

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLMC No. 4839 of 2024**

(In the matter of an application under Section 482 of Criminal Procedure Code, 1973).

Rahul Sharma

....

Petitioner(s)***-versus-******State of Odisha & Ors.***

....

Opposite Party (s)

Advocates appeared in the case through Hybrid Mode:

For Petitioner(s)

:

*Mr. Chandrakanta Nayak, Adv.**For Opposite Party (s)*

:

*Mr. Udit Ranjan Jena, AGA***CORAM:****DR. JUSTICE SANJEEB K PANIGRAHI****DATE OF HEARING:-09.02.2026****DATE OF JUDGMENT:-27.02.2026****Dr. Sanjeeb K Panigrahi, J.**

1. The Petitioner has instituted the present Criminal Miscellaneous Case under Section 482 of the Code of Criminal Procedure, 1973/ Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, invoking the inherent jurisdiction of this Court, seeking quashing of the FIR and the Criminal Proceedings arising out of Khandagiri P.S. Case No.41/2016, corresponding to C.T. Case No.403 of 2016, pending before the learned SDJM, Bhubaneswar, in connection with the alleged commission of offences under Section 279, 337, 338 and 304A of Indian Penal Code.



I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

- (i) On 20.01.2016, at night, on friendly request of one Rahul Sharma, the deceased Debasish Mohanty, along with some of his friends, proceeded on a pleasure trip within Bhubaneswar in a Honda City Car bearing Registration No. OD-02AA-0808. The said vehicle was a private vehicle and not a hired one.
- (ii) The vehicle bearing Registration No. OD-02AA-0808 (Honda City Car) was duly insured with the M/S Bajaj Allianz General Insurance Co. Ltd under Policy No. HBA/00357887, which was valid from 08.01.2015 to 07.12.2016. Thus, on the date of the accident, the said vehicle was covered by a valid and subsisting insurance policy. Further, on the date of incident, the Petitioner was holding a valid and effective driving license.
- (iii) While returning to their respective homes, a cow suddenly came in front of the said vehicle, as a result of which the Petitioner, who was driving the vehicle at the relevant time, lost control over the same and the accident occurred. The deceased, who was seated in the front passenger seat, along with the Petitioner, sustained injuries in the said accident. Consequently, the vehicle capsized near the spot in the vicinity of SUM Hospital, Bhubaneswar and met with a serious accident.
- (iv) Due to the said accident, Debasish Mohanty sustained grievous injuries to his head, along with other injuries on different parts of his body. Immediately after the occurrence, he was rescued



by the local persons present at the spot and was taken to SUM Hospital, Bhubaneswar, where he was provided treatment for a short duration.

- (v) In view of his critical condition, Debasish Mohanty was shifted to AMRI Hospital, Bhubaneswar for better treatment, where he was treated as an indoor patient from 21.01.2016 to 22.01.2016 and remained in an unconscious condition. Despite the sincere efforts of the attending of physicians, he succumbed to his injuries on 22.01.2016 at AMRI Hospital, Bhubaneswar.
- (vi) Thereafter, the dead body of the deceased was taken to Capital Hospital, Bhubaneswar, where the post-mortem examination was conducted by the attending doctor of the said hospital. Upon completion of the autopsy, the dead body was handed over to his relatives for performance of the last rites and funeral rituals.
- (vii) Subsequent to the said accident, a claim application bearing MAC No. 536 of 2016 was filed by the father of the deceased before the Court of the 3rd Addl. District Judge-cum-5th Motor Accident Claim Tribunal, Balasore. By order dated 29.03.2023, the learned Tribunal was pleased to award compensation in favour of the bereaved family of the deceased, which was directed to be paid in terms of the said order.
- (viii) Thereafter, cognizance of the offences was taken by the SDJM, Bhubaneswar, on 20.05.2022 in connection with Khandagiri P.S.



Case No. 41 of 2016, corresponding to C.T. Case No. 403 of 2016, under Section 279, 337, 338 and 304(A) of IPC.

Being aggrieved by the aforesaid facts and circumstances, the Petitioner has been constrained to approach this Court by filing the present CRLMC Application seeking appropriate relief in accordance with law.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER:

3. The learned counsel for the Petitioner respectfully and earnestly made the following submissions in support of his contentions:
 - (i) The Petitioner submits that the present petition arises out of the allegations levelled against him in connection with the F.I.R. registered in the aforesaid case. The Petitioner has, inter alia, assailed the order of cognizance taken on dated 20.05.2022 passed by the SDJM, Bhubaneswar, taking cognizance of the alleged offences.
 - (ii) The Petitioner further submits that the learned SDJM, Bhubaneswar, while taking of the alleged offences, failed to properly consider the statements recorded under Section 161 of Cr.P.C., wherein it has been specifically stated that suddenly came in front of the vehicle while the Petitioner was driving and the deceased was seated in the front passenger seat, as a result of which the Petitioner lost control over the vehicle and the accident occurred. It is contended that the accident was purely accidental in nature and that there was no rashness or negligence on the part of the Petitioner.



