

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 22nd January, 2013

+ **CRL. M.C. 3649/2012**

ASMITA SHARMA & ANR. Petitioners
Through: Mr. Prem Kumar, Adv. with
Mr. Rakesh Kumar, Adv.

versus

STATE (NCT OF DELHI) Respondent
Through: Ms. Jasbir Kaur, APP for the State.

CORAM:
HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. In this Petition under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) the Petitioners seek setting aside of the order dated 16.04.2012 whereby the Petitioners' prayer for dropping the proceedings for the offence punishable under Sections 279/337 of the Indian Penal Code (IPC), 3/181, 146/196 and 5/180 of the Motor Vehicles Act, 1988 (the M.V. Act) was declined by the learned Metropolitan Magistrate ('MM'). A Revision Petition filed against the order dated 16.04.2012 came to be

dismissed by the learned Additional Sessions Judge (ASJ) by an order dated 07.09.2012.

2. The facts of the case are not very much in dispute. On a complaint of Ms. Kapila Nanda and Ms. Poonam Dabas, FIR No.34/2010 was registered at Police Station (PS) Greater Kailash Part-I against the Petitioners for driving the car No.DL-9CS-5016 by Petitioner No.1 in a rash and negligent manner. The First Petitioner was found to be not even possessing the driving licence. Thus, Petitioner No.2, the owner was also prosecuted for permitting Petitioner No.1 to drive the earlier said car without a license.
3. Injured Kapila Nanda appeared before the learned 'MM' on 02.06.2011 whereas injured Poonam Dabas appeared before the learned 'MM' on 07.06.2011 and stated that they did not wish to proceed against the accused persons (that is the Petitioners herein) and the proceedings against them may be dropped. Since there was no application to compound the offences and the offences other than those punishable under Section 337 IPC were non-compoundable, the learned 'MM' declined to drop the proceedings under Section 258 Cr.P.C. and ordered for issuance of the notice under Section 251 Cr.P.C. The Revision Petition preferred by the Petitioners did not find favour with the learned ASJ. The same was dismissed by an order dated 07.09.2012.
4. Mr. Prem Kumar, learned counsel for the Petitioners very fervently argues that it was a very small matter where just simple injuries were received by the injured. Section 258 Cr.P.C. is meant only for the purpose, where at any stage of the case instituted other than a complaint, a Magistrate may stop the proceedings and where evidence of principal

witnesses has been recorded and pronounced a judgment of acquittal and in any other case, release the accused which would amount to his/her discharge. The learned counsel for the Petitioners places reliance on a report of the Supreme Court in *John Thomas v. Dr. K. Jagadeesan*, 2001 CRL.L.J. 3322, a judgment of the Bombay High Court in *Adwait Surendra Aatre v. State of Maharashtra & Ors.*, 2011 (3) BCR (Cri) 166; and a judgment of the Punjab & Haryana High Court in *Anita Narang v. State of Punjab & Ors.*, Crl.MC No.M-11297/2010 decided on 01.09.2010.

5. It is not in dispute that offence punishable under Section 279 IPC is non-compoundable and is punishable with imprisonment of a term which may extend to six months or a fine of ₹1,000/- or both. Whereas, an offence punishable under Section 337 is punishable with imprisonment which may extend to six months or fine which may extend to ₹500/- or both.
6. The offence punishable under Section 338 IPC of course entails more punishment than is applicable in a case under Section 279 IPC.
7. It has to be kept in mind that a person may be independently prosecuted by the State for an offence under Section 279 IPC even if nobody is injured or aggrieved by rash or negligent driving. Thus, the contention raised on behalf of the Petitioners that the offence under Section 279 IPC is included in the offence under Section 337 IPC is not correct.
8. In *John Thomas* what was laid down by the Supreme Court was that Section 258 Cr.P.C. applies to the State cases instituted otherwise than on a complaint. The question of dropping the proceedings in a non-compoundable case under Section 258 Cr.P.C. was not before the Supreme Court.

9. In *Adwait Surendra Aatre* the learned Single Judge of Bombay High Court observed that the offences under Sections 279 IPC and 338 IPC constitute common ingredients. The requirement of offence under Section 338 IPC is covered in Section 279 IPC. It was held that if an accused is acquitted under Section 338 IPC, on the compounding of offence which is permissible with the permission of the Court, the accused cannot be prosecuted or tried for the same act by a different title or head under Section 279 IPC. The learned Single Judge of the Bombay High Court acquitted and quashed the offence punishable under Section 279 IPC.
10. The judgment in *Adwait Surendra Aatre* runs counter to a Division Bench judgment of the Bombay High Court in *State v. Kamalakar Prabhakar Juvekar*, AIR 1960 Bombay 269(V 47 C 76)(1) where it was held that the offence under Section 279 IPC is non-compoundable and the compounding of offence under Section 337 IPC will not prevent the prosecution to be continued under Section 279 IPC. It was observed that the offence under Section 279 IPC is an offence against public safety and is, therefore, punishable independently of Section 337 IPC. The Division Bench held that an offence under Section 279 IPC is an offence against public safety and the fact that one of the component ingredients of the offence under Section 337, where this offence is the result of rash and negligent driving, may constitute independently an offence punishable under Section 279 IPC. The Division Bench held as under :

“4.....An offence under Section 279 IPC is an offence against public safety and the fact that one of the component ingredients of the offence under Section 337, where this offence is the result of rash and negligent driving, may constitute independently an offence punishable under Section 279 IPC, will not, in our

judgment, justify the view that the offence under Section 337 IPC is an aggravated form of the offence penalized by Section 279 IPC. It may appear somewhat incongruous if the argument of the petitioner be accepted that an offence punishable under Section 337 for which the maximum sentence of fine prescribed is lighter than sentence prescribed by Section 279 IPC, is an aggravated form of the later offence. Where a person accused of one offence under Section 337 IPC is acquitted, the acquittal may mean that the accused was not guilty of causing hurt to the person or that he was not acting rashly or negligently. Where an offence under Section 337 IPC is compounded, the composition can, in very nature of the offence, be of causing hurt to the person so injured and not of doing a rash or negligent act, especially when the rash or negligent act is driving a vehicle or riding on a public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to that person. We are, therefore, unable to agree with the view of the trial Magistrate that the order of acquittal passed in favour of the accused for the offence under Section 337 IPC precludes the prosecution of the case under Section 279 IPC.”

11. Similarly, the Division Bench of Punjab and Haryana High Court in *Anita Narang* simply quashed the proceedings under Section 482 Cr.P.C. for an offence under Section 279 IPC being non- compoundable. Admittedly, the powers under Section 482 Cr.P.C. are very wide and the same can be exercised by the High Court in the interest of justice and in order to prevent the misuse the process of the Court. Petitioner No.1 is a young person and both the injured have forgiven her for causing injury to them by her rash or negligent driving. The Petitioners also tendered apology for the offence committed by them and undertook not to repeat the offence in future. Thus, although the order dated 16.4.2012 passed by the learned M.M. and the order dated 07.09.2012 passed by the learned ASJ cannot be faulted, yet in the interest of justice and in view of the specific

statement given by the two injured who suffered simple injuries in the incident and in view of the apology and undertaking given by the Petitioners, the FIR No.34/2010 registered at the Police Station Greater Kailash, Part-I and the consequent proceedings thereon are hereby quashed.

12. The Petition is allowed in above terms.

(G.P. MITTAL)
JUDGE

JANUARY 22, 2013
vk/pst