



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. : 284 of 2024

Reserved on : 05th May, 2025

Decided on : 04th August, 2025

A. Aditya & Others ...Petitioner

Versus

State of Himachal Pradesh ...Respondent

Coram

The Hon'ble Mr. Justice Virender Singh, Judge.

Whether approved for reporting?¹ **Yes.**

For the petitioner : Mr. V. Pattabhi and Mr. Rajnish Maniktala, Senior Advocates with Mr. N.V. Raghav Reddy, Mr. L Prasad Rao and Mr. Dinkar Bhaskar, Advocates.

For the respondent: Mr. Tejasvi Sharma & Mr. H.S. Rawat, Additional Advocates General with Mr. Rohit Sharma and Ms. Ranjna Patial, Deputy Advocates General for respondent No.1.

Mr. Suneet Goel, Senior Advocate with Mr. Vivek Negi, Advocate for respondent No.2.

Virender Singh, Judge

Petitioners have filed the present criminal revision, under Sections 397 and 401 read with Section 482 of the Code of Criminal Procedure (hereinafter referred

¹ Whether Reporters of local papers may be allowed to see the judgment? Yes.

to as the Cr.PC) and Article 227 of the Constitution of India, against the order dated 08.02.2024, passed by the Court of learned Additional Chief Judicial Magistrate, Court No.1, Mandi, District Mandi, H.P. (hereinafter referred to as the 'trial Court'), in Cr. M.A. No.1336/2022, titled as A. Aditya & Others versus State of H.P.

2. By way of order dated 08.02.2024, the learned trial Court has dismissed the application filed under Section 258 of the Cr.PC, for discharging them, from the case titled as State versus Mohinder Singh & Others, arising out of FIR No.61/14, dated 8.06.2014, under Sections 336 and 304-A of the Indian Penal Code (hereinafter referred to as the IPC), registered with Police Station Aut, District Mandi, H.P., in which, the present petitioners have been arrayed as accused No.7 to 9.

3. Order dated 8.2.2024, rejecting the application for discharge, has been assailed before this Court, on the ground, that the learned trial Court ought to have seen that the entire prosecution case, for the offences, under Sections 336 and 304-A IPC, read with Section 34 of the IPC.

4. The order has further been assailed on the ground that during investigation, it has been found that the incident had taken place due to the failure on the part of concerned electricity and dam authorities, i.e., A-1 to A-6, who acted with culpable rashness and negligence in releasing the huge quantity of water, without following the official protocol.

5. Elaborating their stand, it is the specific case of the petitioners that learned trial Court has failed to appreciate that in the investigation, it has been held that the Dam and Electricity Board authorities have failed to take precautions, i.e., having warning hooters in working conditions, that no guard was there to guard anyone of any danger from the shallow waters of the river, no danger board was there to caution anyone that water may be released at any time and that it was mandatory for a jeep to go around with a siren, cautioning anyone and everyone, that water will soon be released from the Dam, as such, held the Dam and Electricity Board guilty of sheer negligence and lack of care.

6. The order has further been assailed on the ground that the learned Magistrate has failed to see the fact that the prosecution, after having gathered such meticulous and detailed information pinning down on the severe negligence and utter carelessness on the part of these Dam and Electricity Board officials i.e., A-1 to A-6, held them liable for the offences under Sections 336 and 304 IPC.

7. The order has further been assailed on the ground that the learned trial Court ought to have seen that the petitioners have not been charged with the substantive Sections of law i.e. Sections 336 and 304-A IPC, but, they have been named as accused, by applying Section 34 IPC. According to the petitioners, Section 34 is not applicable, in the present case and the learned trial Court has dealt with the matter, as if the petitioners are directly liable under Sections 336 and 304 IPC.

8. The order has further been assailed on the ground that learned trial Court has wrongly fixed the liability on the petitioners, under Sections 336 and 304-A IPC. According to the petitioners, the learned trial Court

has also failed to see that to impose criminal liability, either under Section 336 IPC or Section 304 IPC, it is necessary that the death should have been the direct result of the rash and negligent act of the accused and that act must be proximate and the efficient cause, without the intervention of negligence by any other.

9. On the basis of the above grounds, Mr. V. Pattabhi and Mr. Rajnish Maniktala, learned Senior Advocates assisted by Mr. N.V. Raghav Reddy, Mr. L Prasad Rao and Mr. Dinkar Bhaskar, Advocates has prayed that the order passed by the learned trial Court be quashed and set aside and the petitioners be discharged, by allowing the application, under Section 258 Cr.PC.

10. The prayer, so made, in the petition, has been opposed by Mr. Tejasvi Sharma and Mr. H.S. Rawat, learned Additional Advocates General, assisted by Mr. Rohit Sharma and Ms. Ranjna Patial, Deputy Advocates General, appearing for respondent No.1, and Mr. Suneet Goel, Senior Advocate with Mr. Vivek Negi, Advocate for respondent No.2, by submitting that the learned trial Court has rightly considered the material collected by the

prosecution, till date and rightly rejected the application for discharge.

