HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.10497 of 2013

ORDER :

This Criminal Petition is filed by the petitioners/ accused Nos.1 to 4 under Section 482 Cr.P.C to quash the proceedings in C.C. No.631 of 2012 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad, where the learned Magistrate has taken cognizance for the offences punishable under Section 304-A r/w Section 109 IPC and Sections 217 & 417 read with Section 34 IPC and Section 11-B read with Section 9-A of Air Crafts Act, 1934, which is outcome of private complaint of the defacto complainant—Shri Anil Kumar Singh, who is a social activist of Trimulgherry, Secunderabad, who filed the private complaint against four accused viz., 1) L.Ramesh Kumar, owner of the building constructed by violation of the norms, 2) Smt.J.Vidyawati, Elected member of Ward No.1 Secunderabad Cantonment Board, 3) Bala Krishna, Assistant Engineer PWD Office of the C.E.O, Secunderabad Cantonment Board and 4) K.M.Dev Raj, Assistant Executive Engineer (II), PWD office of the C.E.O, Secunderabad Cantonment Board.

2) The private complaint was filed on 02.03.2012, where as the offence took place on 03.03.2010 at Bowenpally and the witness mentioned is one S.N.Reddy, Airport Manager, Begumpet Airport and the documents filed are 12 in number viz., 1) Sections 21, 22, 25, 36, 62 and 63 of the Cantonment Act of 2006, 2) GOC-in-C, Southern Command Pune (orders) dated 07.03.1999, 3) Pictures of High Rise Buildings with Cellular Phone Towers and CD ROM covering the video by TV and other media of the ill-fated Air Crash dated 06.03.2010, 4) Res-ipsa Loquitur defined, 5) News paper articles about the crash dated 04.03.2010,

6) A rough sketch of the building, where the plane crashed, dated

06.03.2010, 7) Newspaper article about demolition, 8) Representations by the complainant and the Hon'ble MLA Dr.P.Shanker Rao, dated 08.12.2009, 9) News Articles about the SCB permits high rise buildings, dated 31.08.2009, 10) CBI report and Secunderabad Cantonment Boards Charge sheet and Articles of charges framed on staff of the PWD of SCB and a Newspaper article about the charge, 11) Miscellaneous, SCB Profile, Airport Authority of India form for NOC for construction of Building and Communications mats etc. and 12) Copy of the Aircraft Act of 1934 along with the amendments.

3) The private complaint averments that the complainant is a social worker and founder of a Non Governmental Organization by name and banner of "Fundamental Duties Foundation" for creating awareness in the minds of citizens about the importance of fundamental duties laid down in Article 51 –A of the Constitution of India. It is averred that the Secunderabad Cantonment Board is a Civic Body under Ministry of Defence, Union of India to take care of the civic needs of the Citizens of the Secunderabad Cantonment as done by Greater Municipal Corporation of Hyderabad. The duties and responsibilities of the public servants working therein including the elected members of the Cantonment Board as per the Cantonment Act, 2006, Rules and other Orders, which are in force for the time being. It is averred that on 03.03.2010, there was an International Air Show conducted at Begumpet Airport in Hyderabad and where planes from the Indian Aerobatics Team of Sagar Pawan of the Indian Navy were performing Aerobatics for the benefit of the people and the Aerobatics team flown by Pilot Commander S.K.Maurya and Anil Niar crashed into an unauthorized constructed multistoried building, which also has an unauthorized cell phone tower erected on top of it making the height of the building to a staggering 90ft as against the permitted

building height of 39.5 feet or 12 meters. In this crash, Commander S.K.Maurya lost his life and also the plane was lost, the loss of his life of Commander S.K.Maurya has been a great loss to the Nation and the said air crash is occurred due to the negligence of the Building owner of a multistoried building on which was constructed a Cellular Phone Tower in utter violation of the Cantonment Building Bye-laws and also violation of Section 9-A of the Aircraft Act, 1934 and the authorities of the Cantonment Board failed to conduct their duties as required by Acts, Rules or other Orders in force with regard to the building restriction imposed by the GOC-in-C, Southern Command vide order dated the March, 1999 and ensuring that there are no buildings built violating the orders and a ban is imposed by the Airport Authority of India for erecting of Radio Communication towers or any form of communication towers or top of the houses but for totally violated by the building owner and by the officials of Cantonment Board and pictures of the unfortunate Air Crash incident covered by both electronic and print media in wide range on 03/04.03.2010 which is taken away the two pilots. The Cantonment Board admitted that the building was constructed without proper sanctions by violating the Cantonment Bye-laws and Rules in force including the restrictions covered by GOC-in-C, Southern Command, Pune are only limited to G + 2 floors in a plot area more than 750 Sq.mtrs and the height of the building being permitted to a height of 12 meters or 39.37 ft. Whereas the building owner violated and constructed ground floor + first floor + Second floor + third floor + stilts and the height of a floor + water tank and the height of another floor to a total height 60 ft as against the permitted height of 39.37 ft besides building owner cause erected the Cellular Phone tower with a height of minimum of 30 ft on the top of a building standing upto 60ft from the ground making the entire structural height to the ground at 95 feet or 29.15 meters by almost 2.41 times higher than permitted height in the prohibited level by clear violation;

