

**Reserved on : 23.07.2024**  
**Pronounced on : 21.10.2024**

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21<sup>ST</sup> DAY OF OCTOBER, 2024

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No. 6647 OF 2024

**BETWEEN:**

MR. MAHANTHESH S. NAGUR  
S/O. SIDDAGUNDAPPA,  
AGED ABOUT 48 YEARS,  
WORKING AS  
JUNIOR ENGINEER IN BESCO,  
RESIDING AT UDAYA LAYOUT,  
MANGANHALLI,  
BENGALURU – 560 060.

... PETITIONER

(BY SRI MADESH V.M., ADVOCATE)

**AND:**

- 1 . STATE BY KARNATAKA  
BY JNANABHARATHI POLICE STATION,  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA,  
BENGALURU – 560 001.
- 2 . PAPANNA M.,  
S/O. MAHESHAPPA,

AGED ABOUT 31 YEARS,  
NO. 51, MANGANAHALLI,  
SULIKERE POST,  
YESHWANTHPUR,  
BENGALURU CITY,  
BENGALURU – 560 060.

... RESPONDENTS

(BY SRI B.N.JAGADEESH, ADDL.SPP FOR R-1)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE CHARGE SHEET AND PROCEEDINGS IN C.C.NO.22675/2022 REGISTERED BY THE JNANABHARATHI POLICE STATION, PRESENTLY PENDING ON THE FILE OF XLVI ADDL. CMM AT BENGLAURU (46<sup>TH</sup> ACMM) FOR OFFENCES P/U/S 285, 427, 304(A) OF IPC, 1860 MARKED AT (ANNEXURE-D) AND GRANT SUCH OTHER RELIEFS AS THIS HONBLE COURT DEEMS FIT AND PROPER UNDER THE CIRCUMSTANCES OF THIS CASE.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.07.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CAV ORDER**

The petitioner is before this Court calling in question proceedings in C.C.No.22675 of 2022 pending before the 46<sup>th</sup> Additional Chief Metropolitan Magistrate, Bengaluru arising out of

crime in Crime No.95 of 2022 for offences punishable under Sections 285, 427 and 304A of the IPC.

2. Facts, in brief, germane are as follows:-

The petitioner is an employee of BESCO working in the cadre of Junior Engineer. It is the case of the prosecution that on 23-03-2022 at about 2.00 p.m. one Shivaraj had gone to Chikkabashti to book Shivahalli Smartha Bhavan for the purpose of his daughter's engagement. After booking the hall, Shivaraj and his daughter were returning home on a two wheeler and at about 3.10 p.m. they were near Sri M. Vishveshwaraiah Layout, Manganahalli Nice Road Bridge next to the transformer of BESCO. At that time the transformer beside the road-side burst. Due to the burst, the oil spilled over from the transformer caught fire and directly fell on Shivaraj and his daughter; both of whom sustained grave burn injuries. Immediately, they were shifted to Victoria hospital where they succumbed to injuries. Thereafter a crime comes to be registered against the officials of BESCO in Crime No.95 of 2022 for offences punishable under Sections 285, 338 of

the IPC. The Police conduct investigation and the investigation leads to filing of charge sheet for the aforesaid offences including the offence under Section 304A of the IPC. The concerned Court takes cognizance of the offence against the petitioner and 3 others. The petitioner is arrayed as accused No.2. Taking of cognizance and continuance of trial has driven the petitioner to this Court in the subject petition.

3. Heard Sri V.M. Madesh, learned counsel appearing for the petitioner and Sri B.N. Jagadeesh, learned Additional State Public Prosecutor appearing for respondent No.1.

4. The learned counsel appearing for the petitioner would vehemently contend that the petitioner has got nothing to do with the bursting of the transformer, as it has accidentally happened and for such accident negligence cannot be attributed against the petitioner who is the Junior Engineer in BESCO and it was the role of other accused who are contractor and others who had to upkeep the transformer and their non-maintenance of the transformer could have led to the mishap, for which the petitioner cannot be

punished for the offence punishable under Section 304A of IPC which is death by rash and negligent act. It is his submission that the act of the petitioner is neither negligent nor rash for attracting the offence under Section 304A of the IPC.

5. Per contra, the learned Additional State Public Prosecutor would vehemently refute the submissions to contend that the petitioner is directly responsible for the upkeep of the transformer in his area. It is not in dispute that he is the officer in-charge to patrol and keep the transformer out of danger. It is his submission that complaints were pending before the BESCO to set right the transformer and it has not been done. Therefore, it is his submission that the petitioner and others should face trial and come out clean.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The afore-narrated facts though not in dispute, it becomes necessary to draw the link in the chain of events. The deceased Shivaraj and his daughter were travelling on a motorcycle. At about 3.10 p.m., they were besides the transformer, a transformer which comes within the jurisdiction of the petitioner, who was the Junior Engineer for the area in BESCO. When they come near the transformer, there is leakage of oil and bursting of transformer. Due to the leakage of oil, the transformer catches fire and the fire falls on Shivaraj and his daughter, which caused grave burn injuries. They were admitted to the hospital where they succumbed to injuries. A complaint comes to be registered immediately for the burn injuries suffered by both the deceased. The complaint is filed by an onlooker i.e., the complainant, who is said to be the relative of the deceased, reads as follows:

“ರವರಿಗೆ,

ಪೊಲೀಸ್ ಸಬ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್  
ಜ್ಞಾನಭಾರತಿ ಪೊಲೀಸ್ ಠಾಣೆ  
ಬೆಂಗಳೂರು-56.

ಇಂದ,

ಪಾಪಣ್ಣ.ಎಂ. ಬಿನ್ ಮಹೇಶಪ್ಪ, 29 ವರ್ಷ  
ನಂ.51, ಮಂಗಳನಹಳ್ಳಿ, ಸೊಲಿಕೆರೆ ಅಂಚೆ,  
ಯಶವಂತಪುರ ಹೋಬಳಿ, ಬೆಂಗಳೂರು ಉತ್ತರ ತಾಲ್ಲೂಕು,

ವಿದ್ಯಾಭ್ಯಾಸ ದಿವ್ಯವೋ, ಜಾತಿ ಹಿಂದೂ ಕುರುಬ.  
ಮೊಬೈಲ್: ನಂ.9916696513.