11. Brief facts, leading to filing the present revision petition, as per the record, may summed up as under:-

On 08.06.2014, Shri Mohar Singh, Assistant Sub-Inspector and Officer-in-Charge, Police Station Aut, District Mandi has visited Shala-Nala, near Thalout, the place of incident to investigate the employees/ persons concerned. At the spot, Shala-Nala, Shri Mohar Singh, Assistant Sub-Inspector met Shri A. Adithya, aged - 29 years, Mobile No. 09704112891, Son of Shri Srihari, Caste- Brahman, Resident of House No. 5-11-354, Naim Nagar, Hanam Konda, WARANGAL (Telangana)-506009, presently Resident of House No. 1391, Pragati Nagar, Bukar Place, Hyderabad and working as Assistant Professor in VNR Vignana Jyothi Institute of Engineering & Technology, Hyderabad, (Telangana). Shri Mohar Singh, Assistant Sub-Inspector and Officer-in-Charge, Police Station, Thalout recorded the statement of Shri A. Adithya under Section 154 CrPC, to the effect that he is resident of the above address and for about last three years, working as Assistant Professor in VNR Vignana Jyothi Institute of Engineering & Technology, Hyderabad, (Telangana). On 03-06-2014 a batch of 48 students including 35 boys and 13 girls, accompanied by 2 faculty members, of the above College and one lady staff member and her son, 2 tour operators, 3 drivers, 4 cooks, 2 cleaners, and 2 booking managers were going from Shimla to Kullu Manali in 2 private buses having numbers UP-65-BT 5872 and UP-65-BT-4068 hired for the

purpose from M/s Lakshmi Travelers. On 08.06.2014 at about 08.00 am, I along with the above students and other above stated persons, have started our journey to Manali. At about 6.45 pm they reached Shala-Nala near Thalout and at that time, the students wanted to take photographs of the river, and so, both the bus drivers parked the two buses on the road side, and all the students went towards the river with the tour manager. The water was very less in the river and some students were standing and some students were seated on the stones and were trying to take photographs including group photographs. Suddenly there was speedy and full flow of water in the river and the locals were shouting that water has been released from behind and asked the students to come out of the river, due to which, all got panicked and were trying to run to the shore. Some were able to reach the land and save themselves, whereas many got washed away by the heavy flow of fast moving turbulent river water, wherein 6 girl students and 18 male students and one tour manager by name Prahallad, got washed away.

It was alleged that the incident took place due to the negligence committed by the Larji Dam employees who released the dam water without any sort of caution or warning of blowing the Hooter/Siren, and so requested to take action against them.

As per the above statement, offence under Section 336, 304A IPC has been found and registered accordingly. The statement in original was sent to the Police Station through Shri Prakash Chand, HHC, No.211, on the basis of which, a case has been registered. After registration of the case, a

copy of the same was sent to the Officer-in-Charge at the spot of the incident.

During investigations, ASI, Mohar Singh visited the site of incident and prepared a map of the site. He clicked the photographs of the site of incident. He also recorded the statements of witnesses. During search operation on 09.06.2014, the dead bodies of Lakhmi Gaytri, Wanathu Ram Babu, Gaipala Aishwary and Vijeta were recovered from Pandoh Dam area, which were identified by the faculty members at the spot. The dead bodies were inspected and photographs of the same were clicked. Form-25.35-A and 25.39 were filled and the postmortem of all the four bodies were got done and the reports of the same had also been procured. After this, all the four dead bodies were sent to their respective residences at Hyderabad through the faculty members through the vehicles arranged for the purpose. Medical Officer, Zonal Hospital, Mandi had mentioned that the cause of death of deceased Lakshmi Gaythri, Wanathu Ram Babu, Gaipala Aishwary and Akula Vijeta was, cardio with asphyxia due to drowning. Similarly, during search operations on 10.06.2014, the dead body of Devasheesh Bose, on 11.06.2014, the dead body of M.D. Shabir Hussain Sikka, on 12.06.2014, the dead bodies of Gonur Arvind Kumar and T. Upendra, on 18.06.2014, the dead bodies of M. Shiva Prakash Verma, P. Vainkta Durga, on 19.06.2014, the dead bodies of Macharla Akhil, Ashish Mantha, on 20.06.2014, the dead body of V. Mehan Sha Raj, on 22.06.2014, the dead bodies of Mithapli Akhil, Cha. Parmeshwar and Warnini Ritwik, on 25.06.2014, the dead body of P. Ridhima, on 26.06.2014, the dead body of Nardu Jagdish Mudrij, on 30.06.2014, the

