

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO. 328 OF 2016**

Nihal Nikhil Ajinkya

....Applicant

versus

State of Maharashtra & Anr.

....Respondents

.....

Mr.Sameer P. Nangre a/w. Mr.Suraj P. Nangre for Applicant.

Mrs. M.H.Mhatre, APP for Respondent no.1.

Mr.Rupesh Ramchandra Lanjekar for Respondent no.2.

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CORAM : A.S.OKA AND P.D.NAIK, JJ.**DATE : 15th April, 2016.****P.C.:**

. Heard learned Counsel appearing for the Applicant, learned APP for the first respondent and learned Counsel appearing for the second respondent. Rule. Respondents waive service.

2. Application taken up for final disposal. By this application under section 482 of the Criminal Procedure Code, 1973 (for short "CrPC"). The applicant is seeking quashing of the criminal case arising out of offences registered against applicant punishable under section 279 and

338 of the Indian Penal Code, 1860 r/w section 134 (A) (B) of the Motor Vehicles Act, 1988.

3. The second respondent has filed two affidavits. In the first affidavit affirmed on 7th April, 2016 he has stated there has been complete settlement between him and the applicant. Second affidavit affirmed today by the second respondent. In paragraph 2 of the said affidavit he has stated thus :

“2. I say that I have already filed an affidavit dated 7th April, 2016 stating that the dispute between myself and the applicant is amicable resolved and I have no grievance against the applicant. I say that I had spend around Rs.60,000/- on my medical treatments and the said medical expenses are received by me from the applicant. I say that in addition to the above, the applicant has paid me sum of Rs.90,000/- towards full and final compensation amount. I say that I have received sum of Rs.1,50,000/- from the applicant which includes all my medical expenses.”

4. We have perused the statement of the second respondent as

well as material forming part of the charge sheet. The submission of the learned APP is that in view of filing of charge sheet, at this stage, powers under section 482 of the said Code cannot be exercised.

5. After having perused the statement of the second respondent and other material forming part of the charge sheet, we have a serious doubt, whether there is any possibility of conviction of the applicant. As far as the offence under section 338 is concerned, it can be compounded with the permission of the court.

6. The second respondent has stated that the entire amount required for medical treatment being Rs.60,000/- was reimbursed by the applicant and compensation has been paid to him in the sum of Rs.90,000/- over and above the amount of expenditure.

7. We must, however, note that mere fact that the victim of an offence alleged under section 279 and 338 of the Indian Penal Code has received compensation is no ground to exercise of the powers under section 482 of the said Code.

8. We are referring to the payment of compensation only as one out of the several factors which we have considered for exercising the

jurisdiction of this Court under section 482 of CrPC.

9. As stated earlier, after having perused the material forming part of the charge-sheet, we find that the offences under section 279 and 338 of the Indian Penal Code are not made out. The chances of conviction of the applicant are very remote. Moreover, considering the conduct of the parties and considering facts of the case, it cannot be said that the alleged offences will have a serious impact on the society. Therefore, in the peculiar facts of the case, we are of the view that the power under section 482 of CrPC deserves to be exercised.

10. Accordingly, pass the following order:

(a) Rule is made absolute in terms of prayer clause (a) which reads thus :

(a) That the Hon'ble Court may be pleased to quash and set aside proceedings bearing CC NO.106/PS/2011 arising out of C.R. No.340 of 2010 registered at Dadar Police Station, Mumbai for offence u/s. 279, 338 of I.P.C. r/w section 134 (A) (B) of Motor Vehicles Act, and pending before the LD. Metropolitan Magistrate 5th

Court, Dadar, Mumbai, against the Applicant, on such terms and conditions as this Hon'ble Court may deem fit to grant in the circumstances of the case;"

- (b) All concerned to act on an authenticated copy of this order.

(P.D.NAIK, J.)

(A. S. OKA, J.)