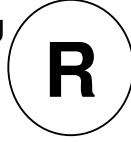


IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF SEPTEMBER, 2026



BEFORE

THE HON'BLE MR. JUSTICE H.P.SANDESH

CRIMINAL PETITION NO.8631 OF 2019

BETWEEN:

MR. K. PRATHAP REDDY
S/O SRI. K NARASIMHA REDDY
AGED ABOUT 48 YEARS
R/AT NO.278, M.S.RAMAIAH CITY
5TH MAIN, J.P.NAGAR, 8TH PHASE
BENGALURU - 560 078

...PETITIONER

(BY SRI. K. RAVISHANKAR, ADVOCATE)

AND:

1. THE STATE OF KARNATAKA,
REP. BY SHO, MAHADEVAPURA P.S.
BENGALURU
REPRESENTED BY SPP
HIGH COURT OF KARNATAKA
BENGALURU-560001

2. SRI. NAGARAJA
S/O VENKATAPATHI
AGED ABOUT 33 YEARS
VIRUPAKSHUPURA VILLAGE
GHATTIMAADAMANGALA POST
BANGARPET TALUK
KOLAR DISTRICT-560094

...RESPONDENTS

(BY SRI. SUHAS GOWDA M, HCGP FOR R1;
R2 – SERVED UNREPRESENTED)



THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.PC PRAYING TO QUASH THE ENTIRE FURTHER PROCEEDINGS IN C.C.NO.50205/2019 PENDING ON THE FILE OF THE XLIII A.C.M.M., MAYO HALL AT BENGALURU CITY, WHEREIN THE PETITIONER HAVE BEEN IMPLICATED FOR THE OFFENCE PUNISHABLE UNDER SECTION 338 OF IPC AND ETC.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 09.09.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH

CAV ORDER

This petition is filed praying this Court to quash the entire further proceedings against this petitioner in C.C.No.50205/2019 pending on the file of XLIII Additional Chief Metropolitan Magistrate, Mayohall, Bengaluru City wherein the petitioner has been implicated for the offence punishable under Section 338 of IPC.

2. Heard the learned counsel appearing for the petitioner and the learned High Court Government Pleader appearing for the State/respondent No.1. Respondent No.2 is served and unrepresented.

3. The factual matrix of case of prosecution while initiating the proceedings against this petitioner is that the complaint has been filed by the complainant/respondent No.2 with the allegation against this petitioner is that his wife by name Smt. N Pushpa was working for Green Space Garden maintenance. That on 21.02.2018 at about 11.30 a.m., when she was working in Salarpuria building, the compound attached to the said building fell down. As a result, she has sustained injury to her both the legs which has resulted the amputation. It is also alleged in the complaint that accused who was working for RSR Earth Movers has dumped the mud in the adjacent new construction area which is also owned by Salarpuria and due to the overloading of the mud and also negligence on the part of accused, the said incident was taken place. Based on the complaint dated 27.02.2018 given by the complainant that is husband of the injured, a case was registered and FIR was filed in Crime No.59/2018. The police have investigated the matter and filed the charge sheet arraying this petitioner as an accused for the offence punishable under Section 338 of IPC. Hence, the present petition is filed invoking Section 482 of Cr.P.C praying this

Court to quash the entire proceedings initiated against this petitioner.

4. The grounds urged by the petitioner in this petition is that he is only a Contractor who is working for the RSR Earth Movers company and he has nothing to do with the affairs of the same. Hence, the entire allegation in the complaint that the petitioner is the owner of the company is misconceived and on this ground alone, the proceedings against the petitioner are liable to be quashed. The Trial Court has mechanically taken the cognizance of the offence without averting to the allegations as well as the documents produced along with the charge sheet. It is contended that admittedly, the alleged incident has taken place on 21.02.2018 and by that time, the petitioner has only done minor earth work and completed the work project and the gate pass has been issued on 03.02.2018. The allegation that petitioner has dumped the mud does not hold water and therefore, entire proceedings is vindicated by malice.