dead body of Vishnu Vardhan Reddy, on 01.07.2014, the dead body of Vishavraj Sandeep, on 20.07.2014. the dead bodies of Kashrla Rishitha Reddy and Desri Shrinidhi, were recovered. To recover the remaining dead bodies, the search operation was carried out in and around Padoh Dam site. The dead bodies recovered during the search operation were inspected and photographs of the same were clicked and Forms-25.35 A and 25.39 were filled up in case of all the recovered dead bodies. The postmortem of all the recovered dead bodies were carried out by a team specially formulated for the purpose. As per the Medical Officer, the cause of death of Devashish Bose was mentioned as, "in my opinion, the cause of death is consistent with emulative effect of (1) asphyxia due to drowning, (2) multiple ante-mortem injuries leading to hemorrhagic shock", and in respect of deceased, Shabir Hussain Sikka, the cause of death was recorded by the Medical Officer as, "in my opinion, cause of death is consistent with asphyxia due to drowning", the cause of death in respect of deceased, T. Upendra, deceased Gonur Arvind Kumar, M. Shiva Prakash Verma, P. Vainkta Durga Tarun, Macharla, Akhil, Ashish Maintha, V. Mehan Shaw Raj, Mufdi Kiran Kumar, Mithapli Akhli Cha. Parmeshwar and Varineeni Ritwik, P. Ridhima, Nardu Jagdish Mudiraj, Vishnu Vardhan reddy and Vishavraj Sandeep, was recorded in writing as, "in my opinion, the cause of death is consistent with drowning". After postmortem, the dead bodies after identification were handed over to the faculty members. On 13.07.2014 and 20.07.2014, the dead bodies of deceased Kasharla Rishitha Reddy and Desri Shrinidhi were recovered and on

28.07.2014, the dead bodies were inspected, photographs of the same were clicked, Forms 25.35-A and 25.39 were filled, the postmortem of the dead bodies were got done through a team constituted specially for the purpose and postmortem reports were also collected. As per the Medical Officer, Zonal Hospital, Mandi, the cause of death of all the four deceased will be given after chemical analysis report of viscera. During postmortem, the samples of those dead bodies, whose DNA test was decided to be conducted, were handed over to the police. It was suggested to the police officials to get done these tests from SFSL Junga and RFSL Mandi. As per the report of RFSL, Mandi, deceased, Desri Srinidhi, Kasrla is related to Reddy and on 13.07.2014 and 28.07.2014, the visra investigations were carried out and visra report was prepared accordingly. As per the reports submitted by the Assistant Director, no use of alcohol and poison by the deceased were recorded in writing in the report. Opinion of the Medical Officer, Zonal Hospital, Mandi on all the postmortem reports of four deceased, Desri Srinidhi, Kasrla Rista Reddy and two unidentified dead bodies, were sought. As per the Medical Officer, Zonal Hospital, Mandi it was mentioned in writing that, "final opinion in absence of any anti mortem injury or fatal frame and absence of alcohol and poison in viscera cause of death cannot be opined. In DNA test report No. 1414/SFSL/DNA-165/14 dated 28.07.2014 submitted by the Assistant Director, Junga, it had been mentioned that, "the DNA profile of the unidentified deceased prepared from muscle piece does not match with DNA profile of the parents of missing students sent by AP FSL. It is mentioned by

the Assistant Director, FSL., Junga in writing that DNA test report No. 1520/SFSL/DNA-183/1 dated 11.08.2014 that, "the unidentified deceased male (source of Exhibit-4 (muscle of the unidentified deceased) & Exhibit-5 (bone and tooth of the unidentified deceased) is the biological offspring (son) of K. Laxmi K. Bala. It has been recorded in writing that the dead bodies were handed over to the parents of the deceased through faculty members for further transportation to their native places at Hyderabad for performing funeral ceremonies of the deceased students. DNA test of the unidentified dead body found on 27.07.2014. was got done, which matched with Prahlad alias Prem Kheda, Son of Shri Nagisthi, resident of 1-147, Ravindravaram Almush Kurnol, Andhra Pradesh. After this, the dead body was sent to Hyderabad for last funeral. On 13.07.2014, a dead body was found, which was identified as M. Shiva Prakash Verma on the basis of the ATM Card, College Identity Card. His dead body was sent to Hyderabad for last funerals. On 18.06.2014 the dead body found in Pandoh Dam area was identified as M. Shiva Prakash by the faculty members and due to non-identification of the dead body, the dead body was sent to Hyderabad and the dead body found on 18.06.2014 was established to be of M. Shiva Prakash was handed over to the faculty members. The DNA test of unidentified dead body, which was sent to Hyderabad on 13.06.2015 was got done at Hyderabad, which was matched with the parents of M Shiva Prakash Verma and the same was handed over to Mr. M. Ravi Verma, father of deceased M. Shiva Prakash Verma for last funerals. According to the FIR, the dead body of M. Shiva Prakash

Verma was found in Pandoh Dam area, which was handed over to Mr. M. Ravi Verma, father of the deceased, was found to be of Kalur Harsha and it was found that the dead body was not properly identified by the faculty members. As per the FIR, 25 dead bodies of the students have been found.