ಮಾನ್ಯರೇ.

ವಿಷಯ:- ನನ್ನ ಸಂಬಂಧಿ ಶಿವರಾಜು & ಇವರ ಮಗಳು ಚೈತನ್ಯ ರವರು ದ್ವಿ ಚಕ್ರವಾಹನದಲ್ಲಿ ಹೋಗುತ್ತಿರಬೇಕಾದರೆ, ರಸ್ತೆ ಪಕ್ಕ ವಿದ್ಯುತ್ ಕಂಬಗಳಿಗೆ ಅಳವಡಿಸಿದ ಟ್ರಾನ್ಸ್‌ಫಾರಂ ಬ್ಲಾಸ್ತ್ ಆಗಿ ಇಬ್ಬರಿಗೂ ಬೆಂಕಿ ತಾಗಿ ಮೈ ಎಲ್ಲಾ ಸುಟ್ಟಿದ್ದು, ನಿರ್ಲಕ್ಷತನ ತೋರಿರುವ ಬೆನ್ನಾಂ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧ ದೂರು.

\* \* \*

ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ವಾಸುದ್ಧುಕೊಂಡು ಟೆಕ್ನಿಷಿಯನ್ ಆಗಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ನನ್ನ ಚಿಕ್ಕಪ್ಪನವರಾದ ಶಿವರಾಜು ರವರು ಹೆಂಡತಿ ರತ್ನಮ್ಮ ಮತ್ತು ಮಗಳಾದ ಕುಮಾರಿ ಚೈತನ್ಯ ರವರೊಂದಿಗೆ ನಮ್ಮ ಮನೆಯ ಹತ್ತಿರ ವಾಸವಾಗಿರುತ್ತಾರೆ. ಶಿವರಾಜುರವರು ಸೂಲೆಕೆರೆಯಲ್ಲಿ ಸೆಕ್ಯೂರಿಟಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿರುತ್ತಾರೆ. ಇವರ ಮಗಳಾದ ಚೈತನ್ಯರವರು 2 ನೇ ಪಿ.ಯು.ಸಿ. ವಿದ್ಯಾಭ್ಯಾಸಮಾಡಿದ್ದು, ಮನೆಯಲ್ಲಿಯೇ ಇದ್ದಳು.

ಚೈತನ್ಯಳಿಗೆ ಮದುವೆ ಮಾಡಲು ನಮ್ಮ ಏರಿಯಾದ ವಾಸಿಯಾದ ವೆಂಕಟೇಶ್ ಎಂಬುವವನನ್ನು ನೋಡಿದ್ದು. ಈ ದಿನ ದಿನಾಂಕ 23.03.2022 ರಂದು ಮಧ್ಯಾಹ್ನ ಸುಮಾರು 02-00 ಗಂಟೆಗೆ ಚೈತನ್ಯಳ ಮದುವೆಯ ನಿಶ್ಚಿತಾರ್ಥ ಕಾರ್ಯಕ್ಕೆ ಚಿಕ್ಕಬಸ್ತಿಯಲ್ಲಿರುವ ಶಿವಳ್ಳಿ ಸ್ಮಾರ್ತ ಭವನವನ್ನು ಬುಕ್ ಮಾಡಿ ಬರುವುದಾಗಿ ನನ್ನ ಚಿಕ್ಕಪ್ಪ ಅವರ ಮಗಳನ್ನು ದ್ವಿಚಕ್ರ ವಾಹನ ನಂ.ಕೆಎ-4, ಜೆಎ-4926 ರಲ್ಲಿ ಕರೆದುಕೊಂಡು ಚಿಕ್ಕ ಬಸ್ತಿಗೆ ಹೋಗಿ ಅಲ್ಲಿ ಚೌಕ್ಟಿ ಬುಕ್ ಮಾಡಿ, ವಾಪಸ್ ಮನೆಗೆ ಬರಲು ಮಧ್ಯಾಹ್ನ ಸುಮಾರು 3-10 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ನನ್ನ ಚಿಕ್ಕಪ್ಪ ಮತ್ತು ಅವರ ಮಗಳು ಸರ್ ಎಂ.ವಿಶ್ವೇಶ್ವರಯ್ಯ ಲೇಔಟ್, ಮಂಗನಹಳ್ಳಿ ನೈಸ್ ರಸ್ತೆಯ ಬ್ರಿಡ್ಜ್ ಬಳಿ ರಸ್ತೆಯಲ್ಲಿ ದ್ವಿ ಚಕ್ರವಾಹನದಲ್ಲಿ ಬರುತ್ತಿರಬೇಕಾದರೆ, ರಸ್ತೆಯ ಬದಿಯಲ್ಲಿ ವಿದ್ಯುತ್, ಕಂಬಗಳಿಗೆ ಅಳವಡಿಸಿರುವ ಬೆನ್ನಾಂನ ಟ್ರಾನ್ಸ್ ಫಾರಂ ಬ್ಲಾಸ್ತ್ ಆಗಿ ಅಲ್ಲಿಂದ ಬಂದ ಆಯಿಲ್ ಸಹಿತ ಬೆಂಕಿಯು ನನ್ನ ಚಿಕ್ಕಪ್ಪ ಶಿವರಾಜು ರವರ ಮೈಗೆ ಮತ್ತು ಅವರ ಮಗಳಾದ ಚೈತನ್ಯರವರ ಮೈಗೆ ತಾಗಿ, ಇಬ್ಬರಿಗೂ ಮೈ ಎಲ್ಲಾ ಸುಟ್ಟ ವಿಷಯ ಮನೆಯಲ್ಲಿದ್ದ ನನಗೆ ಗೊತ್ತಾಗಿ ನಾನು ಕೂಡಲೇ ಅಲ್ಲಿಗೆ ಬಂದು ನೋಡಲಾಗಿ ನನ್ನ ಚಿಕ್ಕಪ್ಪ & ಅವರ ಮಗಳನ್ನು ಸಾರ್ವಜನಿಕರು ಆಂಬುಲೆನ್ಸ್ ಮೂಲಕ ಚಿಕಿತ್ಸೆಗಾಗಿ ವಿದ್ಯಾರಿಯಾ ಆಸ್ಪತ್ರೆಗೆ ಕಳಿಸಿದ ವಿಚಾರ ಗೊತ್ತಾಗಿರುತ್ತೆ.

