friends through their parents that they were playing with her, while Manya who had stepped into the water body screamed and fell down in the shallow water body of 4 inches water depth. By all accounts she was the only child who had stepped into the water body. The parents of the aforementioned 2 kids number is 966 3794936 – Sushanth, 9620695800 – Milton. It appears that my daughter's friends panicked and attempted to pull her out of the said water body, when they too experienced electric shock when they touched her. When they asked her to come out, she seem to have told them "I can't move". They are her last words. It appears that then they

rushed to seek adult help and Ashutosh Anand was first one to respond as he was walking nearby the location. Then other adults Sandeep & Dipti Balani also joined efforts to rescue her. As Ashutosh and few other adults also experienced electric shock they called security guards to pull out Manya. They have apparently even tried to use a wooden stick and a chair to pull her out but they couldn't succeed. In the meantime, the security guards arrived and they cut off the electric supply to the entire swimming pool area by turning off the relevant 2 MCBs. They were thus able to bring her out of the decorative water body to give her CPR in the lobby area. This entire process had been on for over 20 minutes. The concerned persons had no plan of action for helping Manya of this untoward incident with quick response and this inept response caused the death of my only child, Manya. After Manya was shifted to SAHASRA HOSPITAL, the electric team was asked by the resident to switch on MCGs to check if there is electricity flowing in the water. The electricity was found flowing in the decorative body (video reference). I also have information that the steady supply of electricity was in excess on the fateful day. The same also can be investigated.

As a matter of fact, residents have experienced electric shocks even before the death of my child. It appears that concerned persons have complaints of the same on the Society's Mygate application as also provided complaints to the maintenance team including the electrician of the swimming pool and security guards but these complaints were apparently ignored and unfortunately no action was taken by concerned people even when they had knowledge of a constant stream of electric shock which could potentially cause death or bodily harm. This resulted in the death of my daughter Manya.

The 'Prestige Lakeside Habitat Home Owners Association' and the 'Prestige Property Management Services (PPMS) have not just shirked their responsibilities of providing a safe and conducive environment for children to play in the apartment but have aided and abetted a system which is positively dangerous and hazardous for human habitation and livelihood, particularly for innocent children. Now, it is apparent that owing to electric shock, my daughter Manya died in shallow decorative water

body. My daughter's death is clearly a case of culpable homicide.

Persons responsible for my daughter's death are:

- 1) Debashis Sinha – President PLH HOA & other governing body members.***
- 2) Javed Shafiq Rao – Senior Vice President, Prestige Property Management System.***
- 3) S.T. Suresh Babu – Proprietor, Vision India Marketing***
- 4) Santosh Maharana***
- 5) Gobinda Mandal***
- 6) Bikash Kumar Parida***
- 7) Bhakta Charan Pradhan***

Sr.Nos. 4 to 7 are electrical technicians of Prestige apartment, Gunjur.

Therefore, it is requested to register FIR against the above persons who caused death of my daughter Manya under relevant sections IPC. Investigate the facts and provide me justice."

(Emphasis added)

The narration in the complaint is that the complainant's daughter leaves the house at 7.29 p.m. and was playing with her friends near the decorative water body of certain depth and drowning may have happened on slipping into the swimming pool. The Police, on the said complaint, conduct investigation and file a charge sheet against all the accused numbering 7 of them, one of whom is the builder of the apartment complex. The offences alleged are the

ones punishable under Sections 304 and 149 of the IPC. Column No.7 of the charge sheet reads as follows:

“ಕಾಲಂ ನಂ.06ರಲ್ಲಿ ನಮೂದಿಸಿರುವ ಸಾಕ್ಷಿ-1 ರವರು ಪ್ರಕರಣದಲ್ಲಿ ಮೃತಕಾದ ಕು|| ಮಾನ್ಯ ಧರ್ಮಲಾಲ್, 9 ವರ್ಷ ರವರ ತಂದೆಯಾಗಿದ್ದು, ವರ್ತಮಾನ ಹೋಬಳಿ, ಗುಂಜೂರು ಗ್ರಾಮದಲ್ಲಿರುವ ಪ್ರೆಸ್ವೀಜ್ ಲೇಕ್ ಸೈಡ್ ಹೆಬಿಟಾಟ್ ಅಪಾರ್ಟ್‌ಮೆಂಟ್‌ನಲ್ಲಿ ವಾಸವಿರುತ್ತಾರೆ. ಮೃತ ಕು||ಮಾನ್ಯ ಧರ್ಮಲಾಲ್ ರವರು ದಿನಾಂಕ: 28.12.2023 ರಂದು ಸಂಜೆ 7.30 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ತಮ್ಮ ಅಪಾರ್ಟ್‌ಮೆಂಟ್‌ನ 20-21 ಟವರ್ ಮಧ್ಯದಲ್ಲಿದ್ದ ಸ್ವಿಮ್ಮಿಂಗ್ ಪೂಲ್ ಪಕ್ಕದ ಗಾರ್ಡನ್ ಏರಿಯಾದಲ್ಲಿ ಸಾಕ್ಷಿ-5, ಸಾಕ್ಷಿ-8, ಸಾಕ್ಷಿ-10 ರವರ ಜೊತೆಯಲ್ಲಿ ಹೈಡ್ & ಸಿಕ್ ಆಟವಾಡುತ್ತಿರುತ್ತಾರೆ. ರಾತ್ರಿ ಸುಮಾರು 8.15 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಮೃತ ಮಾನ್ಯ ಧರ್ಮಲಾಲ್ ರವರು ಬಚ್ಚಿಟ್ಟುಕೊಳ್ಳುವ ಸಲುವಾಗಿ ಸ್ವಿಮ್ಮಿಂಗ್ ಪೂಲ್‌ನಲ್ಲಿ ಇದ್ದ ದ್ವೀಪದಂತಿರುವ ಸ್ಥಳಕ್ಕೆ ಹೋಗುವಾಗ ಸ್ವಿಮ್ಮಿಂಗ್ ಪೂಲ್‌ನಲ್ಲಿದ್ದ ನೀರಿನ ಸಂಪರ್ಕಕ್ಕೆ ಬಂದಿರುತ್ತಾರೆ. ಆ ಸ್ಥಳದಲ್ಲಿ ನೀರಿನ ಮಟ್ಟ 6 ಇಂಚು ಇರುತ್ತದೆ. ಸದರಿ ಸ್ಥಳದಲ್ಲಿ ಸ್ವಿಮ್ಮಿಂಗ್ ಪೂಲ್‌ಗೆ ಅಳವಡಿಸಿದ್ದ ಎಂ.ಇ.ಡಿ ಲೈಟ್ ಪಿಟಿಂಗ್‌ನಿಂದ ವಿದ್ಯುತ್ ಸೋರಿಕೆಯಾಗಿ ನೀರಿನಲ್ಲಿ ವಿದ್ಯುತ್ ಹರಿವು ಇರುತ್ತದೆ. ಅದೇ ಸ್ಥಳದಲ್ಲಿ ಮೃತ ಕು||ಮಾನ್ಯ ಧರ್ಮಲಾಲ್ ರವರು ನೀರಿನ ಸಂಪರ್ಕಕ್ಕೆ ಬಂದ ಕಾರಣ ಮಾನ್ಯ ಧರ್ಮಲಾಲ್ ರವರು ವಿದ್ಯುತ್ ಸೆಳೆತಕ್ಕೆ ಸಿಕ್ಕು, ನೀರಿನಲ್ಲಿ ಬಿದ್ದಿರುತ್ತಾರೆ. ವಿದ್ಯುತ್ ಸೆಳೆತದಿಂದ ಹೊರಬರಲಾಗದೇ ಸಹಾಯಕ್ಕಾಗಿ ಕೂಗಿಕೊಂಡಿರುತ್ತಾರೆ. ಸಾಕ್ಷಿ-8, ಸಾಕ್ಷಿ-10 ರವರು ಮಾನ್ಯ ಧರ್ಮಲಾಲ್ ರವರು ನೀರಿನಲ್ಲಿ ಬಿದ್ದಿರುವುದನ್ನು ಗಮನಿಸಿ ಸಾಕ್ಷಿ-10 ರವರು ಮಾನ್ಯ ಧರ್ಮಲಾಲ್ ರವರ ಸಹಾಯಕ್ಕೆ ಬಂದು ಆಕೆಯ ಕಾಲನ್ನು ಮುಟ್ಟಿದಾಗ ಸಾಕ್ಷಿ-10 ರವರಿಗೂ ವಿದ್ಯುತ್ ಶಾಕ್ ಹೊಡೆದಿರುತ್ತದೆ. ಆಗ ಸಾಕ್ಷಿ-5, ಸಾಕ್ಷಿ-8, ಸಾಕ್ಷಿ-10 ರವರು ಸಹಾಯಕ್ಕಾಗಿ ಪಾರ್ಕ್‌ನಲ್ಲಿದ್ದವರನ್ನು ಕರೆದಿದ್ದು, ಸಾಕ್ಷಿ-2, ಸಾಕ್ಷಿ-3, ಸಾಕ್ಷಿ-4, ಸಾಕ್ಷಿ-6, ಸಾಕ್ಷಿ-7, ಸಾಕ್ಷಿ-9, ಸಾಕ್ಷಿ-12 ಮತ್ತು ಸಾಕ್ಷಿ-13 ರವರು ಸಹಾಯಕ್ಕೆ ಧಾವಿಸಿರುತ್ತಾರೆ. ಇವರಲ್ಲೂ ಸೇರಿ ಮಾನ್ಯ ಧರ್ಮಲಾಲ್ ರವರ ರಕ್ಷಣೆಗಾಗಿ ದಾವಿಸಿ ಮಾನ್ಯ ಧರ್ಮಲಾಲ್‌ರನ್ನು ಸ್ವಿಮ್ಮಿಂಗ್ ಪೂಲ್‌ನಿಂದ ಹೊರ ತೆಗೆಯಲು ಪ್ರಯತ್ನಿಸಿದ್ದು, ಸಾಕ್ಷಿ-2 ರವರಿಗೆ ವಿದ್ಯುತ್ ಶಾಕ್ ಹೊಡೆದಿರುತ್ತದೆ. ನಂತರ ಸಾಕ್ಷಿ-3 ರವರು ಸ್ವಿಮ್ಮಿಂಗ್ ಪೂಲ್‌ಗೆ ವಿದ್ಯುತ್ ಕಲ್ಪಿಸುವ ಎಂ.ಸಿ.ಬಿ ತೆಗೆದು ನಂತರ ಮಾನ್ಯ ಧರ್ಮಲಾಲ್ ರವರನ್ನು ಸಹಸ್ರಾ ಆಸ್ಪತ್ರೆಗೆ ಸಾಗಿಸಿದ್ದು, ಅಲ್ಲಿನ ವೈದ್ಯರು ಕು||ಮಾನ್ಯ ಧರ್ಮಲಾಲ್ ರವರು ಮೃತಪಟ್ಟಿರುವುದಾಗಿ ದೃಢೀಕರಿಸಿರುತ್ತಾರೆ.

