IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 9278 of 2014

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MADHAVJI DHANJIBHAI PATEL....Applicant(s)

Versus

STATE OF GUJARAT & 1....Respondent(s)

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Appearance:
MR S.V. RAJU, SR. COUNSEL with MR NM KAPADIA, ADVOCATE for the Applicant(s) No. 1
NOTICE SERVED BY DS for the Respondent(s) No. 2
MR. K.L. PANDYA, ADDL.PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR.JUSTICE J.B.PARDIWALA**

Date : 16/10/2015

ORAL ORDER

By this application under Section 482 of the Code of Criminal Procedure, 1973, the applicant-original accused, seeks to invoke the inherent powers of this Court praying for quashing of the proceedings of the Criminal Case No. 58594/14, pending in the Court of the learned Chief Judicial Magistrate, Surat, arising from C.R No. I-151 of 2014 registered with the Umra Police Station, Surat, for the offence punishable under Section 304 Part-II, read with Section 114 of the IPC.

2. The case of the prosecution in brief is as under:-

2. The applicant before me is an Architect by profession. A building in the name of "Kanaiya Palace", situated at Ghoddod Road, Surat was constructed in the year 1998, to be precise, the construction had commenced in the year 1994 and the same was completed in the year 1998. The applicant had rendered his

services as an Architect for the purpose of construction of the said building. In the year 1998 when the construction was completed, it was an eight-storeyed building. On 29th April, 2014, a portion of the slab of flat No.604 collapsed, as a result of which the slabs of the drawing rooms of the other five flats also collapsed. Three persons died on being crushed under the debris and four persons sustained injuries.

2.2 It is the case of the prosecution that the quality of the concrete used was quite inferior and instead of using two way rods, one way rods were used.

In such circumstances, the FIR was registered and on completion of the investigation, the charge-sheet was filed, which culminated into Criminal Case referred to above.

3. In this application, the following questions have been raised:-

*(a) If any building collapses, after 19 years of its construction and that too after withstanding worst earth-quake of 2001, can it be said that it was constructed with substandard material and whether it can be presumed that it was constructed before **19 years** with intention/knowledge to cause death?*

(b) What is the meaning of accident and criminal 'negligence' within the meaning of section 304A and section 304 of I.P.C.

(c) Whether in case of the accident, law permits the presumption to treat the accident as negligence in all the cases and what is the meaning of criminal rash or negligent act.

(d) Whether in case of the accident law permits the presumption to treat the accident as 'culpable homicide not amounting to murder'.

(e) In what circumstances, it can be said that the act by which the death is caused is done with intention of causing death or of causing such bodily injury as is likely to cause death within the meaning Part I of section 304 of I.P.C.

(f) In what circumstances, it can be said that the act by which the death is caused is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death.

(g) what is the meaning of the words "culpable homicide" and what are the ingredients of the words "culpable homicide and what is the difference between the words culpable homicide, the rash or negligent act or the accident.

Mr. S.V. Raju, the learned Senior Advocate assisted by Mr. Nimesh Kapadia, appearing for the petitioner submitted that the collapse of the slab of flat No.604 had nothing to do with the applicant herein being the Architect of the building. He pointed out that the construction had started in the year 1994, but he thought fit to quit the project in the year 1995. It is further pointed out that some reparation work was

undertaken on the 6th floor of the building and the tiles of the slab of flat No. 604 were removed, and that ultimately led to the collapse of the slab damaging the other slabs.

The principal argument of the learned counsel is that even if the entire case is accepted as true, no case is made out to prosecute the applicant for the offence under Section 304-II of the IPC. To fortify the submission, the learned counsel has placed reliance on a decision dated 20th January, 2010 of this Court in the case of State of Gujarat Vs. Jignesh Mohanbhai Patel and ors. (Criminal Revision Application No. 395 of 2006 and allied matters). The learned Single Judge of this Court observed in paragraphs 6 and 15 as under:-

> *"6. Learned counsels for the respondents-accused have mainly submitted that the respondents were serving as Architects. Their main duty was to submit design plan of the buildings before the Corporation and it is upto the builder or site engineer to act upon it. No other role is attributed to them. It is not the case of the prosecution that the buildings were collapsed due to building plans being improper or improper structural design or improper construction of the structure of the buildings. It is further submitted that owners/builders did not file the reports in the form of progress certificates with the Corporation as required by the bye-laws and did not give the completion certificates to show that the buildings were completed as per the approved plan. It is also submitted that Building Use Permissions were not obtained by the owners/buildings of the collapsed building. It is further submitted that owners/builders of the collapsed buildings constructed, completed and used the structure on their own and it might be due to construction of additional rooms and change of use causing additional load on the structure that would have resulted in consequent collapse of buildings in the earthquake. It is further submitted that various agencies and contractors appointed by the builders were involved in the construction of the buildings who would visit the site and supervise the work of the concerned builders. They were neither builders, supervisors, structural designer or Clerk of works. The duties and responsibilities of licensed supervisor, engineer, structural designer and clerk were stipulated in bye-law II/16. As per the bye-law, they were not required to visit the site to see what type of quality was being used by the builder in the construction. It is submitted that the earthquake being a natural catastrophe, no rashness and negligence can be presumed or attributed to the respondents-accused who have only got the plan sanctioned from the Municipal Corporation. It was not the case that the buildings were collapsed due to improper structural design or improper construction of the structure of the collapsed building or due to mistake of the respondents-accused. The case was that due to poor and low quality of material used in the building, the*

buildings were collapsed. However, they were not in any way responsible for the same because they have no connection with the structural design or construction activity of the building. Their only duty was to prepare the plan to be submitted to the Corporation as Architects. It is submitted that the plan prepared by them were approved by the Corporation also. They were rendering their services as Architects for the last several years for a number of buildings including high rise ones keeping in mind the plan approved by the competent authority. Looking to the entire papers of charge sheet, since no prima facie involvement of the respondents is disclosed, they were discharged by the court below. It is also further submitted that they were not in any way connected with any of the allegations levelled in the charge sheet.
It is therefore urged that these revisions be dismissed.

