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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL REVISION APPLICATION NO.117 OF 2025

ARJUN S/O RUSTUMRAO MULE
VERSUS
THE STATE OF MAHARASHTRA, THR. POLICE STATION
(GRAMIN), PARBHANI

.....

Mr Kunal Kale, Advocate h/f Mr Rushikesh R. Shinde, Advocate for
Applicant

Ms B. B. Gunjal, APP for Respondent/State

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CORAM : SUSHIL M. GHODESWAR, J.

DATE : 27th AUGUST 2025

P. C. :

1. Heard Mr Kunal Kale, learned Advocate holding for
Advocate Mr Shinde for applicant and learned APP Ms Gunjal for
respondent/State.

2. The applicant is challenging the impugned judgment and
order dated 27/02/2025, passed by the learned Additional Sessions
Judge, Parbhani below Exh.22 in Criminal Appeal No.18/2017,
whereby the said appeal came to be partly allowed and the judgment
and order dated 21/01/2017, passed by learned Judicial Magistrate
First Class, Parbhani, below Exh.45 in S.S.C. No.352/2013 came to be
modified.

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3. By the Judgment dated 27/02/2025, learned Additional Sessions Judge acquitted the applicant to the extent of conviction and sentence under section 133 read with 177 of Motor Vehicle Act, 1988. However, the remaining judgment of conviction and sentence passed by learned Judicial Magistrate First Class came to be maintained, wherein the applicant came to be convicted for the offences punishable under Section 279 of the Indian Penal Code and sentenced to suffer simple imprisonment for four months and to pay fine of Rs.1000/-, in default to pay fine, to suffer simple imprisonment for fifteen days. The applicant is also convicted for the offences punishable under Section 337 of Indian Penal Code and sentenced to suffer simple imprisonment for four months and to pay fine of Rs.500/-, in default to pay fine, to suffer simple imprisonment for fifteen days. He is further convicted for the offence punishable under Section 3 read with Section 181 of the Motor Vehicles Act and sentenced to pay fine of Rs.100/-, in default to pay fine, to suffer simple imprisonment for one day. He is also convicted for the offence punishable under Section 133 read with Section 177 of the Motor Vehicles Act and sentenced to pay fine of Rs.100/-, in default to pay fine, to suffer simple imprisonment for one day. He is also convicted for the offence punishable under Section 134(a) read with Section 187 of the Motor Vehicles Act and sentenced

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to pay fine of Rs.500/-, in default to pay fine, to suffer simple imprisonment for five days. He is further convicted for the offences punishable under Sections 134(b) read with Section 187 of the Motor Vehicles Act and sentenced to pay fine of Rs.500/-, in default to pay fine, to suffer simple imprisonment for five days. All the sentence directed to be run concurrently.

4. According to the prosecution, the crime was registered on the basis of information given by informant, namely, Prakash Manikrao Dudhate, alleging therein that, on 06/01/2013, when he along with one Ramkishan Sahebrao Lombade proceeding towards Parbhani on motorcycle from Gangakhed, one Piaggio Auto Rickshaw, without having registration number and having a bicycle tied to its rear side, came from back side in a high speed. Said Auto while overtaking their motorcycle, given dash to them. Resultantly, motorcycle got entangled with bicycle tied to Auto and they fell down from motorcycle. Both of them sustained injuries. The said Auto fled away from the spot. Ramkishan Lombade followed said Auto by another motorcycle passing thereby, and caught the auto-rickshaw. After inquiry, the driver of the auto-rickshaw discloses his name as Arjun Rustumrao Mule (present applicant). Thereafter, complainant took the

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accused to police station and lodged complaint, which came to be registered as Crime No.03/2013 for the aforesaid offences.

5. After the investigation is complete, charge sheet came to be filed against the accused, and thereafter, charge was also framed for the aforesaid offences. After recording the evidence of six witnesses, the learned Judicial Magistrate convicted the applicant for the offences punishable, as aforesaid.

6. The applicant, being aggrieved by the aforesaid judgment and order of conviction, preferred Criminal Appeal No.18/2017 before the learned Sessions Court. The learned Sessions Court, after hearing both the parties allowed the appeal partly, thereby modifying the order of learned Judicial Magistrate to the extent of only acquittal from the conviction and sentence under Sections 133 read with 177 of motor vehicle act and maintaining the remaining conviction awarded under the judgment of the learned Judicial Magistrate.

7. Mr Kale, learned Advocate for the applicant submits that the learned Trial Court as well as the Appellate Court have not taken into consideration various omissions and contradictions. The testimony of PW-3/Purushottam Keshavrao Choudhari clearly indicates that the applicant was not driving the said Auto that struck

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the complainant at the time of incident. The learned Courts below also did not take into consideration that the alleged spot is in high density area and there is no eye-witness to the incidence. According to him, the prosecution case is that the bicycle which was tied to the auto-rickshaw from rear side came into contact with the motorcycle of the complainant, and therefore, the accident took place. However, the prosecution, in its panchnama, did not record that the said bicycle was recovered or seized from the spot or even that the auto-rickshaw was found to be tied with the said bicycle when the auto-rickshaw came to be caught by the pillion reader of the complainant.