5. It is further contended that Trial Court ought to have noticed that work order itself is clear that the same has been issued after the said incident i.e., on 26.02.2018 but the

incident was taken place on 21.02.2018. Therefore, looking at any angle, the petitioner is not responsible for the incident which has taken place on 21.02.2018 which is much prior to the issuance of the work order to the petitioner. It is also contended that the petitioner has been falsely implicated in the case and petitioner has acted according to the instruction of the engineer and the petitioner has no independent decision making power in the matter of excavation or any other incidental work including dumping of the mud. The petitioner is not the owner of the Salarpuria and the alleged incident has taken place in the building and premises of the said Salarpuria, for which the petitioner cannot be held liable. The registration of the FIR and filing of the final report is only an afterthought and the same is only a mala fide act. There was a delay in lodging the complaint that too after lapse of six days and statement came to be recorded on 15.05.2018 and there is no explanation whatsoever in respect of inordinate delay. Hence, prayed this Court to invoke the powers under Section 482 of Cr.P.C and quash the proceedings initiated against the petitioner.

6. The counsel appearing for the petitioner in his arguments also reiterated the grounds urged in the petition.

The first and foremost contention of the counsel for the petitioner is that company is not arrayed as accused and in the absence of company, there cannot be any prosecution against this petitioner since he is only a Contractor who is working for the RSR company and he is not the owner of the company. The second submission of the counsel appearing for the petitioner is that there is no any direct nexus in respect of this incident is concerned. The third argument of the counsel is that there cannot be a criminal prosecution against the petitioner. If there is any lapses on the part of the petitioner in discharging his work as Contractor, there is a civil remedy and not the criminal prosecution. The counsel also vehemently contend that there cannot be any vicarious liability.

7. The counsel for the petitioner in support of his arguments, relies upon the judgment of this Court passed in **Criminal Petition No.889/2016** dated **11.11.2021** in the case of **B. R. RAVINDRA vs STATE OF KARNATAKA AND ANOTHER**. The counsel referring this judgment would contend that when the company is not made as a party to the proceedings, the same would stand vitiated.

8. The counsel also relies upon the judgment of this Court passed in **Criminal Petition No.293/2014 connected with Criminal Petition No.688/2014** dated **23.10.2020** in the case of **K C NANDISH B ARCH vs STATE OF KARNATAKA AND ANOTHER**. The counsel referring this judgment would contend that there is no direct nexus and admittedly, the construction work was entrusted to the contractor who in turn has engaged the masons and other labourers to do the said work. These petitioners cannot be held liable or prosecuted for the accidental death and injury caused to the labourers, since the excavation work was not done in their presence.

9. The counsel also relied upon the judgment of this Court passed in **Criminal Petition No.6274/2016** dated **23.09.2019** in the case of **ALLAIAH AND ANOTHER vs STATE OF KARNATAKA AND ANOTHER**. The counsel referring this judgment would contend that this Court held that the case of the prosecution is that the alleged accident had taken place on account of negligence of the employer or occupier in not providing necessary safeguards as required under the Factories Act. Vicarious liability cannot be imputed to

the petitioners. The prosecution is maintainable only against the occupier and not against the instant petitioners.

10. The counsel also relies upon the judgment of by this Court passed in **Criminal Petition No.10072/2012** dated **22.02.2012** in the case of **CHANNABASAVARAJ vs THE STATE OF KARNATAKA** and brought to notice of this Court the discussion made in paragraph 6 of the said judgment wherein this Court held that the petitioner, in terms of the agreement, had engaged the service of accused No.2 as a helper in the said sub-station. Even according to the allegations made in the complaint and the statement of the victim, on the relevant date, accused No.2 was discharging the duty in the sub-station and he was informed by CW4 about his attending to some work on the power transmission line and accused No.2 knowingly well that CW4 was attending to some work on the power transmission line, by his negligent act, switched on the power supply which resulted in electric shock to CW4, consequently, CW4 fell down from the electric pole and suffered injury. The only ground attributed against accused No.1 is that he is the contractor for the maintenance of sub-station and he employed accused No.2. There is no provision in the Indian Penal Code for fastening the vicarious liability on another for

the act of one except to the extent of offences falling under Sections 34 or 149 of IPC.

