

IN THE COURT OF MS. NEHA MITTAL
ADDITIONAL CHIEF JUDICIAL MAGISTRATE-03
ROUSE AVENUE DISTRICT COURT, NEW DELHI

CNR No.DLCT-12-000135-2025

CR Case No.11/2025

FIR No.14/2020

State Vs. Aabid & Anr.

PS: Vasant Kunj, South

16.01.2026

1. Vide this order, the question of framing charge against the accused persons shall be decided and the application u/s 274 BNSS filed on behalf of accused No.2 Kirip Chaliha shall be disposed of.

2. The present case has been registered u/s 288/304A/34 IPC on the complaint of Shahjamal Mandal on account of death of Mosarul Gain. Accused No.1 is the contractor and accused No.2 is the owner of the house where the incident in question took place. The gist of the allegations made in the complaint are that while the complainant and deceased were working as labourers under contractor Aabid Ali/accused No.1 on 01.06.2020 at around 12:30 AM at House No.480, Block No-14, Second Floor, Kaveri Apartment, Vasant Kunj, Delhi, a part of the wall collapsed upon them and the deceased Mosarul Gain suffered injuries leading to his death. It is further alleged that no protective gear or helmet was provided to them either by the contractor or the owner of the house.

3. It is upon receipt of the aforesaid complaint that the present FIR was registered. During investigation, the ownership documents of the house in question in favour of accused No.2 and the agreement regarding the renovation of the house were collected. After completion of investigation, charge-sheet was filed in the Court on 06.01.2024.

Cognizance in the present matter was taken vide order dated 29.04.2024, after condoning the delay in filing the present charge-sheet.

4. The application u/s 274 BNSS was filed by accused No.2 on 21.05.2025. In order dated 09.06.2025 passed by Ld. Predecessor of this Court directing further investigation, it was observed that BNSS would not be applicable in the present case and this Court has to proceed as if BNSS has not been passed and the entire investigation, enquiry and trial in the present case has to be held as per Cr.P.C. The said limb of the order was under challenge before Ld. Revisionist Court and the impugned portion of the order has been set-aside vide order dated 23.12.2025 in the following words:-

“The observations and directions in the impugned order (with respect to the application u/s 274 BNSS) to the effect that the Ld. Trial Court has to proceed as if the BNSS has not been passed and the entire investigation, inquiry and trial in the present case has to be held as per Cr.P.C. are set-aside. The application of the revisionist (accused No.2) u/s 274 BNSS shall be decided in accordance with the said provision”.

5. Thus, in view of the observations made by the Ld. Revisionist Court, it is clear that the present application u/s 274 BNSS is maintainable. Accused No.2 has prayed for his discharge from the present proceedings on the following grounds:-

(a) That there are no allegations against him either in the FIR or the charge-sheet,

(b) That he had entrusted the renovation work of the flat in question to the accused No.1 by way of an agreement dated 19.02.2020. As per the said agreement, he had entrusted the full custody of the flat to accused No.1 till the completion of the renovation work and that accused No.1 was solely responsible for hiring and paying wages to the labourers.

(c) That as accused No.2 is a permanent resident of Assam, he had no control over the construction activities and was not living or present in the flat at the time of alleged incident.

(d) That the deceased worker was not under his direct control and supervision.

(e) That in pursuant of agreement dated 19.02.2020, he had made wage payments to accused No.1 from his bank account towards the renovation work.

(f) That no prima facie case u/s 304A IPC is made out against him as there are no allegations of any rash or negligent act against him. Mere ownership of the building/flat does not suffice for liability u/s 304-A IPC and the owner cannot be held vicariously liable for the accidents if he has delegated the supervisory responsibilities to some other person.

(g) That no prima facie case u/s 288 IPC is made out against him as he was not responsible for pulling down or repairing the flat where the alleged incident took place.

(h) That charge u/s 334 IPC is not at all attracted in the present case as neither there are any allegations of common intention nor can there be common intention to commit a rash and negligent criminal act.

With these submissions, it is prayed that accused No.2 deserves to be discharged in the present case.

6. Counsel for accused No.2 has relied upon the following observations made in judgment titled **“Nanjundappa & Anr. Vs. State of Karnataka 2022 Live Law (SC) 489” :-**

“12. For bringing home the guilt of the accused, prosecution has to firstly prove negligence and then established direct nexus between negligence of the accused and the death of the victim”.

