

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 23rd January, 2018

+ **W.P.(CRL) 244/2018**

PREETI

..... Petitioner

Represented by: Mr. Aditya Aggarwal, Ms.
Samia Malik and Mr. Ankit
Mutreja, Advocates.

versus

THE STATE GOVT OF NCT OF DELHI

..... Respondent

Represented by: Mr. Sanjay Lao, Additional
Standing Counsel for State with
SI Jagdish, PS Shalimar Bagh.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

Crl. M.A. No. 1390/2018 (Exemption)

Allowed, subject to all just exceptions.

W.P.(CRL) 244/2018

1. The grievance of the petitioner in the present petition is that the opinion of the investigation agency having declined to incorporate Section 304 Part-II IPC in the FIR No. 497/2017 under Sections 279/304A IPC be set aside and the State be directed to incorporate the Section 304 Part-II IPC and also transfer the investigation to CBI.

2. The petitioner is the unfortunate wife of the deceased Vikas who died on 20th October, 2017. FIR No. 497/2017 under Sections 279/304A IPC was registered on the statement of the eye witness Pankaj Gaur who alleged that

on 20th October, 2017 he along with his family was going to his brother at Mukundpur while driving Car No. DL 5CH 1178. At around 7.00 PM while coming to the Ring Road at Azadpur they reached in front of Green Lounge Banquet Hall, when one white I-10 whose number afterwards came to be known as DL 8C AM 9694, was being driven by the driver speedily with carelessness and negligence and hit the car of the complainant from the right side and thereafter also travelled further at a high speed. While driving at a fast speed the I-10 car hit the black colour Scooty No. DL 8S 5903 on the left of the wall resulting in the rider of the Scooty falling from the flyover. The complainant stopped his car and with the help of one or more drivers caught hold of the driver of I-10 Car bearing No. DL 8C AM 9694 being driven by the person named Saurabh Goyal. An information was given to the PCR and Saurabh Goyal was handed over with the car to the PCR.

3. On the contents of the allegations as noted above, PS Shalimar Bagh registered the above noted FIR under the provisions of Sections 304A and 279 IPC.

4. The grievance of the petitioner is that the contents of the FIR itself disclose the knowledge attributable to the driver of the vehicle that the act would cause death of the person and thus Section 304 Part-II IPC was required to be invoked. With this grievance the petitioner filed two writ petitions before this Court, first being W.P. (CrI.) No. 3122/2017 followed by W.P. (CrI.) No. 3588/2017.

5. W.P. (CrI.) No. 3122/2017 was disposed of by this Court vide order dated 10th November, 2017 directing that the petition be treated as the representation of the petitioner to police to look into the grievance comprehensively and a decision in this regard be taken within four weeks

from that date, whereafter if the petitioner had any grievance it would be open for her to seek judicial remedies as available in law.

6. When Section 304 IPC was not invoked the petitioner filed yet another petition before this Court being W.P. (Crl.) No. 3568/2017 which was disposed of by this Court vide order dated 21st December, 2017 noting that the communication from Delhi Police is cryptic one, without application of mind. Thus the State agreed to have a fresh look on the representation and stated that a proper order would be communicated to the petitioner within four weeks. Pursuant to the submission of learned Additional Standing Counsel in W.P.(Crl.) No. 3588/2017 on 21st December, 2017 the ACP, MACT informed that the legal opinion through proper channels have taken from the APP and the Chief Prosecutor, North West who had examined the three PCR calls as well as re-examined the complainant Pankaj Gaur who is the eye witness of the incident and it was informed that nothing has come forward to incorporate Section 304 Part-II IPC during the course of investigation of the aforementioned FIR.

7. As noted above the repeated allegations of the complainant in the FIR were of rash and negligent manner in which the car I-10 was being driven. Merely because by hitting of the car, the person on the scooty fell off the flyover and died, it cannot be held that a knowledge was attributable to him that he was committing an act which if death was caused would amount to culpable homicide.

8. Be that as it may, It is well settled that on conclusion of investigation, a final opinion has to be formed by the Investigating Officer, uninfluenced by any factor which is to be placed before the learned Trial Court whereafter it is in the realm of the Court on examining the entire material on record, to

find out if any other offence besides the offences for which the charge sheet has been filed, is made out, of which the Court is competent to take cognizance as well as frame a charge. The Court not being bound by the opinion of the Investigating Officer can always frame charge under the appropriate sections. It is not the case of the petitioner that statements of the eye-witness have been recorded incorrectly. Rather the case of the petitioner is that an inference for offence punishable under Section 304 Part-II IPC can be derived from the allegations of the complainant. This Court finds no reason to interfere in the finding/opinion of the Investigating Officer, who would be free to file the charge sheet as noted above, where after it will be for the Court concerned to form a final opinion after seeing the charge sheet and the documents on record.

9. Petition is dismissed.

JANUARY 23, 2018

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**(MUKTA GUPTA)
JUDGE**

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