15. From the entire papers of charge sheet and the documents annexed thereto, there is nothing to implicate that the respondents are liable or responsible for any of the offences levelled against them. No grave suspicion is made out against the respondents for framing of charge either. In view of the above, taking into consideration nature of their duties, this Court is of the prima facie opinion that there is no sufficient grounds to proceed with the trial against the respondents-accused and hence, they were rightly discharged by the learned Addl. City Sessions Judge. Since no irregularity or illegality as having committed in arriving at the said findings has been noticed by this Court, these revisions are required to be dismissed."

I may also quote with profit a decision of this Court in the case of Girishbhai Maganlal Pandya Vs. State of Gujarat (Criminal Misc. Application No. 2942 of 2014), decided on 23rd March, 2015. Paragraphs 15 to 44, which are relevant, read as under:-

"*15. The relevant portion of Section 304 of the IPC reads as under:-*

> *"Whoever commits culpable homicide not amounting to murder shall be punished with ... and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;*

or with ..... if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death or to cause such bodily injury as is likely to cause death."

16. A plain reading of the above Section makes it clear that it is in two parts. The first part of the Section is generally

referred to as "Section 304 Part-I", whereas the second part as "Section 304, Part-II". It would thus, appear that if such bodily injury as is likely to cause death is intentionally caused and results in the death of the victim, the case would fall under Part-I and not under Part-II. Stated differently, Part-II comes into play when death is caused by doing an act with the knowledge that it is likely to cause death and when such act is the infliction of a bodily injury, the infliction must not be intentional. A person who intentionally causes the bodily injury with knowledge that such act is likely to cause death must necessarily be a person who does an act with the intent to cause bodily injury likely to result in death.

17. The Makers of the Code observed:

> *"The most important consideration upon a trial for this offence is the intention or knowledge with which the act which caused death, was done. The intention to cause death or the knowledge that death will probably be caused, is essential and is that to which the law principally looks. And it is of the utmost importance that those who may be entrusted with judicial powers should clearly understand that no conviction ought to take place, unless such intention or knowledge can from the evidence be concluded to have really existed".*

18. The Makers further stated:

> *"It may be asked how can the existence of the requisite intention or knowledge be proved, seeing that these are internal and invisible acts of the mind? They can be ascertained only from external and visible acts. Observation and experience enable us to judge of the connection between men's conduct and their intentions. We know that a sane man does not usually commit certain acts heedlessly or unintentionally and generally we have no difficulty in inferring from his conduct what was his real intention upon any given occasion".*

19. Let me now look into Section 304A of the IPC and compare it with Section 304 IPC.

20. Section 304A was inserted by the Indian Penal Code (Amendment) Act, 1870 (Act XXVII of 1870) and 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.*

21. The section deals with homicidal death by rash or negligent act. It does not create a new offence. It is directed against the offences outside the range of Sections 299 and 300, IPC and covers those cases where death has been caused without 'intention' or 'knowledge'. The words "not amounting to culpable homicide" in the provision are significant and clearly convey that the section seeks to embrace those cases where there is neither intention to cause death, nor knowledge that the act done will in all probability result into death. It applies to acts which are rash or negligent and are directly the cause of death of another person.

22. Thus, there is a fine distinction between Section 304 and Section 304A. Section 304A carves out cases where death is caused by doing a rash or negligent act which does not amount to culpable homicide not amounting to murder within the meaning of Section 299 or culpable homicide amounting to murder under Section 300, IPC. In other words, Section 304A excludes all the ingredients of Section 299 as also of Section 300. Where intention or knowledge is the 'motivating force' of the act complained of, Section 304A will have to make room for the graver and more serious charge of culpable homicide not amounting to murder or amounting to murder as the facts disclose. The section has application to those cases where there is neither intention to cause death nor knowledge that the act in all probability will cause death.

23. In Empress v. Idu Beg, (1881) ILR 3 All 776, Straight, J. made the following pertinent observations which have been quoted with approval by various Courts including the Supreme Court:

> "*Criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so, and that it may cause injury, but without intention to cause injury, or knowledge that it will probably be caused. The criminality lies in running the risk of doing such an act with recklessness or indifference as to the consequences. Criminal negligence is the gross and culpable neglect or failure to exercise that reasonable and proper care and precaution to guard against injury either to the public generally or to an individual in particular, which, having*

regard to all the circumstances out of which the charge has arisen, it was the imperative duty of the accused person to have adopted".

24. Though the term 'negligence' has not been defined in the Code, it may be stated that negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do. [See Mahadev Prasad Kaushik Vs. State of U.P - AIR 2009 SC 125].

25. In the aforesaid context, I may quote with profit a decision of the Supreme Court in the case of Naresh Giri Vs. State of M.P., reported in (2008) 1 SCC (Cri.) 324. In the said case, a bus was going from Ahrauli towards Kailaras. While it was near a Railway crossing, an accident took place. A train hit the bus at the railway crossing. In the accident, the bus which was being driven by the appellant was badly damaged and as a result of the accident, several passengers got injured and two persons died. After completion of the investigation, charge-sheet was filed. The charges were framed in relation to the offence punishable under Section 302 IPC and alternatively, under Sections 304, 325 and 323 of the Penal Code. Questioning the correctness of the charges framed, the revision petition was filed. The case of the appellant was that Section 302 IPC had no application to the facts of the case. The High Court rejected the plea of the appellant. The High Court was of the view that on the basis of the material available, the charges were rightly framed and the intention of the appellant could be gathered at the time when the evidence would be adduced. It was his case that at the best Section 304A IPC would be attracted.

