IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 5404 of 2017
With
CRIMINAL MISC.APPLICATION (FOR JOINING PARTY) NO. 1 of 2022
In R/SPECIAL CRIMINAL APPLICATION NO. 5404 of 2017
With
R/SPECIAL CRIMINAL APPLICATION NO. 2374 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

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SHAH RUKH KHAN S/O. MEER TAJ MOHAMMED
Versus
STATE OF GUJARAT & 1 other(s)

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Appearance:
MR MIHIR THAKORE SENIOR ADVOCATE WITH MR SALIL M THAKORE(5821) for the Applicant(s) No. 1
MR RAMNANDAN SINGH(1126) for the Respondent(s) No. 2
MR MITESH AMIN PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE NIKHIL S. KARIEL

Date : 27/04/2022

ORAL JUDGMENT

1. Heard learned Senior Advocate Mr. Mihir Thakore with learned Advocate Mr. Salil Thakore on behalf of the petitioner, learned Public Prosecutor Mr. Mitesh Amin on behalf of respondent – State, learned

Advocate Mr. Ramnandan Singh on behalf of respondent no.2- complainant and learned Advocate Mr. M.M. Kharadi for learned Advocate Mr. M.M. Madni in Criminal Misc. Application No. 1 of 2022.

2. By way of these petitions, the petitioner has sought for quashing Criminal Case No. 22663 of 2017 pending before the learned 11th Judicial Magistrate First Class, Vadodara and other proceedings incidental thereto.

3. The brief facts relevant for deciding the present petition are enumerated as below:

The petitioner who was a lead Actor in a movie " Raees", prior to its release, had undertaken an exercise of promotion of the movie by way of a train journey from Mumbai to Delhi. As far as the present issue is concerned, the same relates to certain alleged incidents which had happened when the train had stopped at Vadodara Railway Station. That initially for the incidents at the Railway Station the respondent no.2, had submitted a complaint to the Police Sub Inspector, Railway Police Station, Sayajiganj, Vadodara inter alia praying for registration of an FIR against the petitioner. The respondent no.2 upon receiving no response from the police authorities, had preferred a private complaint against the petitioner and others before the Court of learned Judicial Magistrate First Class, Vadodara. The allegation in the compliant which came to be registered as Criminal Inquiry No. 218 of 2017 being that on 23.01.2017, the petitioner was travelling from Mumbai to Delhi in a train being August Kranti Rajdhani Express on 23.01.2017 for promotion of the movie referred to hereinabove without taking prior permission from the railway authorities. It is alleged that the train had stopped at Platform No. 6 at Vadodara Railway Station and whereas huge crowd of fans had gathered to see the petitioner. It is also alleged that the petitioner had thrown 'smiley balls' and 'T- shirts' in the crowd and there was a scuffle in the crowd over catching the same and on

account of such scuffle, a stampede had ensued on account of which, some persons had got injured and some persons had become unconscious. It would be pertinent to state at this stage that the complaint inter alia further alleges that on account of the chaos created on account of the negligent acts on part of the petitioner, one person had expired. Thus alleging the impugned complaint, the complainant had sought for action to be taken against the present petitioner and two others for offences punishable under Sections 304(A), 427, 336 of the Indian Penal Code as well as offence punishable under Sections 145 and 147 of the Railways Act.

It appears that vide an order dated 02.03.2017, the learned 15th Additional Civil Judge, Judicial Magistrate First Class, Vadodara had noted that there was a police investigation also going on in respect of the same offence. Therefore, exercising powers under Section 210 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C"), the proceedings of the impugned complaint was stayed and the Investigating Officer conducting the inquiry was directed to submit a report within 45 days from the date of the order. It appears that the Deputy Superintendent of Police, Western Railway, Vadodara had submitted Inquiry Report No. 64 of 2017 dated 17.04.2017 to the Superintendent of Police and whereas the said report had been placed before the learned Magistrate. It appears that pursuant to such a report, the learned Magistrate had after taking cognizance of the complaint against the present petitioner had issued summons to the petitioner under Section 204 of the Code of Criminal Procedure for offences punishable under Sections 336, 337 and 338 of the Indian Penal Code and for offences punishable under Sections 145, 150, 152, 154 and 155(1)(a) of the Railways Act, 1989. Furthermore, insofar as other persons named in the complaint as accused no. 2 and 3 are concerned, the learned Magistrate had rejected the complaint exercising power under Section 203 of the Code of Criminal Procedure.

At this stage, the petitioner has approached this Court inter alia challenging the impugned complaint and further challenging the report by the Investigating Officer as well as the order dated 11.07.2017 passed by the learned Magistrate issuing summons to the present petitioner.

4. It appears that initially vide an order dated 27.07.2017, a learned Co-ordinate Bench of this Court had been pleased to issue Rule and grant interim relief in favour of the petitioner herein.

4.1 At this stage, it would also be pertinent to mention that along with the present petition, an application preferred by the legal heirs of the person who had expired allegedly on account of the chaos caused at the Railway Station on 23.01.2017, being one Farhana Farid Khan Pathan and her children more particularly, seeking to be impleaded as party respondents and also for permission to intervene in the present petition, is also considered by this Court.

