IN THE COURT OF MANU VEDWAN, ADDITIONAL SESSION JUDGE-02, SPECIAL JUDGE (NDPS), EAST DISTRICT, KARKARDOOMA COURT, DELHI

Criminal Revision No. 41/2025
CNR No. DLET01-000773-2025

ECE Industries Limited
Through Its Authorized Representatives,
Sh. Anand Prakash,
Having its Registered Office at
ECE House, 28 Kasturba Gandhi Marg,
New Delhi-
110001 **.............Revisionist**

Versus

State of NCT Delhi
Through SHO, Police Station, Shakarpur,
Email-dhcprosecutiondelhipolice @gmail.com **...........Respondent**

Instituted on 14.02.2025

And

Criminal Revision No. 104/2025
CNR No. DLET01-001719-2025

Kapil Malhotra
Son of Late Shri D.K. Malhotra
Resident of House Number 400, Sector-29,
Faridabad, Haryana-121008 **…..Revisionist**

Versus

1. State of NCT Delhi

2. Rahul Gupta
Son of Mr. Ajay Gupta
Resident of House Number 44, IV Floor, Mangal Bazar
Laxmi Nagar, Delhi-110092.

3. Amit Gupta
Son of Mr. R.K. Gupta
Resident of House Number A-3,
Preet Vihar, Delhi-110092

4. Sumit Gupta
Son of Mr. R.K. Gupta
Resident of House Number A-3,
Preet Vihar, Delhi-110092

5. ECE Industries Ltd.
ECE House, 28A, Kasturba Gandhi Marg
New Delhi-110001
Through its Managing Director/Directors ……..**Respondents**

Instituted on 17.02.2025

And

Criminal Revision No. 07/2025
CNR No. DLET01-000159-2025
1. Sumit Gupta
Son of Shri R.K. Gupta

2. Amit Gupta
Son of Shri R.K. Gupta

Both Residents of:
A-3, Preet Vihar,
Delhi-110092. …….**Revisionists**

Versus

State of NCT of Delhi ……. **Respondent**

Instituted on 13.01.2025

Date of Arguments : 16.05.2026
Date of Judgment : 21.05.2026

JUDGEMENT

1. The present revision petitions have been filed by the Revisionists being aggrieved by the impugned common order, dated 23.09.2024, passed by the Learned Judicial Magistrate First Class-04, East District, Karkardooma Courts, Delhi in Criminal Case Number 3131 of 2017, case titled as "*State* v. *Kapil Malhotra*". Vide this common order all these revision petitions are taken up for disposal having not only arisen from same aforesaid order but also has overlapping facts/ grounds.

2. **<u>Brief facts and grounds of revision as elaborated in Criminal Revision Petition bearing number 41/2025 titled as ECE Industries Limited vs. State.</u>**

2.1(a) It is stated in the petition that petitioner is the company and has filed the present petition through its Authorized representative, Sh. Anand Prakash assailing the order, dated 23.09.2024, passed by the Learned Magistrate, in which Learned Magistrate had erroneously directed the framing of notice under Section 251 of the Code of Criminal Procedure, 1973 against the petitioner for the offence committed under Section 287 and 304A of the Indian Penal Code. It is stated that Petitioner Company was incorporated under the Companies Act, 1956 and is involved in the business of manufacturing all kinds of electrical and electronic goods such as transformers, refrigerators, motors, fans, measuring instruments, insulation, domestic and industrial equipment including elevators, elevator components, escalators, pathways, switchgear and power plants. It is further stated that on 03.08.2013, the Petitioner Company had entered into two agreements with Mr. Sumit Gupta and Mr. Amit Gupta ("Agreement"), for installation of a lift. The lift was installed at F-44, 4th Floor, Laxmi Nagar, Delhi (hereinafter referred to as the "Premises") on 31.12.2014, as per the specifications provided, all maintenance and service obligations of the lift were covered under the agreements until 31.12.2015, which was later on extended till 31.01.2016. It is further stated that installation and handing over of the lift at the premises was complete only after conduction of a thorough inspection of the working of the lift and also only after complete satisfaction of Mr. Sumit Gupta and Mr. Amit Gupta. It is further stated that as under the aforesaid agreements lift was to be periodically inspected by the Petitioner Company's technicians and the same was duly being undertaken by the Petitioner Company. However, since the time for warranty under the agreements expired on 31.01.2016, no routine techinicians were assigned for the premises post the expiration of warrantly until an Annual Maintenance Contract was executed on 19.04.2016 (effective from 01.05.2016). It is further stated that at the time of handing over of the lift detailed rescue training was provided on the behalf of the petitioner's company to the care taker of the premises. It is further stated that during the period of validity of the Annual Maintenance Contract there was a contractual obligation upon Mr. Sumit Gupta and Mr. Amit Gupta to report all the incidents whether major or minor within 24 hours to the Petitioner Company. In event of no reporting Petitioner Company had no reason to believe that lift was not working properly or that there is any threat to any individual using the lift.

