

SCC No. 943/2018  
State Vs. Suraj More & Ors.

**Order on the application for discharge of accused persons**  
**filed below Exh. 2 .**  
**( Passed on. 08.08.2023 )**

This is an application filed by accused no. 2 and 3 under Section 239 of The Code of Criminal Procedure, 1973 for discharging them from the crime no.49/2018 section 304-A of IPC registered with Police Station, Sindi Rly.

**02.** It is the case of the prosecution that the construction work of the over bridge of railway was allotted to accused persons. The work was going on at Sindi Rly. During construction, the company digging a Nala which measuring of 12 to 15 ft. width, 4 to 5 ft deep and about 150 ft length, to construct the over bridge at Sindi Rly. On the day of incident, said Nala was full of rain water. The accused have failed to take proper care to protect the life of strangers, they have not created barricades around the said Nala for the safety of others life. It is the gross negligence on the part of accused. That on the day of incident i.e on midnight of 09.10.2017 to 10.10.2017, due to rash and negligence act of accused persons, one child namely Wahid Lobh Shah aged about 2 ½ years r/o Sindi rly. fell down in the said Nala which was full of water and child died. According to the prosecution, accused are responsible for the death of the child Wahid. The police have initially made inquest and registered morgue report under Section 174 of the Code of Criminal Procedure. After making inquiry, police lodged FIR against accused persons.

**03.** It is undisputed that the said work was allotted to the company of accused no. 2 by name Someshwarayya Infratech Pvt. Ltd., Amraoti. It is also not disputed that the accused no.1 Suraj More was the supervisor of the work, which was going on under the control of accused no.2.

**04.** It is the submission of accused that accused no. 2 is the owner of the company. He was not present on the spot when alleged incident took place. According to him, on the day of incident, there was heavy rain in the spot of incident, which is an act of God. Therefore, he is not liable for any of the criminal liability as alleged in the negligence act. There is no evidence that accused persons committed negligence on their part.

**05.** On perusal of the instant application, it appears that said application filed by both accused but during argument the learned counsel for accused argued that he only pressed for discharge to accused No. 2. He prayed to discharge accused No. 2 only. In support of his submission, he relied on the following citations.

- 1) Sajjan Kumar V. Central Bureau of Investigation.  
(2010) 9 Supreme Court Cases 368
- 2) Nanjundappa Vs. State of Karnataka  
2022 SCC Online SC 628
- 3) Kurban Hussein Vs. State of Maharashtra  
(1965) 2 SCR 622
- 4) B.P Ram Vs. State of Madhya Pradesh  
1991 M.P.L.J.145

5) Kolishetty Vs. Bandaru Venkat

2009 (4) A.P.L.J. 306 (HC)

**06.** In reply, the learned APP for state submitted that instant application is false, illegal and baseless. On the face of record, FIR and statements of witnesses recorded by police, the involvement of accused in present crime is prima-facie appear. It is undisputed that the child Wahid died in the Nala dug by accused persons. It is only remained to be proved whether there was rash and negligence act of the accused or not. It will be proved on merit of the case. It is only stated by the accused that they were fixed some flags on the spot but they might be wet and mixed in the mud and water. It is not a case of accused that they were fixed barricades around the said Nala, for safety of strangers. There is sufficient material to hold that the accused are prima facie involved in the alleged act of rash and negligence and liable for the death of innocent child. There is no substance in the application. Hence, he prayed to reject the application.

**07.** Heard both sides at sufficient length. Peruse the entire record and went through the case laws placed on record by accused. Before go through the merit of the application, let me mentioned here that while deciding the discharge application, accused shall satisfy the Court, that the charge, on the basis of documents and report under section 173 of Criminal Procedure Code (hereinafter Cr.P.C.) filed by police is groundless against them. Section 239 of Cr.P.C. deals with the procedure when accused shall be discharge, it enumerates as under.

Section 239. When accused shall be discharge. - If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

**08.** No doubt, while framing of charge against the accused, it is required to consider, the police report and documents filed along with chargesheet. On satisfaction of the prima-facie involvement of the accused, Court shall frame charge against accused and proceed the trail. On the other hands, if the court did not find prima facie case against accused then he may discharge him.

**09.** In the case in hands, the chargesheet has been filed by the police against both applicants. On perusal of the final report, it is specifically mentioned that due to the non-barricading and flagging on the spot of incident, the child fell down in the Nala dug by accused/applicants. It is grave negligence of the accused/applicants. The Investigating Officer submitted in final report that during investigation, he find that the construction work of the over bridge has been allotted to the accused/applicant M. Krishna, Someshwarayya Infratech India Pvt. Ltd., Amraoti, and accused namely Patnala Venkata Shivkishor was the engineer of the alleged construction work, they both doing grave negligence in their business, due to which, they cause or likely to cause death of the child.

**10.** On perusal of the entire record, it appears that the Investigating Officer has collected sufficient material against the accused. On perusal of the spot panchnama, post mortem examination report, inquest panchanama, and statements of witnesses recorded by the police under section 161 of Cr.P.C., it prima-facie appears that the death of child has been occurred due to fell down in the Nala dug by applicants. The alleged incident of death of the child caused by Asphyxia due to drowning. It is prima-facie shows that the death of the child occurred through inhaling a water into the lungs.

**11.** It is the case of applicants that accused No. 2 was not present on the spot when alleged incidence occurred. He has appointed the supervisor to complete the work on his behalf. Police have not made accused to the supervisor. Therefore, he directly is not concerned with the alleged crime. Though, he submitted that he was not present on the spot at the time of incident, however his liability cannot be waived and he could not avoid his responsibility. It is undisputed that the accused no.2 is contractor and accused no.3 is engineer, the construction of over bridge work was allotted to them, work was going on under their supervision. It is also prima-facie seen that the applicants failed to create barricades over the side to prevent the accident. It is sufficient to hold prima-facie negligence on the part of applicants.

**12.** I carefully read all citations on which the applicant relied. In all above cited cases, the Hon'ble Apex Court and various Hon'ble High Courts have given the finding on the judgments of learned lower Courts.

In all of the cases, the opinions of the higher courts bring after completion of full trial. In the instant case still, trial not commenced. Therefore, in my opinion, with due respect of all findings of the Hon'ble Apex Court and High Courts, the ratio of all cases cited supra are not applicable to the instant case.

13. Considering the documents available on record, the involvement of the both applicants prima-facie appears. It is only remains to be decided whether there is negligence on the part of applicants or not. To decide this point, full trial is necessary. Without going through the entire evidence and merit of the case by conducting full trial, no one come to the final conclusion in regard to the negligence. Hence, in my considered point of view, it is not a fit case for discharge. Therefore, I come to the conclusion that the involvement of both accused prima facie seen in the alleged offence. I do not find any substance in the instant application. In this backdrop, in my considered view, the application is liable to be rejected. Thus, I passed following order

**ORDER**

Application is rejected.

Seloo  
Dt.08.08.2023.

(S.W.Shegokar)  
Judicial Magistrate First Class,  
(Court No.2), Seloo.