5. Learned Senior Advocate Mr. Mihir Thakore on behalf of the petitioner at the outset, with regard to application preferred by the wife and children of the deceased person, would submit that the applicants are not required to be heard in a complaint preferred by the respondent no.2. Learned Senior Advocate would specifically draw the attention of this Court to the inquiry report by the concerned Deputy Superintendent of Police more particularly to the statements of Dr.Mahesh Shivrudra Basrage who was Cardiologist and Director at Baroda Heart Institute, Vadodara and the statement of Firozkhan Habibkhan Pathan brother of the deceased. Learned Senior Advocate would also draw the attention of this Court to reference made to the statement of the applicants of Criminal Misc. Application No. 1 of 2022 at Sr. No. 85, 86, 87, 89 and 90 of the report in question and

whereas according to learned Senior Advocate, it is mentioned in the report that the statements of the said persons were similar in nature as the statement given by the brother of the deceased. Learned Senior Advocate would submit that from the report it clearly appears that the deceased had fainted at the Railway Station and whereas the deceased had been immediately rushed to a Hospital by his family members and other persons. Learned Senior Advocate would submit that at the hospital, Doctor Mahesh Basrage had checked up the deceased had informed the family members that he has expired and whereas the Doctor had opined that deceased had died on account of Cardiac Arrest. The Doctor further noted that there were no injury marks or any other marks on the body of the deceased. The statement of brother of the deceased would show that the concerned Doctor had told the family members to have a post-mortem done of the dead body and whereas the family members including brother of the deceased and wife of the deceased had decided that since deceased had expired on account of cardiac arrest, the post-mortem of the dead body was not required to be done. Learned Senior Advocate would therefore submit that since at the relevant point of time, the applicants of Criminal Misc. Application No. 1 of 2022 having no suspicion about the death of the deceased had not conducted the post-mortem. Learned Senior Advocate would submit that having not independently filed a complaint or filed any other proceedings, the family of the deceased being the applicants in Criminal Misc. Application No. 1 of 2022 had also not challenged the order passed by the learned Magistrate whereby process was not issued for offences punishable under Section 304A of the Indian Penal Code. It is further contended that having not taken any steps for approximately five years after the incident, this Court may not join the said applicants as party respondents and whereas learned Senior Advocate would submit that as far as aspect with regard to intervening in the petition is concerned, it would be a prerogative of this

Court to consider whether the applicants ought to be permitted to intervene in this petition or not.

6. Insofar as, the impugned complaint is concerned, the learned Senior Advocate at the outset would also draw the attention of this Court to the provisions under the Railways Act, 1989 for which process issued by the learned Magistrate. Learned Senior Advocate would rely upon Section 179 of the Act and would submit that the said section envisages arrest for offences under certain sections and whereas Section 179(2) envisages power of an officer authorized by the Central Government to arrest without warrant, in case of commission of offences mentioned in Sections 137 to 139, 141 to 147, 153 to 157, 159 to 167 and 172 and 176. Reliance is thereafter placed on Section 180 F whereby it is envisaged that in case of any offence mentioned in Section 179(2) , cognizance could be taken only upon complaint made by officer authorized. Learned Senior Advocate would submit that except for offences punishable under Sections 150 and 152 of the Railways Act, all other offences for which process under the Railways Act had been issued are covered under Section 179(2). Learned Senior Advocate would submit that insofar as considering the said aspect from the view point of the bar of taking cognizance as specified under Section 180F, the learned Magistrate could not have taken cognizance insofar as offence punishable under Sections 145, 150 and 155(1)(a) of the Railways Act more particularly since the complaint was not by an authorized officer. Insofar as Sections 150 and 152 of the Railway Act are concerned, learned Senior Advocate would submit that neither the complaint nor the inquiry carried out by the Investigating Officer shows that any offence under Section 150 or 152 of the Railways Act has been alleged to be committed. Learned Senior Advocate would submit that offence punishable under Section 150 is with regard to maliciously wrecking or attempting to wreck a train and whereas offence with regard to the Section 152 is

maliciously hurting or attempting to hurt persons travelling by Railway. Learned Senior Advocate would submit that neither the petitioner is alleged to have maliciously wrecked or attempted to wreck a train or having maliciously hurt or attempted to hurt a persons travelling by Railway therefore, offences punishable under Sections 150 and 152 of the Railways Act, are not made out even if the allegations are taken at their face value. Thus learned Senior Advocate would submit that having regard to the bar of taking cognizance of Section 180F of the Railways Act and more particularly on a plain reading of offences punishable under Sections 150 and 152 of the Railways Act, there are no offences made out under the Railways Act against the petitioner.

7. Insofar as the offence punishable under the provisions of Indian Penal Code, learned Senior Advocate would submit that Sections 336, 337 and 338 inter alia state about the acts done rashly or negligently which would either endanger human life or personal safety or by such acts causing hurt to any person and or act which had caused grievous hurt to any person. Learned Senior Advocate would emphasize on the term 'so rashly and negligently' as found in Sections 336, 337 and 338 of the Indian Penal Code.

8. Learned Senior Advocate would submit that the rash or negligent act which either endangered human life or caused hurt as per the sections would not be a mere rash or negligent act rather it should be something beyond the ordinary meaning of the term rash or negligent. At this stage, learned Senior Advocate would seek to rely upon decision of the Hon'ble Apex Court in case of Jacob Mathew vs. State of Punjab and another - reported in (2005) 6 SCC 1, Learned Advocate has submitted that in the said judgement the Hon'ble Apex Court has inter alia held that for an act to amount to criminal negligence, the degree of negligence should be of a very

high degree, furthermore, the Hon'ble Apex Court has explained that the word 'gross' has not been used in Section 304-A of the Indian Penal Code, yet the term 'rash or negligent act', as occurring in Section 304A of the Indian Penal Code has to be read as qualified by the word gross. According to learned Senior Advocate the Hon'ble Apex Court has held that the negligence or rashness as in context of offence under Section 304(A) of the Indian Penal Code must be of such a higher degree as to be termed as gross and it is in this context that the word "gross" was used to qualify to term rash or negligent act.