2.1(b) It is further stated that no Annual Maintenance Contract was executed for the lift between 31.01.2016 to 30.04.2016. Despite, having no obligation during that period upon the raising of the complaint on 17.04.2016 regarding the break down in the functioning of the lift Mr. Pappu Singh visited the building on that day. It is further stated that on that day it was analyzed that lift was operational and in perfect working condition. It is further stated that on 01.05.2016, an unfortunate incident had taken place in the premises when the complainant's wife Mr. Komal Gupta got stuck in the elevator and sustained serious injury, while trying to be rescued/ taken out by her husband that is the complainant. Admittedly, on 01.05.2016 husband of the deceased opened the lift with a key when his wife got stuck in the lift. It is further stated that the said rescue was conducted by complainant in the absence of trained professionals or any employee of the petitioner. It is stated that it is absolutely false claim that Petitioner Company did not assist in the rescue operation as no one from the premises including the complainant had ever reached out to the officials of Petitioner Company. It is further stated that admittedly husband of the deceased that is the complainant first forced open the lift door and thereafter trying to extract the deceased from the lift, while, it was stuck between 3rd and 4th floor. During that process, the hands of the wife slipped where upon she fell through the gap between the lower portion of the lift car and the corridor floor. It is further stated that deceased had thus fallen unfortunately, while the complainant was attempting to rescue her and Petitioner Company can't be held responsible for the same. It is further stated that on 01.05.2016, when the deceased was stuck in the lift and complainant was unable to rescue her from the 4th floor, he tried to rescue her from 3rd floor. It is stated that usually, an apron has to be is installed beneath to prevent any fall in the shaft during rescue operations. It is further stated that considering the visible portion of the lift from the 3rd floor (despite presence of the safety apron), there was ample risk of the deceased to fall in the shaft if rescue operations were carried out independently as there was ample gap between lower portion of the lift car and corridor floor.

2.1(c) It is further stated that complainant had attempted to rescue his wife from the 3rd floor, and in his attempt to do so, his hand slipped and his wife fell into the shaft, which was in fact, the main cause of the injuries to the deceased. It is further stated that this rescue operation was carried out solely by the husband of the deceased, without any involvement of the Petitioner Company. Accordingly, the Petitioner Company cannot be held liable for the incident in question, by any stretch of imagination. It is further stated that the husband of the deceased must not undertake rescue operations, more specifically in the absence of any of the routine technicians of the Petitioner Company. It is further stated that the door of the Lift was also forcefully opened which aided in causing the unfortunate incident. It is further stated that on 02.05.2016, First Information Report, bearing number 575 of 2016, was got registered by the husband of the deceased, that is the complainant at police Station Shakarpur, District East Delhi, Delhi under Section 278 and 338 of Indian Penal Code against the owners of the

Premises. It is further stated that nothing was alleged as against the Petitioner Company's involvement in the aforesaid incident. It is further stated that on 16.05.2016, Charge sheet under Section 173 of the Code of Criminal Procedure was filed before the Learned Judicial Magistrate First Class and Mr. Kapil Malhotra, Branch Manager of the Petitioner Company was arrayed as an accused. He joined the investigation and clarified that even though the Petitioner Company had received a breakdown call on 17.04.2016, however, there was no intimation regarding any need of rescue operations on 01.05.2016. It is further stated that pursuant to the order, dated 15.11.2019, as passed by the Learned Judicial Magistrate First Class, the Petitioner Company received notices, dated 14.06.2021, and 05.11.2022, under Section 91/ 160 of Code of Criminal Procedure seeking information with respect to the operations of the Lift in question. It is further stated that in response, the Petitioner Company vide its letters, dated 18.06.2021, 16.11.2022, and 28.11.2022, duly provided the information sought and clarified that there was no role of the Petitioner Company or its officials/ management in the alleged Offence.

2.1(d) It is further stated that this revision is essentials as Learned Judicial Magistrate had erred in considering that the Petitioner Company is not even remotely associated with the death of the deceased or the unfortunate incident in question. It is further stated that the Learned Magistrate, while passing the impugned order had failed to consider that the Petitioner Company was neither responsible for the day-to-day maintenance of the lift in the premises and nor was aware of the malfunctioning of the lift on the day of the incident. It is further stated that the Learned Magistrate had failed to consider the findings of the Forensic Science Laboratory, as highlighted above, which prove the fact that the death of the deceased was on account of the rescue undertaken by the husband of the deceased. It is further stated that there is no direct or indirect involvement of the Petitioner

Company qua the alleged offence, that is the incident that had happened with the deceased. It is further stated that Learned Magistrate had failed to take into account that the lift was equipped with a protective apron designed to prevent individuals from falling into the shaft in the event of a breakdown, especially when the lift is positioned between floors. The unfortunate incident, where the deceased fell into the shaft, occurred despite the protective measures in place. It is further stated that from 31.01.2016 to 30.04.2016, the Lift was not under Annual Maintenance of Company and consequently, the Petitioner Company was not responsible for maintenance or breakdown. It is further stated that on 17.04.2016, a breakdown call was attended by the Petitioner Company's route mechanic as a goodwill gesture. It is further stated that neither the Petitioner Company, its representatives or route technicians were on the site when the incident took place, nor was the Petitioner Company called upon for the rescue operation. It is further stated that whilst the amount for the Annual Maintenance Contract was received on 19.04.2016, the terms/ validity of that Contract was to commence from 01.05.2016.

