

**Vijay Singhania Vs. State**

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**Court :** Delhi

**Decided On :** Jul-04-2008

**Reported in :** 2008(105)DRJ250

**Judge :** S. Muralidhar, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 161, 397(1), 397(3), 401, 482 and 483; Indian Penal Code (IPC) - Sections 34, 288, 304A, 337 and 427

**Appeal No. :** CrI. M.C. 824/1999

**Appellant :** Vijay Singhania

**Respondent :** State

**Advocate for Def. :** Pawan Behl, APP.

**Advocate for Pet/Ap. :** I.U. Khan, Sr. Adv. and; Vikas Arora, Adv

**Disposition :** Petition dismissed

**Judgement :**

**S. Muralidhar, J.**

1. This petition under Section 482 of the Code of Criminal Procedure, 1973 ('Cr PC') challenges an order dated 7th April, 1998 passed by the learned Metropolitan Magistrate ('MM'), Delhi in FIR No. 131 of 1995 holding that there was a prima

facie case made out against the petitioner under Sections 337 and 304A IPC. This petition also challenges an order dated 26th November, 1998 passed by the learned Additional Sessions Judge ('ASJ'), dismissing Crl. Revision No. 41 of 1998 affirming the order passed by the learned MM.

## Background facts 2.

The facts leading to the filing of this petition are that on 20th June, 1995 at around 11.15 am a building at 4883-84, Kucha Ustad Dag, Chandni Chowk, Delhi collapsed resulting the death of three persons and injuring several persons. Pursuant to the collapse, enquiries were ordered independently by the Delhi Administration and the Municipal Corporation of Delhi. An FIR No. 131 of 1995 was registered under Sections 288/337/304-A/427/34 IPC at Police Station Town Hall. On the conclusion of investigation a charge sheet was filed against 3 persons namely the petitioner Vijay Singhania who was described as the owner of the building, Pravin Sharma was described as contractor and M.G. Agarwal an associate of the Pravin Kumar in the construction of the building. The learned MM discharged Pravin Kumar and M.G. Agarwal but framed charges against the petitioner under Sections 304A/337 IPC. Aggrieved by the said order the petitioner as well as the State filed criminal revision petitions. While the revision petition of State was allowed, the revision petition of the petitioner was dismissed by the learned ASJ.

## Submissions of Counsel

3. Mr. I.U.Khan, learned Senior counsel appearing on behalf of the petitioner submits that the enquiries made by the MCD as well as by the Delhi Administration revealed that the petitioner was not in any way responsible for the collapse of the building resulting into casualties and injuries to the persons working there. Some repair and renovation work was going on for the purposes of which some material was lying on the top floor. Heavy rains resulted in the collapse of the roof. It is submitted that the building consisted of the ground floor, first floor and barsati. The petitioner occupied the ground floor in the year 1993 paying Rs.107/- per month. The first floor and barsati were in the possession of Indo European Machinery Co. Pvt. Ltd. ('IEMCPL'). The repair and renovation activity which was going on in the

premises at the relevant time was in the control and supervision of two persons namely M.G. Agarwal and Pravin Kumar, the contractor. Those two persons had arranged for the material to be kept on the site and it was on their direction that it was placed on top of the building. The petitioner was not at the site at the time of the incident. Reliance is placed upon a large number of decisions including Joseph v. State of Kerala , B.P. Ram v. State of Madhya Pradesh , Bishan Swaroop Sharma v. State (N.C.T. of Delhi) 2005 [1] JCC 452, Kurban Hussein Mohammedalli Rangawalla v. State of Maharashtra 1965 (2) CrL LJ 550, Ambalal D. Bhatt v. The State of Gujarat : 1972 CriLJ727 , Baijnath Singh v. State of Bihar : 1972 CriLJ919 and State of Karnataka v. Satish : (1998)8SCC493 . Considerable emphasis has also been placed on the judgment of the Punjab and Haryana High Court in Krishan Lal v. State of Haryana 1994 (1) RCR 251 which was a case of a building collapse.

4. As regards the preliminary objection to the maintainability of the present petition, Mr.Khan submits that the power under Section 482 Cr PC can be exercised by this Court to prevent a grave miscarriage of justice notwithstanding that a revision petition may have been dismissed by the Sessions court. Reliance is placed on the judgment in Kailash Verma v. Punjab State Civil Supplies Corporation Crimes 2005 (1) SC 188, Krishnan v. Krishnaveni : 1997 CriLJ1519 and Jitender Kumar Jain v. State of Delhi : (1998)8SCC770 .