ಎ1 ಆರೋಪಿಯು ಸದರಿ ಅಪಾರ್ಟ್‌ಮೆಂಟ್ ನಿವಾಸಿಗಳ ಸಂಘದ ಅಧ್ಯಕ್ಷರಾಗಿದ್ದು, ಅಪಾರ್ಟ್‌ಮೆಂಟ್‌ನಲ್ಲಿ ಯಾವುದೇ ಅಹಿತಕರ ಘಟನೆಗಳು ಅವಘಡಗಳು ಆಗದಂತೆ ಎಚ್ಚರಿಕೆ ವಹಿಸಬೇಕಾಗಿರುತ್ತದೆ. ಜಾವೆಡ್ ಶಫೀಕ್ ರಾವ್ ರವರು ಪ್ರೆಸ್ವೀಜ್ ಪ್ರಾಪರ್ಟಿಸ್ ಮ್ಯಾನೇಜ್‌ಮೆಂಟ್ ಸರ್ವಿಸಸ್ ನ ಮುಖ್ಯಸ್ಥರಾಗಿದ್ದು ಗುಂಜೂರು ಗ್ರಾಮದಲ್ಲಿರುವ ಪ್ರೆಸ್ವೀಜ್ ಲೇಕ್ ಸೈಡ್ ಹೆಬಿಟಾಟ್ ಅಪಾರ್ಟ್‌ಮೆಂಟ್‌ಗೆ ಸಂಬಂಧಿಸಿದ ವಿದ್ಯುತ್, ಸೆಕ್ಯೂರಿಟಿ, ಗಾರ್ಡನ್, ಲಿಫ್ಟ್, ಹೌಸ್ ಕೀಪಿಂಗ್‌ಗೆ ಸಂಬಂಧಿಸಿದ ಎಲ್ಲಾ ಕೆಲಸಗಳ ನಿರ್ವಹಣಾ ಜವಾಬ್ದಾರಿಯ ಗುತ್ತಿಗೆಯನ್ನು ಪಡೆದಿರುತ್ತಾರೆ. ಎ3 ಆರೋಪಿಯು ಕು||ಮಾನ್ಯ ಧರ್ಮಲಾಲ್‌ರವರು ವಿದ್ಯುತ್ ಶಾಕ್‌ನಿಂದ ಮೃತಪಟ್ಟ ಈಜುಕೊಳದ ನಿರ್ವಹಣಾ ಜವಾಬ್ದಾರಿಗೆ ಗುತ್ತಿಗೆ ಪಡೆದಿರುತ್ತಾರೆ. ಎ1 ರಿಂದ ಎ7 ಆರೋಪಿಗಳು ಪ್ರೆಸ್ವೀಜ್ ಪ್ರಾಪರ್ಟಿಸ್ ಮ್ಯಾನೇಜ್‌ಮೆಂಟ್ ಸರ್ವಿಸ್ ಕಂಪನಿಯಲ್ಲಿ ಎಲೆಕ್ಟ್ರಿಷಿಯನ್ ಆಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದು, ಕು||ಮಾನ್ಯ ಧರ್ಮಲಾಲ್‌ರವರು ವಿದ್ಯುತ್ ಶಾಕ್ ನಿಂದ ಮೃತಪಟ್ಟ ಈಜುಕೊಳ ಮತ್ತು ಸುತ್ತಮುತ್ತಲಿನ ಪ್ರದೇಶದಲ್ಲಿ ವಿದ್ಯುತ್ ನಿರ್ವಹಣೆಯ ಜವಾಬ್ದಾರಿ ಹೊತ್ತಿರುತ್ತಾರೆ. ಎ1, ಎ3, ಎ4, ಎ5, ಎ6 ಮತ್ತು ಎ7 ಆರೋಪಿಗಳು ಸರಿಯಾಗಿ ತಮ್ಮ ಜವಾಬ್ದಾರಿಗಳನ್ನು ನಿರ್ವಹಿಸದೇ, ಪ್ರೆಸ್ವೀಜ್ ಲೇಕ್ ಸೈಡ್ ಹೆಬಿಟಾಟ್ ಅಪಾರ್ಟ್‌ಮೆಂಟ್‌ನ 20-21ನೇ ಟವರ್ ಮಧ್ಯದಲ್ಲಿರುವ ಈಜುಕೊಳದಲ್ಲಿ ವಿದ್ಯುತ್ ಉಪಕರಣಗಳು, ವಿದ್ಯುತ್ ಸಂಪರ್ಕಗಳನ್ನು ಸುಸ್ಥಿತಿಯಲ್ಲಿ ಇಡಲು ವಿಫಲವಾಗಿರುತ್ತಾರೆ. ಈಜುಕೊಳದಲ್ಲಿ ಅಳವಡಿಸಿದ್ದ ಎಲ್.ಇ.ಡಿ ಲೈಟ್‌ಗಳಿಗೆ ವಿದ್ಯುತ್ ಸಂಪರ್ಕ ಪಡೆದಿದ್ದ ಎಲ್.ಇ.ಡಿ ಸ್ಟ್ರಿಪ್ ಡ್ರೈವ್ ನಿಶ್ಚಿತವಾಗಿದ್ದು, ಸದರಿ ಡ್ರೈವ್‌ನಲ್ಲಿ ಡಿ.ಸಿ ವೋಲ್ಟೇಜ್