2.1(e) It is further stated that Learned Magistrate has failed to consider from the available material on record, when the allegations made in the First Information Report or the complaint, even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the Petitioner Company. It is further stated that assuming without admitting that the Petitioner Company is even remotely involved in the commission of the offence, as per Section 287 of Indian Penal Code, there was no opportunity for the Petitioner Company, in its capacity to exercise any reasonable precaution and so much care as is sufficient to guard against danger which is within the bounds of probability of the alleged offence, as the Petitioner Company, its representatives, or technicians were not present on the premises when the incident took place, nor were called upon/ notified to assist in the rescue operation. It is further stated that Learnd Magistrate has failed to consider that as per the ingredients of Section 304A of Indian Penal Code, it is well established that there was no intention or knowledge on the part of the Petitioner Company herein. Criminality within the scope of Section 304A of IPC lies in running the risk of doing such act with recklessness or indifference as to the consequences. It is further stated that Learned Magistrate while passing the impugned order has failed to consider that, it is settled law that Section 304A of Indian Penal Code requires that the death due to rash or negligent act must be direct and proximate result of the act. It is further stated that at one end the Learned Magistrate had observed that Mr. Sumit Gupta and Mr. Amit Gupta had failed to engage services of a lift operator and on the other end had held that the Petitioner Company ought to be made a party being criminally liable for the offence committed. It is further stated that Learned Magistrate had failed to consider that the Petitioner Company has no role to play in the maintenance activities or day-to-day operations of lift in the absence of a valid Annual Maintenance Contract. It is therefore requested that order in question be set aside qua the Petitioner Company.

3. **Brief facts and grounds of revision as elaborated in Criminal Revision Petition bearing number 104/2025 titled as Kapil Malhotra vs. State.**

3.1 It is stated in this petition that Learned Trial Court had taken the cognizance of the offence under Section 287/304A Indian Penal Code and summoned the present petitioner. It is further stated that petitioner had worked with ECE Industries from 24.09.2015 till 14.03.2017 and was engaged only in marketing and administrative jobs. Profile of the applicant is that of marketing of products, receiving sale application and then forwarding to the concerned departments, receiving applications for maintenance and then forwarding them to concerned departments, receiving

Annual Maintenance Contract requests and then forwarding the same to the concerned department, administrative jobs of receipt of bills and payments to staff. It is further stated that petitioner was never involved in the manufacturing of the elevators nor at the helm of the affairs of ECE Industries. It is further stated that petitioner had not received any phone call/ complaint regarding the incident in question. It is further stated that petitioner was not involved in the installation or repairing of the lifts while, working in the ECE Industries. It is further stated that used of the lifts of the ECE Industries can lodge the free online complaints for malfunctioning/ mis-functioning at customer care number of the company maintained by the ECE Industries but no such complaint was ever made by the complainant. It is further stated that had such complaint be made the liability would have been on the separate department of the company under the direct supervision and control of the Board of Directors of ECE Industries Limited. It is further stated that it is the complainant who had put the life of his wife at risk by himself dealing with the lift. It is further stated that Learned Trial Court had wrongly held that maintenance work was not done by the petitioner properly and thus accident occurred in which wife of complainant had unfortunately expired. It is further stated that order in question is basically miscarriage of justice and there is no iota of evidence as against the petitioner. Petitioner had never avoided his duties and he was not responsible for repair or maintenance of lifts. It is further stated that Learned Trial Court had passed the impugned order in the absence of the relevant material on record. It is also stated that the framing of notice as against the petitioner is bad in law and the impugned order is liable to set aside.

4. **Brief facts and grounds of revision as elaborated in Criminal Revision Petition bearing number 07/2025 titled as Sumit Gupta & Anr. vs. State.**

4.1 It is stated in this petition that on 02.05.2016, a complaint was filed by one Rahul Gupta (husband of the deceased) wherein, he had stated that a mishap had happened with his wife on, 01.05.2016, due to which she had expired on 02.05.2016. First Information Report was lodged and later on charge sheet was filed as against the petitioner under Sections 287/304A of Indian Penal Code. It is stated that both these provisions are not attracted as against the petitioners as they were not present on the site at the time when the alleged incident happened. It is further stated that alleged incident had occurred due to the negligent act of the complainant and petitioner had already moved an application under Section 190 of the Code of Criminal Procedure against the complainant Rahul Gupta as he was responsible for that mis-happening. It is further stated that petitioners had done whatever they could do being the owner of the building. They not only facilitated the dwellers of the building by installing a lift but had also taken an Annual Maintenance Contract of the aforesaid lift by its parents company for its maintenance. It is further stated that impugned order is bad in law as petitioners are not responsible for the alleged incident. It is further stated that Learned Trial Court had fixed the vicarious liabilities upon the petitioner for the purpose of framing of charges. It is further stated that complainant did not follow the prescribed procedure for the rescue of the person stuck in the lift and therefore the accident had happened. It is further stated that petitioners have no liability in the present case and complainant or the company in question may be liable. It is therefore requested that impugned order be recalled as qua the petitioners.