5. On behalf of the respondent Mr.Pawan Behl, learned APP, submitted that the present petition is in the nature of a second revision petition which is not maintainable as such. Reliance is placed upon the judgment in Rajathi v. C. Ganesh (1996) 6 SCC 326, Rajan Kumar Manchanda v. State of Karnataka : JT1987(4)SC637 , and Rajinder Prasad v. Bashir : AIR 2001 SC3062 . On merits, reliance is placed upon the statement of witnesses recorded under Section 161 Cr PC. It is submitted that some of the statements and in particular the statement of Brahm Dev who was a Chowkidar of the premises indicates that the petitioner used to come to the site for supervising the building at the night hours and would instruct M.G. Agarwal and Pravin Sharma as to what was to be constructed and how it was to be constructed.

## Maintainability of the petition

6. As regards the preliminary objection as to the maintainability of the petition, the law in this regard has been explained in *Krishnan v. Krishnaveni* : 1997 CriLJ1519 . In para 9 of the said judgment it was explained that 'the prohibition under Section 397(3) on revisional power given to the High Court would not apply when the State seeks revision under Section 401.' In para 10 it was explained that 'when the High Court on examination of the record finds that there is a great miscarriage of justice or abuse of the process of the courts or the required statutory procedure has not been complied with or there is failure of justice or order passed or sentence imposed by the Magistrate requires correction, it is but the duty of the High Court to have it corrected at the inception lest grave miscarriage of justice would ensue.' At the same time it was cautioned that the power 'may be exercised sparingly so as to avoid needless multiplicity of procedure, unnecessary delay in trial and protraction of proceedings'. Ultimately in para 14 it was concluded as follows:

14. In view of the above discussion, we hold that though the revision before the High Court under Sub-section (1) of Section 397 is prohibited by Sub-section (3) thereof, inherent power of the High Court is still available under Section 482 of the Code and as it is paramount power of continuous superintendence of the High Court under Section 483, the High Court is justified in interfering with the order leading to miscarriage of justice and in setting aside the order of the courts below. It remitted the case to the Magistrate for decision on merits after consideration of the evidence. We make it clear that we have not gone into the merits of the case. Since the High Court has left the matter to be considered by the Magistrate, it would be inappropriate at this stage to go into that question. We have only considered the issue of power and jurisdiction of the High Court in the context of the revisional powers. We do not find any justification warranting interference in the appeal.

7. The above exposition of the law was reiterated in *Rajinder Prasad*. Likewise, in *Kailash Verma* the above decisions were followed and the principles were reiterated.

8. The result of the above discussion is that this Court will have to determine if as a result of the impugned order there has been a miscarriage of justice or if

continuation of the trial in the instant case would be in the interests of justice. This necessarily requires the Court to examine the merits of the case and the submissions of counsel in that regard.

#### Consideration of the case on merits

9. The case of the prosecution is that the petitioner was the owner of the building and was therefore responsible for the control and supervision of the construction that was taking place at the relevant time. In the written submissions it is contended that the IEMCPL had acquired the building in 1988 by a registered sale deed. In 1988 the petitioner along with one Rishi Kedia were inducted as tenants in the ground floor. IEMCPL decided to dispose of the ground floor and an agreement to sell was entered into in respect of their tenanted portions for a sum of Rs.2 lakhs. Subsequently IEMCPL decided to dispose of the first and second floors as well. Consequently agreements to sell were entered into with the petitioner and Rishi Kedia in 1994. Thereafter IEMCPL moved out of the premises. It is stated that pursuant to the earlier agreement to sell Rs. 2 lakhs was received from the petitioner and Kedia on 17th August, 1994 and 8th November, 1994 respectively.

10. Reliance is placed by the prosecution on the statement under Section 161 Cr PC of one Inderjit Wadhwa who states that Vijay Singhanian in August 1994 had made additions and alterations on the ground floor and constructed unauthorized shops. He engaged Pravin Sharma (Builder) and M.G. Agarwal, Junior Engineer, MCD to carry on construction. Wadhwa claimed that he and other persons in the locality had warned the petitioner that the building was very weak and in case he made any addition or alteration, the building would collapse. However the petitioner did not heed those warnings. Wadhwa stated that on 19th June, 1995 Pravin Sharma and M.G. Agarwal were allowing steel girders to be carried to the upper floors through labourers. Wadhwa who was present at that point questioned them for doing so.