8.1 Learned Senior Advocate in this regard, would submit that while Section 304-A of the Indian Penal Code states with regard to causing death by doing any rash or negligent act not amounting to culpable homicide and whereas the Hon'ble Apex Court reading the word 'gross' or rather qualifying the expression 'rash and negligent' with the term 'gross' therefore, the intent is to clarify that the death should be on account of an act which should be of a very high degree of negligence and recklessness. Learned Senior Advocate has submitted that the Hon'ble Apex Court has qualified the term rash and negligent with the word gross even where the act has led to the death of a person, whereas according to learned Senior Advocate in case of offence punishable under Sections 336, 337 and 338 of the Indian Penal Code, the legislature has itself qualified the rash or negligent act by using the word *'so'*. According to the learned Senior Advocate therefore the degree of rashness or negligence as required for the act to amount to criminal negligence would be of extremely high, i.e. gross.

9. Learned Senior Advocate would submit that as such the acts committed by the present petitioner which are alleged to be rash and negligent acts, are in the nature of the petitioner throwing 'smiley balls' and 'T-shirts' in the crowd and waving at the crowd. Learned Senior Advocate

would submit that the present petitioner was promoting his movie and during the course of such promotion, having thrown such objects, by no stretch of imagination, it could be considered that the act was so rash or negligent either to endanger human life or personal safety. Learned Advocate would further submit that as such the acts have neither endangered human life or public safety nor has caused hurt or caused any grievous hurt which would justify invoking offences punishable under Sections 336, 337 and 338 of the Indian Penal Code.

9.1 At this stage, learned Senior Advocate would draw the attention of this Court to the report by the Investigating Officer more particularly the conclusion thereof. Learned Senior Advocate would submit that the conclusion inter alia revealed that while the train concerned i.e August Kranti Rajdhani Express would normally stop at platform no. 2 and 3, since there was a crowd which had gathered to see the present petitioner, the train was diverted to platform no.6. The Investigating Officer notes that the petitioner, was present in Coach No. E 4 of the train which had stopped near the stairs of the platform no.6. The Investigating Officer notes that since the coach stopped at such a position, people were forced to stand in a narrow place, to have glimpse of the present petitioner which has resulted in chaos and pushing among the people of the crowd. The Investigating Officer further notes that had the said train stopped a little bit further from the stairs or little bit ahead from the stairs then the persons who had come to see the present petitioner would not have been limited by lack of space to move. Learned Senior Advocate would further refer to the findings of the Inquiry Officer that such placement of the coach was a mistake on the part of the railway authorities. Learned Senior Advocate would also draw the attention of this Court to the statements of witnesses more particularly Police Officials present at the Railway Station to show that some elements

of the crowd which had come to see the petitioner had become unruly and started pushing and going forward towards the coach in which the petitioner was travelling and whereas the crowd was chanting that they will not return without seeing the petitioner and whereas since the crowd was going too near the edge of the platform, for their safety mild force was used. Learned Senior Advocate Mr. Thakore would also draw the attention of this Court to the statements of some of the witnesses which would show that the train after having reached the platform and after the petitioner having waved at the crowds etc., had left the station by around 10:51 p.m. where after the train had again stopped suddenly and whereas persons gathered at the railway station had again rushed towards the coach in which the petitioner was travelling which had also led to chaos. Learned Senior Advocate would therefore submit that as such there could not be any act of gross negligence which could be attributable to the present petitioner more particularly even from the Inquiry Report which clearly reveals that there were multiple causes for leading to the chaos.

10. Learned Senior Advocate would further draw the attention of this Court to paragraph no. 38 in case of **Jacob Mathew** (**supra)** where the Hon'ble Apex Court according to learned Senior Advocate has inter alia held that the requirement to impose criminal liability under Section 304-A of the Indian Penal Code is that the death should be a direct result of rash and negligent act of the accused and that act must be the proximate and efficient cause without intervention of another's negligence. Learned Senior Advocate has emphasized on the observations of the Hon'ble Apex Court which was also reported in **AIR 1965 SC 1616** in case of **Kurban Hussain Mohamedalli Bangawalla vs. State of Maharashtra** where the Hon'ble Apex Court has observed that the act relying upon observations of the Hon'ble Apex Court in an earlier decision where it had been observed that *"it must be*

the causa causans; it is not enough that it may have been the causa sine qua non." Learned Senior Advocate would submit that viewed from the principle as laid down by the Hon'ble Apex Court, the act alleged to have endangered human life or having caused grievous hurt, as the case may be, ought to be the direct result of rash and negligent act of the accused and whereas according to learned Senior Advocate, though there has been no grievous hurt as could be seen from the investigation papers yet any allegation of hurt/ grievous hurt should be direct result of the act of the accused. Learned Senior Advocate would submit that neither the acts of the petitioner of having thrown 'smiley balls' and 'T-shirts' in the crowd or waving at the crowd could have been the '*causa causans'* which had resulted into chaos at the railway station leading to offences being alleged to have been committed by the petitioner.

11. Learned Senior Advocate would further rely upon the decision of the Hon'ble Apex Court in case of **Ambalal D Bhatt vs. State of Gujarat** reported in **AIR 1972 SC 1150**. Learned Senior Advocate would submit that the Hon'ble Apex Court in the said decision had inter alia observed that mere fact of the accused contravening certain rules or regulations in the doing of the specific act which caused death of another, would 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. Learned Senior Advocate in this context relying upon the said judgement would submit that none of the acts of the petitioner could be said to be, in any manner whatsoever, the proximate and the efficient cause for the alleged incidents of the Railway Station.

12. Learned Senior Advocate would further submit that insofar as the death of the person named in the investigation, while there is no evidence even in the investigation report, that death had been caused on account of

any rash and negligent act on part of the petitioner whereas learned Senior Advocate would further submit that neither the act of the petitioner was *causa causans* for the death nor such acts could be said to be the proximate and efficient cause for the same. Learned Senior Advocate would submit that the said conclusion being without prejudice to the unchallenged portion that process had not been issued for offence punishable under Section 304A of the Indian Penal Code.