5. <u>Submissions</u>

5.1(a) Learned counsel for the revisionist ECE Industries has submitted that the Petitioner Company has nothing to do with the present offence. It is further submitted that Petitioner Company was never informed about the accident in question. It is also submitted that neither cognizance is taken on supplementary charge sheet nor Petitioner Company was formally summoned after filing of the supplementary charge sheet. It is also submitted that as such there is no prima facie material available qua the Petitioner Company before the Learned Magistrate and therefore the impugned order be recalled. It is further submitted by the Learned counsel that they have filed the written submissions alongwith the compilation of judgments and same be read/ considered alongwith their oral submissions.

5.1(b) Learned Counsel for the revisionist Kapil Malhotra has submitted that petitioner has nothing to do with the installation and repairing of lifts. It is also submitted that petitioner has been wrongly charged in the present case and either the company or the landlords may be responsible as they are responsible for day to day activites. It is further submitted that even otherwise accident had occurred due to the intervention of the complainant himself who wanted to rescue his wife without any technical knowledge.

5.1(c) Learned Counsel for the revisionist Sumit and Amit Gupta that are the owners of the building also submitted that they were wrongly charged by the Learned Trial Court as they had nothing to do with the accident in question for which complainant was solely responsible. It is further submitted that petitioners had done whatever they could do to facilitate the life of the dwellers of the building but for the unknown reasons they were now arrayed as accused persons. Learned Counsel has also filed written submissions for consideration by the court.

5.1(d) On the other hand, Learned Additional Public Prosecutor has specifically submitted that all these petitions are completely misconceived. It is further submitted that Learned Trial Court has fully applied its mind while, passing the order in question qua the aforesaid petitioners. It is further submitted that the report from the Forensic Science Laboratory has corroborated the case of the prosecution as admittedly there was no apron in the lift which led to the formation of gap between the lower portion of the lift car and the corridor floor. It is also submitted that annual maintenance contract was renewed with the ECE Company of which accused Kapil Malhotra was the concerned Branch Head. It is also submitted that accused persons Sumit Gupta and Amit Gupta are the landlords of the building and are responsible for day to day activities of the lift. It is therefore requested that the aforesaid revision petitions of the respective revisionists be dismissed as according to law.

5.2(a) Written submissions have been filed on behalf of Petitioner ECE Industries Limited in which apart from reiterating the contents of revision it is stated that at the time of the handing over of the lift, detailed rescue training was provided to the caretaker of the premises and there was a contractual obligation upon owners of the premises to report all incidents (minor/major) to the Petitioner Company, within 24 hours of the said accident. It is further stated that after the expiry of warranty under the agreements that is on January 31, 2016, Petitioner Company was under no obligation for maintenance and servicing of the lift. It is further stated that on 19 April, 2016, for the first time a complaint was raised with the Petitioner Company regarding an alleged breakdown in the functioning of the lift. In response, the Petitioner Company, though not under any contractual obligation and purely out of goodwill, deputed one of its personnel, Mr. Pappu Singh, to visit the building on the same day. It is further stated that upon inspection, it was found that the lift was operational and in perfect working condition. It is further stated that on April 19, 2016, an Annual Maintenance Contract was executed by the owners of the premises with the Petitioner Company, which was effective from Ist May, 2016. It is further stated that on Ist May, 2016, an unfortunate incident had taken place in the premises when Mrs. Komal Gupta was using the lift and it got stuck between the third and fourth floor. Complainant in an attempt to rescue the deceased opened the lift using the key (which was provided to the caretaker/guard of the building) in the absence of trained professionals or any employee of the Petitioner Company. This rescue attempt was totally against the guidelines as provided in Annual Maintenance Contract as only the Company was supposed to initiate rescue attempts and Clauses 6.4, 6.5, 6.9, 7.2, 8.1 and 11.3 of Annual Maintenance Contract are evident enough of the same. Aforesaid, clauses reiterated that in case of any malfunctioning of the lift the Customer should immediately notify the same to the Company, and not directly engage with any lift operations (including repair and alterations) without the Company's prior consent. It is further stated that trained professionals of the Company would always be in a better position to conduct rescue operations. It is further stated that the present case does not disclose any act or omission on the part of the Petitioner Company that can be termed gross or reckless. It is further stated that there is no act or omission attributable to the Company in the moment that can raise any criminal liability. Petitioner Company had completed the installation and handed over the lift to the satisfaction of the Owners and had duly discharged its contractual obligations. The alleged incident took place more than three months after the expiry of the service period, during which the Petitioner Company neither had operational control nor maintenance responsibility for the lift.