- (iii) The Petitioner further submits that the deceased, who was seated on the left side of the front seat, did not lose his life on account of any rash or negligent driving on the part of the Petitioner, but due to the sudden and unexpected appearance of a cow running across the road, which was an event beyond human control. It is therefore, contended that the essential ingredients of the offences under Section 279, 337, 338, 304A of IPC, as reflected in the chargesheet, are not attracted in the facts and circumstances of the present case.
- (iv) The Petitioner contends that in MAC No. 536 of 2016, by order dated 29.09.2023, the learned 3rd Addl. District Judge-cum- 5th Motor Accident Claims Tribunal, Balasore, has been pleased to award passed an award of compensation to the family members of the deceased to the tune of Rs 38,59,940/-. In view of the said award and payment of compensation, the Petitioner humbly prays that, in the interest of justice, he be protected from further harassment by continuation of the present criminal proceeding.
- (v) The Petitioner further contends that the F.I.R. discloses that on 22.01.2026, one Chandan Prasad Mohanty lodged a written report before the IIC, Khandagiri Police Station, Bhubaneswar, stating therein that his elder brother's son had died on 22.01.2026 died at AMRI Hospital, and that the deceased, along with his friends, had gone out in a car and, while returning, met with an accident due to unavoidable circumstances. The Petitioner submits that the said averments in the F.I.R., which prima facie



indicate the accidental nature of the occurrence, were also not duly taken into consideration by the learned Court while passing the impugned order.

- (vi) The Petitioner submits that the accident neither happened due to rash driving nor any intention was behind such accident. Since the deceased family have been adequately compensated, the death had given a setback for the Petitioner because who has lost his best friend.
- (vii) The Petitioner further submits that the criminal proceeding continues the Petitioner will further mental agony, hence the Petitioner finding no expeditious justice beg to challenge the order of cognizance taken by the SDJM, Bhubaneswar.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

- 4. *Per contra*, the learned counsel for the Opposite Parties earnestly made the submission that the present CRLMC is not maintainable before this Court and deserves to be rejected in limine.
 - (i) The Opp. Parties submits that the F.I.R. was lodged by one Chandan Prasad Mohanty, wherein it has been stated that the son of his elder brother succumbed to injuries on 22.01.2016 at AMRI Hospital as a consequence of a road accident caused by an unknown person. It is the specific stand of the prosecution that the said F.I.R. set the criminal law into motion against an unidentified offender in respect of the alleged occurrence.



- (ii) It is further submitted that on 28.12.2020, the Investigating Agency took up the investigation in right earnest and proceeded to examine the complainant as well as other material witnesses acquainted with the facts of the case. During the course of investigation, the damaged Honda City Car alleged to have been involved in the occurrence was seized, along with the driving license, R.C. and Insurance Certificate pertaining to the driver of the vehicle. Upon completion of the investigation and after collecting the relevant materials, the Investigating Officer formed an opinion that a prima facie case is made out under Section 279, 337, 338 and 304A of IPC and accordingly submitted the chargesheet before the learned Court having jurisdiction.
- (iii) The Opp. Parties further submits that the Petitioner, by way of the present CRLMC Petition, seeks to invoke the inherent jurisdiction of this Court for quashing the order of cognizance dated on 20.05.2022 passed by the learned SDJM, Bhubaneswar, whereby cognizance has been taken for the alleged commission of the offences under the said IPC provisions.
- (iv) It is the specific stand of the Respondent that the said order of cognizance has been passed upon due consideration of the chargesheet and materials collected during investigation, and that the same does not warrant interference in exercise of the inherent power of this Court.
- (v) The Opp. Parties contends that the learned MACT Court, upon appreciation of the materials place before it, was pleased



conclude that the death of the deceased occurred on account of a road accident. It is additionally submitted that during the course of investigation, the police examined eye-witness who had allegedly witnessed the occurrence. In their statements recorded under law, the said witnesses are stated to have deposed that the offending car was being driven at high speed. They further stated that a cow suddenly entered onto the roadway, and owing to such unforeseen obstruction, the driver was unable to control the vehicle, resulting in the accident in question. On the basis of such materials, the I.O. formed an opinion that the accident was attributable to rash and negligent driving and, accordingly, submitted chargesheet.

