IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 528 of 2024
Reserved on: 12.10.2026
Date of Decision: 30.10.2026
Uploaded on: 30.10.2026

Rohit Kashmiri

....Petitioner

Versus

State of Himachal Pradesh

....Respondent

Coram
Hon'ble Mr Justice Chirag Bhanu Singh, Judge.
Whether approved for reporting.
For the petitioner : Mr. Bhupinder Singh Ahuja, Advocate.

For the respondent : Mr. Lokender Kutlheria, Additional Advocate General.

Chirag Bhanu Singh,Judge

The petitioner, Rohit Kashmiri, the housemaster, who is alleged to have endangered the life and personal safety of one of his students and caused his death by way of negligence, while the deceased had gone for bathing in the river nearby the school alongwith his friends, stands charged for having committed offences punishable under Sections 336 and 304A read with Section 34 of the Indian Penal Code (IPC), vide FIR No. 68 of 2020, dated 03.03.2020, registered at Police Station Sadar Chamba, District Chamba, H.P. and has thus invoked the

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inherent powers of this Court under Section 482 of Cr.P.C. for quashing the said FIR.

2. It is the case of the petitioner that he was a housemaster and even if the averments of the complaint, are taken at its face value, do not *prima facie* constitute any offence, nor is any case made out against him.

3. The statements of the witnesses at the spot, who also happen to be eye witnesses, namely, Daksh, Nitish, Vishal and Aditya all students of the same school who had gone to the nearby river "Ravi" during the lunch break for a bath, further reveal that after having planned the same, they had left the premises after crossing the wall boundary of the school which was partially damaged.

4. During the process, three of the students, namely Daksh, Nitish and Vishal, had put on their clothes after finishing the bath. The deceased, Vikas, had however entered the river again having thought of taking two or three dips before returning to the school. Unfortunately, he did not surface for about three to four minutes. One of them, namely Vishal, tried to look for him, but to no avail. An alarm having been raised another student of the school, Aditya, who was studying in Plus

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Two (+2), reached the spot and somehow retrieved the deceased Vikas. The teachers and other students had also reached the spot. The deceased Vikas was rushed to the hospital, but unfortunately could not be saved.

5. Based on the complaint preferred by the maternal uncle of the deceased Vikas, namely Rajesh Kumar the aforesaid FIR came to be registered. As per the complainant, the deceased Vikas had died due to the negligence of the management/staff of Jawahar Navodaya Vidyalaya, Sarol, Chamba.

6. It is, however, the averred case of the petitioner that the students had ventured to the river of their own volition and were thus responsible for their own act and conduct, since they knew about the consequences of their act. The statements of the eyewitnesses, when read as a whole, do not make out any case against the petitioner under Sections 304A, 336, and 34 of the IPC. No rash and negligent act is attributable to the petitioner by any of the eyewitnesses. The boys had themselves planned to take a bath in the river. Consequently, they had sneaked out for bathing through the wall which was broken. Otherwise, there was no direct nexus between the negligence attributed to the accused and the death of the victim. The death was also not the

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direct result or cause of the negligence attributed to the accused. The death of the victim was not a direct consequence of any overt act or omission by the petitioner.

7. The State, while contesting the present petition, has *inter alia* raised preliminary objections regarding maintainability. It is further averred by the State that the charge-sheet also stands filed before the learned Chief Judicial Magistrate, Chamba and there was sufficient evidence on record that the petitioner had committed a heinous crime and there was a strong possibility of conviction, hence, the petition deserved to be dismissed. On merits too, it is reiterated by the State that there was cogent, convincing and reliable evidence on record and that the death of the deceased Vikas was due to the negligence of the petitioner.

8. Further, as per the respondents, the petitioner, being a teacher of the Vidyalaya was duty bound to prevent the deceased and students from going out of the hostel during school hours. Moreover, as per the investigation, there was a hole in the boundary wall of the school, the deceased, along with the other students, had crossed the wall through this hole and had not been prevented from going towards the river. The death of Vikas

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was thus caused due to the sheer negligence of the petitioner. The respondents thus prayed for the dismissal of the petition.

9. I have heard the learned counsel for the parties and gone through the records carefully.

10. A perusal of the statements of the eyewitnesses, particularly the students who had accompanied the deceased Vikas for a bath in the river namely Daksh, Nitish, and Vishal clearly goes to show that these four students of Class X had sneaked out of the hostel after lunch without seeking permission, just to take a dip in the river, with the objective of returning back for the next class at 3:00 PM. After having their food at the mess, they had hurried to the river. As per their version, they had escaped through the damaged wall behind the school. All except the deceased Vikas had come out of the river, but he insisted on taking two or three dips, and unfortunately did not surface thereupon. It was with the assistance of another student of Plus Two, Aditya, that he was retrieved from the river and rushed to the hospital. The statements of all three students Daksh, Nitish and Vishal are almost verbatim the same.