that such a construction is in existence for more than 10 years show that the Area Supervisor, Assistant Executive Engineer and elected members concerned of the Cantonment Board area of the building at ward No.1 ignored the said existence of the unauthorized construction and the negligence of the officials and that of the building owner is an offence under Section 304-A IPC. It supports from the expression in *Sulabh International Social Service Organisation vs Kishan Lal* in LPA No.1201 of 2007 and CM No.12221 of 2007, that the service organization was found guilty of causing death of a 7 year old boy drowning in an open manhole in their public toilets' and another case of *Uphar Theatre Fire Case*, wherein 59 people, who went to see a film in that Theater on that fateful day were burnt to death by a fire accident and they were sentenced to undergo rigorous imprisonment for a term of two years and a fine of Rs.5,000/- each for the offence under Section 304-A IPC for the rash and negligent act supra and the Omission to do something which a reasonable man guided upon those considerations which ordinarily regulates the conduct of human affairs, would do, or doing something which a prudent and a reasonable man would not do as the Act is within the purview of criminal negligence apart from principle of *Res-ipsa Loquitur* contemplated against the accused from the unauthorized and illegally erected building floors of a cellular phone tower that was not controlled or taken further action by the officials that resulted the Air Crash and death of two officials in the Navy in the air crash on 03.03.2010. The deliberate inaction on the part of the Cantonment Board by not enforcing and implementing the required restrictions of the buildings imposed by GOC-in-C, Southern Command and by allowing the unauthorized construction and higher than the permitted height also in allowing to erect the cellular phone towers that without proper sanctions and its continuation, illegally tantamounts to the Criminal Act, abatement and conspiracy to make

the accused persons liable for the offences. The unfortunate death of Commander S.K.Maurya was due to existence of the illegally erected cellular phone tower measuring more than 25 ft, which was unauthorisedly constructed having four floors + a water tank on top of the 4th floor and the Cellular Phone tower on top of the water tank making the total height of the building at 85 ft to 39.37 ft, which constitute the offence, hence to take action.

4) A perusal of the W.P. No.12723 of 2010 filed by the complainant against the Secretary, Home Department, Government of Andhra Pradesh, Secretariat, Hyderabad and others and the same was ended in dismissal by the Division Bench on 08.06.2010 where the accused persons are among respondent Nos.4 to 8 of the Writ Petition, it was observed that appropriate course for the petitioner to maintain such action is to approach proper forum subject to availability of cause and locus, while dismissing the Writ Petition and from which the complaint was filed that was taken cognizable. The accused persons impugning the cognizance order of the learned Magistrate filed the quash petition and obtained interim stay that is extended from time to time.

5) The contentions in the quash petition in nut shell are that the A.1, is owner of residential building supra which was destroyed by the Air Crash, A.2 is elected member of Ward No.1 of Cantonment; A.3 and A.4 are the employees of Cantonment Board. The private complaint filed by the complainant taken cognizance amounts to gross misuse of judicial process without going into the observations in the order dated 08.06.2010 in W.P. No.12723 of 2010 by the Division Bench supra, the learned Magistrate mechanically conducted the pre-cognizance enquiry in taking cognizance without verifying the locus standi of the complainant in issuing the summons to the accused and

without going into the matter of no specific allegations against any of the accused persons and continuation of the proceedings tantamount to abuse of process and none of the provision of Indian Aircraft Act are applicable and the offence under Section 304-A IPC cannot even be fastened much less to say any further liability by abatement or criminal conspiracy or the like; that the plane crash was occurred due to technical slang. The allegations for the criminal offences are irrational and taking of cognizance is by non-application of judicial mind and there is no fault of any of the accused to implicate them in the criminal case that was taken cognizance and the 2nd petitioner/accused No.2 is elected member of Ward No.1 in the year 2009 for the first time and he had no occasion to be part of the construction by 1st petitioner/ accused No.1 as the construction taken place about ten years back to the crash in March, 2010. A.3 and A.4 are not in charge of that particular ward at the time of construction i.e., 10 years back, to say none of the A.2 to A.4 have direct role much less to make liable for any of the offences but for A.1. The complainant is habituated in filing the frivolous complaints. The Cantonment Board filed O.S. No.4245 of 2004 and O.S. No.633 of 2005 for damages that were decreed for compensation against the complainant and the decrees were made final with no appeal and the Cantonment Board also filed Criminal Defamation case against the complainant in C.C. No.1204 of 2004, which is pending on the file of X Additional Chief Metropolitan Magistrate. The 2nd respondent has no respect for law and order and he is indulging in making false complaints in various courts against the employees of Cantonment Board without substance and intentionally implicated the accused. He has no locus standi to maintain the private complaint. The private compliant is barred by limitation by the time of its filing and the continuation of the private complaint, cognizance order, proceedings in C.C.No.631 of 2012 against the petitioners to

make them go around the Court for no fault of them is unsustainable and prayed to quash the calendar case as there is no case against them.

6) Heard learned counsel for quash petitioners/A.1 to A.4, learned public prosecutor representing 1st respondent—State and also the 2nd respondent—defacto complainant. Perused the material on record including the enclosures of the complaint and two judgments viz., the judgment of the Apex Court passed in Crl.A. No.597 of 2010 and another is passed by the Delhi High Court in DH LPA No.103 of 2013.

7) Now the points that arise for consideration in the Criminal Petition are that:

1) Whether the complainant has locus standi to maintain the complaint?

2) Whether the offences alleged against the quash petitioners/accused persons from the date of air crash occurrence are already barred by limitation?

3) Whether any of the quash petitioners/accused persons are liable for any of the offences prima facie from the complaint averments from the material and the cognizance order of the learned Magistrate for the offences supra against the petitioners/accused Nos.1 to 4 is unsustainable and liable to be quashed?

4) To what result?