7. Reliance has also been placed upon judgment titled **“Guljeet Singh Kochar & Anr. Vs. State 2005:DHC:8812”** in which the findings of the Trial Court to the effect that the owners of the house would be equally liable as the contractor for the alleged offence were set-aside with the following observations:-

“7.admittedly the petitioners are the owner of the house in question where the basement was being constructed. There is no material to suggest that construction of the basement was being done under their direct supervision. They were required to supply only the material and the construction was being supervised by the contractor as per

investigations.....further there is no requirement of law that the construction agreement must be in writing indicating as to who would be responsible of the offence if any.”

8. Similarly, Ld. Counsel for accused No.2 has also relied upon judgment titled **“State Vs. T. Rikku”** passed on 30.09.2022 by the Hon’ble High Court of Judicature at Madras and judgment titled **“Shri Vishwas Vs. State”** passed on 01.06.2022 by Hon’ble High Court of Karnataka at Bengaluru on similar facts.

9. On the question of charge, Ld. Counsel for accused No.2 has referred to the well-established principle i.e. if two views are equally possible and the judge is satisfied that the evidence produced before him give rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. Reliance has been placed upon the following judgments of the Hon’ble Supreme Court of India:-

(a) *“State of Tamil Nadu Vs. N. Suresh Rajan & Ors. (2014) 1 SCC 709”*.

(b) *“Satish Mehra Vs. State (NCT of Delhi) & Anr. (2012) 13 SCC 614”*.

(c) *“Sajjan Kumar Vs. Central Bureau of Investigation (2010) 9 SCC 368”*.

(d) *“P. Vijayan Vs. State of Kerala & Anr. (2010) 2 SCC 398”*.

(e) *“Dilawar Balu Kurane Vs. State of Maharashtra (2002) 2 SCC 135”*.

(f) “*Niranjan Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijjaya & Ors. (1990) 4 SCC 76*”.

(g) “*State of Bihar Vs. Ramesh Singh (1977) 4 SCC 39*”.

10. On behalf of accused No.1, it has been argued that the complainant and the deceased were not indulged in any kind of hazardous job as they were not working on any outer wall. It is submitted that they both were rather working on the interior walls of the flat of accused No.2 which does not involve any inbuilt danger and hence, the incident in question could not have been foreseen by the accused No.1. Thus, no rashness or negligence can be attributed on his part. Hence, it is prayed that he should be discharged in the present case.

11. *Per contra*, Ld. Addl. PP for the State has argued that prima facie case is made out against both the accused persons. It has further been argued that the letter dated 19.02.2020 relied upon by the accused No.2 is not in the form of any contract or agreement and a reading of the contents of the same would reveal that the same is rather directory in nature, addressed to accused No.1 without any acceptance on his part and hence, accused No.2 cannot rely upon the said document to seek his discharge.

12. Arguments on the point of charge as well as on application u/s 274 BNSS have been considered. Record has been perused.

13. The legal principles with respect to the framing of charge are well settled and have been reiterated by the Apex Court in number of judgments. For ready reference, the said principles, as have been laid

down by the Hon'ble Supreme Court in **Union of India Vs. Prafulla Kumar Samal** (1979)3 SCC 4 are being reproduced as under: -

“(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weight the evidence as if a trial is being conducted.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for

conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Section 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

14. The undisputed facts in the case of prosecution are that Mosarul Gain died due to the injuries suffered by him while working as labour to remove one wall from the house of accused No.2. It is also undisputed that the deceased and complainant were engaged as labour by accused No.1. It is in the light of these facts that the question of criminal liability of accused No.2 is to be determined by the Court.

15. The accused No.2 has been chargesheeted u/s 288/304-A IPC. For commission of offence punishable u/s 304-A IPC, the death of a person should be caused by a rash or negligent act not amounting to culpable homicide. In order to hold a person guilty under this section, rash or negligent act must be direct or proximate cause of death. The question of rashness and negligence depends upon the nature and extent of care required from a reasonable man in the given circumstances. Mere contravention by the rules by the accused does not making liable for this offence unless the act by which the death is caused was the proximate and efficient cause of death. These principles of law have been clearly set out in the judgments relied upon by the counsel for accused No.2.