5.2(b) It is further stated that no vicarious liability can be fastened on the officials / Directors/management of the Petitioner Company for the unfortunate incident. It is further stated that negligence is an essential ingredient of the offence, the negligence to be established must be culpable or gross and not merely based upon an error of judgment. It is further stated that the Learned Magistrate while, passing the Impugned Order has failed to consider that the Petitioner Company was neither responsible for day-to-day maintenance of the lift post expiration of maintenance and service period that is January 31, 2016, and nor was the Petitioner Company aware of the malfunctioning of the lift on the day of the incident. It is further stated that owners did not inform the Petitioner Company regarding the earlier repeated complaints about the lift. It is further stated that post installation under Annual Maintenance Contract routine preventive maintenance, inspection of mechanical and electrical components and replacement or repair of worn our parts, are generally made thereby ensuring continued safe functioning of the lift. It is further stated that in the event of a malfunction or operational failure, the established protocol of the Petitioner Company requires the client or caretaker of the premises to immediately inform through 24-hour customer care helpline 9891153601, details of which are prominently displayed inside the lift. It is further stated that upon receipt of such complaint Petitioner Company promptly dispatches a trained service technician to the site to attend to and rectify the issue. The Company maintains detailed service and complaint records for each lift under maintenance, evidencing its adherence to safety and service protocols. It is further stated that the continuation of criminal proceedings against the Petitioner Company in the absence of any direct nexus between its actions and the unfortunate incident would amount to abuse of process of law. Alongwith that, Learned Counsel has also filed a detailed compilation of following judgments:- *Dhanpreet Singh and Anr.* v. *State of Punjab,* 2022 OnLine P&H 4239, *Sunil Malhotra* v. *State (NCT of Delhi),* 2023 SCC OnLine Del 7365, *Kurban Hussain Mohamedalli Rangawalla* v. *State of Maharashtra,* 1964 SCC OnLine SC 162, *Geeta Ramesh* v. *State of Sikkim,* 2018 SCC OnLIne Sikk 37, *Suren Gurung* v. *State of Sikkim,* 2018 SCC OnLine Sikk 37, *Raj Kumar Bansal* v. *State of Jharkhan,* 2012 SCC OnLine Jhar 514, *Mulraj Dhir* v. *Emperor*, 1930 SCC OnLine Patna 69, *Dipakbhai Jagdishchandra Patel* v. *State of Gujarat* (2019) 16 SCC 547,*Union of India* v. *Prafulla Kumar Samal*, (1979) 3 SCC 4, *P Vijayan* v. *State of Kerala,* (210) 2 SCC 398, *Deepak Dua* v. *State,* 2021 SCC OnLine Del 4221, *Sajjan Kumar* v. *CBI,* (2010) 9 SCC 368, *Sukhdev Singh* v. *Delhi State (Govt. of NCT of Delhi),* (2003) 7 SCC 441, *Shibu* v. *State of Kerala,* (2012) SCC OnLine Ker 31953, *Aroon Purie* v. *State (NCT of Delhi)*, 2022 SCC OnLine 1491, *Sunil Bharti Mittal* v. *CBI* (2015) 4 SCC 609, *Pepsi Foods Ltd.* v. *Special Judicial Magistrate,* (1998) 5 SCC 749, *Omlata* v. *State of NCT of Delhi,* Crl. M.C. No. 6195 of 2023 and *Neena* v. *State of M.P.,* 2023 SCC OnLine MP 5020. All these judgments have been perused very carefully vis-a-vis facts of the case as such these do not apply at least at this stage of prima facie consideration.

5.3 Written submissions on behalf of the accused Kapil Malhotra are also filed in which once again the contents of the case of the prosecution as well as contents of the revision petition, filed by the aforesaid accused are repeated, apart from that, it is stated that the petitioner has no role in manufacturing of the elevator. It is further stated that no phone call/ complaint was ever made by any person to the petitioner and thus petitioner has no role in the present case. It is further stated that petitioner was not made aware about any mall function/ mis-functioning of the lift. It is further stated that even otherwise the department to take care of the repairing work of the elevators is different from the department in which petition as used to work while being employed with ECE Industries. It is further stated that it is the complainant who had taken the rescue work upon himself and put his wife at risk. It is further stated that investigating officer had allegedly tried to implicate the petitioner leaving the company aside as if the company is owned by the petitioner. It is further stated that petitioner was not having any say in the affairs of the company.