26. In the aforesaid background, the Supreme Court made the following observations, which are worth taking note of.

7. Section 304-A IPC applies to cases where there is no intention to cause death and no knowledge that the act done, in all probabilities, will cause death. This provision is directed at offences outside the range of Sections 299 and 300 IPC. Section 304-A applies only to such acts which are rash and negligent and are directly the cause of death of another person. Negligence and rashness are essential elements under Section 304-A.

8. Section 304-A carves out a specific offence where death is caused by doing a rash or negligent act and that

act does not amount to culpable homicide under Section 299 or murder under Section 300. If a person wilfully drives a motor vehicle into the midst of a crowd and thereby causes death to some person, it will not be a case of mere rash and negligent driving and the act will amount to culpable homicide. Doing an act with the intent to kill a person or knowledge that doing an act was likely to cause a person's death is culpable homicide. When the intent or knowledge is the direct motivating force of the act, Section 304-A has to make room for the graver and more serious charge of culpable homicide. The provision of this section is not limited to rash or negligent driving. Any rash or negligent act whereby death of any person is caused becomes punishable. Two elements either of which or both of which may be proved to establish the guilt of an accused are rashness/negligence, a person may cause death by a rash or negligent act which may have nothing to do with driving at all. Negligence and rashness to be punishable in terms of Section 304-A must be attributable to a state of mind wherein the criminality arises because of no error in judgment but of a deliberation in the mind risking the crime as well as the life of the person who may lose his life as a result of the crime. Section 304-A discloses that criminality may be that apart from any mens rea, there may be no motive or intention still a person may venture or practice such rashness or negligence which may cause the death of other. The death so caused is not the determining factor.

9. What constitutes negligence has been analysed in Halsbury's Laws of England (4th Edition) Volume 34 paragraph 1 (para 3) as follows :

> *"Negligence is a specific tort and in any given circumstances is the failure to exercise that care which the circumstances demand. What amounts to negligence depends on the facts of each particular case. It may consist in omitting to do something which ought to be done or in doing something which ought to be done either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence, where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the*

surrounding circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury. The duty of care is owed only to those persons who are in the area of foreseeable danger, the fact that the act of the defendant violated his duty of care to a third person does not enable the plaintiff who is also injured by the same act to claim unless he is also within the area of foreseeable danger. The same act or omission may accordingly in some circumstances involve liability as being negligent although in other circumstances it will not do so. The material considerations are the absence of care which is on the part of the defendant owed to the plaintiff in the circumstances of the case and damage suffered by the plaintiff, together with a demonstrable relation of cause and effect between the two".

10. In this context the following passage from Kenny's Outlines of Criminal Law, 19th Edition (1966) at page 38 may be usefully noted :

"Yet a man may bring about an event without having adverted to it at all, he may not have foreseen that his actions would have this consequence and it will come to him as a surprise. The event may be harmless or harmful, if harmful, the question rises whether there is legal liability for it. In tort, (at common law) this is decided by considering whether or not a reasonable man in the same circumstances would have realised the prospect of harm and would have stopped or changed his course so as to avoid it. If a reasonable man would not, then there is no liability and the harm must lie where it falls. But if the reasonable man would have avoided the harm then there is liability and the perpetrator of the harm is said to be guilty of negligence. The word 'negligence' denotes, and should be used only to denote, such blameworthy inadvertence, and the man who through his negligence has brought harm upon another is under a legal obligation to make reparation for it to the victim of the injury who may sue him in tort for damages. But it should now be recognized that at common law there is no criminal liability for harm thus caused by inadvertence. This has been laid down authoritatively for manslaughter again and again. There are only two

states of mind which constitute mens rea and they are intention and recklessness. The difference between recklessness and negligence is the difference between advertence and inadvertence they are opposed and it is a logical fallacy to suggest that recklessness is a degree of negligence. The common habit of lawyers to qualify the word "negligence" with some moral epithet such as 'wicked' 'gross' or 'culpable' has been most unfortunate since it has inevitably led to great confusion of thought and of principle. It is equally misleading to speak of criminal negligence since this is merely to use an expression in order to explain itself."

11. "Negligence", says the Restatement of the law of Torts published by the American Law Institute (1934) Vol. I. Section 28 "is conduct which falls below the standard established for the protection of others against unreasonable risk of harm". It is stated in Law of Torts by Fleming at page 124 (Australian Publication 1957) that this standard of conduct is ordinarily measured by what the reasonable man of ordinary prudence would do under the circumstances. In Director of Public Prosecutions v. Camplin (1978) 2 All ER 168 it was observed by Lord Diplock that "the reasonable man" was comparatively late arrival in the laws of provocation. As the law of negligence emerged in the first half of the 19th century it became the anthropomorphic embodiment of the standard of care required by law. In order to objectify the law's abstractions like "care" "reasonableness" or "foreseeability" the man of ordinary prudence was invented as a model of the standard of conduct to which all men are required to conform.

12. In Syed Akbar v. State of Karnataka, (1980) 1 SCC 30, it was held that "where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment.As pointed out by Lord Atkin in Andrews v. Director of Public Prosecutions ((1937) (2) All ER 552) simple lack of care such as will constitute civil liability, is not enough; for liability under the criminal law a very high degree of negligence is required to be proved. Probably, of all the epithets that can be applied 'reckless' most nearly covers the case."

13. According to the dictionary meaning 'reckless'

means 'careless', 'regardless' or heedless of the possible harmful consequences of one's acts'. It presupposes that if thought was given to the matter by the doer before the act was done, it would have been apparent to him that there was a real risk of its having the relevant harmful consequences; but, granted this, recklessness covers a whole range of states of mind from failing to give any thought at all to whether or not there is any risk of those harmful consequences, to recognizing the existence of the risk and nevertheless deciding to ignore it. In R. v. Briggs (1977) 1 All ER 475 it was observed that a man is reckless in the sense required when he carries out a deliberate act knowing that there is some risk of damage resulting from the act but nevertheless continues in the performance of that act.