11. Reliance is also placed on the statement of one Brahm Dev son of Shri Khub Lal who was working at the relevant point of time as a security guard of the building on a monthly salary of Rs.500. Brahm Dev corroborated the statement

made by Inderjeet Wadhwa who had on 19th June, 1995 questioned M.G. Agarwal for allowing steel girders to be carried to the top of the building. Brahm Dev stated that the petitioner would come at night to supervise the construction. The petitioner would discuss with M.G. Agarwal and Pravin Sharma about what should be constructed and how it should be constructed. Brahm Dev also states that he was present at the time of the incident. There are also statements of other witnesses who speak to the fact that the building was old and weak and that the construction was being carried on in a rash and negligent manner.

12. It has been vehemently argued by Mr. Khan that barring the statement of Brahm Dev there is nothing at all to connect the petitioner with the offence and therefore not even a prima facie case can be said to be made out against him under Sections 304A/337 IPC. However, this Court is unable to agree with this submission. The statements of the witnesses, though yet to be tested at the trial, cannot at this stage be brushed aside. They are relevant for considering if there exists a prima facie case to proceed against the petitioner. It is not possible to accept the contention that no witness other than Brahm Dev has spoken about the role of the petitioner. A definite conclusion in this regard can be arrived at only after the witnesses have been examined at the trial.

13. Since considerable emphasis has been placed on judgment in Krishan Lal this Court proposes to discuss the said decision at some length. Krishan Lal and Bachan Lal were two brothers were getting a Cold Store constructed. In the process of construction the building collapsed and two labourers and a girl aged 10 to 11 years died. Several other labourers were also injured. Relying on the judgment in Public Prosecutor v. P. Moopanar : AIR1970 Mad198 where it was held that the Manager of the school was not liable where the building collapsed and students died, it was simply held that the petitioners were laymen and could not be held liable for the negligence of the persons who were constructing the building. Moreover it appears that the contentions of the petitioners in that case on facts were not controverted by the prosecution. In the instant case, there is a statement by at least one of the witnesses that the petitioner would himself come and supervise the construction work at nights. therefore, on facts the decision in Krishan Lal is distinguishable.

14. In *Abdul Kalam v. State* 2006 [2] JCC 803 this Court quashed the proceedings against the owner of the building when a scaffolding erected by the contractor fell upon and injured the complainant. On facts it was found that the owner had assigned the job to the contractor and that 'there was nothing else left for him to do'. The said judgment is distinguishable on facts. In the instant case it is too early to come to the conclusion that the statements made by the witnesses do not bring out a case against the petitioner even prima facie for the offence with which he is charged. If, in fact, the statements are found to be correct, the petitioner may not be able to escape liability.

15. In *Gulijeet Singh Kochar v. State* 2005 [3] JCC 1691 the petitioners were the owners of the property and were sought to be proceeded against under Section 304A IPC following an incident when one of the workers fell down and died. It was found on facts that there was no material to suggest that the construction of the basement was being done under the direct supervision of the owners. The investigation had revealed that the building was being constructed by the contractor. In the case in hand it is difficult to come to a similar conclusion in view of the evidence gathered and placed on record by the prosecution.

16. It was repeatedly suggested by Mr. Khan that there should have been some intervening act by the petitioner which resulted into the collapse of the building and that there was no vicarious liability for the acts of the contractors or the engineers. This Court is unable to accept this submission at the present stage when the matter is yet to go to trial. The witnesses whose statements have been referred to are yet to be cross-examined. At least one of them speaks about the petitioner having visited the site at night and giving instructions what should be constructed and how it should be constructed. Also, it is only when the evidence is tested in the court it can be determined with certainty as to what relationship the petitioner had with the other two accused. At this stage it is not possible to come to the conclusion that there is not even a prima facie case made out against the petitioner for the offence under Sections 337 and 304A IPC.

17. On a conspectus of the material placed on record by the prosecution thus far, this Court is unable to be persuaded to quash the criminal proceedings. This is not

a case where a grave miscarriage of justice has resulted from the framing of charges against the petitioner. therefore no ground is made out for the interference by this Court with the order passed by learned ASJ dismissing the petitioner's revision petition. In other words, this case does not fall within the parameters explained by the Supreme Court in Krishnan v. Krishnaveni justifying the entertaining of a petition under Section 482 Cr PC.

18. Even on merits, for the reasons explained, this Court is unable to come to the conclusion that there is no material or that not even a prima facie case is made out against the petitioner for being proceeded against for the offences under Section 304A and 337 IPC. Accordingly, this petition is dismissed.

19. The trial court record shall be sent back immediately. The matter will be listed before the trial court on 25th July, 2008 at 2 pm. The plea of the petitioner for exemption from personal appearance will be dealt with on merits by the trial court.

20. It is clarified that no observation made in this order is intended to influence the orders to be passed by the trial court hereafter at any stage of the proceedings.

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