ಸದರಿ ಟ್ರಾನ್ಸ್‌ಪಾರಂನಿಂದ ಈ ದಿನ ಬೆಳಿಗ್ಗೆಯಿಂದಲೂ ಸಹ ಆಯಿಲ್ ಸೋರುತ್ತಿದ್ದ - ಹಾಗೂ ಹೊಗೆ ಬರುತ್ತಿದ್ದ ಬಗ್ಗೆ ಸ್ಥಳೀಕರು ಬೆನ್ನಾಂ ನವರಿಗೆ ದೂರವಾಣಿ ಮೂಲಕ ತಿಳಿಸಿದ್ದರೂ ಸಹ ಅವರು ಯಾರೂ ಸ್ಥಳಕ್ಕೆ ಬರದ ನಿರ್ಲಕ್ಷತನ ತೋರಿದ್ದರಿಂದ ಅವಘಡ ಸಂಬವಿಸಿದ್ದು, ಈ ಘಟನೆಗೆ ಕಾರಣರಾದ ಬೆನ್ನಾಂ ಅಧಿಕಾರಿಗಳ ವಿರುದ್ಧ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ತಮ್ಮಲ್ಲಿ ಕೋರಿದೆ.

ವಂದನೆಗಳೊಂದಿಗೆ,

ತಮ್ಮ ವಿಶ್ವಾಸಿ  
ಸಹಿ/-”

In the interregnum, the two, who had suffered grave injuries succumbed to the same. The Police conduct investigation and file a final report/charge sheet now adding the offence under Sections 427 and 304A of the IPC. The summary of the charge sheet as obtaining in Column No.7 reads as follows:

“ಕಲಂ. 285, 427, 304 (ಎ) ಐಪಿಸಿ.

ಈ ದೋಷಾರೋಪಣ ಪಟ್ಟಿಯ ಕಾಲಂ ನಂ4 ರಲ್ಲಿ ಕಂಡ ಎ-1 ಆರೋಪಿಯು ಬೆಂಗಳೂರು ನಗರ ಕೆಂಗೇರಿ ವಿಭಾಗದ ಕೆ-4 ಉಪ ವಿಭಾಗ ಬೆಸ್ಕಾಂ ಅಂಜನಾನಗರ ಕಾರ್ಯ ಮತ್ತು ಪಾಲನ ಘಟಕ-1 ರಲ್ಲಿ ಸಹಾಯಕ ಅಭಿಯಂತರರಾಗಿಯೂ, ಎ-2 ಮತ್ತು ಎ-3 ಆರೋಪಿಗಳು. ಕಿರಿಯ ಅಭಿಯಂತರರಾಗಿಯೂ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿದ್ದು, ಎ-4 ಆರೋಪಿಯು ಹೊರಗುತ್ತಿಗೆ ಆದಾರದ ಮೇಲೆ ಬೆಸ್ಕಾಂ ಬೆಂಗಳೂರು ಬಸವೇಶ್ವರ ನಗರದಲ್ಲಿರುವ ಪಶ್ಚಿಮ ವೃತ್ತದಲ್ಲಿ ದೂರು ಸ್ವೀಕಾರ ವಿಭಾಗದಲ್ಲಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡಿದ್ದು, ಎ-1 ರಿಂದ ಎ-3 ರವರ ಕಾರ್ಯವ್ಯಾಪ್ತಿಯು ಜ್ಞಾನಭಾರತಿ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿನ ಅಮ್ಮ ಆಶ್ರಮದಿಂದ ಹಿಡಿದು ಸೀಗೇಹಳ್ಳಿ ಗೇಟ್ ವರೆಗೆ 79 ಮತ್ತು 136 ನೇ ವಾರ್ಡ್ ಒಳಗೊಂಡಂತೆ ವಿದ್ಯುತ್ ಉಪಕರಣಗಳ ಸುಸ್ಥಿತಿಯ ನಿರ್ವಹಣೆ ಹಾಗೂ ವಿದ್ಯುತ್ ಬಿಲ್ಲಿನ ಪಾವತಿ ನಿರ್ವಹಣೆ, - ಇತ್ಯಾದಿಯಾಗಿದ್ದು, ಜ್ಞಾನಭಾರತಿ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದಿನ ವಿಶ್ವೇಶ್ವರಯ್ಯ ಬಡಾವಣೆಯ 6 ನೇ ಬ್ಲಾಕ್‌ನ ಮಂಗನಹಳ್ಳಿ ಮುಖ್ಯ ರಸ್ತೆಯ ನೈಸ್ ರೋಡ್ ಜಂಕ್ಷನ್ ಬಳಿ 2018 ನೇ ಜೂನ್ ಮಾಹೆಯಲ್ಲಿ ಅಳವಡಿಸಿದ್ದ 250 ಕಿಲೋ ವ್ಯಾಟ್ ಸಾಮರ್ಥ್ಯದ ವಿದ್ಯುತ್ ಪರಿವರ್ತಕ ಸಂಖ್ಯೆ 38 ರಿಂದ ಈಗ್ಗೆ 3-4 ತಿಂಗಳಿಂದಲೂ ಸರಿಯಾಗಿ ಪವರ್ ಸಪ್ಲೈ ಆಗದೆ, ಆಗಾಗ ಬೆಂಕಿ ಕಿಡಿ ಕಾರುತ್ತಿದ್ದು, ಜೊತೆಗೆ ಕಟ್ - ಕಟೆಂದು ಶಬ್ದ ಬರುತ್ತಿದ್ದು, ಈ ಬಗ್ಗೆ ಸ್ಥಳೀಯರಾದ ಸಾಕ್ಷಿ-11 ರಿಂದ ಸಾಕ್ಷಿ-15 ರವರು ಹಾಗೂ ಇತರರು ಏರಿಯಾಗೆ 5 ರೌಂಡ್ಸ್‌ಗೆ ಬರುವ ಬೆಸ್ಕಾಂ ಅಧಿಕಾರಿಗಳಿಗೆ ಮಾಹಿತಿ , ನೀಡಿದ್ದರೂ ಸಹ ಕಾಲಂ ನಂ 4 ರಲ್ಲಿ ಕಂಡ ಎ-1 ರಿಂದ ಎ-3 ರವರು ಯಾವುದೇ ಮುಂಜಾಗ್ರತಾ ಕ್ರಮ ಕೈಗೊಳ್ಳದೆ.