- (vi) The Opp. Parties submits that Section 279 of IPC contemplates rash driving or riding on a public way so as to endanger human life or to be likely to cause hurt or injury to any person. It is their categorical contention that, in the instant matter, the eye-witness have unequivocally stated that the vehicle in question was being driven at a high speed and that it dashed against the road divider. According to the Respondent, the very fact that the vehicle was being driven at an excessive speed on a public road and ultimately collided with the divider clearly establishes the element of rashness and negligence on the part of the driver. It is, therefore, contended that the occurrence having taken place due to high speed of the vehicle, the ingredient of negligence



stands prima facie proved, justifying the order of cognizance and continuation of the criminal proceeding.

- (vii) The Opp. Parties further contends that Section 304A of IPC deals with the causing death by negligence, and that the said provision squarely applies to the facts of the present case. It is submitted that the materials collected during investigation reveal that the driver was operating the vehicle at a high speed, which resulted in the accident. According to the Opp. Parties, the act of driving at such speed on a public way constitutes a negligent act within the meaning of Section 304a IPC, and the unfortunate death of the deceased was the direct consequences of such negligent conduct. Hence, it is contended that the essential ingredients of such Section 304A IPC are prima facie satisfied, and the prosecution has rightly invoked the said provision in the chargesheet.
- (viii) The Opp. Parties further submits that the law is well settled that at the stage of taking cognizance, the learned SDJM is only required to pursue the police papers and materials collected during investigation of judicial mind, to ascertain whether a prima facie case is made out of the proceeding against the accused. It is contended that in the present case, the learned SDJM, upon perusal of the chargesheet and the accompanying documents, was satisfied that sufficient grounds existed to proceed and accordingly took cognizance of the offences and issued process against the accused persons.



- (ix) The Opp. Parties further submits that the order of cognizance reflects due application of mind and adherence to the settled principles governing such stage of proceedings, and that no illegality, irregularity, or jurisdictional error has been committed by the learned Trial Court warranting interference.

IV. COURT'S REASONING AND ANALYSIS:

5. Heard Learned Counsel for parties and perused the documents placed before this Court.
6. In light of the forgoing facts and circumstances of the case, this Court is of the considered view that the ingredients required to attract Section 279, 337, 338 and 304A have not been satisfactorily established. In order to sustain conviction under Section 279 IPC, the prosecution is required to prove that the accused was driving the vehicle in a manner so rash and negligent as to endanger human life or likely to cause hurt or injury. Similarly, for the offence under Section 337 and 338 IPC, it must be demonstrated that the act was done rashly or negligently so as to cause hurt or grievous hurt. Section 304A IPC further mandates proof that death was caused by a rash and negligent act not amounting to culpable homicide.
7. The settled principles of criminal jurisprudence unequivocally require the existence of a culpable mental state as a sine qua non for fastening criminal liability, particularly in offences predicated upon rashness or negligence under the IPC. In the case at hand, there is no material on record to suggest the presence of any mens rea or any criminal animus



on the part of the Petitioner to cause the alleged accident or the resultant death. The evidence indicates that the Petitioner had gone for a drive in the ordinary course, as is commonly done amongst friends for recreation. Such conduct, by itself, does not import criminality, nor does it evince any intention or knowledge that the act was likely to endanger human life. There is no iota of evidence to suggest that the Petitioner acted with deliberate disregard for the safety of others.

8. On the contrary, the circumstances emerging from the record reveal that upon the sudden appearance of a cow on the road, the Petitioner made earnest and immediate efforts by applying his presence of mind to avert the mishap and to safeguard both the animal and his companion. The material placed before this Court reflects the exercise of due care and caution rather than recklessness or indifference. In the absence of any culpable intention, knowledge, or gross negligence attributable to the Petitioner, the essential ingredients necessary to constitute the alleged offence remain unfulfilled in the eye of law.
9. In the present case, the prosecution has failed to adduce cogent and convincing evidence to establish either the element of rashness or negligence attributable to the accused, much less to prove that such act was the proximate and efficient cause of the alleged death. The evidentiary materials on record do not disclose the degree of culpability required to fasten criminal liability under the aforesaid provisions. In the absence of proof of the foundational ingredients



constituting the offences alleged, the continuation of criminal liability under the said sections would be legally unsustainable.