ಬದಲಾಗಿ ಎ.ಸಿ ವೋಲ್ಟೇಜ್ ಪ್ರವಹಿಸಿ ಈಜುಕೊಳದಲ್ಲಿ ಅಳವಡಿಸಿದ್ದ ಎಲ್.ಇ.ಡಿ ಲೈಟಿಂಗ್ ನಿಂದ ವಿದ್ಯುತ್ ಸೋರಿಕೆಯಾಗಿರುತ್ತದೆ. ವಿದ್ಯುತ್ ಸೋರಿಕೆಯಾಗುತ್ತಿದ್ದ ಸಮಯದಲ್ಲಿ ವಿದ್ಯುತ್ ಸೋರಿಕೆಯಾಗುತ್ತಿದ್ದ ಭಾಗದ ಸಂಪರ್ಕಕ್ಕೆ ಕು||ಮಾನ್ಯ ಧರ್ಮಲಾಲ್ ರವರು ಸಿಕ್ಕು ಅಪಘಾತ ಸಂಭವಿಸಿರುವ ಬಗ್ಗೆ ಸ್ಥಳ ಪರಿಶೀಲನೆ ಮಾಡಿದ ಸಾಕ್ಷಿ-21 ಮತ್ತು ಸಾಕ್ಷಿ-22 ರವರು ದೃಢೀಕರಿಸಿರುತ್ತಾರೆ.