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Point No.1:

8) Coming to the locus of the complainant, there is no dispute on the factum of the complainant is the permanent resident of the Cantonment Area of Secunderabad where the air crash occurrence took place; apart from he claims as social worker running an N.G.O. It is the settled law that complainant need not always be a victim. A

public spirit person can even maintain a complaint like the one on hand. The law is fairly settled in this regard from the expression of the Apex Court in ***A.R Antulay vs Ramdas Sriniwas Nayak and another***[1] holding that locus standi to file complaint is foreign to criminal jurisprudence in India, unless a statute prescribes for the specific offences eligibility criteria in making a complaint before court of law to take cognizance thereon. Thus complaint got locus standi to maintain the complaint.

Point No.2:

9) So far as the contention of the complaint case is barred by limitation concerned, as per Section 304-A IPC, the punishment provided for the offence is with imprisonment for two years or fine or both, which is a cognizable and bailable offence triable by any judicial Magistrate of I Class or Metropolitan Magistrate as the case may be. The air crash was occurred on 03.03.2010 which is the alleged offence against the accused. The complaint filed was on 02.03.2012 which is within two years to say well within the three years period of limitation provided by Section 468 (2) (c) Cr.P.C. Thus the complaint case is no way barred by law of limitation.

Point No.3:

10) The facts of the case already maintained in detail including the contentions of the quash petitioners. Before discussing the facts further to quash the proceedings or not concerned, coming to the legal position mainly the expression placed reliance by the complainant requires to discuss. In the 1st decision placed reliance by the defacto-complainant of the Apex Court in three judge bench **Sushil Ansal Vs. State through CBI**[2] in C.M.A.No.597 of 2010 dated 05.03.2014 (known as uphaar case) it is observed as follows:-

"Enforcement of laws is as important as their enactment, especially where such laws deal with safety and security of citizens and create continuing obligations that call for constant vigil by those entrusted with their administration. Callous indifference and apathy, extraneous influence or considerations and the cynical "Chalta Hai" attitude more often than not costs the society dearly in man-made tragedies whether in the form of fire incidents, collapse of buildings and bridges, poisonous gas leaks or the like. Short-lived media attention followed by investigations that at times leave the end result flawed and a long winding criminal trial in which the witnesses predecease their depositions or switch sides under pressure of for gain and where even the victims or their families lose interest brings the sad saga to an uncertain end."

The facts of the case are that there was a fire accident in Uphaar Cinema building, at Green Park Extension Shopping Centre, New Delhi, comprised a cinema auditorium with a sanctioned capacity of 750+250(balcony) seats. The auditorium comprised of first, second and ground floor and ground floor consisting of parking besides electrical transformer which was maintained by the Delhi Vidyut Board, etc., and the second transformer even though located within the cinema premises, did not supply electricity to the cinema but rather to some of the tenants occupying parts of the commercial complex and some other consumers from the locality. The fire accident occurred on 13.06.1997 at 6.55 a.m. and brought to control by 7.25 a.m. within 30 minutes after fire broke out from the bigger of the two transformers at the ground floor of the Uphaar Cinema Building.

11) There several questions formulated to answer including owners control and occupiers liability and as to some even referable to negligence for suffered liability to be considered different to criminal liability in deciding whether the outcome of direct result of rash and negligent act of accused and that act must be proximate and efficient cause without the intervention of any other person's negligence. It must have been the causa causans; it is not enough that it may have been the *causa sine qua non*. In this regard, in deciding the same as to deaths occurred, Section 304-A of I.P.C. applies and for the grievous

injuries Section 338 of IPC applies against the owner of the premises and those occupiers of the premises for said negligence as a result of which the fire broke out.

12) The Apex Court referred, in this regard, the principles of law more particularly from interpreting meaning of rash or negligence u/sec.304-A of I.P.C. as follows:-

47. Section 304A of the IPC makes causing death by a rash or negligent act not amounting to culpable homicide, punishable with imprisonment of either description for a term which may extend to two years or with fine or with both. It reads:

"304A. Causing death by negligence.-- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

48. The terms 'rash' or 'negligent' appearing in Section 304A IPC extracted above have not been defined in the Code. Judicial pronouncements have all the same given a meaning which has been long accepted as the true purport of the two expressions appearing in the provisions. One of the earliest of these pronouncements was in Empress of India v. Idu Beg ILR (1881) 3 All 776, where Straight J. explained that in the case of a rash act, the criminality lies in running the risk of doing an act with recklessness or indifference as to consequences. A similar meaning was given to the term 'rash' by the High Court of Madras in Re: Nidamarti Nagabhushanam-7 Mad HCR 119, where the Court held that culpable rashness meant acting with the consciousness that a mischievous and illegal consequence may follow, but hoping that it will not. Culpability in the case of rashness arises out of the person concerned acting despite the consciousness. These meanings given to the expression 'rash', have broadly met the approval of this Court also as is evident from a conspectus of decisions delivered from time to time, to which we shall presently advert. But before we do so, we may refer to the following passage from "A Textbook of Jurisprudence" by George Whitecross Paton reliance whereupon was placed by Mr. Jethmalani in support of his submission. Rashness according to Paton means "where the actor

foresees possible consequences, but foolishly thinks they will not occur as a result of his act".

49. In the case of 'negligence' the Courts have favoured a meaning which implies a 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 which having regard to all the circumstances out of which the charge arises, it may be the imperative duty of the accused to have adopted. Negligence has been understood to be an omission to do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable person would not do. Unlike rashness, where the imputability arises from acting despite the consciousness, negligence implies acting without such consciousness, but in circumstances which show that the actor has not exercised the caution incumbent upon him. The imputability in the case of negligence arises from the neglect of the civil duty of circumspection.