13. Learned Senior Advocate would further reiterate as such there were multiple causes for the alleged offences which had happened and whereas any act, done by the present petitioner could not be stated to be a proximate cause for the chaos at the Railway Station. Having regard to the submissions made, learned Senior Advocate would submit that the impugned complaint may be quashed by this Court.

14. Having regard to the submissions as above learned Senior Advocate would submit that the rash or negligent act as claimed, cannot be mere rash or negligent act rather according to learned Senior Advocate when the Hon'ble Apex Court has qualified the term rash and negligent act by using the word 'gross', even in a case where rash and negligent act has resulted in death of person then in that case the legislature itself termed 'rash or negligent' to be qualified by the term '*so*' the degree of rashness and negligence should be very high degree, which is completely absent in the instant case. Therefore, according to learned Senior Advocate the impugned complaint may be quashed by this Court.

15. Learned Public Prosecutor Mr. Mitesh Amin appearing on behalf of the respondent-State would submit that while the proceedings had arisen on account of a private complaint preferred by the respondent no.2 herein but ultimately the report has been prepared by the Investigating Officer which

would be the crux of the issue. Learned Public Prosecutor has fairly submitted that there is no material as could be found in the report from which it could be stated that any act on part of the present petitioner was stated to be endangering human life or public safety or would be proximate cause for the death of the person concerned. Learned Public Prosecutor would also fairly submit that as per the judgements cited by learned Senior Advocate, the acts of the petitioner could not be termed as "so rash or negligent", which would either endanger human life or personal safety of any person or which would cause any grievous hurt to any person". In any case learned Public Prosecutor would submit that perusal of the report does not indicate that any of the acts of the petitioner were the proximate cause for the incidents which happened at the Railway Station.

15.1 This Court had requested the learned Public Prosecutor to make submission as to whether the application of the family members of the deceased, ought to be considered by this Court at this stage and whereas learned Public Prosecutor has fairly pointed out that since the present proceedings arise from a private complaint, the family of the victim not having initiated or contested in any of the proceedings in the interregnum period of approximately 5 years, while this Court may not consider the application but at the same time learned Public Prosecutor would submit that in view of the fact that the applicants may have something to say more particularly since they are claiming that the unfortunate event of death had occurred at the Railway Station therefore applicants may be permitted to intervene.

16. Learned Advocate Mr. Ramnandan Singh for the complainant has vehemently opposed the present petition. Learned Advocate would specifically draw the attention to the permission given by the railway authorities dated 23.01.2017 to promote the movie in question. Learned

Public Prosecutor would submit that the terms and conditions of the permission in question more particularly clause (5) of the terms and conditions would reveal that the railway administration inter alia required strict compliance and adherence of the safety and security of Railway Personnel, Public, Railways, property and assets. Learned Advocate would submit that the said clause inter alia requires that the party carrying out the shoot shall be solely responsible for the safety and security of the members of the shooting-crew etc. and whereas, learned Advocate has emphasized that the railway administration could not be in any way held responsible for injury or loss of life of any member of the shooting crew.

17. Learned Advocate Mr. Ramnandan Singh on behalf of respondent no.2 had also drawn attention of this Court to Section 336 of the Indian Penal Code. Learned Advocate would submit that the term "so rashly or negligently" has to be read in context of the facts and situation more particularly, according to learned Advocate the act on part of the present petitioner had clearly endangered the human life therefore according to the learned Advocate Mr. Singh, a proper trial would be the right remedy for the petitioner to prove that the acts committed were not of such nature that would endanger human life.

18. Learned Advocate would further rely upon the order dated 11.07.2017 by the learned Magistrate whereby summons has been issued to the present petitioner. Learned Advocate would submit that the learned Magistrate has clearly observed that the petitioner was knowing that the action on his part would cause chaos and yet, he had done the act negligently and recklessly. Learned Advocate Mr. Singh would submit that learned Magistrate prima facie has come to such conclusion, thus this Court may not interfere at this stage.

19. Learned Advocate had further relied upon the decision of the Hon'ble Apex Court in case of **Fiona Shrikhande vs. State of Maharashtra** reported in **(2013) 14 SCC 44** . Learned Advocate would submit that while the Magistrate had after prima facie coming to conclusion, issued summons upon the present petitioner, that may not be the stage at which this Court would interfere and set aside the said exercise. Learned Advocate would rely upon the observations of the Hon'ble Apex Court that at the complaint stage, the Magistrate is merely concerned with the allegation made out in the complaint and has only to prima facie satisfy whether there are sufficient grounds to proceed against the accused and it is not the province of the Magistrate to enquire into a detailed discussion on the merits or demerits of the case.

20. Learned Advocate has further relied upon the decision of the Hon'ble Apex Court in case of **State of Gujarat vs. Afroz Mohammed Hasanfatta** reported in **(2019) 20 SCC 539**. Learned Advocate Mr. Singh would submit that the Hon'ble Apex Court has reiterated that at the stage of issuing process, the Court is not required to embark upon the possible defences and the Court would also not require to examine the merits and demerits of the case in question. Learned Advocate would therefore submit that at this stage this Court may not interfere with the order of the learned Magistrate.

21. Learned Advocate Mr. Kharadi on behalf of learned Advocate Mr. M.M. Madni had been permitted to argue on behalf of the applicants in Criminal Misc. Application No. 1 of 2022. Learned Advocate would submit that act of the petitioner of throwing 'smiley balls' and 'T-shirts' was in fact a rash and negligent act on the part of the petitioner more particularly

according to learned Advocate Mr. Kharadi such acts having endangered the human life and also causing a grievous hurt as the case may be. Learned Advocate Mr. Kharadi at this stage had submitted that the petitioner being charged with the offence in question and whereas from the investigation report prima facie case being made out against the petitioner of having committed rash and negligent act, this Court may not interfere at this stage and whereas the petitioner may approach the learned Trial Court in exercise of remedies available under the law. Thus submitting, learned Advocate has requested this Court not to interfere with the impugned complaint at this stage.