11. The father of the deceased, Devinder Singh, while getting his statement recorded on 26.05.2020, had also merely

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stated that his son had died due to the negligence of the management and staff of Jawahar Navodaya Vidyalaya, Sarol, Chamba. However, subsequently on 22.09.2020, a supplementary statement of the said Devinder Singh was recorded, stating that in the Parent Teacher Meeting (PTM), he had raised the issue about the damaged boundary wall and had asked the school to get the same repaired, that his son and the other students had gone for bathing through that damaged wall, after having crossed the same. Prior to the occurrence, Rakesh Kumar had brought this to the notice of the housemaster (the present petitioner). The petitioner had even asked the parents to collect some money to repair the same and Devinder Singh, the father of the deceased, had agreed to contribute towards the repair of the wall. However, the school had failed to take any corrective measures. Had they repaired the wall, his son would not have died.

12. What thus emerges from the record is that the negligence attributed to the school and its management is that they had not got the boundary wall repaired, and hence they had been negligent, and because of their negligence, the deceased Vikas had died, resulting in the FIR.

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13. It would be apposite to reproduce the provisions of Section 304A of the IPC, which reads thus:

> **"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."

14. The bare reading of the aforesaid provisions shows that the doing of some rash or negligent act has to be the direct cause of the death and is a condition precedent for invoking the provisions of Section 304A of IPC.

15. The said proposition of law had been laid down and enunciated as far back as 1965 in a case titled as ***Kurban Hussein Mohamedalli Rangawalla v. State of Maharashtra [AIR 1965 SC 1616]***. It was clearly held that to impose criminal liability under Section 304A IPC, it is necessary that the death should have been the direct result of a rash and negligent act of the accused, and that act must be the proximate and proximate cause without the intervention of another's negligence. It must be the *causa causans,* it is not enough that it may have been the *causa sine qua non*.

16. This view has been generally followed by the courts in India. In a subsequent judgment in ***Ambalal D. Bhatt v. State of***

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Gujarat [AIR 1972 SC 1150], reiterating the view in ***Kurban Hussein's Case (supra)***, the Hon'ble Supreme Court further went on to hold that the mere fact that an accused contravenes certain rules or regulations in the doing of an act which causes the death of another does not establish that the death was the result of a rash or negligent act, or that it was an act which could be said to be the proximate and efficient cause of the death.

17. Even while considering the negligence in the context of medical professionals and its interplay with Section 304A IPC, the Hon'ble Supreme Court in ***Jacob Mathew v. State of Punjab and Another [AIR 2005 SC 3180]***, has held that though the word "gross" has not been used in Section 304A of the 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" occurring in Section 304A of the IPC has to be read as qualified by the word "grossly".

18. It further enunciated that *res ipsa loquitur* is a rule of evidence which in reality belongs to the law of torts only. In criminal proceedings, the burden of proving negligence cannot be discharged or made out by resorting to the said rule. The

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essential ingredients of negligence, and that too direct and proximate, will have to be proved.

19. The learned counsel for the petitioner has also placed reliance on a recent judgment of the Hon'ble Supreme Court titled ***Yuvraj Laxmanlal Kanthariya & Anr. v. State of Maharashtra***, ***[2025 INSC 338]***, to buttress his arguments that the negligence is required to be the direct cause of death as per the requirements of Section 304A of the IPC.

20. Having considered the entire material collected by the prosecution and the exposition of law, it can safely be said that the entire material collected by the prosecution cannot be said to establish the basic ingredients of Section 304A IPC. The mere act of not having got the boundary wall repaired would not be a criminal act. Rather, while having gone for swimming in the river, the deceased having drowned/got stuck in the river leading to his death was purely accidental.

21. Even otherwise, the class teacher or the housemaster cannot be said to have been negligent or complicit when the students went for swimming from the mess itself. The broken wall of the school premises, in any case, was not to be got repaired by the class teacher or the housemaster, it was, in any

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case, the domain of the principal or the management, or the persons administratively managing the school.

22. It is no doubt true that a young life was lost and the broken wall may have been a reason for the deceased and his friends to have easily sneaked out towards the river. Seen in the light of the nature of the allegations and the material collected, it cannot be said that the broken wall was the direct cause of the death of Vikas, nor can it be said to be such a grossly rash and negligent act on the part of the petitioner, who was merely the class teacher. The deceased and his friends had sneaked out after lunch, and that too after scaling the wall of the school premises, which was partially broken.

23. The statements of the eye-witnesses i.e. Daksh, Nitish, Vishal and Aditya also do not remotely connect the petitioner with the offence, more particularly the ingredients of Section 304A of IPC. None of them have attributed any overt act having been committed by the petitioner, nor have they highlighted any act of rashness and negligence on the part of the petitioner because of which the deceased is stated to have died. There is also no evidence on record to show that the acts of

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negligence on the part of the petitioner was the direct and proximate cause of the death of the deceased.

24. On these basic facts, no *prima facie* case can thus be said to be made out against the petitioner for having committed an offence under Sections 304A, 336, and 34 of the IPC. The recitals of the FIR and the material collected during the investigation do not *prima facie* make out a case against the petitioner under the aforesaid provisions.

25. Consequently, the FIR No. 68 of 2020 dated 03.03.2020 registered at Police Station Sadar Chamba, District Chamba, H.P., qua the petitioner, is quashed and set aside and so also the consequent proceedings pending before the learned Chief Judicial Magistrate, Chamba.

26. Petition stand disposed off in the aforesaid terms, so also the pending miscellaneous application, if any.

(Chirag Bhanu Singh)
Judge

30th October, 2026
(Shamsh Tabrez)

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