ಟ್ರಾನ್ಸ್ ಪಾರಂ ಅನ್ನು ಕಾಲ ಕಾಲಕ್ಕೆ ಸರಿಯಾಗಿ ನಿರ್ವಹಣೆ ಮಾಡದೆ ಅತೀವ ನಿರ್ಲಕ್ಷ್ಯತನ ತೋರಿ, ಅದನ್ನು ಹಾಗೆಯೇ ಬಿಟ್ಟಿದ್ದು, ಇದರಿಂದ ದಿನಾಂಕ 23/03/2022 ರಂದು ಮಧ್ಯಾಹ್ನ 12-40 ರಿಂದ 12-50 ಗಂಟೆಯ ನಡುವೆ ಸದರಿ ಟ್ರಾನ್ಸ್ ಫಾರಂನಿಂದ ಹೊಗೆ ಸಹಿತ ಆಯಿಲ್ ಸೋರುತ್ತಿದ್ದ ಮತ್ತು ಆಯಿಲ್ ಕುಡಿಯುತ್ತಿದ್ದ ಶಬ್ದ ಕೇಳಿದ ಸಾಕ್ಷಿ-11 ರವರು 1912ಗೆ ಕರೆ ಮಾಡಿ ದೂರು ಸಲ್ಲಿಸಿದ್ದು, ಸದರಿ ದೂರನ್ನು ಬೆಸ್ಕಾಂ



ಪನ್ ಸರ್ಕಲ್ ಪಶ್ಚಿಮ ವಿಭಾಗದಲ್ಲಿ ಎ ಪಾಳಿಯಲ್ಲಿ ಕರ್ತವ್ಯದಲ್ಲಿ ೨-4 ಆರೋಪಿಯು ಮದ್ಯಾಹ್ನ 12-50 ಗಂಟೆಯಲ್ಲಿ ಡೌನ್ ಲೋಡ್ ಮಾಡಿಕೊಂಡಿದ್ದು, ಬಳಿಕ ಈತನು ಈ ದೂರಿನ ಬಗ್ಗೆ ಬೆಸ್ಕಾಂ ಅಧಿಕಾರಿಗಳಿಗೆ ಮಾಹಿತಿ ನೀಡಬೇಕಾಗಿದ್ದು, ಆದರೆ ಈತನು ಅತೀವ ನಿರ್ಲಕ್ಷ್ಯತನ ಮತ್ತು ಬೇಜವಾಬ್ದಾರಿತನದಿಂದ ಸದರಿ ದೂರಿನ ಬಗ್ಗೆ ಯಾವುದೇ ಬೆಸ್ಕಾಂ ಅಧಿಕಾರಿಗಳಿಗೆ ಮಾಹಿತಿ ನೀಡದೆ ಇದ್ದುದರಿಂದ ಆ ದಿನ ದಿನಾಂಕ:- 23/03/2022 ರಂದು ಮದ್ಯಾಹ್ನ 3-10 ಗಂಟೆಯಲ್ಲಿ ಸದರಿ ಟ್ರಾನ್ಸ್ ಪಾರಂನ ಅಂತರಿಕ ದೋಷದಿಂದ ಪರಿವರ್ತಕದ ಕಬ್ಬಿಣದ ಟ್ಯಾಂಕಿನ ವೆಲ್ಡಿಂಗ್ ಜಾಗದಲ್ಲಿ ಸೀಳಿಕೊಂಡು ಆಯಿಲ್ ಸಹಿತ ಬೆಂಕಿಯು ಜ್ವಾಲೆಯ ಸುಮಾರು 10 ಮೀಟರ್ ದೂರದವರೆಗೆ ಚಿಮ್ಮಿದ್ದು, ಆ ಸಮಯದಲ್ಲಿ ಪರಿವರ್ತಕದ ಪಕ್ಕದ ರಸ್ತೆಯಲ್ಲಿ ಹೊಂಡಾ ಆಕ್ಟಿವಾ ನಂ ಕೆಎ-04-ಜೆವಿ-4926 ರ ದ್ವಿ ಚಕ್ರ ವಾಹನದಲ್ಲಿ ಹೋಗುತ್ತಿದ್ದ ಮಂಗನಹಳ್ಳಿಯ ವಾಸಿಯಾದ ಶಿವರಾಜ 50 ವರ್ಷ ಮತ್ತು ಇವರ ಮಗಳು ಶುಚ್ಯತನ್ಯ 18 ವರ್ಷ ರವರ ಸಂಪೂರ್ಣ ದೇಹದ ಮೇಲೆ ಆಯಿಲ್ ಸಹಿತ ಬೆಂಕಿಯು ಜ್ವಾಲೆಯು ಉದ್ದು ಗಂಭೀರ ಸ್ವರೂಪದ ಸುಟ್ಟ ಗಾಯಗಳಾಗಿದ್ದು, ದ್ವಿ ಚಕ್ರ ವಾಹನವು ಸಂಪೂರ್ಣ ಸುಟ್ಟು ಹೋಗಿ ನಿರುಪಯುಕ್ತ ವಸ್ತುವಾಗಿದ್ದು, ಸದರಿ ಗಾಯಾಳುಗಳನ್ನು ಚಿಕಿತ್ಸೆಗೆ ವಿಸ್ತಾರವಾಗಿ ಆಸ್ಪತ್ರೆಗೆ ದಾಖಲಿಸಿದ್ದರೂ ಸಹ ಚಿಕಿತ್ಸೆ ಫಲಕಾರಿಯಾಗದೆ ಅದೇ ದಿನ ರಾತ್ರಿ ಇಬ್ಬರೂ ಮೃತಹೊಂದಿರುತ್ತಾರೆ. ದ್ವಿ ಚಕ್ರ ವಾಹನ ಸುಟ್ಟು ಹೋಗಿದ್ದರಿಂದ ಮೃತ ಶಿವರಾಜ ರವರ ಹೆಂಡತಿ ಸಾಕ್ಷಿ-2 ರವರಿಗೆ ಸುಮಾರು 40,000/- ರೂಗಳಷ್ಟು ನಷ್ಟ ಉಂಟಾಗಿರುತ್ತದೆ.