22 . Heard learned Advocates for the respective parties who have not submitted anything else.

23. At the outset, insofar as the applicants of Criminal Misc. Application No. 1 of 2022 are concerned, the said applicants seek to be impleaded as party respondents in the present petition or had requested for permission to intervene in the application. It appears that applicants though are the legal heirs of the person who is stated to have expired after the incident at the railway station on the concerned day, even at the relevant point of time had chosen not to have post-mortem of the dead body done. The investigation report shows that at the relevant point of time the Doctor concerned had opined that death was on account of Cardiac Arrest and whereas the Doctor had recommended having a post-mortem of the body which has been refused by the family of the deceased. It appears that thereafter while respondent no.2 had filed the complaint before the learned Magistrate, after the inquiry as referred to hereinabove, though the complaint inter alia alleges offence punishable under Section 304A of the Indian Penal Code yet the learned Magistrate had thought it appropriate to issue summons only with regard to Sections 336, 337 and 338 of the Indian Penal Code. The

applicants had not challenged the said order of the year 2017 till date.

24. Having regard to the said circumstances, this Court deems it appropriate not to join the said applicants as party respondents in the present petition and whereas as noted hereinabove, this Court had permitted the applicants to intervene in the present petition and whereas submissions by learned Advocate for the applicants in the said application have been taken into consideration.

25. Insofar as the principle issue is concerned, while the learned Senior Advocate on behalf of the petitioner has attempted to submit that the act on part of the petitioner would neither amount to an act of criminal negligence nor was any act on part of the petitioner directly responsible for any incident that had happened at the Railway Station on that particular date. Such contention while it is supported by the State, is sought to be questioned by the complainant. Having regard to the said position at this stage it would be beneficial to refer to the observations of the Hon'ble Apex Court insofar as the aspect of negligence and criminal negligence is concerned. In case of **Jacob Mathew(supra)** the Hon'ble Apex Court had after elaborately discussing various aspects of the term negligence had inter alia concluded as regards the ordinary meaning of the term negligence at paragraph no. 48(1) which is reproduced hereinbelow for benefit:

> "48.
>
> (1) Negligence is the breach of a duty caused by 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. The definition of negligence as given in Law of Torts, Ratanlal & Dhirajlal (edited by Justice G.P. Singh), referred to hereinabove, holds good. Negligence becomes actionable on account of injury resulting from the act or omission amounting to negligence attributable to the person sued. The essential components of negligence are three: 'duty', 'breach' and 'resulting damage'."

25.1 Furthermore at paragraph no. 48(5) the Hon'ble Apex Court has explained the difference between negligence in civil law and negligence in criminal law. The said paragraph is quoted hereinbelow for benefit:

> "48.
>
> (5) The jurisprudential concept of negligence differs in civil and criminal law. What may be negligence in civil law may not necessarily be negligence in criminal law. For negligence to amount to an offence, the element of *mens rea* must be shown to exist. For an act to amount to criminal negligence, the degree of negligence should be much higher i.e. gross or of a very high degree. Negligence which is neither gross nor of a higher degree may provide a ground for action in civil law but cannot form the basis for prosecution."

25.2 The Hon'ble Apex Court has also observed with regard to the general principle of *res ipsa loquitur* at paragraph no. 48 (8). The same being relevant for the present purpose is quoted hereinbelow:

> "48.
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> (8) Res ipsa loquitur is only a rule of evidence and operates in the domain of civil law specially in cases of torts and helps in determining the onus of proof in actions relating to negligence. It cannot be pressed in service for determining per se the liability for negligence within the domain of criminal law. Res ipsa loquitur has, if at all, a limited application in trial on a charge of criminal negligence."

26. Having regard to the observations of the Hon'ble Apex Court as quoted hereinabove it could be stated that insofar as the ordinary meaning of the term negligence, the same would amount to an act of a breach of duty caused by omission to do something or commission of doing some act which should not have been done more particularly in context of a reasonable man guided by considerations which regulate the normal conduct of human affairs. In other words wherever the term negligence is used in its normal sense, the same would require doing something which should not be done or not doing something which should be done more so the acts of doing and not doing being in the context of how a reasonable person would or would not act in the given circumstances. Furthermore, for negligence to

become actionable there has to be an injury resulting from the negligence in doing something or in not doing something. According to the Hon'ble Apex Court there are three essential components of negligence i.e. (a) duty, (b) breach and (c) resulting damage.

26.1 Insofar as the difference between negligence in civil and criminal law, the Hon'ble Apex Court has inter alia observed and clarified that a negligence in civil law may not be necessarily a negligence in criminal law. According to the Hon'ble Apex Court for negligence to amount to an offence the element of *mens rea* i.e culpable state of mind should be shown to exist. Furthermore according to the Hon'ble Apex Court for negligence to be termed as criminal negligence, the degree of negligence should be of a much higher level i.e. gross negligence of a very higher degree. Furthermore the Hon'ble Apex Court has also clarified that negligence which is neither gross nor of a higher degree cannot be basis for prosecuting a person and there may be a remedy in the civil law with regard to the same.

26.2 It would be further relevant to mention that the normal rule of r*es ipsa loquitur* i.e a thing speaks for itself, may not be available for determining per se whether any liability could be attributed for negligence within the realm of criminal law.