11. Per contra, the learned High Court Government Pleader appearing for the State in his arguments would vehemently contend that the company is not made as a party in the proceedings is a curable defect and Court cannot quash the petition only on the ground of technicality. The substantive justice must be done having considered the foundational facts of the case. The counsel also would submit that though there was no nexus of direct connection to the incident, it cannot be contended that the petitioner did not dispute the fact that he had undertaken the excavation work and dumped the mud which has resulted in the alleged incident. The counsel also would contend that this is not a civil remedy as contended by the petitioner's counsel and the question of giving any criminal colour does not arise since the alleged incident took place on account of negligent act on the part of the petitioner in carrying out the work entrusted to him. Section 338 of IPC is very clear with regard to the negligent act is concerned. The other contention of the counsel for the petitioner is that there is no vicarious liability and the same cannot be accepted for the reason that the petitioner was discharging the duty which was

entrusted to him in connection with work order. Though it is contended that work order was issued subsequently, but clearly admitted that work was carried out even prior to the issuance of work order. Hence, this Court cannot exercise the powers under Section 482 of Cr.P.C.

12. Having heard the learned counsel appearing for the petitioner and also the learned High Court Government Pleader appearing for the State and also having considered the material on record, the point that would arise for the consideration of this petition before this Court is:

1. Whether the initiation of criminal proceedings against the petitioner is bad in law and whether this Court can exercise the powers under Section 482 of Cr.P.C holding that the Trial Court committed an error in taking cognizance against the petitioner based on the charge sheet filed against him and whether it requires interference of this Court?
2. What order?

Point No.1:

13. Having heard the petitioner's counsel and also the counsel appearing for the State and also on perusal of the material on record, it is not in dispute that the alleged incident was taken place on 21.02.2018. The petitioner also not disputes the fact that gate pass was issued to him on 03.02.2018 for the excavation work. However, the counsel would contend that work order was issued to the RSR company on 26.02.2018. The complaint was filed on 27.02.2018 and FIR came to be registered against the petitioner. The police also investigated the matter and filed the charge sheet on 15.10.2018. The Trial Court having perused the documents produced along with the charge sheet as well as the statement of witnesses, taken the cognizance of the offence and issued the summons to the petitioner on 11.12.2018. Hence, the question before this Court is for having taken the cognizance by the Trial Court against the petitioner.

14. Having perused the grounds of the petition, it discloses that it is an admitted fact that this petitioner has started the excavation work and no dispute to that effect. It is also the contention of the petitioner that he is only a Contractor who is working for the RSR company and nothing to do with the

affairs of the said company. It is also his contention that he is not the owner of the company. But ground urged is that Trial Court has mechanically taken cognizance of the offence without advertting to the allegations and the documents produced along with the charge sheet. But categorically admitted that incident was taken place on 21.02.2018 and by that time, the petitioner has only done minor earth work and completed the work project and also gate pass has been issued. Having taken note of ground No.2 urged in the petition, it is very clear that petitioner has done the earth work. The petitioner also not disputing the fact that work was entrusted to him to do the excavation work. It is also not in dispute that gate pass was given earlier to this incident i.e., on 03.02.2018 and incident was taken place on 21.02.2018 and the petitioner also done the work.

15. To come to the proper conclusion that company is not made as accused, this Court has to take note of contents of the complaint wherein specifically contend that wife of the complainant was working and no dispute to that effect. On account of the alleged incident, she has sustained injury to her legs and her legs are amputated and the same is also not in dispute. The fact that the compound which belongs to the

Salarpuria Company was felled down on 21.02.2018 at 11.30 a.m. and the same is also not in dispute. On account of felling down of compound, she has sustained the injuries and the same is also not in dispute. It is also not in dispute that the contractor of RSR company while doing excavation work, put more mud and compound could not able to hold the strength of the said mud and fell down and the same is specifically stated in the complaint. In the complaint, it is also specifically alleged that RSR Earth Movers Company person i.e., this petitioner without taking any prior safety measures and due to his negligence in dumping the mud near the compound wall of Salarpuria, the alleged incident has taken place. The prayer in the complaint is also very clear with regard to taking of action against RSR Earth Movers Company.