The investigation in the case has been carried out by Shri Raman Kumar, Assistant Superintendent of Police, Mandi. During investigation, the Investigating Officer visited the place of incident and recorded the statements of the witnesses. Also procured CD of the site of incident and inquired about the hooters and warning boards installed in Larji Hydroelectric Project and also procured the copies of letter No. HPSEBL/AMD/DB-1/2014-762-63 dated 11.06.2014, letter No. 2043-44 dated 15.07.2014 and letter No. 1535 dated 19.07.2014 through correspondence/ letter No. 1926/5A dated 11.06.2014. On 14.06.2014, I.O. also procured the duty slips of the officials on duty and who have been suspended due to negligence of duty vide letter No. 1946/5 dated 14.06.2014, in the case registered, it has been mentioned that the transfer orders of Mandeep Singh and Ved Prakash issued vide letter No. 2105/5A dated 28.06.2014 and vide letter No. 1658 dated 01.07.2014, respectively had also been procured. The information about rules has also been collected vide letter No. 2345/5A dated 1-K 17.07.2014 and letter No. 1786-87 dated 19.07.2014. In the case registered, accused (1) Mohinder Singh Dhatwalia, Son of Shri Sukh Ram Dhatwalia, Resident of Village Jajari, Tehsil Jajri, Tehsil Badsar, Thana Badsar, District Hamirpur working as Senior Executive

Engineer, Himachal Pradesh State Electricity Board Ltd. Shadabal, aged - 54 years; (2) Mandeep Singh, Son of Shri Daljeet Singh, Resident of House No.-57, Ward No.-3, Pratap Nagar, Thana & District Hamirpur, presently working as Senior Executive Engineer, H.P. State Electricity Board Ltd., Shadabai, aged 36 years; (3) Harbans Singh, Son of Bachitter Singh, Caste - Rajput, Resident of Village Taliyal, Post Office Dol, Police Station - Jawali, District Kangra, presently working as Fitter Hydromechanical (Civil), Larji, Power House Division No.-1, Larji Dam; (4) Balbir Singh Sharma, Son of Shriram Sharma, Resident of House No. 132, Opposite S.S.B. Camp, Shamshi, Police Station Bhuntar, District Kullu, presently working as Executive Engineer. H.P. State Electricity Board, Thalout, District Mandi, aged 58 years; (5) Prem Sukh, Son of Shri Dola Ram, Village Shamshi, Post Office Najd, Police Station Bhuntar, District Kullu, presently working as Assistant Engineering, H.P. State Electricity Board, Thalout, District Mandi, aged - 52 years; (6) Ved Prakash, Son of Hoshiar Singh, Post Office Ranital, Police Post - Haripur, Tehsil and District Kangra, presently working as Assistant Engineer, HPSEBL, Duwada, District Mandi, aged 58 years, have been inquired and investigated. After arresting the above all officials, all were informed about the offence and later on released on bail. The certificates of identification were filled and completed.

To investigate into the case, a Special Police Force was constituted under the leadership of DSP Amit Sharma, who visited VNR Vignana Jyothi Institute of Engineering & Technology for procurement of record pertaining to the tour programme of the

students. The statements of the witnesses were recorded. On 08.06.2014, due to negligence of Assistant Professor, A. Adithya, Assistant Professor, C. Kiran and Assistant Professor, Sumabala, who were accompanying the students of the above College, during their study tour as caretakers, have stopped the bus amidst their destination and allowed the students to go to River Beas for clicking the photographs, due to which this accident had occurred. Whereas all the three Assistant Professors were accompanying the students during their study tour as guardians and they should not allow the students to go to such a place where there is a threat to their lives and in fact, it was their duty, which clearly shows their negligence. The case under Section-34 IPC has been found and accordingly the case has been registered. For investigation in the case, a Special Team under SI(P), Hans Raj was constituted to make enquiries from Assistant Professor, A. Adithya; Assistant Professor, C. Kiran and Assistant Professor, Sumabala; VNR Vignana Jyothi Institute of Engineering & Technology and enquiries have been made from the above three Assistant Professors, A. Adithya, C. Kiran and Sumabala were duly informed of the offence and accordingly arrested and later on, released on bail. The certificates of identification have been prepared and duly filled in.

During investigation, it has been found that no proper mechanism of sounding of hooter during release of water from the Dam, has been established by the project authorities. Total three hooters have been installed for the sake of formality, out of which, one has been installed on the bridge, which is

usually rung by the employee on duty. The second hooter has been installed at the tunnel pipeline coming from Thalout to Aut, where no employee has been employed for blowing the hooter. The sound of hooter installed at the Dam site goes up to 200 meters only. The sound of this hooter, installed at the Dam site, could not be clearly heard due to the sound of the traffic. Third hooter is installed at Project Colony of Thalout, which has been found to be out of order for the last few days and no employee has been deployed at this site for blowing of the hooter by the HPSEBL. There is no direct connection of hooters from the Dam site, and there is also separate connections and no employee is deployed for connecting these hooters. No hooter has been installed from Thalout to Dwada, so that the public may be warned about the release of water and could be alerted of the danger. Neither any vehicle has been deployed to warn the people/ public about the release of water from the Dam site nor there were any warning boards installed at the road sides, which clearly shows the negligence and carelessness of the officials of HPSEBL authorities.