ಈ ದುರ್ಘಟನೆಗೆ ಕಾಲಂ ನಂ 4 ರಲ್ಲಿ ಕಂಡ ೨-1 ರಿಂದ ೨-4 ರವರ ಅತೀವ ನಿರ್ಲಕ್ಷ್ಯತನ ಮತ್ತು ಬೇಜವಾಬ್ದಾರಿತನವೇ ಕಾರಣವಾಗಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುವುದರಿಂದ ಆರೋಪಿಗಳ ವಿರುದ್ಧ ಈ ಮೇಲ್ಕಂಡ ಕಲಂಗಳ ಅನ್ವಯ ಆರೋಪಣ ಪಟ್ಟಿ ಸಲ್ಲಿಸಿರುತ್ತೆ."

The summary of the charge sheet clearly pins down the accused. One of the accused is the petitioner. The submission is that he is not responsible for what has happened, as the acts are neither rash nor negligent. He seeks to place reliance upon a judgment in the case of **VISHWAS V. v. STATE OF KARNATAKA**<sup>1</sup>. The said judgment is wholly inapplicable to the facts of the case at hand. The facts in the said judgment were that Architect of a building was

<sup>1</sup> 2022 SCC OnLine Kar 1541

hauled up for offence under Section 304A of the IPC. The Architect after having designed the building has nothing to do with what happened in the building. Therefore, it was held that there was no rash or negligent act on his part. In the said judgment this Court has held as follows:

".... ...."

**10.** Section 304A of the IPC reads as follows:

"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."

**11.** Section 304A of the IPC has two components in it. The result of death should be out of rash or negligent act by the accused. Section 304A of the IPC mandates that whoever causes death of any person by doing any rash or negligent act not amounting to culpable homicide be punished. Therefore, the act should be either rash or negligent.

**12.** The petitioner, as stated earlier, is an Architect who had designed the building and had given it to the owner in terms of the agreement. The owner had entrusted the work of construction to accused No. 1 under whom the worker on the day working and unfortunate incident of his death happened. It cannot be said that design of the house by the petitioner was an act of rash or negligence that had caused the death of the worker. It would be too far to stretch Section 304A of the IPC to contend that a person who had designed the house is responsible for death of a worker while undertaking construction under a contractor. In this regard reference is made to the three Judge Bench judgment of the Apex Court in the case of *AMBALAL D. BHATT v. STATE OF GUJARAT* wherein it is held as follows:

"10. It appears to us that in a prosecution for an offence under Section 304-A, the mere fact that an accused contravenes certain rules or regulations in the doing of an act which causes death of another, does not establish that the death was the result of a rash or negligent act or that any such act was the proximate and efficient cause of the death. If that were so, the acquittal of the appellant for contravention of the provisions of the Act and the Rules would itself have been an answer and we would have then examined to what extent additional evidence of his acquittal would have to be allowed, but since that is not the criteria, we have to determine whether the appellant's act in giving only one batch number to all the four lots manufactured on November 12, 1962, in preparing Batch No. 211105, was the cause of deaths and whether those deaths were a direct consequence of the appellants' act, that is, whether the appellants' act is the direct result of a rash and negligent act and that act was the proximate and efficient cause without the intervention of another's negligence. As observed by Sir Lawrence Jenkins in *Emperor v. Omkar Rampratap* [(1902) 4 Bom LR 679] the act causing the deaths "must be the *causa causans*; it is not enough that it may have been the cause *sine qua non*". This view has been adopted by this Court in several decisions. In *Kurban Hussein Mohammedali Rangwala v. State of Maharashtra*, [(1965) 2 SCR 622] the accused who had manufactured wet paints without a licence was acquitted of the charge under Section 304-A because it was held that the mere fact that he allowed the burners to be used in the same room in which varnish and turpentine were stored, even though it would be a negligent act, would not be enough to make the accused responsible for the fire which broke out. The cause of the fire was not merely the presence of the burners within the room in which varnish and turpentine were stored, though this circumstance was indirectly responsible for the fire which broke out, but was also due to the overflowing of froth out of the barrels. In *Suleman Rehiman Mulani v. State of Maharashtra* [(1968) 2 SCR 515] the accused who was driving a car only with a learner's licence without a trainer by his side, had injured a person. It was held that that by itself was not sufficient to warrant a conviction under Section 304-A. It would be different if it can be established as in the case of *Bhalchandra alias Bapu v. State of Maharashtra* [(1968) 3 SCR 766] that deaths and injuries caused by the contravention of a prohibition in respect of the substances which are highly dangerous as in the case of explosives in a cracker factory which are considered to be of a highly hazardous and dangerous nature having sensitive

composition where even friction or percussion could cause an explosion, that contravention would be the causa causans.”

**13.** The Apex Court clearly holds that cause of death should be a direct consequence of the act of the accused and that should be an act either rash or negligent and proximate to the cause of such death. By no stretch of imagination the petitioner can be hauled into the proceedings for offences punishable under Section 304A of the IPC in the light of the fact that he was in any way neither responsible for construction nor was he present at the place of construction nor even had any proximity to the act which was either rash or negligent...”

The offence therein would in no manner become applicable to the case at hand. In the case at hand, the petitioner was responsible for the upkeep of the transformer despite it being contracted out or not. It is his responsibility for such patrolling and maintenance of the transformer. The act of the petitioner may not be rash, but it is undoubtedly negligent. The said finding is not rendered in the air. After the accident, the Electrical Inspectorate was asked to conduct an enquiry as to the reason behind the mishap. The Electrical Inspectorate gives its report. The preamble of the report and opinion read as follows:

“ಅಪಘಾತದ ಅವಲೋಕನ:

1. ಈ ಬೆಂಕಿ ಅಪಘಾತವು ಮಂಗನಹಳ್ಳಿ ಮುಖ್ಯ ರಸ್ತೆಯ, ಫೆಡರಲ್ ಬ್ಯಾಂಕ್ ಎದುರು ಅಳವಡಿಸಿದ್ದ ವಿದ್ಯುತ್ ಪರಿವರ್ತಕ ಸಂಖ್ಯೆ-38ರ ಪಕ್ಕದ ರಸ್ತೆಯಲ್ಲಿ ಸಂಭವಿಸಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.