16. It is important to note that the complaint is very specific regarding taking the action against the RSR Earth Movers Company. Though such complaint is filed against the company, unfortunately, the IO only made this petitioner as an accused in the FIR. FIR contents is also very clear that an allegation is made against the RSR Earth Movers Company also and in the charge sheet filed on 15.10.2018 also, very same allegation was made. But while filing the charge sheet, only this

petitioner has been made as accused and not made the company as an accused. Merely because the IO has committed an error in not making the company as an accused, the injured victim should not suffer on the ground of technicality since the alleged incident is not in dispute and it is not in dispute that the injured has sustained the injury in the alleged incident. The Court also cannot shut its eyes while considering the foundational facts of the case. The complaint is very specific that against the company action is sought. It is a mischievous act of the IO in not arraying the company as an accused since complaint is specific and allegation is also specific against the company as well as against this petitioner.

17. In this regard, this Court also would like to rely upon judgment of the Apex Court in the case of **STATE OF GUJARAT vs KISHANBHAI AND OTHERS** reported in **(2014) 5 SCC 108**, wherein the Apex Court in paragraphs 19 to 25 discussed in detail with regard to defective or illegal investigation, a very heinous case, ended in acquittal due to lapses committed by the investigating officer and prosecuting agencies in the process of establishing the guilt of the accused before the Trial Court and strict directions are issued to conduct a periodical training and the defective investigation cannot be

a ground to acquit the accused. The Apex Court also held that even if there is negligence on the part of the IO, it is the duty of the Public Prosecutor to discharge his duty with accountability while prosecuting the case and the same can be curable defect. It is also held that it is the duty of the Court to see that substantial justice is done to the victim and Court also should not be a mute spectator while conducting the proceedings and Court also should involve in considering the case of the victim.

18. With regard to the fact of mute spectator is concerned, this Court would like to rely upon the judgment of the Apex Court in the case of **STATE OF RAJASTHAN v. ANI ALIAS HANIF AND OTHERS** reported in **(1997) 6 SCC 162**.

Paragraph Nos.12 and 13 of the judgment reads as follows:

"12. Reticence may be good in many circumstances, but a judge remaining mute during trial is not an ideal situation. A taciturn Judge may be the model caricatured in public mind. But there is nothing wrong in his becoming active or dynamic during trial so that criminal justice being the end could be achieved. Criminal trial should not turn out to be a bout or combat between two rival sides with the judge performing the role only of a spectator or even an umpire to pronounce finally who won the

race. A judge is expected to actively participate in the trial, elicit necessary materials from witnesses at the appropriate context which he feels necessary for reaching the correct conclusion. There is nothing which inhibits his power to put questions to the witnesses, either during chief examination or cross-examination or even during re-examination to elicit truth. The corollary of it is that if a judge felt that a witness has committed an error or a slip it is the duty of the judge to ascertain whether it was so, for, to err is human and the chances of erring may accelerate under stress of nervousness during cross-examination. Criminal justice is not to be founded on erroneous answers spelled out by witnesses during evidence collecting process. It is a useful exercise for trial judge to remain active and alert so that errors can be minimised.

13. In this context it is apposite to quote the observations of Chinnappa Reddy, J. in Ram Chander v. The State of Haryana (AIR 1981 SC 1036):

"The adversary system of trial being what it is, there is an unfortunate tendency for a judge presiding over a trial to assume the role of a referee or an umpire and to allow the trial to develop into a contest between the prosecution and the defence with the inevitable distortions flowing from combative and competitive elements entering the trial procedure. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a spectator

and a mere recording machine. He must become a participant in the trial by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth."

We respectfully concur with the aforesaid observations. We find no wrong in the trial court interjecting during cross-examination of PW-3 with a view to ascertain the correct position."

19. This Court would also like to rely upon the judgment of the Apex Court in the case of **BABLU KUMAR AND OTHERS v. STATE OF BIHAR AND ANOTHER** reported in **(2015) 8 SCC 787**. Paragraph No.22 of the said judgment reads as follows:

"22. Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the Court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. Law does not countenance a "mock trial". It is a serious

concern of the society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The Court is duty bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The Court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the Court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the Court that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial, has a statutory duty to perform. He cannot afford to take things in a light manner. The Court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial.