14. In R. v. Caldwell (1981) 1 All ER 961, it was observed that :-

> *"Nevertheless, to decide whether someone has been 'reckless', whether harmful consequences of a particular kind will result from his act, as distinguished from his actually intending such harmful consequences to follow, does call for some consideration of how the mind of the ordinary prudent individual would have reacted to a similar situation. If there were nothing in the circumstances that ought to have drawn the attention of an ordinary prudent individual to the possibility of that kind of harmful consequence, the accused would not be described as 'reckless' in the natural meaning of that word for failing to address his mind to the possibility; nor, if the risk of the harmful consequences was so slight that the ordinary prudent individual on due consideration of the risk would not be deterred from treating it as negligible, could the accused be described as reckless in its ordinary sense, if, having considered the risk, he decided to ignore it. (In this connection the gravity of the possible harmful consequences would be an important factor. To endanger life must be one of the most grave). So, to this extent, even if one ascribes to 'reckless' only the restricted meaning adopted by the Court of Appeal in Stephenson and Briggs, of foreseeing that a particular kind of harm might happen and yet going on to take the risk of it, it involves a test that would be described in part as 'objective' in current legal jargon. Questions of criminal liability are*

seldom solved by simply asking whether the test is subjective or objective."

15. The decision of R. v Caldwell (supra) has been cited with approval in R v. Lawrence (1981) 1 All ER 974 and it was observed that :

"*.....Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting 'recklessly' if, before doing the act, he either fails to give any thought to the possibility of there being any such risk or, having recognized that there was such risk, he nevertheless goes on to do it*".

14A. Normally, as rightly observed by the High Court charges can be altered at any stage subsequent to the framing of charges. But the case at hand is one where prima facie Section 302 IPC has no application."

27. In the overall facts of the case, I have reached to the conclusion that the case on hand is not one of voluntary commission of offence against a person. The harmfulness inflicted intentionally or knowingly or caused directly and wilfully would attract Section 304 IPC. I am of the view that the mere act of driving a vehicle mindful of the fact that the same needed some immediate repairs would not be a criminal act. Prima-facie it appears that the driver as well as the cleaner were in knowledge of the fact that there was a cavity beneath the seat on which unfortunately the deceased was sitting, and despite such knowledge the driver and the cleaner kept on plying the vehicle. However, that by itself would not suggest that they had knowledge that by plying a defective vehicle they were in all probability likely to cause death of any student travelling in the bus. Yes, they could definitely be held liable for a rash or a negligent act, punishable under Section 304A of the IPC, if ultimately necessary evidence in that regard

comes on record at the time of the trial.

28. In the aforesaid context, the observations made by the Supreme Court in the case of Keshub Mahindra Vs. State of Madhya Pradesh (supra) are very relevant. I have quoted the observations made in paragraphs 19 and 20 in the earlier part of my judgment and therefore, I need not reiterate the same.

29. The above takes me to the question whether the applicant herein should face the charge under Section 304A of the IPC or not.

30. In a prosecution for an offence under Section 304A of the IPC, the Court has to examine whether the alleged act of the accused is the direct result of a rash and negligent act, and that act was the proximate and efficient cause of the death without the intervention of others' negligence. To put it in other words, whether the mere fact that the applicant herein as the Chief Administrator of the school failed to take appropriate care to ensure the safety of the students by permitting the defective bus to be plied by itself is sufficient to establish an offence under Section 304A IPC. The answer to this question will determine whether the applicant's act as alleged by the prosecution is the causa causans or has there been a causa interveniens, which has broken the chain of causation so as to make his act, though a negligent one, not the immediate cause or whether it amounts to an act of gross negligence or recklessly negligent conduct. In this context, it may be observed that in a case of this nature, the death of a small child aged four however, shocking and regrettable it may be, ought not to allow the mind to boggle while considering the aforesaid question.

As to what is meant by causa causans, has been explained by the Supreme Court in the case of Sushil Ansal v. State through Central Bureau of Investigation, (2014)6 SCC 173, as under :

> *"As to what is meant by causa causans we may gainfully refer to Black's Law Dictionary (Fifth Edition) which defines that expression as under:*
>
> > *"Causa causans. - The immediate cause; the last link in the chain of causation."*

The Advance Law Lexicon edited by Justice Chandrachud, former Chief Justice of India defines Causa causans as follows:

"Causa causans. - The immediate cause as opposed to a

remote cause; the 'last link in the chain of causation'; the real effective cause of damage"

The expression "proximate cause" is defined in the 5th Edition of Black's Law Dictionary as under:

"Proximate cause. - That which in a natural and continuous sequence unbroken by any efficient, intervening cause, produces injury and without which the result would not have occurred. Wisniewski vs. Great Atlantic & Pacific Tea Company, 226 Pa. Super 574 : 323 A2d 744 (1974), A2d at p. 748. That which is nearest in the order of responsible causation. That which stands next in causation to the effect, not necessarily in time or space but in causal relation. The proximate cause of an injury is the primary or moving cause, or that which in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the accident could not have happened, if the injury be one which might be reasonably anticipated or foreseen as a natural consequence of the wrongful act. An injury or damage is proximately caused by an act, or a failure to act, whenever it appears from the evidence in the case, that the act or omission played a substantial part in bringing about or actually causing the injury or damage; and that the injury or damage was either a direct result or a reasonably probable consequence of the act or omission."

I may also refer to the earlier decision of the Supreme Court in Kurban Hussein Mohamedalli Rangawalla Vs. State of Maharashtra, AIR 1965 S.C. 1616. On the interpretation of Section 304-A, holding:

"4. We may in this connection refer to Experor V. Omkar Rampratap, 4 Bom LR 679, where Sir Lawrence Jenkins had to interpret S. 304-A and observed as follows:

"To impose criminal liability under Section 304-A, Indian Penal Code, 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 efficient 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."