10. It is well settled that criminal liability for offences arising out of motor vehicle accidents must rest upon clear proof of rashness or negligence of such a degree as to amount to culpability in law. Merely because an accident has occurred, it does not inexorably follow that the driver was rash or negligent within the meaning of the provisions of IPC. Where the material on record indicates that the driver had exercised reasonable care and caution while the vehicle was in motion, and the occurrence was precipitated by sudden and unforeseen circumstances, it cannot be presumed that there was sufficient opportunity to avert the mishap. In such exigent situations, the law recognises that the element of human reaction time and suddenness of the event must be given due consideration while assessing the culpability.
11. It is, no doubt, incumbent upon the driver, being the person most conversant with the circumstances leading to the accident, to furnish a plausible and satisfactory explanation regarding the sequence of event. However, the burden upon the prosecution to establish rashness or negligence beyond reasonable doubt remains undiluted. An adverse inference cannot substitute proof of culpable conduct. In the present case, the act complained of does not disclose rash or negligent driving simpliciter of such a character so as to attract penal consequences, much less does it evince any mens rea or conscious disregard for human life. The evidence, taken as its highest, suggests an unfortunate accident rather than a criminally blameworthy act.



12. Similar interpretation was reiterated by the Supreme Court in the ***Rathnashalvan v. State of Karnataka***,¹, wherein it has been held that:

“7. Section 304-A applies to cases where there is no intention to cause death and no knowledge that the act done in all probability will cause death. The provision is directed at offences outside the range of Section 299 and 300 IPC. The provision applies only such acts which are rash and negligent and are directly cause of death of another person. Negligence and rashness are essential elements under Section 304A. Culpable Negligence lies in the failure to exercise reasonable and proper care and the extent of its reasonableness will always depend upon the circumstances of a risk that evil consequences will follow but with the hope that it will not. Negligence is a breach of duty imposed by law. In criminal cases, the amount and degree of negligence are determining factors. A question whether the accused’s conduct amounted to culpable rashness and negligence depends directly on the question as to what is the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient considering all the circumstances of the case. Criminal rashness means hazarding a dangerous or wanton and the knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused.

8. As noted above, “Rashness” consists in hazarding. dangerous or wanton act with the knowledge that it is so, and that it may cause injury. The criminality lies in such a case in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence on the other hand, is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances out of which the charge has

¹ 2007 Supreme (SC) 40



arisen it was the imperative duty of the accused person to have adopted ."

13. In the absence of any specific statutory classification or express legislative exclusion of the requirement of culpable intent, this Court is of the considered view that the settled and fundamental principles of criminal jurisprudence would govern the field. It is trite law that, for the commission of an offence under IPC, the existence of 'mens rea'- that is, a guilty mind or criminal intention, constitutes an essential ingredient, unless the statute expressly or by necessary implication excludes the same.
14. Criminal Liability, in its classical formulation, is founded upon the concurrence of both the prohibited act (actus reus) and the requisite guilty intention (mens rea). In the absence of such culpable mental state, or where the animus to commit the alleged offence is demonstrably lacking and the foundational requirements of a penal offence remains unfulfilled. Mere occurrence of an act, bereft of criminal intent, cannot ipso facto attract penal consequences. Accordingly, where the prosecution fails to establish the existence of the requisite mens rea beyond reasonable doubt, the offence alleged under the IPC cannot be said to have been made out in the eye of law.
15. In the instant case, this Court is of the considered view that neither the doctrine of contributory negligence nor allegation of rash and negligent driving is attracted to the facts and circumstances pertaining to the Petitioner. The materials on record do not disclose any omission on the part of the Petitioner amounting to culpable negligence within



the meaning of the relevant provision of IPC. It is trite that negligence, in the criminal law context, must be of such a gross or culpable nature so as to exhibit a disregard for the consequences of one's act. A mere error of judgment or an unfortunate mishap, unaccompanied by blameworthy conduct, cannot be elevated to the status of criminal negligence. The degree of care expected is that of a prudent and reasonable driver placed in similar circumstances.