During investigation, it has also been found that on 08.06.2014 at 17.32, a telephone call has also been made by the authorities of SLDC, Shimla to Larji Powerhouse to decrease the generation of electricity from 136 MW to 96 MW, at 1750, another telephone call has been received to decrease the generation of power from 96 MW to 64 MW and third telephone call has also been made at 1920 to decrease the generation of power from 64 MW to 32 MW but as per the Daily Log Sheet of LPH Dwada Barrag Control Room, the officials of the Larji

Hydroelectric Project has shown the discharge in spillways in cumecs 50 at 1600, discharge in spillways in cumecs 30 at 1700, discharge in spillways in cumecs 20 at 1800, and discharges in spillways in cumecs 450 at 1900. As per the above record, the increase in release of that much of water has been found to be highest in last few days, which clearly shows the negligence of the officials of HPSEBL.

As per the report received from the Deputy Director, SFL, Junga, Report No. 1199 SFSL/DNA(126)/ 14(Tallanda Upender), MLC92/14 dated 12.06.2014 STR DNA Profiles of the parents of the deceased for confirming the identity of the deceased, 1296 SFSL/DNA(138)/ 14(Marharla Akhil). MLC 105/14 dated 19.06.2014 STR DNA Profiles of the parents of the deceased for confirming the identity of the deceased, 1273 SFSL/DNA(138)/14 (Mohan Sal Raj), MLC107/14 dated 20.06.2014 STR DNA Profiles of deceased, 1278 SFSL/DNA(143)/14 (Mittapelli Akhil). MLC114/14 dated 23.06.2014/ STR DNA Profiles of the parents of the deceased for confirming the identity of the deceased, 1277 SFSL/DNA(142)/14 (M. Kiran Kumar). MLC113/14 dated 22.06.2014 STR DNA Profiles of the parent of the deceased for confirming the identity of the deceased, 1366SFSL(157)/14(B. Sandeep Yadav) MLC 125/14 dated 01.07.2014 Exhibit-2 Piece of muscle for DNA Profiling belongs to the biological child (son), of B. Vijaya and B.Vresh, 1322SFSL/DNA(149)/14 (N. Jagdosj Mudiraj) MLC 122/14 dated 26.6.14 STR DNA Profile of the parents of the deceased for confirming the identity of the deceased, 1321SFSL/DNA(148)/14 (P. Ridhima) MLC 120/14 dated 26.06.2014

STR DNA Profiles of the parents of the deceased for confirming the identity of the deceased, 1275 SFSL/DNA(140)/14 (B. Ritwik), MLC112/14 dated 22.06.2014 STR DNA Profiles of the parents of the deceased for confirming the identity of the deceased, 1274 SFSL/DNA(139)/14C.H. Parmeshwar) MLC 11/14 dated 22.06.2014 STR DNA Profiles of the parents of the deceased for confirming the identity of the deceased, 1466 SFSL/DNA(173)/14 (Dassari Srinidhi), MLC 145/14 dated 20.07.2014 Exhibit-1 Muscle Piece for DNA Profiling belongs to the biological child (Daughter) of D. Ananth and D. Raja, have been received in writing. On the basis of the investigation, on the spot visit to the site of accident and map thereof, as per the statements of witnesses, record, postmortem reports, reports of SFSL, Junga, RFSL Mandi, and as per the statements of the accused, Mohinder Singh, Mandeep Singh, Harbans Singh, Balbir Singh, Ved Prakash, Prem Sukh, A. Adithya, Sumabala, C. Kiran, a case has been registered under section 336, 304A, 34 IPC.”

12. The petitioners are before this Court, by way of present revision petition against the order dated 08.02.2024, passed by the learned trial Court, while rejecting their application, for discharge, under Section 258 Cr.PC.

13. After completion of the investigation, the accused persons were charge-sheeted, in this case, and

thereafter, the present petitioners had moved application under Section 239 Cr.PC., for discharging them, from the said case, before the learned trial Court, which was dismissed by the learned trial Court, vide order dated 16.03.2020.

14. The said order was assailed, by the petitioners before this Court, by way of Criminal Revision No.239 of 2022. This Court, vide order dated 20th May, 2022, has allowed the revision petition, by setting aside the order dated 16.03.2020, passed by the learned trial Court. Relevant paragraph 7 of the judgment, is reproduced, as under:-

7. In view of the aforesaid discussion and circumstances, impugned order passed by the learned Magistrate is set aside and petitioners are permitted to file fresh application on or before 15.6.2022 under the relevant provision of law, seeking discharge in a summons case and in case such application is preferred by the petitioners, the same shall be decided by the learned Magistrate on its own merit, as this Court has not decided the claim of the petitioners on merits to discharge them in the case.

15. In this case, the present petitioners had also approached this Court earlier by way of application under Section 482 Cr.PC bearing Cr.MMO No.357 of 2017, which

was decided on 05.12.2017. Relevant paragraphs 41 to 48, 53 and 54 are reproduced as under:-

“41. Now, coming to the role of the Faculty members, one of the Faculty member, who was accompanying the students, has made her children to sit in the bus, when she went to the river alongwith other colleagues. The faculty member had already also visited Manali for the similar purpose, as has been disclosed by one of the Faculty member and they were having knowledge with respect to the river Beas and the terrain and in these circumstances, these Faculty members were required to stop the students from going to the river Beas, but they themselves accompanied the students and when water came, inspite of the warning, the students and they rushed to the bank of river. However, the local people remain able to save certain students.