This view has been generally followed by High

Courts in India and is in our opinion the right view to take of the meaning of S.304-A. It is not necessary to refer to other decisions, for as we have already said this view has been generally accepted. Therefore, the mere fact that the fire would not have taken place if the appellant had not allowed burners to be put in the same room in which turpentine and varnish were stored, would not be enough to make him liable under S.304-A, for the fire would not have taken place, with the result that seven persons were burnt to death, without the negligence of Hatim. The death in this case was, therefore, in our opinion not directly the result of a rash or negligent act on the part of the appellant and was not the proximate and efficient cause without the intervention of another's negligence. The appellant must, therefore, be acquitted of the offence under S.304-A."

In my view, having regard to the materials on record, the incident in this case cannot be treated as a direct and proximate cause of the negligence, even if I assume one on the part of the applicant herein in not getting the defective bus repaired. Many other factors might have resulted in the unfortunate incident. It was the Driver and the Cleaner who were actually handling the bus. If little care would have been taken by the Cleaner to ensure that no student occupied the seat beneath which there was a cavity, then probably this incident would not have occurred. Therefore, the alleged negligence from the part of the applicant herein cannot be regarded as the causa causans. Although it may be a causa sine qua non.

31. It must be pointed out that rashness and negligence are not the same things. Mere negligence cannot be construed to mean rashness. There are degrees of negligence and rashness and in order to amount to criminal rashness or criminal negligence one must find that the rashness has been of such a degree as to amount to taking hazard knowing that the hazard was of such a degree that injury was most likely to be occasioned thereby. The criminality lies in running the risk or doing such an act with recklessness and indifference to the consequences. Criminal negligence is gross and culpable neglect, that is to say, a failure to exercise that care and failure to take that precaution which, having regard to the circumstances, it was the imperative duty of the individual to take. Culpable rashness is acting with consciousness that mischievous consequences are likely to follow although the individual hopes, even though he hopes sincerely, that such

consequences may not follow. The criminality lies in not taking the precautions to prevent the happening of the consequences in the hope that they may not happen. The law, in my view, does not permit a man to be un-cautious on a hope however earnest or honest that hope may be.

32. In the case of - 'A. W. Lazarus v. The State', AIR 1953 All 72 (A), a Bench of the Allahabad High Court held, following the decisions in - 'Empress of India v. Idu Beg', 3 All 776 (B) and - 'H.W. Smith v. Emperor', AIR 1926 Cal 300 (C), that criminal rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton and the further knowledge that it may cause injury but done without any intention to cause injury or knowledge that it would probably be caused. It was pointed out that the criminality in such a case lay in running the risk of doing such an act with recklessness or indifference as to the consequences. The Bench further held that the criminal negligence under Section 304-A, I.P.C. was gross and culpable neglect of failure to exercise that reasonable and proper care and to take precautions to guard against injury either to the public generally or to an individual in particular, which, having regard to all the circumstances attending the charge, it was the imperative duty of the accused person to have adopted. Another important element which goes to make the offence is that the act of the accused must be found to be the immediate cause of the death, that is to say, the act and the death must be 'causa causans'.

33. I may here refer to a very instructive judgment of the House of Lords in - 'Andrews v. Director of Public Prosecutions', 1937-2 All ER 552 (D). In this case Lord Atkin reviewed several of the earlier cases and delivered the leading opinion of the House. Lord Atkin pointed cut that the connotations of 'mens rea' are not helpful in distinguishing between degrees of negligence, nor do the ideas of crimes and punishments in themselves carry a jury much further in deciding whether, in a particular case, the degree of negligence shown is a crime and deserves punishment. According to Lord Atkin, "the principle to be observed is that cases of manslaughter in driving motor cars are but instances of a general rule applicable to all charges of homicide by negligence. Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal law there are degrees of negligence, and a very high degree of negligence is required to be proved before the felony is established."

34. Lord Atkin observed that the most appropriate epithet which can be applied to such cases is "reckless". He further pointed out that "it is difficult to visualise a case of death

caused by "reckless" driving, in the connotation of that term in ordinary speech, which would not justify a conviction for manslaughter, but it is probably not all-embracing, for "reckless" suggests an indifference to risk, whereas the accused may have appreciated the risk, and intended to avoid it, and yet shown in the means adopted to avoid the risk such a high degree of negligence as would justify a conviction."

35. In an earlier case Lord Ellenborough had pointed out that to substantiate the charge of manslaughter the prisoner must be found to have been guilty of criminal misconduct arising either from the grossest ignorance or the most criminal inattention. Lord Atkin explained this observation of Lord Ellenborough in these words :

> *"The word "criminal" in any attempt to define a crime is perhaps not the most helpful, but it is plain that Lord Ellenborough meant to indicate to the jury a high degree of negligence."*

36. Attention was also drawn by Lord Atkin to a passage in a considered judgment of Lord Hewart, Lord Chief Justice the passage to which attention was drawn was this:

> *"In a criminal Court, on the contrary, the amount and degree of negligence are the determining questions. There must be 'mens rea'."*

But, as was pointed out by Lord Atkin, the connotation of mens rea do not always prove helpful in determining the guilt of an accused in a particular case.

37. The essence of criminal liability under Section 304-A IPC is culpable rashness or negligence and not any rashness or negligence. The difference between the two is what marks off a civil from a criminal liability. The distinction is often an intricate matter and depends on the particular time, place and circumstances. In civil law negligence means inadvertence, which, if it resulted in injurious consequences to person or property, may involve liability to compensate for the damage. In Halsbury's Laws of England, 3rd Edn. Vol. 28, paragraph 1, it is stated :

> *''Negligence is a specific tort and in any given circumstances is the failure to exercise that care with which the circumstances demand. What amounts to negligence depends on the facts of each particular case and the categories of negligence are never closed. It may consist in omitting to do something which ought to be*

done or in doing something which ought to be done, either in a different manner or not at all. Where there is no duty to exercise care, negligence in the popular sense has no legal consequence. Where there is a duty to exercise care, reasonable care must be taken to avoid acts or omissions which can be reasonably foreseen to be likely to cause physical injury to persons or property. The degree of care required in the particular case depends on the accompanying circumstances, and may vary according to the amount of the risk to be encountered and to the magnitude of the prospective injury."