(iii) What constitutes Negligence?:

50. The expression 'negligence' has also not been defined in the Penal Code, but, that has not deterred the Courts from giving what has been widely acknowledged as a reasonably acceptable meaning to the term. We may before referring to the judicial pronouncements on the subject refer to the dictionary meaning of the term 'negligence'.

51. Black's Law Dictionary defines negligence as under:

"The failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation; any conduct that falls below the legal standard established to protect others against unreasonable risk of harm, except for conduct that is intentionally, wantonly, or willfully disregardful of other's rights."

52. Charlesworth and Percy on Negligence (Twelfth Edition) gives three meanings to negligence in forensic speech viz: (i) in referring to a state of mind, when it is distinguished in particular from intention; (ii) in describing conduct of a careless type; and (iii) as the breach of a duty to take care imposed by either common law or statute. The three meanings are then explained thus:

"The first meaning: Negligence as a state of mind can be contrasted

with intention. An act is intentional when it is purposeful and done with the desire or object of producing a particular result. In contrast, negligence in the present sense arises where someone either fails to consider a risk of particular action, or having considered it, fails to give the risk appropriate weight.

The second meaning: Negligence can also be used as a way to characterize conduct, although such a use may lead to imprecision when considering negligence as a tort. Careless conduct does not necessarily give rise to breach of a duty of care, the defining characteristic of the tort of negligence. The extent of a duty of care and the standard of care required in performance of that duty are both relevant in considering whether, on any given facts conduct which can be characterized as careless, is actionable in law.

"The third meaning: The third meaning of negligence, and the one with which this volume is principally concerned, is conduct which, objectively considered, amounts to breach of a duty to take care".

53. Clerk & Lindsell on Torts (Eighteenth Edition) sets out the following four separate requirements of the tort of negligence:

"(1) the existence in law of a duty of care situation, i.e. one in which the law attaches liability to carelessness. There has to be recognition by law that the careless infliction of the kind of damages in suit on the class of person to which the claimant belongs by the class of person to which the defendant belongs is actionable;

(2) breach of the duty of care by the defendant, i.e., that it failed to measure up to the standard set by law;

(3) a casual connection between the defendant's careless conduct and the damage;

(4) that the particular kind of damage to the particular claimant is not so unforeseeable as to be too remote."

54. Law of Torts by Rattanlal & Dhirajlal, explains negligence in the following words:

"Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do.

Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property. According to Winfield, "negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff". The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) Breach of the said duty; and (3) consequential damage. Cause of action for negligence arises only when damage occurs for damage is a necessary ingredient of this tort. But as damage may occur before it is discovered; it is the occurrence of damage which is the starting point of the cause of action.

55. The above was approved by this Court in Jacob Mathew v. State of Punjab and Another (2005) 6 SCC 1.

56. The duty to care in cases whether civil or criminal including injury arising out of use of buildings is examined by courts, vis-à-vis occupiers of such bindings. In Palsgraf v. Long Island Railroad, 248 NY 339, Justice Cardozo explained the orbit of the duty of care of an occupier as under:

"If no hazard was apparent to the eye of ordinary vigilance, an act innocent and harmless, at least to outward seeming with reference to her, did not take to itself the quality of a tort because it happened to be a wrong, though apparently not one involving the risk of bodily insecurity, with reference to someone else...Even then, the orbit of the danger as disclosed to the eye of reasonable vigilance would be the orbit of the duty."

57. To the same effect is the decision in Hartwell v. Grayson Rollo and Clover Docks Limited and Others (1947) KB 901 where the duty of an occupier who invites people to a premises, to take reasonable care that the place does not contain any danger or to inform those coming to the premises of the hidden dangers, if any, was explained thus:

"In my opinion the true view is that when a person invites another to a place where they both have business, the invitation creates a duty on the part of the invitor to take reasonable care that the place does not contain or to give warning of hidden dangers, no matter whether the

place belongs to the invitor or is in his exclusive occupation."

58. The duty of a theatre owner to his patrons was outlined as follows in Rosston v. Sullivan, 278 Mass 31 (1932):

"The general duty to use ordinary care and diligence to put and keep this theatre in a reasonably safe condition, having regard to the construction of the place, character of the entertainment given and the customary conduct of persons attending."

59. The above case was cited with approval in Helen Upham v. Chateau De Ville Theatre Inc 380 Mass 350 (1980).

60. The Supreme Court of Wyoming in Mostert v. CBL & Associates, et. Al., 741 P.2d 1090 (Wyo. 1987) held that the owner of a theatre, AMC owed an affirmative duty to patrons as "business visitor invitees" to inform them of off-premises dangers (in that case a flash flood) which were reasonably foreseeable:

"We conclude that appellee AMC owed the Mostert family an affirmative duty to exercise reasonable or ordinary care for their safety which includes an obligation to advise them of off- premises danger that might reasonably be foreseeable. We are not suggesting by our determination that AMC had a duty to restrain its patrons or even a duty to advise them what to do. The duty as we see it is only to reveal what AMC knew to its customers."

