

56 CR Cases 3131/2017 STATE Vs. Kapil Malhotra etc 575 /2016  
(Shakarpur)

23.09.2024

Present: Ld APP for the State.  
Shri Rajiv Ranjan, Id. Counsel for ECE Company present through VC.  
Accused Sumit and Amit with Id. Counsel Shri D.K. Bhatia.  
Accused Kapil Malhotra in person.  
Shri Dharam Dev, Id. Counsel for accused Kapil Malhotra through VC.

**Order on Charge**

1) The brief facts of the present case are that on 02.05.2016, a complaint was lodged by complainant Sh. Rahul Gupta in PS Shakarpur wherein he had stated that he alongwith his wife was residing at F-44, 4<sup>th</sup> floor, Laxmi Nagar, Delhi as tenant. It is further stated that on 01.05.2016 at about 09.30, his wife was using the lift of the building and the same got stucked between 3<sup>rd</sup> & 4<sup>th</sup> floor and as a result, his wife started knocking at the door of lift. On hearing the noise, the complainant opened the door of the lift with the keys and tried to save his wife, however, his wife fell in the lift pit. As a result, the wife of the complainant received injuries and was admitted to hospital. As per the complainant, the owner of the property namely Sumit Gupta & Amit Gupta were duly informed about malfunctioning of the lift various times and a number of incidents has occurred before this incident also,

however, no action was taken by them. Upon the complaint of the complainant, the FIR was registered for offence u/sec. 278/338 IPC. During the pendency of investigation, the wife of complainant had expired during treatment. After the investigation, the charge sheet was filed against accused Sumit Gupta, Amit Gupta & Kapil Malhotra for the offences u/s 287/304A IPC. Thereafter, the order was passed by Ld. Predecessor for further investigation in the present case and the supplementary chargesheet was filed against accused Vikram Prakash (expired) & ECE company for offence u/s 287/304A IPC.

2) I have heard arguments addressed by Ld. APP for State and Ld. Counsel for accused persons. The complete record is also perused.

3) Ld. APP for state has submitted that there is sufficient material of record to frame the charges against the accused persons as mentioned in the charge sheet.

4) On the other hand, Ld. Counsel for accused persons submitted that the present case is based on false and frivolous facts. Ld. Counsel for accused ECE Company submitted that there are no allegations in the FIR against accused company. It is further submitted that there is no mens rea of the company and there is no role of the company. It is further submitted that there is no vicarious liability of the company and the branchhead i.e. Kapil Malhotra was having the sole responsibility of maintaining the lift installed at the place of incident.

5) It is argued on behalf of accused Sumit & Amit that they had entered into contract with ECE company and taken every step for maintenance of the lift as a layman. It is further argued that the incident has happened due to negligence of complainant himself as he was not any professional to rescue the persons stuck in the lift and despite that, he had opened the lift door. It is further argued that the maintenance of the lift had already resumed in April 2016 and at the time of incident, the lift was duly maintained. It is further argued that there was no negligent act or omission on the part of accused Amit or Sumit.

6) It is argued on behalf of accused Kapil Malhotra that the accused was not employee of the ECE Company after 14.03.2017 and there was no occasion of any negligence or involvement of accused Kapil Malhotra.

7) Thus, it is prayed to discharge the accused persons in the present case.

8) The law is trite that duty of the Court at the stage of framing of charge is to see whether the ingredients of offence are available in the material produced before the Court or not. Contradiction in the statement of witnesses or sufficiency or truthfulness of the material placed before the Court cannot be examined at the stage of framing of charge. For this limited purpose, the Court can sift the evidence. Court has to consider material only with a view to find out if there is a ground for

presuming that the accused has committed an offence and not for the purpose of arriving at a definite conclusion. A case for framing of charge is made out only if the Court comes to a conclusion, on the basis of material on record that commission of offence is a probable consequence.

9) Perusal of the chargesheet shows that as per the complainant and other residents of the building, the accused Sumit & Amit were requested many times for proper maintainance of the lift and for engaging the lift operator. Earlier also, various complaints were made to the accused Sumit & Amit regarding obstructions in the lift operation. Despite the requests and complaints, accused Sumit and Amit has failed to engage the services of a lift operator. As per the FSL report, during the inspection, it was noted that the lift was out of order and stucked between the floors during operation. It was also observed that there was some obstacles inside the door of the lift which was a obstuction of the free movement of the door. It was also observed that there was a gap between the lower portion of the lift car and corridor floor and there was a possibility of slipping down of a person in the shift through the gap during the rescue process.

10) It is admitted case that the lift was installed by ECE company and the accused Kapil Malhotra was the Branch Head who had looked after the maintainance work after receiving a

call of breakdown on 17.04.2016. As per the statement of residents, despite the checking on 17.04.2016, the lift was not working properly after 1-2 days of its repair.

11) The accused Kapil Malhotra has taken the defence that he was not employee with the ECE company on the date of incident. However, as per the interrogation report of accused Kapil Malhotra, accused was working as a Branch Head since 07.10.2015. As the gap has been noted in the FSL/ Inspection report, the liability of the ECE company who has installed the lift and of accused Sh. Kapil Malhotra who had attended the maintainance work on/ after 17.04.2016 cannot be ruled out.

11) Thus, in view of the above-stated facts and circumstances, there is sufficient material on record to frame charges against accused persons for offence u/s 287/304A IPC. Accordigly, the application for discharge filed on behalf of accused Kapil Malhotra is hereby dismissed.

Be listed on 20.11.2024.

( SONIKA)  
Judicial Magistrate First Class-04  
East/KKD/Delhi/23.09.2024