27. It would also be relevant in the above context to refer to observations of the Hon'ble Apex Court in case of **Kurban Hussain Mohamedalli Bangawalla (supra)**. At this stage it would be relevant to note that while the case before the Hon'ble Apex Court was with regard to an offence under section 304A of the Indian Penal Code but at the same time in the considered opinion of this Court, the observations therein would be beneficial for the purpose of deciding the present issue. The Hon'ble Apex

Court at paragraph no. 4 of the said decision had approved of a view taken by the Bombay High Court which reads as under:.

> " To impose criminal liability under s. 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 cause causans; it is not enough that it may have been the *cause sine qua non."*

27.1 The Hon'ble Apex Court has held that insofar as offence punishable under Section 304A, death should have been on account of and a direct consequence of rash and negligent act on part of the accused and whereas the act must be the proximate and efficient cause for the death. What would be relevant to observe herein is that the term proximate and efficient have been qualified by stating that the death should have been as a direct result of the rash and negligence act of the accused without any intervention from negligence of any other person. Meaning thereby that the alleged act on part of the accused should be the act which led to the death and there should not be any intervening or contributory negligence of any other person including of the deceased. The Hon'ble Apex Court has further approved the observation that the death should be the "*causa causans;"* i.e the real, proximate, or main cause of something; the final link in the chain of causation (Oxford Dictionary) and whereas it is not enough that the act should be the "*causa sine qua non"* i.e a necessary cause or condition (Merriam – Webster Dictionary) . Thus it appears that the distinction that is sought to be drawn is that while there may be contributing or even necessary cause being a rash and negligence act, without which rash and negligence act, the death may not have occurred but that would not meet with the test of law. Rather what is required is that rash and negligent act should be the real and proximate i.e. the final link in the chain of causation. Thus while there may have been various rash and negligent acts, which may have contributed to the death but such acts would not be enough to impose

criminal liability under Section 304A of IPC rather it is that one act or acts of criminal negligence in question, on account of which the death had occurred which would attract the criminal liability. To put in a different words if that final act had not taken place then the death would not have occurred.

28. In case of **Ambalal D Bhatt vs. State of Gujarat** reported in **AIR 1972 SC 1150** the Hon'ble Apex Court has inter alia observed that merely on account of the fact that the accused had contravened certain rules and regulations in doing of an act which had caused death of another would not make that person liable to be prosecuted for an offence under Section 304A of the Indian Penal Code. According to Hon'ble Apex Court unless the death was the direct consequence of the rash and negligent act, mere breach of rules in doing of an act which caused death would not be enough to allege criminal liability under Section 304A of the Indian Penal Code.

29. Now coming to the offences alleged against the petitioner, the learned Magistrate has issued process against the petitioner for commission of offences punishable under Sections 336, 337 and 338 of the Indian Penal Code. Section 336 prescribes punishment for endangering human life or personal safety of others by doing a rash and negligent act. Section 337 prescribes punishment for causing hurt to a person by doing a rash or negligent act which endangers human life or personal safety of others. Section 338 prescribes punishment for causing grievous hurt to a person by an act done by a rash or negligent act which endangers human life or the personal safety of others.

29.1 A plain reading of the scheme of the section would reveal that the act which is sought to be punished is the act which is done rashly or negligently

resulting in either endangering of human life or personal safety. Under Section 336 of the Indian Penal Code no injury is envisaged to any person whereas under Section 337 of the Indian Penal Code an injury of hurt or simple hurt is envisaged and under Section 338 injury in the nature of grievous hurt is being envisaged more particularly on account of an act done so rashly or negligently.

29.2 It would also be relevant to note that in all the three sections the term rashly or negligently has been qualified by the word *'so'*. It would also be pertinent to note here that the sections are placed in an ascending order insofar the consequence of the rash and negligent act, as observed hereinabove, Section 336 speaks about rash and negligent act, endangering human life and public safety of others where no injury is envisaged. Section 337 envisages simple injury on account of rash and negligent act and section 338 envisaging simply injury on account of rash and negligent act. Section 338 envisaging injury of grievous hurt by the rash and negligent act. The next section in that order would be death which is caused on account of rash and negligent act of the accused. The said act being punishable under Section 304A of the Indian Penal Code. As discussed hereinabove insofar as rash and negligent act resulting into the death of a person the rash and negligent act has not been qualified by the word *'so'*. On the other hand as noted hereinabove Sections 336, 337 and 338 of the Indian Penal Code qualifying the rash or negligent act with the word *'so'* . Again it would be pertinent to mention here that as noted hereinabove the Hon'ble Apex Court in case of **Jacob Mathew(supra)** has held that while the word gross has not been used in Section 304-A of the Indian Penal Code yet since the requirement of negligence or recklessness in criminal law is of a high degree therefore, the expression rash or negligent act has to be read as qualified by the word "grossly".

29.3 The primary ingredient of offence punishable under Section 336, 337 and 338 and offence punishable under Section 304A is that the act concerned should be done rashly or negligently. Though the consequence of the rash and negligent act and the resultant punishment are varying as per the gravity of the consequence but at the same time the underlying factor to impose criminal liability in all the above sections being that the act should be done rashly or negligently. While the Hon'ble Apex Court in case of **Jacob Mathew (supra)** has inter alia held that the term rash and negligent to be read as qualified by the word 'gross' whereas insofar as Sections 336, 337 and 338, the statute itself has qualified the expression rashly or negligently with the term 'so'. Furthermore in case of **Jacob Mathew (supra)** the Hon'ble Apex Court has also held that for negligence to amoutn to criminal negligence, the degree of negligence should be very high, i.e gross. It could thus be held that for an act to amount to criminal negligence as per Section 336, 337 and 338, the negligence should be of a higher degree. For an act to be categorized as a rash and negligent act under Sections 336, 337 and 338, it is required to be shown that the recklessness or negligence was of a very high degree.