2. ಮಂಗಳಳ್ಳಿ ಮುಖ್ಯ ರಸ್ತೆಯ. ನೈಸ್ ರಸ್ತೆಯ ಹತ್ತಿರದಲ್ಲಿ 1x250ಕೆ.ವಿ.ಎ, ವಿದ್ಯುತ್ ಪರಿವರ್ತಕ ಕೇಂದ್ರವನ್ನು (Spun : pole mounted, ವಿದ್ಯುತ್ ಪರಿವರ್ತಕ ಸಂಖ್ಯೆ:38) ಸರ್. ಎಮ್ ವಿಶ್ವೇಶ್ವರಯ್ಯ 66/11ಕೆ.ವಿ ವಿದ್ಯುತ್. ಉಪಕೇಂದ್ರದಿಂದ ವಿಸ್ತರಿಸಿದ್ದ 11ಕೆ.ವಿ ಎಫ್-12 ಫೀಡರ್‌ನ ಮಾರ್ಗಕ್ಕೆ(Coyote ACSR Conductor) ವಿದ್ಯುತ್ . ಸಂಪರ್ಕಗೊಳಿಸಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.

3. ಬೆಂಕಿಗೆ ಅಹುತಿಯಾದ ವಿದ್ಯುತ್ ಪರಿವರ್ತಕ ಕೇಂದ್ರವನ್ನು ಪರಿಶೀಲಿಸಿದಾಗ, ಪರಿವರ್ತಕ ಕೇಂದ್ರದ ಸುತ್ತಾ ಹಾಗೂ 10ಮೀಟರ್ ದೂರದವರೆಗೆ ಪರಿವರ್ತಕದಲ್ಲಿನ ತೈಲವು, ಪರಿವರ್ತಕದ ಕಬ್ಬಿಣದಿಂದ ಕೂಡಿರುವ ಟ್ಯಾಂಕ್‌ನ **welding** ಮಾಡಿರುವ ಭಾಗದಲ್ಲಿ ಸೀಳಿಕೊಂಡು (ವಿದ್ಯುತ್ ಪರಿವರ್ತಕದ ಟ್ಯಾಂಕ್ ಸ್ಪೋಟಗೊಂಡು ಒಪನ್ ಆಗಿರುವುದು) ತೈಲವು ಹೊರ ಚಿಮ್ಮಿರುವುದು ಹಾಗೂ ಈ ಪರಿವರ್ತಕಕ್ಕೆ ಅಳವಡಿಸಿದ್ದ ವಿದ್ಯುತ್ ಸುರಕ್ಷತಾ/ ನಿಯಂತ್ರಣಾ ಉಪಕರಣಗಳು (ಎಲ್.ಟಿ.ಡಿ ಬಾಕ್ಸ್, 2x250 Amps MCCB) ಎಲ್.ಟಿ ಲೀಡ್ ವೈಯರ್‌ಗಳು ಸಂಪೂರ್ಣವಾಗಿ ಬೆಂಕಿಯ ಜ್ವಾಲೆಯಿಂದ ಸುಟ್ಟಿರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.

4. ಈ 1x250ಕೆ.ವಿ.ಎ, ವಿದ್ಯುತ್ ಪರಿವರ್ತಕವು Repair Good ಪರಿವರ್ತಕವಾಗಿದ್ದು, ಪರಿವರ್ತಕಕ್ಕೆ ಬ್ರೀಫರ್ ಯುನಿಟ್ ಅಳವಡಿಸದೇ ಇರುವುದು ಹಾಗೂ Explosion vent ಕಾರ್ಯಚರಣೆಗೊಳ್ಳದೆ ಇರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ. ಹಾಗೂ ಸದರಿ ವಿದ್ಯುತ್ ಪರಿವರ್ತಕವು ಮೆ|| ಕವಿಕಾ ಸಂಸ್ಥೆಯು ತಯಾರಿಸಿರುವುದಾಗಿ ತಿಳಿದುಬಂದಿರುತ್ತದೆ.

5. ಈ ಬೆಂಕಿ ಅಪಘಾತದ ಸ್ಥಳದಲ್ಲಿ ಬೆಂಕಿಗಾಹುತಿಯಾದ ಎಂದು ಹೇಳಲಾದ ದ್ವಿಚಕ್ರ ವಾಹನವು ಸ್ಥಳದಲ್ಲಿ ಲಭ್ಯವಿರುವುದಿಲ್ಲ.

6. ಸರ್. ಎಮ್. ವಿಶ್ವೇಶ್ವರಯ್ಯ 66/11ಕೆ.ವಿ ಎಮ್.ಯು.ಎಸ್.ಎಸ್‌ನಿಂದ ವಿದ್ಯುತ್ ವಿತರಣಾ ಕೇಂದ್ರದಲ್ಲಿ ನಿರ್ವಹಿಸುತ್ತಿರುವ ಲಾಗ್ ಪುಸ್ತಕವನ್ನು ಪರಿಶೀಲಿಸಿದಾಗ 11 ಕೆ.ವಿ ಎಫ್-12 ಫೀಡರ್ಗೆ ಅಳವಡಿಸಿದ್ದ ವಿದ್ಯುತ್ ಸುರಕ್ಷತಾ, ನಿಯಂತ್ರಣಾ ಉಪಕರಣಗಳು ಅಪಘಾತವಾದ ಸಮಯದಲ್ಲಿ ಕಾರ್ಯಚರಣೆಗೊಳ್ಳದೆ ಇರುವುದು ಕಂಡುಬಂದಿರುತ್ತದೆ.