ಆದ್ದರಿಂದ ಆರೋಪಿಗಳ ವಿರುದ್ಧ ಮೇಲ್ಕಂಡ ಕಲಂಗಳ ಅನ್ವಯ ದೋಷಾರೋಪಣ ಪಟ್ಟಿಯನ್ನು ಮಾನ್ಯ ನ್ಯಾಯಾಲಯಕ್ಕೆ ನಿವೇದಿಸಿಕೊಂಡಿರುತ್ತದೆ.”

(Emphasis added)

It is the filing of the charge sheet that has driven the petitioners to this Court in the subject petition. The learned senior counsel submits that *qua* the builder there is already an interim order granted by the coordinate Bench of this Court. It becomes germane to notice the interim order granted in Writ Petition No.8996 of 2024. It reads as follows:

“Learned senior counsel for the petitioner submits that petitioner who is arrayed as accused No.2 in the F.I.R., is the builders of the apartments complex and he has already handed over the possession of the entire apartment complex to the association owners.

Learned High Court Government Pleader is directed to take notice for respondent No.1.

Issue emergent notice to respondent No.2.

There shall be an interim order of stay as prayed for only as against the petitioner herein, till the next date of hearing.”

(Emphasis supplied)

Interim order is granted on the ground that the builder has handed over possession of the entire apartment complex to the Association. This would clearly indicate that the petitioners are the office bearers of the Association. The fateful incident happens in the swimming pool of the apartment complex. The swimming pool admittedly unattended. The child gets drowned in the swimming pool where its water was at certain depth. The reason behind this would be a matter of trial. The daughter of the complainant was 9 years old. The death has happened due to lack of supervision of the swimming pool by the guard or absence of a life guard near the swimming pool.

9. The learned senior counsel submits that, in no apartment complex, swimming pools, there is any guard who would stop a child from moving around the swimming pool, as it is a question of privacy. This submission is unacceptable. If there is no life guard who is guarding the swimming pool particularly when the children are around, it is shirking of the responsibility on the part of the elected Association. It cannot be said that they are not accountable

or responsible for the happening in the apartment complex, particularly the event of the kind.