30. As far as the facts of the present case are concerned, as observed hereinabove, parties are ad-idem as regards the act done by the present petitioner and the question is to find out whether such acts were so rash or negligent i.e the rashness or recklessness was of such a higher degree to come in the ambit of Sections 336, 337 and 338 of the IPC. This Court notes that the petitioner herein is an Actor and whereas he was at the relevant time promoting his upcoming movie. The permission of the railway authorities had been sought for and whereas the said permission had been granted. The petitioner upon seeing the crowd at the relevant point of time

had waved and had thrown 'smiley balls' and 'T shirts' as part of promoting the movie in question. As rightly submitted by the learned Public Prosecutor for the State, such acts on part of the petitioner could not be stated to be acts of a very high degree of negligence or recklessness, which would attract the rigors of offence punishable under Sections 336, 337 and 338 of the Indian Penal Code.

30.1 It would be further pertinent to mention here that from the investigation/ inquiry report which has been submitted to the learned Magistrate by the Investigating Officer it also appears that there may be other intervening circumstances which had led to some unruly incident at the Railway Station. As noted hereinabove while the train had been diverted from Platform No. 1 to Platform No. 6, there was a large crowd which was present on Platform No.6. The train had stopped in such a way that the compartment in which the petitioner was travelling had stopped near the stairs on the Platform for going to other Platforms. This had resulted in a narrower space being available for the crowd. Furthermore it also appears that some sections of the crowd were behaving in an unruly manner and whereas they were insisting to see the present petitioner. Furthermore it also appears that to control some unruly sections of the crowd, the police personnel had to resort to using of force. It also appears that two international Cricketers had also come to the Railway Station to meet the present petitioner and their presence also had resulted in the crowd getting excited and getting out of control. It also appears that the train had after its scheduled stop had started to leave the platform at which time some of the persons in the crowd had started to move out of the platform and whereas the train had stopped all of a sudden which had led to some sections of the crowd pushing to go back towards the train which also appears to have led to some unruly scenes. It would be pertinent to mention at the cost of

repetition that all these observations, have been made by this Court relying upon the conclusion made in the inquiry report by the Investigating Officer submitted to the learned Magistrate. From the above narration of the events, in the considered opinion of this Court, the acts on part of the petitioner could neither be termed as the 'causa causans' for the incident nor the said acts could be termed as the proximate or the immediate cause.

31. At this stage it also requires to be mentioned that the act on part of the petitioner more particularly the act of throwing 'smiley balls' and 'T shirts' into the crowd may have led to some of the members of the crowd getting excited but in the considered opinion of this Court, such acts on part of the petitioner could not be stated to be consisting of a very high degree of negligence or recklessness nor would the act concerned be the proximate acts or efficient cause of the unruly scenes that had happened at the Railway Station. Furthermore the petitioner as stated hereinabove being an Actor was promoting his upcoming movie and during course of such promotion he had done the act of throwing 'smiley balls', 'T-shirts' and waving at the crowd. In the considered opinion of this Court none of the said act could be termed as having any element of *mens rea*, which is an essential element to hold negligence as being an offence.

32. Insofar as offences punishable under the Railways Act are concerned, learned Magistrate had issued summons to the petitioner for offences punishable under Sections 145, 150, 152, 154, 155(1)(a) of the Railways Act. Section 180 F of the Railways Act bars the Court from taking cognizance of offences mentioned in sub-section (2) of Section 179 except on a complaint made by the officer authorized. Section 179(2) would take into its ambit offence punishable under Sections 145, 154 and 155(1)(a) of the Railways Act. In the instant case the complaint having been registered by a private

individual and not by an officer authorized, the learned Magistrate could not have taken cognizance for offences covered under Section 179(2) of the Railways Act.

32.1 Insofar as Section 150 it appears that the said section is with regard to wrecking or attempting to wreck a train and whereas Section 150(e) also states with regard to doing or causes to be done or attempts to do in act or thing in relation to any railway. That the acts as alleged in the FIR, do not relate to any alleged act of the petitioner of wrecking or attempting to wreck a train or having done anything in relation to the railway. The act allegedly done by the the petitioner was of throwing 'smiley balls' and 'T shirts' in the crowd and waving at the crowd none of which had any element of either wrecking or attempting to wreck the railway.

32.2 Insofar as Section 152 of the Railways Act is concerned, the same is with regard to hurting or attempting to hurt persons travelling by the Railway and whereas the entire section is in relation to an act of a person which is likely to endanger safety of any person being in or upon a rolling stock or in or upon any rolling stock forming part of train. The word "rolling stock" having been defined as locomotives, lenders, carriages, wagons, railcars, containers, trucks, trolleys and vehicles of all kinds moving on rails. As noted hereinabove, none of the acts which have been complained of, constitute any act or attempt on part of the petitioner to endanger safety of a person on the train.

33. Thus it appears that insofar as Sections 150 and 152 of the Railways Act are concerned even if the allegations levelled in the FIR are taken at their face value then also no offence under the said Sections are not constituted.

34. Insofar as the submission of learned Advocate Mr. Singh for respondent no.2 that the learned Magistrate having come to a prima facie conclusion that the act on part of the petitioner was negligent and reckless and therefore summons had been issued to the petitioner and whereas according to the learned Advocate issuance of the summons would not be the stage of which this Court ought to interfere. In this regard in the considered opinion of this Court, apart from challenging the decision of the learned Magistrate to issue the summons, the petitioner has also challenged the complaint itself as a whole praying for quashing and setting aside the same.

35. The decisions of the Hon'ble Apex Court in case of **Fiona Shrikhande (supra)** and **Afroz Mohammed Hasanfatta(supra)** relied upon by the learned Advocate for respondent no.2, would be, in the considered opinion of this Court, applicable only at a stage if this Court were interfering with the summons issued by the learned Magistrate. In the instant case, as noted hereinabove, since the complaint itself is under challenge, the decision relied upon, would not advance the cause agitated by the learned Advocate for the complainant.