#### ಅಭಿಪ್ರಾಯ:

ಮೇಲ್ಕಂಡ ತನಿಖಾಂಶಗಳನ್ನು ಕೂಲಂಕುಷವಾಗಿ ಪರಿಶೀಲಿಸಿದಾಗ: 1x250ಕೆ.ವಿ.ಎ ವಿದ್ಯುತ್ ಪರಿವರ್ತಕವು (ವಿದ್ಯುತ್ ಪರಿವರ್ತಕ ಸಂಖ್ಯೆ: 38) repair good ಪರಿವರ್ತಕವಾಗಿದ್ದು, ಈ ಪರಿವರ್ತಕವನ್ನು ಜೂನ್ 2018ರಲ್ಲಿ ಬದಲಾಯಿಸಿ ಚಾಲನೆಗೊಳಿಸಿರುವುದಾಗಿ ಸಂಬಂಧಿಸಿದ ಅಧಿಕಾರಿಗಳು ತಿಳಿಸಿದ್ದು. ಪರಿವರ್ತಕವು ದುರಸ್ತಿಗೊಂಡ (repair good) ಪರಿವರ್ತಕವಾದ್ದರಿಂದ, ಪರಿವರ್ತಕದ ಬ್ರೀಫರ್ ಯುನಿಟ್ ಅಳವಡಿಸದೇ, Conservator ಟ್ಯಾಂಕ್‌ನ ಬ್ರೀಫರ್ ಪೈಪ್‌ಅನ್ನು ತೆರೆದ ಸ್ಥಿತಿಯಲ್ಲಿ (Open) ಬಿಟ್ಟಿದ್ದರಿಂದ ಈ ಪೈಪಿನ ಮುಖಾಂತರ ಧೂಳಿನ/ ಇತರೆ ಕಣಗಳು ಪರಿವರ್ತಕದಲ್ಲಿ ಪ್ರವೇಶಿಸಿದ್ದರಿಂದ ಹಾಗೂ

Explosion vent ಕಾರ್ಯಚರಣೆಗೊಳ್ಳದೆ ತೈಲವು ಅಧಿಕ ತಾಪಮಾನದಿಂದ expand ಆಗಿ ಅಧಿಕ ಒತ್ತಡದಿಂದ (Over pressure) ಪರಿವರ್ತಕದಲ್ಲಿ ಆಂತರಿಕ ದೋಷ ಉಂಟಾಗಿದ್ದರಿಂದ ಪರಿವರ್ತಕವು ಸ್ಫೋಟಗೊಂಡು, ಪರಿವರ್ತಕದಲ್ಲಿನ ತೈಲವು ಹೊರ ಚಿಮ್ಮುವ ಸಮಯದಲ್ಲಿ ಅದೇ ಮಾರ್ಗದಲ್ಲಿ ದ್ವಿಚಕ್ರ ವಾಹನದಲ್ಲಿ ಹಾದುಹೋಗುತ್ತಿದ್ದ ಶ್ರೀ. ಶಿವರಾಜ್ ಹಾಗೂ ಇವರ ಮಗಳು ಕುಮಾರಿ. ಚೈತನ್ಯರವರುಗಳ ಮೇಲೆ ಆಕಸ್ಮಿಕವಾಗಿ ಬಿದ್ದಿದ್ದರಿಂದ ಸುಟ್ಟಗಾಯಗಳಾಗಿ ಈ ಬೆಂಕಿ ಅಪಘಾತ ಸಂಭವಿಸಿ ಮೃತಪಟ್ಟಿರುತ್ತಾರೆ.

ಸಂಬಂಧಪಟ್ಟ ಬೆಸ್ಕಾಂ ಅಧಿಕಾರಿಗಳು ವಿದ್ಯುತ್ ಪರಿವರ್ತಕವನ್ನು ನಿಯಮಾನುಸಾರ ಕಾಲ-ಕಾಲಕ್ಕೆ ಪಾಲನೆಮಾಡಿ, ಪರಿವರ್ತಕದಲ್ಲಿ ತೈಲ ಹಾಗೂ **Explosion vent** ಅನ್ನು ಸುಸ್ಥಿತಿಯಲ್ಲಿ ನಿರ್ವಹಿಸಿ ಹಾಗೂ ಪರಿವರ್ತಕಕ್ಕೆ ಬ್ರೇಫರ್ ಅಳವಡಿಸಿ ಪರಿವರ್ತಕದ ಸುರಕ್ಷತೆಯನ್ನು ಕಾಪಾಡಿದ್ದರೆ ಈ ಅಪಘಾತವನ್ನು ತಪ್ಪಿಸಬಹುದಿತ್ತೆಂದು ಮೇಲ್ನೋಟಕ್ಕೆ ಅಭಿಪ್ರಾಯಿಸಲಾಗಿದೆ. ಆದ್ದರಿಂದ ಬೆಂಗಳೂರು ವಿದ್ಯುತ್ ಸರಬರಾಜು ಕಂಪನಿಯಿಂದ ಕೇಂದ್ರೀಯ ವಿದ್ಯುಚ್ಛಕ್ತಿ ಪ್ರಾಧಿಕಾರ (ಸುರಕ್ಷತೆ ಮತ್ತು ವಿದ್ಯುತ್ ಪೂರೈಕೆಗೆ ಸಂಬಂಧಿಸಿದ ಕ್ರಮಗಳು)-2010ರ ನಿಯಮ ಸಂಖ್ಯೆ-12(1)ರ ಉಲ್ಲಂಘನೆಯಾಗಿರುತ್ತದೆ.”

(Emphasis added)

The Electrical Inspectorate clearly observes that BESCO officers who are responsible should have checked oil leakage in the explosion vent and repaired it intermittently and if that had been done the mishap could have been easily avoided. Therefore, there has been dereliction of duty on the part of the officers of BESCO.

8. Reference being made to the judgments of the Apex Court in the cases of **CHERUBIN GREGORY V. STATE OF BIHAR<sup>2</sup>** and

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<sup>2</sup> 1963 SCC OnLine SC 70

***SUSHIL ANSAL V. STATE***<sup>3</sup>, would be apposite. The Apex Court in the case of ***CHERUBIN GREGORY supra*** has held as follows:

“ .... .. ”

4. The voltage of the current passing through the naked wire being high enough to be lethal, there could be no dispute that charging it with current of that voltage was a “rash act” done in reckless disregard of the serious consequences to people coming in contact with it.

.... ..