42. In these circumstances, this Court finds that action of the Faculty members is that they were knowing that by their act in not stopping the students from going to the river bed, they are likely to die in all probabilities. In these circumstances also, this Court finds that the case under Section 304-A, read with Section 34 IPC, prima facie is made out. The Hon'ble Supreme Court in Pundurang and Takia & others versus State of Hyderabad reported in (1995) SCC 216, has held that common intention in Section 34 IPC is pre-supposed prior concert, but as in the present case, the petitioners were having knowledge that by such adventure, the students will die and not stopping them from going to the river bed itself shows that they were having the knowledge that in all probabilities the students will die due to their act and by not stopping the students. So, with due respect, to the judgment, the same is of no help to the petitioners.

43. In a case titled *Sushil Ansal versus State* (2014) 6 SCC 173, the Hon'ble Supreme Court has held that breach of duty was not a cause of the death of victim or personal safety causing hurt does not come under the definition of Section 304 of the Indian Penal Code, but in the present case, the action of the petitioners in sending the students to the river bed and not stopping them when they were going to the river bed, which is not a tourist place and asking them not to go there and when the Faculty members were knowing that it was dangerous to go there, as the Tea- Stall owner of that place has also given a hint in this regard, this Court has come to the conclusion that the negligence was so gross that it is a criminal negligence and punishable under Section 304 IPC and so this judgment is of no help to the petitioners.

44. Similarly, in *S.N. Hussain versus The State of Andhra Pradesh* (1972) 3 Supreme Court Cases 18, it has been held:

“3. The appellant's defence was that he was neither rash nor negligent and the accident was unavoidable. He did not realize at all that a Goods train was passing at the time and since the gate was open he crossed the railway crossing absolutely oblivious of the fact that a train was approaching. The learned Trial Magistrate accepted the defence but the High Court was pleased to hold that the appellant was both rash and negligent.”

45. In the present case, the Faculty members were aware about the danger in the river bed, to go there and even when the Tea-Stall owner has also given a hint in this regard to not to go to the river bed, this Court has come to the conclusion that the negligence was so gross that it is a criminal negligence and punishable under Section 304 of the Indian Penal Code, so, this judgment is of no help to the petitioners and

neither it is applicable to the facts and circumstances of the present case.

46. The learned counsel for the petitioner has argued that there was no common meeting of mind and to support his contention, he has relied upon the judgment rendered in *Vijendra Singh vs. State of U.P.*, AIR 2017 Supreme Court 860, wherein it has been held:

“25. In the case at hand, it is contended that there is no injury caused by lathi or ballam. Absence of any injury caused by a lathi cannot be the governing factor to rule out Section 34 IPC. It is manifest from the evidence that the accused-appellants had accompanied the other accused persons who were armed with gun and they themselves carried lathi and ballam respectively. The carrying of weapons, arrival at a particular place and at the same time, entering into the shed and murder of the deceased definitely attract the constructive liability as engrafted under Section 34 IPC.”

47. However, in the present case, there was a meeting of mind between the faculty members that they were knowing that their act in not stopping the students from the going to the river bed, they will die in all probabilities, in case water comes, which generally happens in the rivers of the hills. So, it is the Faculty members who were knowing that these students are not aware about the facts how to judge whether the water is likely to come in the river, which is generally sensed by the blow of cold wind from the upper side of the rivers, but these students were innocent that they could not make out the danger when the local people started blowing the whistles and dragging the students to safety. The Faculty members knowing fully aware about the consequences about the students going into the river bed, and students

were not aware about the perennial rivers coming from the glaciers and their nature and the release of water from the Dams from time to time which the Faculty members were knowing, (as it has come in the statements of the Faculty members that they had earlier come to Manali also and knows about Manali). Further, the parents could not have allowed the petitioners to take their children to Manali, but as it was an industrial tour, it is not understandable as to why these students were taken to Manali, whereas there is no Industry at Manali, which clearly shows that it is the negligence on the part of the Faculty members and it is so grave that they are liable for committing an offence punishable under Sections 336 and 304-A read with Section 34 of the Indian Penal Code. Other judgment relied upon by the learned counsel for the petitioners, is Suresh and another versus State of U.P., (2001)3 Supreme Court Cases 673, wherein the Hon'ble Supreme Court, while discussing, has held :