10. The issue now would be whether Sections 304 and 149 of the IPC would get attracted in the case at hand. Section 304 reads as follows:

"304. Punishment for culpable homicide not amounting to murder.- *Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;*

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."

Section 304 of the IPC punishes for culpable homicide which does not amount to murder. For an offence to become punishable under Section 304 of the IPC, it is necessary that it has ingredients of Section 299 of the IPC. Section 299 of the IPC defines culpable homicide. It reads as follows:

"299. Culpable homicide.—Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations

(a) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(c) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Explanation 1.—A person who causes bodily injury, to another who is labouring under a disorder, disease or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born."

Section 299 of the IPC directs whoever causes death by an act with the intention of causing death would commit an offence of culpable homicide. The officer-in-charge of the police station appears to have blissfully ignored looking into Section 299 of the IPC. There can be no intention to kill, attached to these petitioners, in the case at hand. Therefore, Section 304 of the IPC is loosely or erroneously laid against the petitioners. Though culpability, in the case at hand, is on the face of it existing, *mens rea* is absent, as there is no intention to murder. Such blameability would only hinge upon negligence. Therefore, it ought to have been a case of Section 304A of the IPC and not Section 304 of the IPC, as is laid against the petitioners. Section 304A reads as follows:

"304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

(Emphasis supplied)

Section 299 *supra* takes within its sweep culpability of mind as the soul of it is intention, whereas, Section 304A of the IPC omits within its sweep the culpability, as there need not be an intention to kill or

murder. Knowledge of the consequences of committing an act which would directly result in death would become intention and lead to culpability. If the person does not even intend to cause harm, but an act has resulted in causing death, culpability is absent. Therefore, the section which deals with causing death by negligence ought to have been invoked and not section 304 of the IPC.

11. The petitioners are all members of the Association. Not for nothing they are elected; they are elected on what they profess. They profess to take care of every grievance of the residents in the apartment complex and also for the purpose of its upkeep. Therefore, in exercise of my jurisdiction under Section 482 of the Cr.P.C., I deem it appropriate to obliterate the offence laid against these petitioners for offence under Section 304 of the IPC and charge them with Section 304A of the IPC, as admittedly, these petitioners were in-charge of the affairs of the apartment complex and are *prima facie* negligent.

12. The submission of the learned senior counsel that, in no apartment complex guards are kept at the swimming pools if accepted, will have a disastrous effect on the safety of the residents particularly, the children of infant age. Therefore, the office bearers of the Association should bring in safety measures, subject to just exceptions of privacy of the residents. *If any apartment complex has a swimming pool and the said swimming pool is left unguarded without any life guard or without any safety measures taken as the case would be, those apartment complexes would be doing so at their own peril.* Therefore, it is for the members of every apartment Association to protect the lives of infants, in the apartment complex, by bringing in such measures that would avoid any such mishap, so that innocent lives are not casually lost in the manner that has happened in the case at hand. Since it is an admitted that no life guard is even appointed, to guard the pool at appropriate hours, nor the pool itself is guarded by placing safety measures around the pool, which the petitioners were obliged to provide and take care of, they will have to come out clean in a full blown trial, not for the offence under Section 304 of the IPC, but for offence

punishable under Section 304A of the IPC, as *prima facie*, I find negligence on the part of the petitioners.

13. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is allowed in part.
- (ii) The offence that is laid against the petitioners punishable under Section 304 of the IPC stands quashed.
- (iii) The petitioners are charged with the offence under Section 304A of the IPC along with Section 149 of the IPC, in place of Section 304 of the IPC.
- (iv) The concerned Court shall try the petitioners for offence punishable under Section 304A and 149 of the IPC, in accordance with law.

- (v) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioners under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings against them before the concerned Court.

Consequently, I.A.No.1 of 2024 also stands disposed.

sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:MJ