

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2814 OF 2014

Shri Eknath Govarya Pawar & Ors. ... Petitioners/
Applicants.

V/s.

The State of Maharashtra ... Respondent.

Mr. Prakash Naik a/with Mr. Pawan Mali, Advocate for the
Petitioners.

Ms. V.S. Mhaispurkar, APP for the State.

**CORAM : M.L.TAHALIYANI,J.
DATE : 04 FEBRUARY, 2015**

P.C. :

1 Heard learned counsel Mr. Prakash Naik appearing
for the Petitioners / Applicants and learned additional public
prosecutor Ms. V.S. Mhaispurkar for the State.

2 This writ petition be converted in to Revision
Application and be registered accordingly.

3 The Applicants are facing trial for the offences
punishable under sections 307, 353, 279 and 332 read with
109 of the Indian Penal Code in Sessions Case No.175 of 2011,
pending in the Court of Sessions at Pune. The complainant in
this case is one Santosh Babanrao Wadekar, who was on duty

as a Traffic Police Constable at Khandobaji Baba Chowk, Pune City. There was some defect in electronic signal and therefore, the traffic was being regulated by the complainant manually. While the complainant was busy in his duty at the signal, Innova Car No. MH-06-AS-1343 arrived at the junction from J.M. Road. The car did not move further despite the green signal for the traffic. The complainant, therefore, went near the car to find out as to why the car was not moving. It is alleged that applicant no.1 was driving the car and that he suddenly drove the car towards the complainant. The complainant, therefore, wanted to stop the car and take action against the driver. In the process, the complainant caught hold of door-handle of the car. The complainant thought that he could stop the car by holding the door-handle. Applicant No.1, however, did not stop the car and continued to drive the same to some distance. The complainant was dragged alongwith the car and had sustained injuries. Thereafter, the car was followed by the police vehicle and all the applicants were apprehended by the police. The offence was registered at Deccan Gymkhana Police Station, Pune. After completion of investigation, the chargesheet had been filed against the applicants. Other applicants have allegedly abetted the offence alleged to have been committed by the applicant no.1.

4 The applicants moved the Sessions Court for discharge of the applicants of the offence punishable under

section 307 read with 109 of the Indian Penal code. The learned Sessions Judge rejected the applicants' prayer and therefore, the applicants have moved this court for setting aside the order of the Sessions Court and for discharge of the applicants from the offence punishable under section 307 read with section 109 of the IPC.

5 The learned counsel Mr. Naik for the applicants has submitted that even if the case of the prosecution is accepted to be true and correct, it does not amount to an offence punishable under section 307 of the IPC. The learned additional public prosecutor Ms. Mhaispurkar has submitted that applicant no. 1 continued to drive the vehicle, knowing well that the complainant had held the door-handle of the car. It was submitted by Ms. Mhaispurkar that applicant no. 1 and his associates, therefore, knew that they were likely to cause death of the complainant.

6 In my opinion, the requirements of the offence under section 307 of the IPC are not available in the FIR. In the first place, it was not the duty of the complainant to hold the handle of the car to stop the same. The proper course open to him was to chase the vehicle or give wireless message to the traffic officer on the next signal or give intimation to the control room. It is possible that applicant no.1 may not be knowing that the complainant was holding handle of the car.

At the most, it can be said that applicant no.1 and other applicants tried to run away from the spot, by driving the car in a rash and negligent manner to avoid police action. In fact it was the mistake on the part of the complainant to hold the handle of the car.

7 I am, therefore, of the view that the learned additional Sessions Judge should have discharged all the applicants of the offence punishable under section 307 read with section 109 of the Indian Penal Code. Hence, I pass the following order.

- i. The Applicants shall stand discharged of the offence punishable under section 307 read with section 109 of the Indian Penal Code. Rest of the offences are triable by the Court of Magistrate.
- ii. The rest of charges be sent to the Court of Magistrate for trial in accordance with law.

8 The present Revision Application stands disposed of.

(JUDGE)

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