“Para 40. Participation in the crime in furtherance of the common intention cannot conceive of some independent criminal act by all accused persons, besides the ultimate criminal act because for that individual act law takes care of making such accused responsible under the other provisions of the Code. The word "act" used in Section 34 denotes a series of acts as a single act. What is required under law is that the accused persons sharing the common intention must be physically present at the scene of occurrence and be shown to not have dissuaded themselves from the intended criminal act for which they shared the common intention. Culpability under Section 34 cannot be excluded by mere distance from the scene of occurrence. The presumption of constructive intention, however, has to be arrived at only when the Court can, with

judicial servitude, hold that the accused must have pre-conceived result that ensued in furtherance of the common intention. A Division Bench of the Patna High Court in *Shatrughan Patar V/s. Emperor*, AIR 1919 Pat 111 held that it is only when a Court with some certainty hold that a particular accused must have pre-conceived or pre-meditated the result which ensued or acted in concert with others in order to bring about that result, that Section 34 may be applied." 48. The settled law, in fact, is in favour of the prosecution as each of the Faculty member was knowing that by not stopping the students to go to the river bed, they were likely to die, which is also clear from the fact that while going into the river bed, Faculty member had not taken own child to the river bed. In these circumstances, this Court finds that the law, as cited by the learned counsel for the petitioners is of no help to the present petitioners.

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53. Considering the material, which has come on record, alongwith the law, as discussed hereinabove, there was meeting of mind between the Faculty members to the effect that they were knowing that their act in not stopping the students from going to the river bed, they will die in all probabilities, in case water comes, which generally happens in the rivers in the hills. Also it is the Faculty members, who were knowing that these students are not aware about the facts how to judge whether the water is likely to come in the river, which is generally sensed by the blow of cold wind etc. from the upper side of the rivers, but these students were innocent that they could not make out the danger even when the local people started blowing the whistles and dragging the students to safety. The Faculty members knowing fully

well about the consequences about the students going into the river bed, and students were not aware about the nature of perennial rivers coming from the glaciers and their nature and likely release of water from the Dams from time to time which the Faculty members were knowing, (as it has come in the statements of the Faculty members that they had earlier come to Manali also and knows about Manali) makes out a case against the Faculty members under Sections 336, 304-A read with Section 34 of the Indian Penal Code. Further, the parents could not have allowed the petitioners to take their children to Manali, but as it was an industrial tour, it is not understandable as to why these students were taken to Manali whereas there is no Industry at Manali, which clearly shows that it is the negligence on the part of the Faculty members and it is so grave that life of 25 victims lost and so the petitioners committed an offence punishable under Sections 336 and 304-A read with Section 34 of the Indian Penal Code. Further this Court finds that Faculty members were knowing that by their act in not stopping the students from going to the river bed, they are likely to die in all probabilities, having this knowledge, they not only failed to stop the victims, but facilitated them to go to the river bed. Otherwise also, from the record, it is clear that the Faculty members were supposed to take care of the students, as they were in the care and custody of the Faculty members/petitioners and the College. Petitioners were supposed to make journey of victims safe and take them safe back to Hyderabad to their parents. It is worthwhile to mention here that the victims were in the age group of 19 and 22 years and they were in the care and custody of College authorities. In spite of taking care of them, the petitioners facilitated them to go to the river bed knowing fully well about the risk involved there, which is clear from the fact that one of the Faculty members, who was having her own child with her during the tour had not taken her

child to the river bed. Further, when the Faculty members fled from the river bed on sensing the coming danger, they were supposed to take the students and the victims with them, but they only fled themselves leaving victims, who were not knowing anything with regard to the nature of the river and the danger prevailing at the spot being in their threshold of life un-experienced and in the care and custody of the Faculty members. In these circumstances also, there cannot be any other conclusion, but that the proceedings started against the petitioners is on the basis of the facts, which have come on record and are not required to be interfered with.

54. This Court concludes that no prudent person will enter himself or permit someone else to go into the river bed in the hilly areas and when the petitioner had permitted and facilitated the victims (who lost their lives) after entering river bed, this act of petitioners was with the clear and instant risk of harm/danger to life and personal safety of the victims. As the petitioners were knowing the danger thus, their common intention with respect to their negligent act is abundantly clear.

16. Admittedly, those findings have not been assailed by the petitioners.

17. Thereafter, the petitioners have filed application, under Section 258 Cr.PC, before the learned trial Court.

18. Before proceeding further, the scope of Section 258 Cr.PC, is liable to be discussed. The provisions of Section 258 Cr.PC, are reproduced as under:-

258. Power to stop proceedings in certain cases. - In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

19. Hon'ble High Court of Kerala, in **Crl. R.C. No.1869 of 2018, titled as Suo Motu versus State of Kerala**, along with connected matter, has elaborately discussed the provisions of Section 258 Cr.PC. Relevant paragraph 7, of the judgment, is reproduced, as under:-

"7. Section 258 can be invoked only in peculiar and unusual circumstances in cases, wherein no prima facie case is made out against the accused or when the accusation does not actually constitute an offence or for the reason that the prosecution is bound to fail on account of a technical defect. For the reason that the accused had absconded or that despite the initiation of coercive proceedings, his presence could not be secured is no reason to invoke Section 258 of the Cr.P.C. From the proceedings sheet, it does not appear that the learned Magistrate had made any genuine endeavour to secure the presence of the accused by exhausting the provisions under the Code. The order is laconic and is not supported by any reasons. The learned Magistrate has exceeded in its powers in invoking provisions of Section

258 of the Code and hence, cannot be sustained, the same being illegal and irregular.”

