

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

CRIMINAL WRIT PETITION NO. 2296 OF 2016

Master Nikunj Dholay
Through his father and legal gaurdian
Mr. Rajesh Dholay ... Petitioner

V/s.

The State of Maharashtra & anr. ... Respondents

Mr. Prajot H. Jaggi for the petitioner.

Mr. D.S. Joshi for respondent no.2.
Mrs. S.V. Sonawane, APP for the State.

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

3rd August, 2016.

P.C.

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. The petitioner prays for quashing the First Information Report No. 384/2015 dated 15th November, 2015 registered for an offence punishable under Sections 279 and 338 of IPC and under Sections 134 B of the Motor Vehicles Act. The brief facts of the case are as under:-

The petitioner is an accused against whom aforesaid FIR came to be registered. It is alleged that the accused who was minor at the relevant time was driving four wheeler on 14th November, 2015. It is stated that respondent being friend of the petitioner was sitting behind on the rear seat of the vehicle. The father of the respondent received a phone call from his wife that his son suffered an accident. It was informed to him that the accused was driving a vehicle 'Maruti Zen' which crashed at the divider near Lokhandwala Bank road. The son of respondent Rahul was admitted in Kokilaben Dhirubai Ambani Hospital. Son of respondent was minor at the relevant time.

3. We have seen the record maintained by the Investigating Officer in respect of the investigation of this case. The investigating officer has not filed any final report so far. The investigation is said to be still pending.

4. It was submitted that from 14th November, 2015 till the date of discharge from hospital i.e. 19th May, 2016 son of the respondent was taking medical treatment in the said hospital for the injuries sustained by him.

5. Learned Counsel appearing for petitioner and respondent submits that incident was an accidental one. Both the petitioner and son of respondent were friends and their parents being family friends, they decided to settle the matter.

6. The respondent filed affidavit in this Court. He states in paragraph 5,6 and 7 as under:

“ I say that the entire incident was unintentional and further that even the Petitioner had suffered injuries and has undergone a mental trauma.

I say that the petitioner has apologized to me in writing and the father of the petitioner has taken good care of my son and has also paid the medical bills till date for the treatments, tests, etc. of my son.

I say that after a mutual discussion with my family and considering the apology of the petitioner, I have decided to withdraw the allegations made by me against the said petitioner herein.”

7. The father of the petitioner and the respondent are present in Court. They are identified by their respective Counsel. Learned APP

submits that Investigating Officer was waiting to record statement of the injured as he was in traumatic condition. The Doctors advised that it would not be appropriate to remind him of incident while recording the statement. Learned APP submits that the investigating officer collected record and recorded statement of some of the witnesses. Learned APP submits that cost be awarded which shall be paid by the petitioner.

8. It is an admitted fact that the petitioner was not holding a valid driving license at the relevant time. He was a minor. An offence relating to driving without licence was not registered by police.

9. In the facts of the case we find that son of the respondent suffered serious injuries due to rash and negligent driving of the petitioner who was driving vehicle without license. The son of the respondent fortunately recovered, according to learned Counsel for the respondent. It is submitted that he is keeping good health now. Both the children were minor. Parties are family friends, they know each other. In the affidavit of respondent it is stated that medical bills of son of respondent were paid by the petitioner.

10. The Investigating Officer could have filed final report expeditiously

within reasonable period as such cases are to be dealt with on priority. Necessary instructions be given to Investigating officer by the DCP of concerned zone.

11. Taking into consideration the facts and circumstances and request made by the petitioner and respondent, we are inclined to allow the request made by the parties.

12. Learned APP submitted that heavy cost be awarded so that elder members of Society would get message not to allow minor children or persons who do not hold valid driving licence to drive the vehicle.

13. In the normal circumstances, we would have allowed the parties to get the FIR quashed without imposing cost or on payment of nominal cost. But the facts of this case are disturbing in nature. The owner of the vehicle i.e. petitioner's father allowed his minor son to drive a four wheeler due to which minor son of the respondent suffered very serious injuries. We have perused the medical papers maintained by the hospital. We share concern of the learned APP that message must go to the Society at large. In such a situation even a by-passer or any other third party could have suffered serious damage or injuries. Fortunately that

has not happened.

14. Taking into consideration all these facts and circumstances, we pass following order:

ORDER

(i) The FIR being C.R. No.384/2015 dated 15th November, 2015 registered by Versova Police Station, Mumbai is hereby quashed and set aside subject to payment of cost of Rs. 50,000/- (Rupees Fifty Thousand Only) with the Tata Memorial Hospital and Cancer Research Institute, Parel, Mumbai within two weeks from today.

(ii) Payment of cost is a condition precedent for quashing the FIR. Order of quashing the FIR would be operative after Petitioner deposits the amount of costs and submits receipt of the same to the Registry of this Court.

15. Rule is made absolute in the above terms.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)