61. In Brown v. B & F Theatres Ltd., (1947) S.C.R. 486, the Supreme Court of Canada held the liability of a theatre owner to be 90% and the contributory negligence of the appellant to be 10% in a case with the following facts:

"The appellant, Margaret Brown, was injured by falling down a stairway in a theatre in Toronto. After passing through a brightly lighted lobby, she entered the foyer, intending to go to the ladies' room. This was on the left of the entrance and was indicated by a short electric sign 7' high facing her as she turned. In the foyer, a narrow corridor, the lights were dimmed; and, proceeding along the wall at her left, she opened what she took to be the door to the waiting room. A fire extinguisher 2' long and 4' from the floor hung on the wall next to the left side of the door; and at the right side was a post or panel 7" wide, projecting about 4" out from the wall; the door, 31" wide, swinging toward the left, on which the word "Private" was printed in faint letters,

was between three and four feet in front of the sign and led to a stairway into the basement. The platform or landing was about 24" deep and the door must have swung somewhat before the edge would be brought into view. Immediately inside on the wall at the right and on a level with her eyes, was a light which, on her story, momentarily blinded her. The entrance to the ladies' room was separated from this door by the post or panel."

62. Holding that the theatre owner had breached the duty owed by a proprietor of premises to his invitee, the Court held as follows:

"Here, Mrs. Brown paid a consideration for the privileges of the theatre, including that of making use of the ladies' room. There was a contractual relation between her and the theatre management that exercising prudence herself she might enjoy those privileges without risk of danger so far as reasonable care could make the premises safe." (emphasis supplied)

63. In Dabwali Fire Tragedy Victims Association v. Union of India and Ors., (2001) 1 ILR Punjab & Haryana 368 to which one of us (Thakur J.) was a party, the High Court of Punjab & Haryana held that both the school, as well as the owners of a premises on which the school function was held, were liable as occupiers for the tragic death of 406 persons, most of them children, caused by a fire which broke out on the premises during the function. In dealing with the question whether the owners of the premises, Rajiv Marriage Palace, being agents of the school could be held accountable, the High Court held as follows:

"..The School ought to have known that in a function which is open to general public, a Pandal with a capacity of 500 to 600 persons spread over no more than an area measuring 100' x 70', a gathering of 1200 to 1500 persons could result in a stampede and expose to harm everyone participating in the function especially the children who were otherwise incapable of taking care of their safety. The school ought to have known that the availability of only one exit gate from the Marriage Palace and one from the Pandal would prove insufficient in the event ofany untoward incident taking place in the course of function. The School ought to have taken care to restrict the number of invitees to what could be reasonably accommodated instead of allowing all and sundry to attend and in the process increase the chances of a stampede. The School ought to have seen that sufficient circulation space in and around the seating area was provided so that the people

could quickly move out of the place in case the need so arose. Suffice it to say that a reasonably prudent School Management organizing an annual function could and indeed was duty bound to take care and ensure that no harm came to anyone who attended the function whether as an invitee or otherwise, by taking appropriate steps to provide for safety measures like fire fighting arrangements, exit points, space for circulation, crowd control and the like. And that obligation remained unmitigated regardless whether the function was held within the School premises or at another place chosen by the Management of the School, because the children continued to be under the care of the School and so did the obligation of the School to prevent any harm coming to them. The principle of proximity creating an obligation for the School qua its students and invitees to the function would make the School liable for any negligence in either the choice of the venue of the function or the degree of care that ought to have been taken to prevent any harm coming to those who had come to watch and/or participate in the event. Even the test of foreseeability of the harm must be held to have been satisfied from the point of view of an ordinary and reasonably prudent person. That is because a reasonably prudent person could foresee danger to those attending a function in a place big enough to accommodate only 500 to 600 people but stretched beyond its capacity to accommodate double that number. It could also be foreseen that there was hardly any space for circulation within the Pandal. In the event of any mishap, a stampede was inevitable in which women and children who were attending in large number would be worst sufferers as indeed they turned out to be. Loose electric connections, crude lighting arrangements and an electric load heavier than what the entire system was geared to take was a recipe for a human tragedy to occur. Absence of any fire extinguishing arrangements within the Pandal and a single exit from the Pandal hardly enough for the people to run out in the event of fire could have put any prudent person handling such an event to serious thought about the safety of those attending the functioning especially the small children who had been brought to the venue in large numbers…"

64. Referring to the English decisions in Wheat v. E. Lacon & Co. (1966) 1 All ER 582, Hartwell v. Grayson Rollo (supra), Thomson v. Cremin (1953) 2 All ER 1185 and H & N Emanuel Ltd. v. Greater London Council & Anr. (1971) 2 All ER 835, the High Court went on to hold as follows:

"93. In the instant case while the School had the absolute right to restrict the entry to the venue of the function being organized by it and everything that would make the function go as per its requirements, the owners had not completely given up their control over the premises, and were indeed present at the time the incident occurred. The facts and circumstances brought on record in the course of the enquiry establish that the School and the Marriage Palace owners were both occupying the premises and were, therefore, under an obligation to take care for the safety of not only the students, but everyone who entered the premises on their invitation or with their permission specific or implied. As to the obligation of an occupier to take care qua his invitees a long line of English decisions have settled the legal position...

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97. In the light of the above, we have no hesitation in holding that the One Man Commission of Inquiry was perfectly justified in holding the School and the Marriage Palace liable for the act of tort arising out of their negligence and duty to take care about the safety of all those invited to the function at Dabwali. Question No. 2 is answered accordingly."

