

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 30 OF 2015**

1. Shri Hali Ahmed Mohammed Ali Otaifah,
Son of Mohammed Ali,
Aged 22 years,
Occupation student
R/o. Flat No. 20 Haven
Building, Miramar, Panaji-Goa
N/O Taaz Street
Hazyez, Sanaa, Yemen .. Petitioner

V/s

1. State of Goa
Through Public Prosecutor,
2. Shri Sanjay Madkaikar
Son of Anand Madkaikar
Aged 47 years,
Business R/o. Flat No.F2
Bld. No.1, Sidharth Appartments
Caranzalem, Goa.
3. Shri. Raghuprasad Naik
S/o Vishavanath Naik
Occupation Business
R/o Flat No. UG-6
Bldg. No. 9 Phase II
Kamath Complex,
Tonca Caranzalem Goa .. Respondents

Mr. R. Naik, Advocate for the petitioner.

Mr. M. Amonkar, Additional Public Prosecutor for the respondent no. 1.

CORAM :- C. V. BHADANG, J.

Date : 18th March, 2015.

ORAL JUDGMENT :

Rule. Rule returnable forthwith. Heard finally with the consent of the parties.

2. Mr. Amonkar, learned Additional Public Prosecutor waives service of notice on behalf of the respondent no. 1.

3. The learned Counsel for the petitioner submits that the respondents no. 2 and 3, who are injured in the accident in question, are present in the Court today. However, they are neither identified nor represented by any Counsel. However, in the circumstances of the present case, it would not be necessary to issue a formal notice to the respondent nos. 2 and 3.

4. There was a motor vehicle accident, which had occurred on 16/03/2014 involving the present petitioner and the respondents no. 2 and 3. In that accident, the respondents no. 2 and 3 were injured. On investigation, a chargesheet came to be filed against the petitioner herein in the Court of Judicial Magistrate, First Class, Panaji for the offence punishable under Sections 279 and 338 of Indian Penal Code (I.P.C., for short) read

with Section 3 of Motor Vehicles Act, 1988 (M. V. Act, for short). It appears that the petitioner and the respondents no. 2 and 3 moved a joint application exhibit D-7 before the Magistrate purportedly under Section 320 of Cr.P.C. for compounding of the offences. The learned Magistrate, by order dated 05/01/2015, partly allowed the application. The learned Magistrate allowed the compounding of the offence punishable under Section 338 of I.P.C. while directing that the petitioner would be prosecuted for the offences under Section 279 of I.P.C. and Section 3 of the M. V. Act in as much as these offences are not compoundable.

5. It is in these circumstances that the petitioner has approached this Court under Section 482 of Cr.P.C. for quashing of the proceedings before the learned Judicial Magistrate, First Class, Panaji in Criminal Case No. 149/2014/B.

6. I have heard Mr. Naik, learned Counsel for the petitioner and Mr. Amonkar, learned Additional Public Prosecutor for the respondent no. 1.

7. The learned Counsel for the petitioner has submitted that the prosecution under both the offences, namely under Section 279 and Section 338 of I.P.C. arises out of the same

incident. It is submitted that although the parties have agreed to compound the offences, only in view of the fact that the offence under Section 279 of I.P.C. is not compoundable, the Magistrate was unable to record an order for compounding of the same. The learned Counsel for the petitioner has placed reliance on the decision of this Court in ***Pranav Goel Vs. State of Goa and another*** reported in 2013 All M R (Cri.) 2586, in order to submit that in similar fact situation, this Court had quashed the chargesheet as regards the offence under Section 279 of I.P.C. is concerned.

8. The learned Additional Public Prosecutor, on the contrary, has pointed out that unlike in the case of ***Pranav Goel*** (supra), the petitioner is also charged for the offence under Section 3 of the M. V. Act. In reply, it is submitted by the learned Counsel for the petitioner that the petitioner would be willing to seek an order on admission, so far as that offence is concerned before the Magistrate and has restricted the prayer for quashing only as regards the offence under Section 279 of I.P.C. is concerned.

9. The scope and ambit of powers of this Court in the matters of quashing of F.I.R./ Criminal Proceedings are no longer

res integra. The Hon'ble Supreme Court in the case of **Gian Singh Vs. State of Punjab and Anr.** reported in (2012)10 SCC 303 has, *inter alia*, held that the powers exercised under Section 482 of Cr.P.C. are separate and distinct than the powers under Section 320 of Cr.P.C. In other words, the fact that the offence is non-compoundable by itself may not preclude this Court in the given case from quashing the same. It has been held that the inherent powers in this regard are wide enough with no statutory limitations and such powers can normally be exercised (i) to secure the ends of justice, or (ii) to prevent abuse of process of any Court. The Apex Court then proceeded to observe that while exercising such power the High Court must have due regard to the nature and gravity of the crime.

10. In the present case, the record shows that already a joint application was filed by the petitioner and the respondents no. 2 and 3 at exhibit D-7 and the learned Magistrate had refused to compound the offence under Section 279 of I.P.C. apparently only on the ground that the said offence is not compoundable.

11. It is submitted by the learned Counsel for the applicant that there were two vehicles involved in the accident. The petitioner as well as the respondents were riding the two wheelers

and in the investigation, it transpired that it was the petitioner, who was found to be negligent. Be that as it may, in the given circumstances, considering the nature of the allegations made, the chances of conviction in such a case would be remote and bleak. In such circumstances, the following order is passed :

ORDER

- (i) The petition is partly allowed.
- (ii) Rule is made absolute in terms of the prayer clause (A) to the extent of offence punishable under Section 279 of I.P.C. is concerned.

11. Writ Petition stands disposed of accordingly.

C. V. BHADANG, J.

SMA