38. The consequence flows from a state of mind which is blank or devoid of any advertence, and the liability for such consequence is to be judged from the standpoint of reasonable foreseeability and the failure to exercise the care which such foreseeability necessarily implies. That I conceive to be the principle of tortious liability for negligence. Kenny in his "Outlines of Criminal Law'' at page 29 observes,

"But if the reasonable man would have avoided the harm then there is liability and the perpetrator of the harm is said to be guilty of negligence. The word 'negligence', therefore, in our jurisprudence is used to denote blameworthy inadvertence, and the man who through his negligence has brought harm upon another is under a legal obligation to make reparation for it to the victim of the injury, who may sue him in tort for damages. But it should now be recognised that at common law there is no criminal liability for harm thus caused by inadvertence.....The truth may be that he did not foresee the consequences as a reasonable man would have done, and that he was negligent in the true sense of the word, and therefore civilly, although not criminally, liable."

39. Kenny further points out that for criminal liability for negligence, there must be something more than such blameworthy inadvertence. This aspect is also adverted to in paragraph 1374 of Halsbury's Laws of England, 3rd Edn. Volume 10,

"A higher degree of negligence is necessary to render a person guilty of manslaughter than to establish civil liability against him. Mere carelessness is not enough. Negligence in order to render a person guilty of manslaughter must be more than a matter of

compensation between subjects; it must show such disregard for the life and safety of others as to amount to a crime against the State. Whether negligence is to be regarded as of such a nature is a question for the jury, after they have been properly directed by the Judge as to the standard to be applied, and depends on the facts of the particular case. The number of persons affected by a single act of negligence does not affect the decree of negligence."

40. While on this aspect, it is also instructive to refer to two English cases. Rex v. Williamson, 1807-3 C and P 635, was a case where a man who practised as an accoucheur, owing to a mistake in his observation of the actual symptoms, inflicted on a patient terrible injuries from which she died. After pointing out that in a civil case once negligence was proved, the degree of negligence was irrelevant, Lord Ellenborough, the Lord Chief Justice, said.

"In a criminal court, on the contrary, the amount and degree of negligence are the determining questions. There must be mens rea..... In explaining to juries the test which they should apply to determine whether the negligence in a particular case, amounted or did not amount to a crime, Judges have used epithets such as 'culpable', 'criminal', 'gross', 'wicked', 'clear', 'complete'. But whatever epithet be used and whether an epithet be used or not, in order to establish criminal liability the facts must be such that, in the opinion of the jury, the negligence of the accused went beyond a mere matter of compensation between subjects and showed such disregard for the life and safety of others, as to amount to a crime against the State and conduct deserving punishment."

41. Mere negligence or rashness is, therefore, not enough to bring a case within the ambit of Section 304A I. P. C. Negligence or rashness proved by evidence must be such as should necessarily carry with it a criminal liability. Whether such liability is present may depend on the degree of culpability having regard in each case to the particular time, place and circumstances. If it is merely a case of compensation or reparation for injury or damage caused to a person or property, it is clearly not punishable under either of the sections. The culpability to be criminal should be such as concerns not merely the person injured or property damaged but the safety of the public on the road. But the nature and

extent of the injury or damage will be irrelevant in fixing criminal liability for negligence under the sections.

42. I may quote with profit the case of Ambalal D. Bhatt Vs. State of Gujarat, reported in (1972) 3 SCC 525, wherein the following observations made by the Supreme Court are worth taking note of.

> *8. The learned Advocate contends that even if one batch number was given to several lots prepared on 12-11-62 as was done in respect of batch no 211105, the evidence discloses that this was not an isolated case but such practice was uniformly followed in S. C. L. Ltd. for which the appellant could not alone be held liable. In the circumstances the non-compliance with the rules for giving a batch number to every lot does not make the act of the appellant the causa causans of the death of the persons who were injected with glucose saline prepared by him because it was not only the duty of the Analyst Prabhakaran to test the material before they are issued to the injection department but also to test the solution in such a way as would trace lead nitrate in the sodium chloride content of the solution. As Prabhakaran had not applied the proper test and that too knowing fully well that several lots were given one batch number, he cannot be absolved of his responsibility to take representative samples for testing them instead of testing only one bottle out of 450 bottles comprising batch no. 211105. On this premise it is contended that though section 304A covers various fields of activity, an offence is committed only if a person charged is shown to have neglected to take such action as he is reasonably expected to take to avoid injury to others and that such reasonable steps that are expected to be taken by him should show that there was a failure to take such elementary steps it was necessary for him to take. Inasmuch as in all cases under section 304A there is a casual chain which consists of many links, it is only that which contributes to the cause of all causes, namely, the causa causans and not causa sine qua non which fixes the capability. In other words, it is submitted that it is not enough for the prosecution to show that the appellant's action was one of the causes of death. It must show that it is the direct consequence, which in this case has not been established. On the other hand, according to the learned Advocate the appellant is separated by two important steps which intervene before the glucose saline is sold for being administered to the needy. These are : (1) that not only should the materials be tested but*

the solution should be tested properly to detect the dangerous components of the preparation which was the duty of the Chief Analyst; and (2) that the production report and the analysis report have to be seen by the Production Superintendent who is to satisfy himself that proper tests have been carried out before certifying them for sale. The persons who are directly responsible for the saline solution to be certified for sale are the Chief Analyst as well as the Production Superintendent and not the appellant.