20. This Court would like to rely upon the judgment of the Apex Court in the case of **DINESH KUMAR v. STATE OF HARYANA** reported in **(2023) 20 SCC 49**. The Apex Court in this judgment referring Sections 165 and 45 of the Evidence Act, 1872, held that, it is the duty of trial Judge to ask pertinent questions. Paragraph Nos.22, 23, 24 and 25 of the said judgment reads as follows:

"22. We are afraid that by pointing out the weakness in the cross-examination of the defence the Presiding Judge indirectly admits to the weakness in the trial itself. We say this for the reasons that under Section 165 of the Act, a trial Judge has tremendous powers to "ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant". It is in fact the duty of the Trial Judge to do so if it is felt that some important and crucial question was left from being asked from a witness. The purpose of the trial is after all to reach to the truth of the matter.

23. Section 165 of the Act reads as under:

"165. Judge's power to put questions or order production.– The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact

relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question:

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved:

Provided also that this section shall not authorize any Judge to compel any witness to answer any question, or to produce any document which such witness would be entitled to refuse to answer or produce under Sections 121 to 131, both inclusive, if the question were asked or the document were called for by the adverse party; nor shall the Judge ask any question which it would be improper for any other person to ask under Section 148 or 149; nor shall he dispense with primary evidence of any document, except in the cases hereinbefore excepted."

24. The powers of a Presiding Judge in a criminal trial and his duty to get to the truth of the matter have been laid down in a seminal judgement of this Court authored by O. Chinnappa Reddy, J. which is Ram Chander v. State of Haryana. O. Chinnappa Reddy, J. in the said judgment refers to

his earlier Judgment given by him as a Judge of the Andhra Pradesh High Court, where it was said : (Intha Ramana Reddy case, SCC Online AP para 2)

"2.Every criminal trial is a voyage of discovery in which truth is the quest. It is the duty of a Presiding Judge to explore every avenue open to him in order to discover the truth and to advance the cause of justice. For that purpose he is expressly invested by Section 165 of the Evidence Act with the right to put questions to witnesses. Indeed the right given to a Judge is so wide that he may, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact, relevant or irrelevant. Section 172(2) of the Code of Criminal Procedure enables the court to send for the police diaries in a case and use them to aid it in the trial. The record of the proceedings of the Committing Magistrate may also be perused by the Sessions Judge to further aid him in the trial."

25. The duty of the Presiding Judge of a criminal trial is not to watch the proceedings as a spectator or a recording machine but he has to participate in the trial "by evincing intelligent active interest by putting questions to witnesses in order to ascertain the truth." While referring to a decision of Lord Denning in Jones v. National Coal Board (1957) 2 WLR 760 (CA) the learned Judge had said that it is the duty of the Judge to ask questions to the witnesses when it becomes necessary to clear

up any point that has been overlooked or left obscure, then he goes on to say as under: (Ram Chander v. State of Haryana (1981) 3 SCC 191) Scc p.194, para 3)

"3.We may go further than Lord Denning and say that it is the duty of a Judge to discover the truth and for that purpose he may "ask any question, in any form, at any time, of any witness, or of the parties, about any fact, relevant or irrelevant" (Section 165, Evidence Act). But this he must do, without unduly trespassing upon the functions of the Public Prosecutor and the defence counsel, without any hint of partisanship and without appearing to frighten or bully witnesses. He must take the prosecution and the defence with him. The Court, the prosecution and the defence must work as a team whose goal is justice, a team whose captain is the judge. The Judge, 'like the conductor of a choir, must, by force of personality, induce his team to work in harmony; subdue the raucous, encourage the timid, conspire with the young, flatter and (sic the) old'."

21. The first and foremost contention of the counsel for the petitioner is that company has not been arrayed as an accused and in support of this contention, he relied upon the judgment of this Court in the case of **B R RAVINDRA** referred supra wherein this Court comes to a conclusion that in non-arraying of the company as a party, it vitiates and a very

approach cannot be accepted in a case where the wife of the complainant has suffered the injury of amputation in the alleged incident and there cannot be any technicality and the same can be cured at any stage as rightly pointed out by the counsel appearing for the State. It is the lapses on the part of Investigating Officer and complaint specifically alleged in the complainant against the company only. It is also to be noted that the Section 319 of Cr.P.C is very clear that at any point of time, during the course of the trial, if court comes to the conclusion that any accused can be added, the same can be added. In this regard, this Court would like to refer Section 319 of Cr.P.C.- the power of the Court to proceed against other persons appearing to be guilty of offence and would like to extract the said proviso.