5.4 Written submissions have also been filed on behalf of the accused persons Sumit Gupta and Amit Gupta in which once again they have reiterated the contents of the their revision petition, apart from that, it is stated that there are no specific allegations of negligence as against the owners. It is further stated that it is never the case of the prosecution that owner had ignored any prior warning defect notice or safety audit report. It is further stated that the case of prosecution is based on vague and omnibus allegations of poor maintenance which is legally insufficient to attract prosecution. It is further stated that admittedly lift was under a valid Annual Maintenance Contract thus also they can't be held responsible for the break down of the lift as there is a special technical agency to take care of the same. It is further stated that when the lift was stopped between the floor it was the husband of the deceased who had tried to rescue the deceased and in that process she had expired. It is further stated that lift getting stuck is not per se proof of criminal negligence.

It is further stated that every accident does not amount to an offence under Section 304A of Indian Penal Code. It is further stated that owner can't be held to be vicarious liable for any offence under Indian Penal Code. It is further stated that no expert report conclusively attribute fault to the owner. Petitioners have not violated any Lift Act or Rules neither any safety instructions were infringed. It is further stated that owner can't be made to face trial without prima facie material.

6. Analysis & Reasoning

6.1(a) To start with, a plain reading of Section 438 of BNSS clearly indicates that Section 438 (1) allows aggrieved parties to challenge the correctness, legality, or propriety of any finding, sentence, or order issued by the trial court. Such challenges can be brought before a revisional court, namely the High Court or the Sessions Judge, as Section 438 confers concurrent jurisdiction upon both judicial authorities. Section 438 (2) BNSS prohibits the revision powers under Section 438 (1) BNSS from being used on interlocutory orders in appeals, enquiries, trials, or other proceedings. It is well settled law that scope of revisional jurisdiction is limited to the extent of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by the Learned Trial Court and jurisdiction under section 438 BNSS to be exercised for setting right a patent defect or an error of jurisdiction or law cannot be equated with the power of Appellate Court. Reliance is placed upon *New India Assurance Co. Ltd.* v. *Krishna Kumar Pandey* Crl. Appeal No. 1852 of 2019 decided on 06.12.2019 and *Sanjaysinh Ramarao Chavan* v. *Dattatray Gulabrao Phalke*, (2015) 3 SCC 123. Coming forward, with respect to framing of charge. It is to be noted that at this stage, the Court is required to sift and weigh the material on record to evaluate the material only for the purpose of finding out, if the facts emerging when taken at their face value, disclosed the existence of ingredients constituting the offence. The Court only has to form an opinion based on the material placed before it that the accused might have committed the alleged offence. Though, for the purpose of conviction, the same has to be proved beyond reasonable doubt. At this stage, even a very strong suspicion rounded upon the materials before the Magistrate or Judge which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of the charges against the accused in respect of the commission of that offence. Reading sections 227 and 228, CrPC/section 250, 251, BNSS together in juxtaposition it would be clear that at the beginning of the trial, the truth, veracity and effect of the evidence that the prosecutor proposes to adduce are not to be meticulously judged. Charges can be framed if there are materials showing possibilities about the commission of a crime as against certainty. On the basis of material on record if the court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Meticulous consideration of materials at this stage is uncalled for. The defence of the accused would not be considered at the time of framing of charge against the accused. There is no provision in the Code which grants any right to file/summon any material or document at the stage of framing of charge. If the court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed while grave suspicion would entitle a court to frame charges.

6.1(b) Also, at the time of framing of charges all that is necessary to see is that on the basis of the documents produced by prosecution whether a grave suspicion arises with regard. Once there is *prima facie* and satisfactory existence of sufficient grounds for proceeding against the accused, the court is obliged to evaluate such material evidence instead of acquitting the accused from the very guilt itself, which may result in the failure of the justice. At this stage of the framing of the charge, the court is not expected to go deep into the probative vaule of the materials on record, the court is obliged to see whether there is prima facie evidence in support of the charge levelled against the accused. While framing charges there is no need to maintain the same standard to be adopted by the court in scrutinizing the evidence at the time of trial, but all due diligence should be taken even at the stage of framing the charge as to whether the charges framed is supported with prima facie and sufficient material evidence. Reliance is placed upon *State of AP Golconda* vs. *Linga Swamy*, AIR 2004 SC 3967, *Amrish Jolly* vs. *Central Bureau of Investigation*, 2020 Cr LJ 1351 (HP), *Niren Sharma* v. *State of Sikkim*, 1998 (4) Crimes 242 (245) (Gau), *PK Pradhan* v. *State of Sikkim*, 2002 Cr LJ NOC 373 (Sikk), *State of Orisa v Debendra Nath Padi, (2005) SCC 568 2005 (53) ACC 205, Asstt. Director, Enforcement Directorate v. Khader Sulaiman,* 2003 Crl J. 3468 Reference taken from book named *Bharatiya Nagarik Suraksha Sanhita*, 2023 23 Edition.