36. The Hon'ble Apex Court in case of **M/s Niharika Infrastructure vs. State of Maharashtra,** has reiterated the law with regard to the exercise of jurisdiction by this Court for quashing of a complaint either under Article 226 of the Constitution of India or under Section 482 of the Code of Criminal Procedure. The Hon'ble Apex Court at paragraph no. 57 has reiterated the principles of law with regard to quashing of the complaint, the said observations being relevant for the present purpose are reproduced hereinabelow:

> "57. From the aforesaid decisions of this Court, right from the decision of the

Privy Council in the case of **Khawaja Nazir Ahmad (supra)**, the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) However, in cases where no cognizable offence or offence or any kind is disclosed in the first information report the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must

disclose all facts and details relating to the offence reported. Therefore,when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and

xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

36.1 The Hon'ble Apex Court, has inter alia reiterated the principle, that while the Courts would not thwart any investigation into cognizable offences but at the same time in cases where no cognizable offence is disclosed then the Court will not permit an investigation to go on. Furthermore the Hon'ble Apex Court has laid down that while quashing of a complaint would be in a very rare case, yet for securing the ends of justice and to prevent the abuse of process of law, the inherent power of this Court under Section 482 would be exercised. Quashing should be as per the parameters laid down by the Hon'ble Apex Court in case of **R.P. Kapur v. State of Punjab** reported in **AIR 1960 SC 866** and **State of Haryana and others v. Bhajan Lal and Others**, reported in **1992 Supp. (1) SCC 335** .

37. The Hon'ble Apex Court in case of **Bhajan Lal (supra)** at para 102 has laid down instances whereby the High Court in exercise of extraordinary power under Article 226 of the Constitution of India or the inherent power under Section 482 of the Code of Criminal Procedure could quash a complaint either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. The observations of the Hon'ble Apex Court at paragraph no. 102 being relevant, the same is reproduced hereinbelow for benefit:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code, which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for

> proceeding against the accused.
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
>
> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

38. Having regard to the observations made hereinabove, it appears to this Court that the impugned complaint would be covered by instances (1), (3) and (6) of the instances enumerated by Hon'ble Apex Court in case of **Bhajanlal (supra).** Insofar as offences under the Indian Penal Code are concerned, as discussed herieinabove, the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, in the considered opinion of this Court do not prima facie constitute any offence or make out a case against petitioner. That the allegation against the petitioner are of doing acts rashly and negligently which had resulted in endangering life or personal safety or causing hurt or causing grievous hurt. As discussed hereinabove, the act on part of the petitioner could not be termed to be so grossly negligent or reckless, neither could be an act on part of the petitioner be treated as the proximate and efficient cause of the unruly incidents at the Railway Station. Furthermore, it requires to be appreciated that while the Investigating Officer had submitted a detailed report before the learned Magistrate, it appears that the Investigating Officer had also inter alia opined that in addition to the act of the petitioner, there were other intervening act also, reference to which has been made hereinabove, which had led to the incidents at the Railway Station. Thus in the considered opinion of this Court , the allegations made in the complaint even if they are not controverted and furthermore, the evidence collected in support of the uncontroverted allegations do not disclose commission of an

offence and thus being covered by instance no. (3) of the judgement of **Bhajanlal (supra).**

38.1 Furthermore insofar as offences punishable under Sections 145, 154 and 155(1)(a) of the Railways Act, the same would stand covered under instance no. (6) of the decision of **Bhajan lal (supra),** more particularly in view of the bar of taking jurisdiction except on a written complaint by an authorized officer as per Section 179(2) of the Railways Act. Insofar as offences punishable under Sections 150 and 152 of the Railways Act, the same would stand covered by instance no. (1) of the decision of **Bhajanlal (supra)**, more particularly since even if the allegations against the petitioner are taken at its face value then also no offence under Sections 150 and 152 of the Railways Act are made out.

39. While this Court has observed the impugned complaint being covered by instances (1), (3) and (6) of the decision of the Hon'ble Apex Court in case of **Bhajanlal (supra),** an additional aspect also appears to be very relevant more particularly since the said aspect touches on the issue of securing the ends of justices. As noted herienabove , the petitioner was promoting his movie on the Railway Station, after having obtained permission for doing so from the concerned authorities. Neither the acts of the petitioner could be termed as being of extreme high degree of negligence or recklessness nor could be the acts stated to be proximate or efficient cause for the alleged incident. As noted by this Court, the alleged incidents had happened as a result of culmination of many causes of which one of the causes may have been the act on part of the petitioner of having thrown 'smiley balls' and 'T shirts' in the crowd. That as noted hereinabove, out of thousands of persons present in the Railway Station on the date of the incident including police personnel and railway staff, none of the

persons who might have been injured on account of the incident or even witnessed the incident had complained about the same. This Court having regard to the extraordinary jurisdiction in exercise by Article 226 of the Constitution of India and inherent power under Section 482 of the Code of Criminal Procedure, is also required to consider that whether it would be fair and justifiable for ordinary citizens of the place where the trial against the petitioner might be held if the impugned complaint is not quashed who would have to suffer inconvenience on account of the petitioner being required to attend the trial with regard to a complaint, which has been filed by a person who has no direct connection with the incident in question.

40. Having regard to the discussions, reasoning and conclusions as hereinabove, in the considered opinion of this Court the petitioner has been able to make out a case for quashing of the impugned complaint. As a result of the same the Criminal Case No. 22663 of 2017 pending before the learned 11th Judicial Magistrate First Class, Vadodara as well as order dated 02.03.2017 passed by the learned Magistrate stands quashed. Criminal Misc. Application No. 1 of 2022 for joining party stands rejected. Rule is made absolute.

(NIKHIL S. KARIEL,J)

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