"319. Power to proceed against other persons appearing to be guilty of offence.

- (1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

- (2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.
- (3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.
- (4) Where the Court proceeds against any person under sub-section (1), then –
 - (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;
 - (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

22. Having considered the said proviso, it is very clear that in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being accused has committed any offence for which such person could be tried together with the accused, the court may proceed against such

person for the offence which he appears to have committed. When such power is given, an accused can be added at any stage. Hence, the said judgment will not come to the aid of the petitioner and there cannot be any technicality and substantive justice must be done. The role of Investigating Officer as well as prosecuting agency and also the Judge who conduct the trial must involve in the case while dispensing the justice and job of the Court is also quest for the truth.

23. The other judgment relied upon by the counsel for the petitioner is in the case of **K C NANDISH B ARCH** referred supra wherein also this Court held that there must be proximity and work was entrusted to the contractor who in turn has engaged the labourers. But in the case on hand it has to be noted that there is a proximity to the cause of incident and this petitioner was carrying out the excavation work which was entrusted by the company. Section 338 of IPC is also very clear that whoever causes grievous hurt to any person by doing any act so rashly or negligently as to endanger human life or the personal safety of others, shall be punished with imprisonment. In the case on hand, there is a direct nexus in discharging the excavation work and there was a negligence. This judgment also will not come to the aid of the petitioner.

24. The counsel also relies upon the judgment in the case of **ALLAIAH AND ANOTHER** referred Supra wherein also though court held that the vicarious liability cannot be imputed to the petitioners and the said judgment also will not comes to the aid of the petitioner having considered the factual aspects of the case. The Court has to take note of the foundational facts of the case while relying upon the judgment and in a criminal proceedings also vicarious liability could be fixed if specific accusation is made in the complaint and the same is found in the complaint itself. So also the judgment in the case of **CHANNABASAVARAJ** referred supra also will not comes to the aid of the petitioner. While giving the reasoning by the Court, the Court has to take note of the material available on record. In the case on hand, this Court has already pointed out the allegation made in the complaint and specific allegation is made that there was a negligence on the part of the petitioner while doing the earthwork and the mud was dumped and compound was not having capacity to bear the strength of the said mud which has resulted in falling down of the compound and the injured sustained the injuries. Specific allegations are made against the company as well as the petitioner in the complaint and charge sheet material is also very clear that the

work was undertaken earlier to the issuance of the work order. It is very clear that work was undertaken and gate pass was given on 03.02.2018. The petitioner also categorically admitted that he has done the work of excavation. The ground which has been raised before this Court by the petitioner cannot be considered in a petition under Section 482 or Cr.P.C and the same has to be considered during the course of trial with regard to the disputed facts as well as the interpretation in respect of the negligence is concerned and so also the entrusting of the work. The complaint is very specific that the company of Salarpuria entrusted the work to the RSR company. In connection with the same, the work was undertaken and there was negligence on the part of the petitioner in doing the said work, which has resulted amputation of the legs of the complainant's wife.

25. The other contention of the counsel for the petitioner is that there was a delay of six days in lodging the complaint and the same also cannot be considered at this stage since the same is also a mixed question of fact and law and the question of limitation also to be taken note of during the course of trial with regard to that whether the delay is explained properly or not while considering the matter on merits.

26. At this stage, this Court would like to rely upon the judgment of the Apex Court reported in **2025 SCC ONLINE SC 2923** in the case of **JEYASINGH vs STATE REP. BY THE INSPECTOR OF POLICE, TAMIL NADU** wherein the Apex Court in paragraph 10 discussed the ingredients of Section 338 of IPC. Having discussed the same comes to the conclusion that no negligence could have been attributed to the appellant herein who only facilitated the organization of the trekking expedition. But in the case on hand, it is very clear that this petitioner was entrusted to do the work of earth excavation and the specific attribution is made that there was a negligence on the part of the petitioner. When there is a negligence while carryout the excavation work without taking the safety measures, invoking of Section 338 of IPC is warranted.