8. Mr Kale learned counsel for the applicant further submits that the learned Trial Court as well as Appellate Court have not considered the evidence in proper perspective and given unnecessary weightage to the testimonies of the witnesses, who have at all not supported the case of prosecution in reality. He then submits that, as per the version of the prosecution witnesses, the bicycle was tied to the auto-rickshaw of the present applicant, however, there is no evidence or the material to suggest that such bicycle was tied to the auto-rickshaw of the applicant when the said auto rickshaw stopped by the prosecution witness. Lastly, learned Advocate for the applicant submits that, giving dash while driving the vehicle is another aspect

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and driving a vehicle in rash and negligent manner is another aspect. In order to prove the offences under Sections 279 and 337 of the Indian Penal Code, the prosecution is required to prove that the applicant was driving the vehicle in a rash and negligent manner. The evidence nowhere suggests that the vehicle being driven in rash and negligent manner. Hence, learned Advocate for the applicant submits that there is a gross illegality in the order passed by the learned lower Courts. As such, this Court, in the exercise of its revisional jurisdiction under Section 397 of the Code of Criminal Procedure may call for the record to satisfy itself as to the correctness, legality and propriety of the finding, sentence or order.

9. Per contra, learned APP Ms Gunjal vehemently opposes the the present revision application. She submits that the learned lower Courts have passed well reasoned orders after considering the entire evidence on record and the same warrants no interference by this Court.

10. After hearing the learned Advocates for the respective sides, I have gone through the record. It is clear that the prosecution witnesses have stated that the applicant, while driving the vehicle, had given dash to the motorcycle of the complainant, due to which the

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informant and pillion rider fell down and sustained injuries. However, there is absolutely no evidence on record to suggest that, the applicant was driving his vehicle in a rash and negligent manner. In order to attract the provisions under Sections 279 of the Indian penal Code, the prosecution is required to prove that the applicant was negligently and rashly driving the vehicle. After carefully examining the prosecution witnesses, it is found that it is nobody's case that applicant, at the time of accident, was driving his auto in a rashly and negligent manner.

11. It is a matter of record that the applicant faces allegations of having tied a bicycle to the rear side of his auto-rickshaw, which subsequently came into contact with the motorcycle of the informant, causing the rider to lose balance and fall. However, it is for the prosecution to establish that the said bicycle was really tied on the rear side of the auto of the applicant. Neither the panchnama of the seizure of the vehicle/Auto, nor any of the prosecution witnesses who identified the applicant as the driver have stated that a bicycle was found tied to the Auto at the time of vehicle was intercepted. In absence of such important evidence, the learned Trial Courts have committed illegality in convicting the applicant. When the orders passed by the lower Courts suffer from illegality, this Court has

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revisional jurisdiction under section 397 of the Code of Criminal Procedure to quash and set aside such orders.

12. In that view of the matter, I found that the learned Trial Court as well as the Appellate Court have committed error in law, thereby convicting the applicant for the offence punishable under Sections 279, 337 of the Indian Penal Code and other offences punishable under the provisions of Motor Vehicles Act. To attract the provisions of Section 337 of the Indian Penal Code, it is necessary for the prosecution to prove that the accused acted in a rash and negligent manner, thereby endangering human life or the personal safety of others. In absence of record to suggest that the applicant was rashly and negligently driving the vehicle, the learned Trial Courts have committed mistake in convicting the applicant for the said offences.

13. In that view of the matter, I am inclined to exercise revisional jurisdiction under section 397 of the Code of Criminal procedure, thereby quashing and setting aside the impugned judgment and orders. Hence I pass the following order :-

ORDER

(I) The criminal revision application is allowed.

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(II) The judgment and order dated 21/01/2017, passed by learned Judicial Magistrate First Class, Parbhani, below Exh.45 in S.S.C. No.352/2013 and the judgment and order dated 27/02/2025, passed by the learned Additional Sessions Judge, Parbhani below Exh.22 in Criminal Appeal No.18/2017, are quashed and set aside.

(III) The applicant is acquitted of the offences registered under Crime No.03/2013 for the offences punishable under Sections 279, 337 of the Indian Penal Code and under Section 3 read with Section 181, Section 133 read with Section 177, Section 134(a) and Section 134(b) read with Section 187 of the Motor Vehicles Act.

(IV) The bail bonds executed by the Applicant and his surety stand discharged.

(V) The fine amount, if any deposited by the Applicant before the trial court, is ordered to be refunded to him.

(VI) The Record and Proceedings of the lower Court be returned.

[SUSHIL M. GHODESWAR, J.]