6.1(c) <u>Further, with respect to section 304 A of Indian Penal Code, same was inserted in the Indian Penal Code, 1860 by the Indian Penal Code (Amendment)</u> Act, 1870 (27 of 1870) to cover those cases wherein a person cause the death of another by such acts as are rash or negligent but there is no intention to cause death and no knowledge that the act will cause death. Essential ingredients of section 304 A IPC are: (I) Death of a person (ii)Death was caused by accused during any rash or negligence act (iii) Act does not amount to culpable homicide. It is to be noted that to prove negligence under Criminal Law, the prosecution must prove the existence of duty and breach of that duty/gross negligence thereby causing death. The two states of mind/*mens rea* involved are intention and recklessness. The difference between recklessness and negligence is the difference between advertence and inadvertence; they are opposed and it is a logical fallacy to suggest that recklessness is a degree of negligence. Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause an injury but without intention, to cause injury or knowledge that it will probably be caused. The criminality lies in taking the risk of doing such an act with recklessness or being indifferent as to the consequence. Criminal negligence is gross and culpable neglect or failure to exercise with reasonable care and proper care to guard against injury either to the public generally or to an individual in particular as non-exercise of this imperative duty on the part of the accused amounts to culpable neglect. Reliance is placed upon *State of Punjab* v *Balwinder Singh*, 2012 (2) SCC 182, *Malay Kumar Ganguly* v *Sukumar Mukherjee* (2009) 9 SCC 221 and *P B Desai (Dr.)* v. *State of Maharashtra*, 2013 (11) Scale 429.

6.1(d) <u>Also, it needs to be noted that machinery is dangerous to human life if proper precaution is not taken in its working. This section renders any</u> rash or negligent conduct in respect of machinery punishable. The distinction between sections 287 and 304A of the Indian Penal Code, 1860 is that section 304A is attracted only that if the rash or negligent act are directly the cause of death but when the rash or negligent act produces indirectly the death, section 287 is attracted. They had negligently omitted to take care of the machinery as was sufficient of guard against probable danger to human life, but the death was not the direct result of the accident. (a) Essential Ingredients of the offence got following essential elements: (i) That the accused did some act using a machinery; (ii) That he did so rashly or negligently; and (iii) That the act complained of was to endanger human life or likely to cause hurt or injury to another or it can be summoned as the accused was in possession of some machinery, he omitted to take such order in possessing the machinery as was sufficient to guard against any probable danger to human life from such machinery, accused acted negligently or with knowledge of a probable danger. Reliance is placed upon *Mulraj Dhir* v. *Emperor*, 31 CrLJ 1232: AIR 1930 Pat 507, *Mohri Ram* v. *Emperor*, AIR 1930 Lah 453: 127 IC 153. Reference is also taken from the book named as *Bharatiya Nayay Sanhita* by *Ratanlal and Dhirajlal,* 2023, 36th Edition.

6.1(e) Now, adverting to the facts of the present case as according to the complainant on 01.05.2016, his wife was going from 4th floor of their house to the ground floor by using the lift. It is further stated by the complainant that concerned lift in which his wife was traveling towards the ground floor got stuck between fourth and third floor, his wife started shouting and beating the door of the lift. It is further stated that complainant had then managed to open the door of the lift with the help of the key and tried to pull his wife out of the lift. During that process of lifting complainant had somehow lost the grip over the hand of his wife, she fell down inside the lift shaft and got severely injured. It is also stated by the complainant that previously also they had informed their land lords Sumit Gupta and Amit Gupta about the faulty nature of the lift, but, both of them never took any action regarding the same. As, according to the case, of the prosecution which is found detailed in the charge sheet another person namely Rahul Malhotra has also mentioned the similar facts. It is also stated that the people from the lift company had come on 17.04.2016, and, repaired the lift which again got break down after 2-3 days. It is further stated that they than talked regarding the faulty lift with their landlord and asked him to keep lift operator but neither he got the lift repaired nor kept the lift operator as requested. One Smita Kaur had also mentioned that 4-5 days before the incident in question her husband also got stuck inside the lift and he managed to come out by jumping. It is also stated by Smita Kaur that she also got stuck in the lift two weeks before the incident and she had to press the emergency button. Despite her repeated requests to the landlord to repair the lift or keep the lift operator nothing was done on their behalf. As according to the statement of Hari Ram who used to work as watchman in the building people used to operate the lift by themselves and there was no lift man in the building.

6.1(f) It is also stated by him that he was not in the building when the deceased fell down from the lift. It is stated by the complainant that on 17.04.2016, concerned lift company had not fully repaired the lift as after 4-5 days of that incident one Indiranilkar also got stuck in the lift. It is further stated that lift in question was installed by ECE Industries and the landlord got renewed the Annual Maintenance Contract of the lift on 17.04.2016. Later on, investigating officer also got examined Manager of the ECE Industries Limited as according to him the lift was installed by their company and was in warranty period till 31.01.2016. On 17.04.2016, lift was repaired at the request of the landlord. Annual Maintenance Contract was also renewed by receiving the cheque of rupees 41,000/- and its initiation date was 01.05.2016. As, according to the prosecution at the time of the incident lift was opened by using of rescue key. Team of Forensic Science Laboratory had oberved friction marks at left corner portion of fourth and third floor lift door. It is specifically pointed out by the aforesaid team that apron portion was not in the lift and there was sufficient gap between the lower portion of lift car and corridor floor. Thus, it was apprehended by the aforesaid team from Forensic Science Laboratory that there was the possibility of slipping down of the lady in the shaft through the gap during the rescue process. It needs to be mentioned here that as per the directions of the then Learned Magistrate further investigation was undertaken qua the role of the ECE Company and supplementary charge sheet filed in that regard. It is stated that Kapil Malhotra on the behalf of the