(self emphasis supplied)

20. Learned counsel for the petitioners, in this case, has challenged the order passed by the learned trial Court, mainly on the ground that from the bare reading of the charge sheet, it transpired that there was a manmade glitch of water, *mens rea* was not there, as the spot, where the alleged incident had taken place, is perennial river and scant water was there.

21. According to the learned counsel for the petitioners, there was no danger, as such, the present petitioners cannot be made liable, by invoking Section 34 of the IPC.

22. To buttress his contentions, statements of Puran Chand, Noop Ram, Bihari Lal, Chetan Chavan, V. Raman Teja, Lavanya, and A. Purna Shekhar, recorded by the I.O., under Section 161 Cr.PC, during the investigation, have been relied upon.

23. At the time of seeking relief, under Section 258 Cr.PC, the entire material collected by the prosecution, more particularly, the statements of the witnesses,

recorded under Section 161 Cr.PC, have to be considered, as a whole and not in piece-meal, i.e., by picking up a particular line.

24. Bihari Lal, in his statement, recorded, under Section 161 Cr.PC, has stated that initially, the water was very less in the river, but, all of a sudden, the water level has increased drastically, due to which, some of the students have succeeded in coming out of the river and some of the students have washed away in the heavy flow of water.

25. Similarly, Noop Ram deposed that at about 6.35 p.m., some people, who were attending the marriage at the residence of Hukme Ram, started blowing whistles and were asking the students to come out of the river, as the flow of water was increasing rapidly.

26. Reliance has also been placed on the statement of Mr. Chetan Chavan, who has deposed that one of his batch mates, Debashish Bose wanted to attend the nature's call and asked the driver of the bus to stop the bus. Thereafter, they had allegedly inquired from the owner of the nearby Dhaba, if it was safe to go down in the

river to take pictures, to which, he replied that it was safe, but, they should come back fast. Thereafter, they had gone down to the river bed to click photographs. No one from the faculty has stopped them from going into the river bed.

27. Similar statements have been made by V. Raman Teja and Lavanya.

28. The statement of A. Purna Shekhar, was also recorded by the police, wherein, he has got recorded that the incident happened due to discharge/release of large quantity of water into River Beas, by the employees of Larji Hydroelectric Project, without blowing any siren and prior intimation.

29. Although, the above statements of the witnesses, recorded by the police, during the course of the investigation, have been relied upon to seek discharge, however, the question, which arises, before this Court, for determination, is about the fact at the time of deciding the question of discharge, as to whether the entire case is to be seen or only the statements of few witnesses are to be seen. The answer to this question, is in negative, as, while

deciding the question of discharge, under Section 258 Cr.PC, the entire case, as presented by the prosecution, is to be considered.

30. Statement of Puran Chand son of Sher Singh, was also recorded, by the police, on 15.6.2024, who has categorically stated that he has requested those persons, who came there in the bus, which was stopped near his T-stall, by cautioning them not to go towards river, as the water can be released at any time. However, according to him, they had not adhered to his advice and had gone towards river bed.

31. Similar statement has been made by Noop Ram.

32. On the basis of the statements, so recorded, by the Police, as highlighted by the learned counsel for the petitioners, the arguments, so advanced, qua the fact that the act of the petitioners, in allowing the students to walk into the river, for allegedly clicking photographs, is not *causa causans* of the incident. The said act of the petitioners, permitting the students to go into the river bank to click the photographs, cannot be seen, in isolation, however, the statement of the witness, who had specifically

deposed that he has cautioned them not to go to the river bank, as water level may increase, at any time, has also to be taken into consideration.

33. If the facts and circumstances of the present case are seen in the light of the judgment of Hon'ble High Court Kerala in ***Crl. R.C. No.1869 of 2018, titled as Suo Motu versus State of Kerala***, then, at the stage of deciding application, under Section 258 CrPC, only prima facie case is to be seen.

34. The alleged rash and negligent act of the accused is *causa causans* of the incident, which has rightly been held to be the question of law and facts, by the learned trial Court which will be proved during the course of trial.

35. The Hon'ble Supreme Court in ***State of Gujarat versus Dilip Singh Kishore Singh Rao, 2023 SCC Online 1294***, has held that at the time of framing of the charge, the Court has to see the material collected by the prosecution to determine whether a case has been made out for proceeding with the trial or not and the defence of the accused is not required to be considered.

Relevant paragraphs 7 to 10 of the judgment, are reproduced, as under:-

7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the chargesheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in *State of Tamil Nadu Vs. N. Suresh Rajan And Others* (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on

record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

(self emphasis supplied)

36. Considering all these facts, there is no occasion for this Court to interfere with the order passed by the learned trial Court, as such, the present petition is dismissed. Pending miscellaneous applications, if any, shall also stand disposed of.

37. Any of the observations, made hereinabove, shall not be taken as an expression of opinion, on the

merits of the case, as these observations, are confined,
only, to the disposal of the present petition.

August 04, 2025 *(ps)*

(Virender Singh)
Judge

High Court of HP