65. In R. v. Gurphal Singh [1999] CrimLR 582, the Court of Appeal in England dealt with a case where a person staying at a lodging house occupied and managed by the Singh family died in his sleep due to carbon monoxide poisoning. The cause of the carbon monoxide was the blocking of the chimney in the room of the lodger, as well as in the neighbouring room due to which the smoke from a fire in the room could not escape. While determining whether the Singh family had breached their duty of care, the Court held as follows:

"...In substance this is a case where those living in the room in which Mr. Foster died in a lodging house managed by Singh family. They were led to believe that the appellant and his father would take care that they were not poisoned by equipments provided by the family. The appellant was possessed of sufficient information to make him aware of a danger of death from gas. He may not have had sufficient skill to be able to discover how that danger arose but he was responsible for taking reasonable steps to deal with that danger if need by calling in expert help. In those circumstances the judge was right to hold that there was a sufficient proximity between the lodgers on the one side

and the father and son on the other side to place a duty of care on the latter."

66. To sum up, negligence signifies the breach of a duty to do something which a reasonably prudent man would under the circumstances have done or doing something which when judged from reasonably prudent standards should not have been done. The essence of negligence whether arising from an act of commission or omission lies in neglect of care towards a person to whom the defendant or the accused as the case may be owes a duty of care to prevent damage or injury to the property or the person of the victim. The existence of a duty to care is thus the first and most fundamental of ingredients in any civil or criminal action brought on the basis of negligence, breach of such duty and consequences flowing from the same being the other two. It follows that in any forensic exercise aimed at finding out whether there was any negligence on the part of the defendant/accused, the Courts will have to address the above three aspects to find a correct answer to the charge.

(iv) Difference between negligence in civil actions and in criminal cases:

67. Conceptually the basis for negligence in civil law is different from that in criminal law, only in the degree of negligence required to be proved in a criminal action than what is required to be proved by the plaintiff in a civil action for recovery of damages. For an act of negligence to be culpable in criminal law, the degree of such negligence must be higher than what is sufficient to prove a case of negligence in a civil action. Judicial pronouncements have repeatedly declared that in order to constitute an offence, negligence must be gross in nature. That proposition was argued by Mr. Ram Jethmalani at great length relying upon English decisions apart from those from this Court and the High Courts in the country. In fairness to Mr. Salve, counsel appearing for the CBI and Mr. Tulsi appearing for the Association of Victims, we must mention that the legal proposition propounded by Mr. Jethmalani was not disputed and in our opinion rightly so. That negligence can constitute an offence punishable under Section 304A of the IPC only if the same is proved to be gross, no matter the word "gross" has not been used by the Parliament in that provision is the settled legal position. It is, therefore, unnecessary for us to trace the development of law on the subject, except making a brief reference to a few notable decisions which were referred to at the

bar.

68. One of the earliest decisions which examined the question of criminal negligence in England was R. v. Bateman (1925) 94 L.J.K.B. 791 where a doctor was prosecuted for negligence resulting in the death of his patient. Lord Hewart L.C.J. summed up the test to be applied in such cases in the following words:

"A doctor is not criminally responsible for a patient's death unless his negligence or incompetence passed beyond a mere matter of compensation and showed such disregard for life and safety as to amount to a crime against the State."

69. Nearly two decades later the Privy Council in John Oni Akerele v. The King AIR 1943 PC 72 found itself confronted by a similar question arising out of the alleged medical negligence by a doctor who was treating patients for an endemic disease known as "Yaws" which attacks both adults and children causing lesions on the body of the patient. Following the treatment, 10 children whom the accused had treated died allegedly because the injection given to the patients was too strong resulting in an exceptional reaction among the victims. The allegation against the doctor was that he had negligently prepared too strong a mixture and thereby was guilty of manslaughter on account of criminal negligence. Relying upon Lord Hewart's L.C.J. observations extracted above, the Privy Council held:

"11. Both statements are true and perhaps cannot safely be made more definite, but it must be remembered that the degree of negligence required is that it should be gross, and that neither a jury nor a Court can transform negligence of a lesser degree into gross negligence merely by giving it that appellation. The further words spoken by the Lord Chief Justice in the same case are, in their Lordships' opinion, at least as important as those which have been set out:

It is desirable that, as far as possible, the explanation of criminal negligence to a jury should not be a mere question of epithets. It is, in a sense, a question of degree, and it is for the jury to draw the line, but there is a difference in kind between the negligence which gives a right to compensation and the negligence which is a crime."

70. What is important is that the Privy Council clearly recognized the difficulty besetting any attempt to define culpable or criminal negligence and held that it was not possible to make the distinction

between actionable and criminal negligence intelligible, except by means of illustrations drawn from actual judicial opinions. On the facts of that case the Privy Council accepted the view that merely because a number of persons had taken gravely ill after receiving an injection from the accused, a criminal degree of negligence was not proved.

71. In Jacob Mathew's case (supra) a three-Judge Bench of this Court was examining a case of criminal medical negligence by a doctor under Section 304A IPC. This Court reviewed the decisions on the subject including the decision of the Privy Council in John Oni Akerele's case (supra) to sum up its conclusions in para 48. For the case at hand conclusions 5 and 6 bear relevance which may, therefore, be extracted:

"48. We sum up our conclusions as under:

xxx xxx xxx (5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of mens rea must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution.

(6) The word "gross" has not been used in Section 304-A IPC, yet it is settled that in criminal law negligence or recklessness, to be so held, must be of such a high degree as to be "gross". The expression "rash or negligent act" as occurring in Section 304-A IPC has to be read as qualified by the word "grossly"."