ECE Company used to take care of the maintenance of the lift. It also needs to be clarified that on the day when supplementary charge sheet was filed lawyer on behalf of ECE Industries was present and copy of charge sheet supplied to him.

6.1(g) Again, coming forward firstly, the word cognizance indicates the point when a Magistrate or a Judge first take Judicial notice of an offence. In common parlance, it means taking notice of. Thus, cognizance is of an offence not an offender. Whether the Magistrate has taken the cognizance of an offence or not depends on the facts and circumstances of each case, as no particular form is necessary. It is to be noted that Learned Counsel for ECE Industries started appearing before the concerned trial court, since 05.05.2018, regularly and they were present even on the date when supplementary charge sheet was filed on 06.01.2023. Therefore the arguments that Petitioner Company was not summoned formally is not comprehensible. Reliance is placed upon *State of Gujarat* v. *Afroz Mohammed Haranfatta* AIR 2019 SC 2499, *State of W.B.* v. *Mohd. Khalid* (1995) 1 SCC 684 and *Uma Shankar Singh* v. *State of Bihar & Anr.* (2010) 9SCC 479. Secondly, admittedly, ECE industries had entered into a contract with Mr. Sumit Gupta one of the owners of the building and as according to the terms and conditions of the contract they have to provide free maintenance for a period of 12 months. Further, after going through the papers including one paper filed as Project Data and Proposed Specifications, it is not discernible that what are the reasons for not fitting the apron in the lift and who is responsible for the same. It needs to be pin pointed here that as according to the team of Forensic Science Laboratory one very important component of the lift that is apron was admittedly not made part and parcel of the lift while installing the same. Thus, undisputedly the 'car apron' part of lift in question is missing. The missing of such an important part is neither noticed by the officials of company when they happened to visit the premises for purpose of repairing the aforesaid lift on 17.04.2016 nor mentioned by the company in their very first agreement/contrach with the landlords of premises. After perusing all the relevant documents and statements recorded by investigating officer nowhere any reason for not attaching 'car apron' portion in the lift can be culled out. It needs to be pin pointed here that a 'car apron' is a vertical sheet extending down from the bottom of the lift car entrance. If the lift stops above the landing the car apron blocks off the lift shaft, reducing the risk of people falling in. In case of less space as well there are types of car aprons which may be used. There are conventional aprons and foldable apron for purpose of lift car. Finally, it is not wrong to say that at the stage of consideration of charge, the Court is not required to undertake a detailed evaluation of evidence or to test the probative value of the material at trial. The Court proceeds on the premise that the prosecution material, as presented, is prima facie true and un controverted. Cross-examination and defence rebuttal are not part of this stage. Though, doubtless at the same time Court is not to act merely as a post office or a mouthpiece of the prosecution. The Court must apply its judicial mind to the record, to assess, whether the material, taken at face value, discloses the essential ingredients of the alleged offence and raises grave suspicion, as distinct from a mere suspicion. In the present case, as already discussed in detail beforehand, a lift was admittedly installed without 'car apron', it got stuck, and in the rescue process which was carried out by the complainant himself, his wife had expired. It needs to be pin pointed that *Criminal rashness* is hazarding a dangerous or wanton act with knowledge that it is so and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. Alongwith, this *Criminal negligence* is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury. Therefore, in the light of foregoing discussion, settled position of law as already discussed, and after considering the totality of facts and circumstances of the case without analysing the evidence in detail, which is available on record/ collected by the investigating officer, and required to be tested at trial there seem to be no reason to interfere in the order passed by Learned Judicial Magistrate First Class. Reliance is also placed upon *Asian Resurfacing of Road Agency Pvt. Ltd.,* v.*Central Bureau Investigation* (2018) 16 SCC 299 and *Kanchan Kumar* v. *State of Bihar* (2022) 9SCC 377.

6.1(h) All these revision petitions are accordingly disposed off as dismissed. Trial Court Record alongwith the copy of this order be sent to the court concerned. Revision files be consigned to Record Room after due compliance.

Announced in the open court
on this 21st Day of May, 2026.

MANU VEDWAN

Digitally signed by MANU VEDWAN
Date: 2026.05.21 16:50:44 +0530

(Manu Vedwan)
Additional Sessions Judge-02/
Special Judge (NDPS)
East/Karkardooma/Delhi/21.05.2026