16. In the present case, the renovation/repair/construction work in the flat of accused No.2 was being done under the direct supervision of the contractor/accused No.1. It is not even the case of prosecution that accused No.2 was directly or indirectly managing or interfering in the work being carried out in the flat. There is no iota of doubt regarding the rashness and negligence of accused No.1 in the incident in question, he being the contractor. However, the criminal liability of accused No.1 cannot be vicariously imposed upon accused No.2. There is no material in the entire charge-sheet that the renovation/repair/construction work in the flat was being done under the supervision of accused No.2.

17. Accused No.2 has placed heavy reliance upon work agreement dated 19.02.2020 entered between him and accused No.1 to show that accused No.1 was solely responsible for the renovation of the flat and for criminal liability in respect thereto, if any. The prosecution has argued that the document dated 19.02.2020 is not an agreement between the parties but merely a letter written by accused No.2 and addressed to accused No.1. The question of the genuineness and the nature of document dated 19.02.2020, in the opinion of this Court, can only be determined during trial as giving any findings on this point at this stage would amount to holding a mini-trial which is not permissible in law. However, the contents of the document dated 19.02.2020 have not been denied by the accused No.1 and hence, the question whether the same is an agreement or letter is irrelevant.

18. The judgments relied upon by the counsel for accused No.2 are squarely applicable to the present case. Hence, the application u/s 274 BNSS filed on behalf of accused No.2 is allowed and accused No.2 is discharged in the present case.

19. Accused No.1, being the contractor, was duty bound to provide safety gears to the workers i.e. the complainant and the deceased which he failed to do. Thus, in view of the above discussed facts and circumstances, prima facie case for offences punishable under Section 288/304-A IPC is made out against the accused No.1

Announced in the open Court
Date: 16th January, 2026

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ACJM-03/RADC
NEW DELHI

CNR No.DLCT12-000135-2025

CR Case No.11/2025

FIR No. 411/2020

U/S 288/304A/34 IPC

PS: Vasant Kunj South

State Vs. Aabid & Anr

16.01.2026

Present : Sh. Lalit Pingolia, Ld. Addl. PP for the State.
Sh. Abhinav Akash, Ld. Counsel for the accused No.1.
Sh. R.H.A. Sikander, Ld. Counsel for the accused No.2. **(through VC)**
Accused No.1 Aabid in person.
Accused No.2 Kirip Chaliha is absent.

Vide detailed order of even date, the accused Kirip Chaliha has been discharged in the present matter. Prima facie case for the offence punishable u/s 288/304-A IPC is made out against the accused Aabid.

Bail Bonds of accused Kirip Chaliha are retained on the record for the further period of 06 months u/s 437-A Cr.P.C.

Notice of accusation has been explained to the accused to which he pleads not guilty and claims trial.

Vide separate statement of accused recorded u/s 294 Cr.P.C., he has admitted the fact of registration of FIR, certificate u/s 65 B Indian Evidence Act, MLC and death report of deceased Mosarul Gain, PMR No.1211/2020, dead body identification memo and body handing over receipt without admitting the contents thereof.

In view thereof, PW HC Rantej Singh, Dr. Amit Kumar, Dr. Aditya Khurana, Dr. Azra Shamshad and Ikral Ali are dropped from the list of witnesses.

At this stage, it is submitted by the Ld. Counsel for the accused that the matter was transferred to this Court as accused No.2 is a former MP. It is further submitted that after the discharge of accused No.2 in the present matter, this Court no longer have the jurisdiction to try the present matter as the trial will continue only against accused No.1 who is not a sitting/former MP/MLA.

Submissions heard. Considered

This Court finds force in the submissions made as this Court has been constituted only to deal with matters pertaining to sitting/former MP/MLA. With the discharge of accused No.2 in the present case, the present matter no longer falls within the purview of the specialized jurisdiction of this Court.

In view thereof, present file be placed before Ld. Principal District and Sessions Judge, RADC, New Delhi on **19.01.2026 at 02:00 PM** for appropriate orders. Accused is directed to appear on the above-said date and time.

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(NEHA MITTAL)
ACJM-03/RADC
NEW DELHI/16.01.2026

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