7. Learned counsel, however, tried to adopt a different approach. The contention was that the deceased was a trespasser and that there was no duty owed by an occupier like the accused towards the trespasser and therefore the latter would have had no cause of action for damages for the injury inflicted and that if the act of the accused was not a tort, it could not also be a crime. There is no substance in this line of argument. In the first place, where we have a Code like the Indian Penal Code which defines with particularity the ingredients of a crime and the defences open to an accused charged with any of the offences there set out we consider that it would not be proper or justifiable to permit the invocation of some Common Law principle outside that Code for the purpose of treating what on the words of the statute is a crime into a permissible or other than unlawful act. But that apart, learned counsel is also not right in his submission that the act of the accused as a result of which the deceased suffered injuries resulting in her death was not an actionable wrong. A trespasser is not an outlaw, a *caput lupinem*. The mere fact that the person entering a land is a trespasser does not entitle the owner or occupier to inflict on him personal injury by direct violence and the same principle would govern the infliction of injury by indirectly doing something on the land the effect of which he must know was likely to cause serious injury to the trespasser. Thus in England it has been held that one who sets spring-guns to shoot at trespassers is guilty of a tort and that the person

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<sup>3</sup> (2014)6 SCC 173

injured is entitled to recover. The laying of such a trap, and there is little difference between the spring-gun which was the trap with which the English Courts had to deal and the naked live wire in the present case, is in truth "an arrangement to shoot a man without personally firing a shot". It is, no doubt, true that the trespasser enters the property at his own risk and the occupier owes no duty to take any reasonable care for his protection, but at the same time the occupier is not entitled to do wilfully acts such as set a trap or set a naked live wire with the deliberate intention of causing harm to trespassers or in reckless disregard of the presence of the trespassers. As we pointed out earlier, the voltage of the current fed into the wire precludes any contention that it was merely a reasonable precaution for the protection of private property. The position as to the obligation of occupiers towards trespassers has been neatly summarised by the Law Reform Committee of the United Kingdom in the following words:

"The trespasser enters entirely at his own risk, but the occupier must not set traps designed to do him bodily harm or to do any act calculated to do bodily harm to the trespasser whom he knows to be or who to his knowledge is likely to be on his premises. For example, he must not set man-traps or spring-guns. This is no more than ordinary civilised behaviour."

Judged in the light of these tests, it is clear that the point urged is wholly without merit."

Further, the Apex Court in the case of **SUSHIL ANSAL** *supra*, has held as follows:

".... .... ....

**104.** That brings us to the question whether and if so what is the effect of a statutory obligation to care for the safety of the visitors to a cinema hall, where a duty to care otherwise exists under the common law. The answer can be best provided



by a reference to the English decision in *Lochgelly Iron & Coal Co. Ltd. v. M'Mullan* [*Lochgelly Iron & Coal Co. Ltd. v. M'Mullan*, 1934 AC 1 (HL)] . A reading of this case would suggest that where a duty of care exists under the common law, and this duty is additionally supported and clarified by the statutory provisions, a breach of the statutory duty would be proof enough of negligence. It would not be open to the defendant in such a case to argue that the harm was not foreseeable, since "the very object of the legislation is to put that particular precaution beyond controversy".

**105.** The import and significance of *M'Mullan case* [*Lochgelly Iron & Coal Co. Ltd. v. M'Mullan*, 1934 AC 1 (HL)] is explained in *Clerk & Lindsell on Torts* (20th Edn.) as follows:

"In *Lochgelly Iron & Coal Co. Ltd. v. M'Mullan* [*Lochgelly Iron & Coal Co. Ltd. v. M'Mullan*, 1934 AC 1 (HL)] , the House of Lords came close to equating an action for breach of statutory duty with an action in negligence. Lord Atkin said that all that was necessary to show

'is a duty to take care to avoid injuring; and if the particular care to be taken is prescribed by statute, and the duty to the injured person to take the care is likewise imposed by statute, and the breach is proved, all the essentials of negligence are present'. (AC p. 9)

Negligence did not depend on the Court agreeing with the legislature that the precaution ought to have been taken, because the "very object of the legislation is to put that particular precaution beyond controversy". On this approach breach of a statutory duty constitutes negligence *per se*, but it applies only to legislation which is designed to prevent a particular mischief in respect of which the defendant is already under a duty in common law. Failure to meet the prescribed statutory standard is then treated as unreasonable conduct amounting to negligence, because a reasonable man would not ignore precautions required by statute, and the defendant cannot claim that the harm was unforeseeable because the legislature has already anticipated it. The statutory standard "crystallises" the question of what constitutes carelessness. On the other hand, where legislation does not deal with circumstances in which there is an existing common law duty, then, unless expressly stated, breach of the statute would not give rise

to an action, because the damages may greatly exceed the penalty considered appropriate by the legislature.”

....      ....      ....

**115.2.** The second and equally important dimension relevant to the duty of an occupier of a cinema theatre concerns the statutory provisions that regulate such duties and make certain safety measures essential. As previously discussed, the effect of such statutory provisions where the nature of care is specifically outlined is that an occupier cannot argue in defence that any danger arising out of violation or non-adherence to the provisions of the statute was not reasonably foreseeable by him. The decision of the House of Lords in *Lochgelly case* [*Lochgelly Iron & Coal Co. Ltd. v. M'Mullan*, 1934 AC 1 (HL)] succinctly explains “*the effect of an additional statutory burden cast upon an occupier where a common law duty already exists*”.

9. It also becomes germane to notice the fact that there are several complaints, before the fateful day, to rectify the defect in the transformer. The Police, on investigation, have appended those complaints to the charge sheet. These are undisputed facts. *Prima facie* negligence is writ large *qua* the petitioner, or other accused in the case at hand. Therefore, there is no warrant to interfere with the on-going trial against the petitioner.

10. Heavy reliance is placed by the petitioner on the fact that the wife of the deceased has been paid ₹20,00,000/- compensation on the death of the husband and the daughter and, therefore, in

the light of compensation being paid, the petitioner should be absolved of the crime. The said submission is **preposterous** to say the least. Payment of any amount of compensation by BESCO, can by no stretch of imagination absolve the officers of the allegation of dereliction of duty. It is altogether a different circumstance that the family of the deceased is consoled by payment of compensation. The petitioner who is charged with dereliction of duty along with AEE and AE should necessarily come out clean in the trial. Payment of compensation can never override or mask the allegation of dereliction of duty. Today the incident may have happened to the deceased and it can happen to others if the officers are left off the hook on the ground that compensation is paid to the family of the deceased.

11. Finding no merit in the petition, I pass the following:

**ORDER**

(i) Criminal Petition stands **rejected**.

- (ii) It is made clear that the observations made in the course of the order are only for the purpose of consideration of the case of petitioner under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings pending against him or any other accused.

Consequently, I.A.No.1 of 2024 also stands disposed.

**Sd/-**  
**(M. NAGAPRASANNA)**  
**JUDGE**

Bkp  
CT:MJ