72. The legal position in England remains the same as stated in R. v. Bateman (supra). That is evident from a much later decision of the House of Lords in R. v. Adomako (1994) 3 All ER 79 where the legal principle of negligence in cases involving manslaughter by criminal negligence were summed up in the following words:

"...In my opinion the law as stated in these two authorities is satisfactory as providing a proper basis for describing the crime of involuntary manslaughter. Since the decision in Andrews v. DPP (1937) 2 All ER 552, was a decision of your Lordships' House, it remains the most authoritative statement of the present law which I have been able to find and although its relationship to R. v. Seymour

(1983) 2 ALL ER 1058 is a matter to which I shall have to return, it is a decision which has not been departed from. On this basis in my opinion the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such breach of duty is established the next question is whether that breach of duty caused the death of the victim. If so, the jury must go on to consider whether that breach of duty should be characterised as gross negligence and therefore as a crime. This will depend on the seriousness of the breach of duty committed by the defendant in all the circumstances in which the defendant was placed when it occurred. The jury will have to consider whether the extent to which the defendant's conduct departed from the proper standard of care incumbent upon him, involving as it must have done a risk of death to the patient, was such that it should be judged criminal.

It is true that to a certain extent this involves an element of circularity, but in this branch of the law I do not believe that is fatal to its being correct as a test of how far conduct must depart from accepted standards to be characterised as criminal. This is necessarily a question of degree and an attempt to specify that degree more closely is I think likely to achieve only a spurious precision. The essence of the matter, which is supremely a jury question, is whether, having regard to the risk of death involved, the conduct of the defendant was so bad in all the circumstances as to amount in their judgment to a criminal act or omission..."

73. There is no gainsaying that negligence in order to provide a cause of action to the affected party to sue for damages is different from negligence which the prosecution would be required to prove in order to establish a charge of 'involuntary manslaughter' in England, analogous to what is punishable under Section 304A, IPC in India. In the latter case it is imperative for the prosecution to establish that the negligence with which the accused is charged is 'gross' in nature no matter Section 304A, IPC does not use that expression. What is 'gross' would depend upon the fact situation in each case and cannot, therefore, be defined with certitude. Decided cases alone can illustrate what has been considered to be gross negligence in a given situation.

74. We propose to revert to the subject at an appropriate stage and refer to some of the decided cases in which this Court had an occasion to examine whether the negligence alleged against the accused was

gross, so as to constitute an offence under Section 304A of the IPC.

(V) Doctrine of Causa Causans:

75. We may now advert to the second and an equally, if not, more important dimension of the offence punishable under Section 304-A IPC, viz. that the act of the accused must be the proximate, immediate or efficient cause of the death of the victim without the intervention of any other person's negligence. This aspect of the legal requirement is also settled by a long line of decisions of Courts in this country. We may at the outset refer to a Division Bench decision of the High Court of Bombay in Emperor v. Omkar Rampratap (1902) 4 Bom LR 679 where Sir Lawrence Jenkins speaking for the Court summed up the legal position in the following words:

"…to impose criminal liability under Section 304-A, Indian Penal Code, it is necessary that the act should have been the direct result of a rash and negligent act of the accused and that act must be proximate and efficient cause without the intervention of another negligence. It must have been the causa causans; it is not enough that it may have been the causa sine qua non."

76. The above statement of law was accepted by this Court in Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra AIR 1965 SC 1616. We shall refer to the facts of this case a little later especially because Mr. Jethmalani, learned Counsel for the appellant-Sushil Ansal, placed heavy reliance upon the view this Court has taken in the fact situation of that case.

77. Suffice it to say that this Court has in Kurban Hussein's case (supra) accepted in unequivocal terms the correctness of the proposition that criminal liability under Section 304-A of the IPC shall arise only if the prosecution proves that the death of the victim was the result of a rash or negligent act of the accused and that such act was the proximate and efficient cause without the intervention of another person's negligence. A subsequent decision of this Court in Suleman Rahiman Mulani v. State of Maharashtra AIR 1968 SC 829 has once again approved the view taken in Omkar Rampratap's case (supra) that the act of the accused must be proved to be the causa causans and not simply a causa sine qua non for the death of the victim in a case under Section 304-A of the IPC.

78. To the same effect are the decisions of this Court in Rustom

Sherior Irani v. State of Maharashtra 1969 SCJ 70; Balchandra @ Bapu and Anr. v. State of Maharashtra AIR 1968 SC 1319; Kishan Chand v. State of Haryana (1970) 3 SCC 904; S.N Hussain v. State of A.P. (1972) 3 SCC 18; Ambalal D. Bhatt v. State of Gujarat (1972) 3 SCC 525 and Jacob Mathew's case (supra).

79. To sum up: for an offence under Section 304-A to be proved it is not only necessary to establish that the accused was either rash or grossly negligent but also that such rashness or gross negligence was the causa causans that resulted in the death of the victim. As to what is meant by causa causans we may gainfully refer to Black's Law Dictionary (Fifth Edition) which defines that expression as under:

"The immediate cause; the last link in the chain of causation."

80. The Advance Law Lexicon edited by Justice Chandrachud, former Chief Justice of India defines Causa Causans as follows:

"the immediate cause as opposed to a remote cause; the 'last link in the chain of causation'; the real effective cause of damage"

81. The expression "proximate cause" is defined in the 5th edition of Black's Law Dictionary as under:

"That which in a natural and continuous sequence unbroken by any efficient, intervening cause, produces injury and without which the result would not have occurred. Wisniewski vs. Great Atlantic & Pac. Tea Company 226 Pa. Super 574, 323 A2d, 744,

748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission."

