

[3327]

**(SHOW CAUSE NOTICE BEFORE ADMISSION)
IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
FRIDAY, THE FOURTH DAY OF AUGUST
TWO THOUSAND AND TWENTY THREE**

:PRESENT:

**THE HONOURABLE SRI JUSTICE K SREENIVASA REDDY
CRIMINAL PETITION NO: 5640 OF 2023**

Between:

Shaik Mohammad Ismail, S/o Shaik Khasim Vali, Aged about 44 Years, R/o Door No.12 - 4 - 29 - IB, Vidyuth Nagar, 3rd Cross, Back Side of IOB, Anantapuramu, Andhra Pradesh.

Petitioner/Accused

AND

1. The State Of Andhra Pradesh, Represented by its Public Prosecutor, High Court of Andhra Pradesh, at Amaravati.
2. Chakali Navya, Aged about 28 Years, W/o Late C.Satish, R/o Kotanka Village, Garladinne Mandal, Now Residing at housing Board Colony, Ananthapuramu Town.

Respondent

WHEREAS the Petitioner/Accused above named through his Advocate Sri Vivekananda Virupaksha presented this Petition under Section 482 of Cr.P.C, praying that in the circumstances stated in the memorandum of grounds filed in support of the Criminal Petition, the High Court may be pleased to Quash the entire proceedings in P.R.C.No.14 of 2023 on the file of the Learned Principal Judicial First Class Magistrate, Ananthapuramu, arising out of Crime No.92 of 2022 on the file of the I Town Police Station, Ananthapuramu, for the offence under Section 304 (ii) of the Indian Penal Code, in the interest of equity and justice while exercising its inherent jurisdiction under Section 482 of Cr.P.C.

AND WHEREAS the High Court upon perusing the petition and memorandum of grounds filed herein and upon hearing the arguments of Sri Vivekananda Virupaksha Advocate for the Petitioner, Assistant Public Prosecutor for 1st Respondent, directed issue of notice to the Respondent No.2 herein to show cause as to why this CRIMINAL PETITION should not be admitted.

You viz:

Chakali Navya, Aged about 28 Years, W/o Late C.Satish, R/o Kotanka Village, Garladinne Mandal, Now Residing at housing Board Colony, Ananthapuramu Town.

are be and hereby directed to show cause either appearing in person or through an Advocate, as to why in the circumstances set out in the petition and the memorandum of grounds filed therewith(copy enclosed) this CRIMINAL PETITION should not be admitted within four weeks.

IA NO: 1 OF 2023

Petition under Section 482 of Cr.P.C, praying that in the circumstances stated in the memorandum of grounds filed in support of the petition, the High Court may be

pleased to grant stay of all further proceedings, as against the Petitioner herein, including the appearance of the Petitioner herein in P.R.C.No.14 of 2023 on the file of the Learned Principal Judicial First Class Magistrate, Ananthapuramu, arising out of Crime No.92 of 2022 on the file of the I Town Police Station, Ananthapuramu, for the offence under Section 304 (ii) of the Indian Penal Code, pending disposal of CRLP No. 5640 of 2023, on the file of the High Court.

The Court made the following order :

"Learned Assistant Public Prosecutor takes notice on behalf of 1st Respondent and seeks time to get instructions.

Issue notice to Respondent No.2.

Learned counsel for the petitioner is permitted to take out personal notice to Respondent No.2 by Registered Post with Acknowledgment Due and file proof of service within a period of three (3) weeks.

A perusal of material on record goes to show that for the last three days since the date of incident i.e., 07.04.2023, petitioner herein used to go to Godown along with the deceased and other co workers to clean the Godown. During that time, it is stated that the paint material which was stored was kept in the premises of Godown company. On 07.04.2023, the petitioner herein sent the deceased to Godown with an instruction to throw the paint material in the premises into drainage canal. On that, when the deceased went to the Godown at about 1.20 p.m. and pouring the material into the drainage canal water in front of the Godown, suddenly it got exploded due to chemical reaction, as a result of which, the deceased whole body exploded and his body parts were scattered and died on the spot. Thereafter, a case has been registered and police after conducting investigation filed charge sheet making the petitioner herein as accused.

Learned counsel for the petitioner submits that even accepting the entire accusation to be true, prima facie ingredients of offence under Section 304 Part II IPC do not attract for the reason that there was no knowledge on the part of the petitioner herein while instructing the deceased if the paint material is thrown in the drainage canal, it would explode.

Learned counsel in support of his contention relied upon a decision reported in Abdul Kalam Musalman and Ors. Vs. State of Rajasthan, wherein it was held that;

In the case of Mahadev Prasad Kaushik (Supra), the Hon'ble Supreme Court has laid down the test of motivating force. Therefore, this Court is required to see what was the motivating force in the mind of the accused persons when death of the five labourers was caused? According to the prosecution, the petitioners were carrying out illegal mining. Therefore, their intention was to carrying out the illegal mining of the place. Obviously, the motivating force was to extract minerals from the earth. The motivating force was not to cause death of the five labourers. Since their intention was carrying out of illegal mining, and howsoever unlawful it may be to do so, it was certainly not their intention to cause the death of the unfortunate victims. Therefore, their act falls within the ambit of Illustration c of Section 299 IPC. Hence, their act is covered by Section 304A and not by Section 304 IPC.

In the present case on hand, a perusal of material on record goes to show that there is no such averment to the extent that the accused has the motive factor or knowledge in instructing the deceased to pour the paint material into the drainage water canal and by virtue of the same, there would be an explosion because of the chemical reaction. There is any amount of ambiguity whether Section 304 Part II IPC would attract or not at this stage. The matter requires examination.

In view of the above, there shall be stay of all further proceedings in P.R.C.No.14 of 2023 on the file of the learned Principal Judicial Magistrate of First Class, Ananthapuramu, for a period of six (6) weeks.

Post after four (4) weeks."

SD/-G.HELMA NAIDU
ASSISTANT REGISTRAR

//TRUE COPY//

For ASSISTANT REGISTRAR

To,

1. The Principal Judicial First Class Magistrate, Ananthapuramu
2. The S.H.O, I Town Police Station, Ananthapuramu
3. Chakali Navya, Aged about 28 Years, W/o Late C.Satish, R/o Kotanka Village, Garladinne Mandal, Now Residing at housing Board Colony, Ananthapuramu Town. (by RPAD- along with a copy of petition and memorandum of grounds)
4. One CC to Sri Vivekananda Virupaksha Advocate [OPUC]
5. Two CCs to Public Prosecutor, High Court of AP [OUT]
6. One spare copy

HIGH COURT

SRKJ

DATED:04/08/2023

POST AFTER FOUR (4) WEEKS

NOTICE BEFORE ADMISSION

CRLP.No.5640 of 2023

STAY