27. This Court also would like to rely upon the judgment of the Apex Court reported in **(2019) 17 SCC 193** in the case of **SHIV KUMAR JATIA vs STATE OF NCT OF DELHI**. In this case also, principle summarized while fastening the vicarious/constructive liability holding that there must be a specific statutory provision which applicable to the facts of the case. It is also held that criminal liability can only be imposed for direct actions of the individual concerned, culpability for

which must be established in accordance with law. The Apex Court also discussed in detail in paragraph 10.1 that though held that no individual can be made accused along with the company, unless there is sufficient evidence of his active role with criminal intent. But in this case, there is an active role on the part of the petitioner that he had undertaken the excavation of the earth in connection with the work entrusted to him.

28. It is very clear that the specific allegation is made in the complaint as against the RSR Earth Movers which has undertaken the said work. In view of the work entrusted, the work order was issued. The issuance of work order is also not in dispute and carrying out the work in terms of the work order is also not in dispute. Though the work order was of the subsequent date, but the fact is that work was undertaken even prior to the issuance of work order and the same is admitted by the petitioner stating that he has done the minor earth work and completed the project. When such being the case, this Court has to take note of the factual aspects of the case. This Court already pointed out that work was undertaken based on work order which was issued. The Court while considering the factual aspects of the case has to take note of the principles

laid down in the judgments. This Court already held that the judgments which have been relied upon by the petitioner's counsel will not come to the aid of the petitioner. This Court also held that when the specific allegation is made against the company and the company has not been arrayed as an accused, the same is the lapse on the part of the I.O. in view of judgment referred supra in a case of **STATE OF GUJARAT vs KISHANBHAI AND OTHERS**. So also, the Court cannot shut its eyes while considering the factual aspects of the case particularly, in this case, wherein a poor lady who was working for her livelihood has suffered injuries i.e., life long permanent disability on account of amputation of her legs consequent upon the negligence on the part of this petitioner and also the company which has undertaken the work of excavation and there was a work order and no dispute with regard to the entrusting of the work by issuing the work order. The incident was also taken place subsequent to the work which was undertaken i.e., excavation and mud was put near the compound wall and compound wall was unable to sustain the strength of the mud which has resulted in collapsing of the compound wall, as a result, the injured sustained the hurt, which resulted in amputation of both the legs of the injured.

29. Having considered the foundational facts of the case and when there is a specific allegation against the company as well as this petitioner who is a Contractor who has undertaken the work, only on the ground of technicality, the Court cannot quash the proceedings. The substantive justice must be done in keeping the person who has sustained the injury that too on account of negligence on the part of the petitioner as well as the company who has undertaken the work and the defect is also curable and the same is not on account of the victim but it is on the part of Investigating Officer.

30. The Trial Court while taking the cognizance taken note of the charge sheet materials and also the documents which have been produced along with the charge sheet and applied its judicious mind and found that matter requires to be tried and hence, the same cannot be considered as a mechanical act on the part of the Trial Court in taking the cognizance as contended by the counsel appearing for the petitioner. Thus, the Trial Court rightly held that the matter requires a trial.

31. If the complainant/respondent No.2 chooses to bring the company also an accused, the same is a curable

defect and the same can be considered by the Trial Court if any such application is filed for adding of the company to the proceedings. Hence, the petitioner has not made out any grounds to invoke Section 482 of Cr.P.C to quash the proceedings. Hence, answered the above point as negative.

Point No.2:

32. In view of the discussions made above, I pass the following:

ORDER

- (i) The petition is dismissed.
- (ii) Taking of cognizance against the petitioner by the Trial Court is upheld. The Trial Court is directed to proceed in accordance with law.
- (iii) The respondent No.2/complainant is also given liberty to make necessary application to bring the company as an accused. If such application is filed, the Trial Court is directed to consider the same since the said error is a curable defect in view of the lapses on the part of Investigating Officer.

Sd/-
(H.P.SANDESH)
JUDGE

SN