13). From the above principles, in the backdrop of facts of the fire accident in the Uphaar Cinema Building, it was observed that the Ansal brothers-owners where within the meaning of occupiers concerned as per law a tenant in Wheat Vs. E Lacon *& Co.Ltd*[3] referred supra in the expressions of the House of Lords, it is held as follows:-

"wherever a person has a sufficient degree of control over premises that he ought to realise that any failure on his part to use care may result in injury to a person coming lawfully there, then he is an " occupier " and the person coming lawfully there is his " visitor ": and the " occupier " is under a duty to his " visitor " to use reasonable care. In order to be an " occupier " it is not necessary for a person to have entire control over the premises. He need not have exclusive occupation. Suffice it that he has some degree of control. He may share the control with others. Two or more may be " occupiers ". And whenever this happens, each is under a duty to use care towards persons coming lawfully on to the premises, dependent on his degree of control. If each fails in his duty, each is liable to a visitor who is injured in consequence of his failure, but each may have a claim to contribution from the other."

and thereby once the company i.e. Ansal brothers (Susheel Ansal and Gopal Ansal) on exercising control over the affairs of the Cinema and its maintenance, the trial Court so also the High Court have both concurrently held that Sushil and Gopal Ansal were, at all material times, at the helm of the affairs of the company that owned Uphaar cinema. All crucial decisions relating to the cinema including decisions regarding installation of DVB transformer on the premises, closure of the right side exit & gangway and rearrangement of the seating plan in the balcony were taken while either one or the other of the two was either a Director or Managing Director of the company. Both the Courts have further found that Ansal brother's control over the day-to-day affairs and the staff employed to look after the cinema management continued even upto the date of the incident. In particular the Courts below have concurrently held that the decision to install the DVB

transformer and to let out various parts of the premises for commercial use in violation of the sanctioned plan were taken by Sushil Ansal as Managing Director of the company. Applications for grant of the cinema license and subsequent renewals were found to have been made by him as the representative licensee on behalf of the company even after his purported retirement from the Board of Directors. Not only that, the Courts below have concurrently held that Sushil Ansal was exercising a high degree of financial control over the affairs of the company and the cinema owned by him. Gopal Ansal was similarly exercising an equally extensive degree of financial control even after his retirement as Director. The Courts below have also found that all decisions relating to changes in the balcony seating arrangement and installation of additional seats were taken during Gopal Ansal's term as Managing Director and at his request. The Courts have noticed and relied upon the Show Cause Notice dated 28th May, 1982 in which Gopal Ansal, the Managing Director, was cautioned about the dangerous practice being followed by the cinema management of bolting the doors of the cinema hall during the exhibition of the films. An assurance to the effect that such a practice would be discontinued was given by Gopal Ansal as Managing Director of the company. The duty of Court is not one time affair to continue obligation thereby under the statutory regime even for not only under the end of law which obligation is untenable to ensure safety for invitees that include of the duty to both civil and criminal depending upon whether the negligence is simple or gross and for gross negligence prosecution and damages simultaneously and not necessarily in alternative that can be claimed and referred to that conclusion explosion in ***Cracker Manufacturing factory in Balchandra @ Bapu v. State of Maharashtra***[4] prosecuted and convicted for the offences u/sec. 304-A and 337 IPC for not taking degree of care and from the gross negligence towards

the employees who are small church employees who were below age of 18 made to work and were killed in the explosion. His case of compensation civil claim awarded against the company as owner of cinema hall for the negligence the case reported in ***Municipal Council of Delhi Vs. Association of victims for Uphaar Cinema***[5].

14) No doubt, from the propositions supra coming to the facts on hand, the cantonment Board is supposed to have taken consideration of the violations made by the builder while making the construction beyond sanctioned strength and even it is the prohibited area as per GOC, SC, Pune, in the cantonment area for the number of floors to be permitted limiting to G+2 in a plot area more than 750 sq.mts. and the height of the building to be permitted to an height of 12mtrs, or 39.37 ft. whereas, in this case the height of the building constructed is almost 10ft. x 6 floors with 60 ft. as against permitted height of 39.37 ft. and the building the height of the structure to staggering 95 ft., with five floors and over and above to it, the cellular phone tower of 38 ft., erected for all from ground to the total height of 95 ft against 39.37 ft., is a grave violation and a culpable negligence as a direct cause to the accident above is violation for which the builder is directly liable for the criminal prosecution.

15) However, so far as other accused persons who are the ward member and the Assistant Engineers since retired from service for their inaction to remove the unlawful construction concerned it is difficult to attribute criminal negligence on their part.

16) Having regard to the above, the engineers cannot be made liable but for the builder for the criminal prosecution; needless to say along with the builder if at all the cantonment authority are also can be made liable for compensation as joint tort features for allowing the illegal construction by violation of the rules and regulations.

17) Accordingly and in the result, the Criminal Petition is dismissed so far as A.1 viz., L.Ramesh Kumar, however the criminal petition is allowed so far as other petitioners/ A.2 to A.4 concerned viz., Smt.J.Vidyawati, Bala Krishna and K.M.Dev Raj, by quashing all the proceedings in C.C. No.631 of 2012 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad against A.2 to A.4 and the bail bonds of the petitioners/ A.2 to A.4 if any, are cancelled.

18) Miscellaneous petitions, if any pending in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.03.06.2016
VVR/knl

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[1] AIR 1984 SC 718

[2] 2002 CrlLJ 1369=95(2002)DLT623=2002(63)DRJ585.

[3] [1966] AC 552

[4] AIR 1968 SC 1319

[5] 2011 14 SCC 481