9. It is, however, the case of respondent State that had the appellant not given a single batch number to all the four lots when he prepared the offending glucose saline, the analysis by the Chief Analyst would analysis by the Chief Analyst would have certainly discovered the heavy deposits of lead nitrate in the sodium chloride and the lot which contained this would have been rejected. As the appellant has been negligent in conforming to the rules, the deaths were the direct consequence of that negligence.

10. It appears to us that in a prosecution for an offence under section 304A, 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 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 12-11-62 in preparing batch no. 211105 was the cause of deaths and whether those deaths were a direct consequence of the appellant's act that is, whether the appellant's 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 cause causans; it is not enough that it may have been the causa sine qua non". This view has been adopted by this Court in several decisions.In Kurban Hussein Mohem-medali Rangwala v. State of Maharashtra, 1965-2 SCR 622 = (AIR 1965 SC 1616), the accused who had manufactured wet paints without a

licence was acquitted of the charge under section 304A 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 Rahiman Mulani v. State of Maharashtra (1968) 2 SCR 515 = (AIR 1968 SC 829) 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 by itself was no sufficient to warrant a conviction under section 304A. It would be different if it can be established as in the case of Balachandra v. State of Maharashtra, (1968) 3 SCR 766 = (AIR 1968 SC 1319) that deaths and injuries caused by the contravention of a prohibition in respect of the substance 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.

11. Bearing these principles in view, what we have to see is :

> *(1) whether there was contravention of the rule? If so, to what extent that contravention by the appellant contributed to the non-discovery of lead nitrate in sodium chloride content of the glucose saline in Batch No. 211105? (2) Whether sodium chloride for which the said solution was prepared was obtained by the appellant from sources other than the Stores of S. C. I. Ltd.? and (3) Whether the method adopted in testing the said batch by Prabhakaran would have, but for the contravention of the rules requiring the giving of one batch number to each lot, detected the presence of lead nitrate when he analysed samples of the offending batch of glucose saline prepared by the accused. The answers to these questions will determine whether the appellant's act is the causa causans or has there been a cause interveniens which has broken the chain of causation so as to make his act, though a negligent one, not the immediate*

cause or whether it amounts to an act of gross negligence or recklessly negligent conduct. In this context it may be observed that in a case of this nature where as many as 12 persons lost their lives as a result of the parenteral administration of the drug comprised in Batch No. 211105 prepared by the appellant, those deaths however shocking and regrettable they may be, ought not to allow the mind to boggle while appreciating the evidence which must necessarily be free from any such consideration."

43. I may also quote with profit a decision of the Supreme Court in the case of Balwant Singh Vs. State of Punjab, reported in 1994 Supp (2) SCC 67. The following observations of the Supreme Court are worth taking note of.

> *"8. Then the question would be whether an offence under Sec. 304-A, I.P.C, is made out? The provisions of this Section apply to cases where there is no intention to cause death and no knowledge that the act done in all probabilities will cause death. Therefore this provision is directed at offences outside the range of Ss. 299 and 300, I.P.C. and obviously contemplates those cases into which neither intention nor knowledge enters. The words "not amounting to culpable homicide" in the Section are very significant and it must therefore be understood that intentionally or knowingly inflicted violence directly and wilfully caused is excluded. The Section applies only to such acts which are rash or negligent and are directly the cause of death of another person. In other words, a rash act is primarily an over hasty act as opposed to a deliberate act but done without due care and caution. Then the question whether the conduct of the accused amounted to culpable rashness or negligence depends on the amount of care and circumspection which a prudent and reasonable man would consider it to be sufficient and this depends on the circumstances in each case."*

44. In a very recent pronouncement of the Supreme Court in the case of Dr. P.B Desai Vs. State of Maharashtra and anr., reported in AIR 2014 SC 795, the Supreme Court has explained in details as to when criminal liability would be attracted in cases of medical negligence. It is no doubt true that the Supreme Court was dealing with an issue whether the role of the appellant as a doctor in that case amounted to a rash or a negligent act as to endanger the life of the patient. The

Supreme Court made the following observations:-

"*(4) Breach of Duty to Take Care: Consequences*

42. If the patient has suffered because of negligent act/ omission of the doctor, it undoubtedly gives right to the patient to sue the doctor for damages. This would be a civil liability of the doctor under the law tort and/or contract. This concept of negligence as a tort is explained in Jacob Mathews v. State of Punjab and Another 2005(6) SCC1, in the following manner:

> *"10. The jurisprudential concept of negligence defines any precise definition. Eminent jurists and leading judgments have assigned various meanings to negligence. The concept as has been acceptable to Indian jurisprudential thought is well stated in the Law of Torts, Ratanlal & Dhirajlal (24th Edn., 2002, edited by Justice G.P. Singh).*
>
> *Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property.... The definition involves three constituents of negligence: (1) A legal duty to exercise due care on the part of the party complained of towards the party complaining the former's conduct within the scope of the duty; (2) breach of the said; and (3) consequential damage. Cause of -action for negligence arises only when damage occurs; for, damage is a necessary ingredient of this tort."*

43. Such a negligent act, normally a tort, may also give rise to criminal liability as well, though it was made clear by this Court in Jacob's Case (supra) that jurisprudentially the distinction has to be drawn between negligence under Civil Law and negligence under Criminal Law. This distinction is lucidly explained in Jacob's Case, as can be seen from the following paragraphs:

> *"12. The term "negligence" is used for the purpose of fastening the defendant with liability under the civil law and, at times, under the criminal law. It is contended on*

behalf of the respondents that in both the jurisdictions, negligence is negligence, and jurisprudentially no distinction can be drawn between negligence under civil law and negligence under criminal law. The submission so made cannot be countenanced inasmuch as it is based upon a total departure from the established terrain of thought running ever since the beginning of the emergence of the concept of negligence up to the modern times. Generally speaking, it is the amount of damages incurred which is determinative of the extent of liability in tort; but in criminal law it is not the amount of damages but the amount and degree of negligence that is determinative of liability. To fasten liability in criminal law, the degree of negligence has to be higher than that of negligence enough to fasten liability for damages in civil law. The essential ingredient of mens -rea cannot be excluded from consideration when the charge in a criminal court consists of criminal negligence. In R. v. Lawrence Lord Diplock spoke in a Bench of five and the other Law Lords agreed with him. He reiterated his opinion in R. v. Caldwell3 and dealt with the concept of recklessness as constituting mens rea in criminal law. His Lordship warned against adopting the simplistic approach of treating all problems of criminal liability as soluble by classifying the test of liability as being "subjective" or "objective", and said: (All ER p. 982e-f) "Recklessness on the part of the doer of an act does presuppose that there is something in the circumstances that would have drawn the attention of an ordinary prudent individual to the possibility that his act was capable of causing the kind of serious harmful consequences that the section which creates the offence was intended to prevent, and that the risk of those harmful consequences occurring was not so slight that an ordinary prudent individual would feel justified in treating them as negligible. It is only when this is so that the doer of the act is acting 'recklessly' if, before doing the act, he either fails to give any thought to the possibility of there being any such risk or, having recognised that there was such risk, he nevertheless goes on to do it."

13. The moral culpability of recklessness is not located in a desire to cause harm. It resides in the proximity of the reckless state of mind to the state of mind present when there is an intention to cause harm. There is, in other words, a disregard for the possible consequences. The consequences entailed in the risk may not be wanted, and indeed the actor may hope that they do not occur, but this hope nevertheless fails to inhibit the taking of the risk. Certain types of violation, called

optimising violations, -- may be motivated by thrill-seeking. These are clearly reckless.

14. In order to hold the existence of criminal rashness or criminal negligence it shall have to be found out that the rashness was of such a degree as to amount to taking a hazard knowing that the hazard was of such a degree that injury was most likely imminent. The element of criminality is introduced by the accused
having run the risk of doing such an act with recklessness and indifference to the consequences. Lord Atkin in his speech in Andrews v. Director of Public Prosecutions stated: (All ER p. 556 C)

> *"Simple lack of care such as will constitute civil liability is not enough. For purposes of the criminal law there are degrees of negligence, and a very high degree of negligence is required to be proved before the felony is established."*

Thus, a clear distinction exists between "simple lack of care" incurring civil liability and "very high degree of negligence" which is required in criminal cases. In Riddell v. Reid4a (AC at p. 31) Lord Porter said in his speech —

> *"A higher degree of negligence has always been demanded in order to establish a criminal offence than is sufficient to create civil liability."*

15. The fore-quoted statement of law in Andrews has been noted with approval by this Court in Syad Akbar v. State of Karnataka. The Supreme Court has dealt with and pointed out with reasons the distinction between negligence in civil law and in criminal law. Their Lordships have opined that there is a marked difference as to the effect of evidence viz. the proof, in civil and criminal proceedings. In civil proceedings, a mere preponderance of probability is sufficient, and the -- defendant is not necessarily entitled to the benefit of every reasonable doubt; but in criminal proceedings, the persuasion of guilt must amount to such a moral
certainty as convinces the mind of the Court, as a reasonable man, beyond all reasonable doubt. Where negligence is an essential ingredient of the offence, the negligence to be established by the prosecution must be culpable or gross and not the negligence merely based upon an error of judgment."

44. Thus, in the civil context while we consider the moral implications of negligent conduct, a clear view of the state of mind of the negligent doctor might not require strictly. This is for the reason the law of tort is ultimately not concerned with

the moral culpability of the defendant, even if the language of fault is used in determining the standard of care. From the point of view of civil law it may be appropriate to impose liability irrespective of moral blameworthiness. This is because in civil law two questions are at
issue: Was the defendant negligent? If so, should the defendant bear the loss in this particular set of circumstances? In most cases where negligence has been established, the answer to the second question will be in the affirmative, unless the doctrine of remoteness or lack of foresee ability militates against a finding of liability, or where there is some policy reason precluding compensation. The question in the civil context is, therefore, not about moral blame, even though there will be many cases where the civilly liable defendant is also morally culpable.

(5) Criminal Liability : When attracted

45. It follows from the above that as far as the sphere of criminal liability is concerned, as mens rea is not abandoned, the subjective state of mind of the accused lingers a critical consideration. In the context of criminal law, the basic question is quite different. Here the question is: Does the accused deserve to be punished for the outcome caused by his negligence? This is a very different question from the civil context and must be answered in terms of mens rea. Only if a person has acted in a morally culpable fashion can this question be answered positively, at least as far as non strict liability offenses are concerned.

46. The only state of mind which is deserving of punishment is that which demonstrates an intention to cause harm to others, or where there is a deliberate willingness to subject others to the risk of harm. Negligent conduct does not entail an intention to cause harm, but only involves a deliberate act subjecting another to the risk of harm where the actor is aware -of the existence of the risk and, nonetheless, proceeds in the face of the risk. This, however, is the classic definition of recklessness, which is conceptually different from negligence and which is widely accepted as being a basis for criminal liability."

For a period of 19 years, nothing happened to the building. If it is the case of the prosecution that inferior quality of material was used for the purpose of construction, probably it would have collapsed in the year 2001 itself when the State of Gujarat witnessed one of the worst natural calamities in the form of an earthquake.

It appears that on account of the reparation work which was undertaken in a particular flat situated on the 6th floor, something went wrong which led to the collapse of the other slabs.

In view of the above, this application is allowed. The proceedings of Criminal Case No. 58594/14, pending in the Court of the learned Chief Judicial Magistrate, Surat, arising from C.R No. I-151 of 2014 registered with the Umra Police Station, Surat, for the offence punishable under Section 304 Part-II, read with Section 114 of the IPC are hereby ordered to be quashed qua the present applicant. Rule is made absolute. Direct service permitted.

(J.B.PARDIWALA, J.)

Mohandas