16. Similarly, the Supreme Court in the *Syada Akbar v. State of Karnataka*,², wherein it was held that:

"19. As a rule, mere proof that an event has happened or an accident has occurred, the cause of which is unknown, is not evidence of negligence. But the peculiar circumstances constituting the event or accident, in a particular case, may themselves proclaim in concordant, clear and unambiguous voices the negligence of somebody as the cause of the event or accident. It is to such cases that the maxims res ipsa loquitor may apply, if the cause of the accident is unknown and no reasonable explanation as to the cause is coming forth from the defendant. To emphasise the point, it may be reiterated that in such cases, the event or accident must be of a kind which does not happen in the ordinary course of things if those who have the management and control use due care. But, according to some decisions, satisfaction of his conditions alone is not sufficient for res ipsa loquitor to come into play and it has to be further satisfied that the event which caused the accident was within the defendant's control. The reason for this second requirement is that where the defendant has control of the thing which caused the injury, he is in a better position than the plaintiff to explain how the accident occurred. Instances of such special

² AIR 1979 SC 1848



kind of accidents which "tell their own story" of being offsprings of negligence, are furnished by cases.

34. It was thus evident that the accident happened due to an error of judgment, and not negligence or want of judgment, and not negligence or want of driving skills on the part of the accused. An error of judgment of the kind, such as the one in the instant case which comes to light only on post-accident reflection but could not be foreseen by the accused in that fragmented moment before the accident, is not a sure index of negligence, particularly, when in taking and executing that decision the accused was acting with the knowledge and in that belief that this was the best course to be adopted in the circumstances for everybody's safety."

17. In the instant case, the evidence does not indicate any lapse or omission attributable to the Petitioner. On the contrary, it appears that the Petitioner had taken reasonable precautions and had anticipated foreseeable contingencies ordinarily expected on a public road. There is no material to suggest that the Petitioner failed to exercise due care or acted in a manner endangering human life. Accordingly, in the absence of any demonstrable degree of negligence, much less gross negligence, the Petitioner cannot be fastened with criminal liability. The invocation of the principles of contributory negligence or rash and negligent driving, in the facts of this case, is wholly misconceived and unsustainable in the eye of law.
18. A bald assertion by a witness to the effect that the driver was negligent, without more, does not constitute legally admissible evidence upon which reliance may safely be placed by the Court. It is settled principle of the law of evidence that a witness is competent to depose to facts within his personal knowledge, namely, what he saw,



heard, or perceived, but not to substitute such factual narration with a conclusion of law. It is not for a lay witness to opine that a party was negligent; rather, the witness must place before the Court the specific acts, omissions, speed, manner of driving, road conditions, and surrounding circumstances, from which the Court may independently assess whether the conduct complained of satisfies the legal threshold of rashness or negligence.

19. The question as to whether the act of the Petitioner was rash or negligent is one which must be established by the prosecution beyond reasonable doubt. The burden to prove the existence of such culpable rashness or negligence, as contemplated under the IPC, squarely rests upon the prosecution and does not shift merely by reason of the occurrence of the accident. An opinion devoid of foundational facts is merely conjectural and cannot assume the character of substantive evidence. Therefore, in the absence of detailed factual testimony demonstrating the manner in which the vehicle was driven so as to endanger life or safety, a bare statement branding the driver as negligent is insufficient in law to sustain a finding of culpability.
20. The mere circumstance that the deceased, who was seated in the front passenger seat, succumbed to injuries in the ill-fated vehicle, while the Petitioner, seated in the driver's seat, survived, cannot ipso facto give rise to a presumption of guilt. Criminal liability cannot be founded upon conjectures, assumptions, or the fortuitous fact of survival. Suspicion, however grave, cannot take the place of legal proof.



21. This Court is of the view that, in the absence of cogent and convincing evidence demonstrating that the Petitioner was driving in a manner so rash or negligent as to endanger human life, no adverse inference, can be drawn solely on the basis of the tragic outcome. The prosecution must establish, through reliable evidence, a direct and proximate nexus between the alleged rash or negligent act and the death in question. Failing such proof, the Petitioner is entitled to the benefit of doubt. In such a view of the matter, permitting the criminal proceedings to continue would serve no useful purpose and would amount to an abuse of the process of law. Accordingly, the F.I.R. and all consequential proceedings arising therefrom are liable to be quashed.

V. CONCLUSION:

22. In view of the foregoing analysis, and after an anxious and careful consideration of the material facts and circumstances of the case, this Court is of the considered opinion that to quash and set aside the F.I.R. as well as the criminal proceedings in respect of Khandagiri P.S. Case No. 41/2016, corresponding to C.T. Case No. 403/2016, presently pending before the learned SDJM, Bhubaneswar, as well as consequential criminal proceedings emanating therefrom, are liable to be quashed and set aside. Consequently, this Court is inclined to accede to the relief prayed for by the Petitioner.
23. Accordingly, the CRLMC stands **allowed**.



24. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 27th February, 2026/