

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.872 OF 2015**

Denver Jeremiah Jude Raja	... Applicant
Vs.	
The State of Maharashtra and Anr.	... Respondents

Mr. S.S. Borkar i/by Mr. Madhukar Dalvi for the Applicant.
Mrs. M.H. Mhatre, APP for the Respondent No.1.
Mr. Amol Jayant Phoujadar for the Respondent No.2.

**CORAM : A.S. OKA &
P. D. NAIK, JJ.**

DATE : 11th APRIL, 2016

PC.

1 Heard the learned counsel appearing for the Applicant, the learned APP for the first Respondent and the learned counsel appearing for the second Respondent. Rule. The learned counsel appearing for the second Respondent waives service, the learned APP waives service for the first Respondent. Forthwith taken up for final disposal.

2. The prayer in this application under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.PC.") is for quashing of pending criminal case in which the Applicant is being prosecuted for the

offences punishable under Sections 279, 338 and 427 of the Indian Penal Code.

3 The second Respondent is the first informant. In the statement on the basis of which FIR was registered, he stated that on 15th December, 2008 in the morning around 8 to 8.10 am, he got down from a bus at Shankarwadi Bus Stop, Jogeshwari (E). He stated that when he was crossing the western express highway, a motor car came in a very high speed and gave a dash to him. He stated that he became unconscious as a result of the injury sustained. The statement itself discloses that the Applicant had taken the second Respondent to Aditya Nursing Home and admitted the second Respondent to the said Nursing Home. The second Respondent has filed an affidavit. He has stated that he has no subsisting grievance against the Applicant. The Applicant was driving the Swift Car which was involved in the accident. He has stated that he has settled the dispute with the Applicant. The learned APP submitted that apart from the fact that the charge sheet has been filed even offence under Section 338 is made out. We find from the Table appended to Section 320 of the Code of Criminal Procedure, 1973 that offence punishable under Section 338 is a compoundable offence with the leave of the Court at the instance of the person to whom hurt is caused.

4 In the present case, the second Respondent is the injured person who has stated that there is a complete settlement with the Applicant.

5 As far as the allegation of commission of offence under Section 279 is concerned, we may note here that in the morning of a working day, the second Respondent was attempting to cross the western express highway. It is not the case made out by the second Respondent that for crossing the highway, he was using Zebra crossing.

6 Considering the peculiar facts of the case, it cannot be said that alleged offence is against the society at large. Considering the peculiar facts of the case, the same will not have any serious impact on the society. The accident has occurred while the second Respondent was attempting to cross the western express highway which is having a very heavy vehicular traffic. The Applicant admitted the second Respondent to a hospital. The learned counsel appearing for the second Respondent states that entire medical expenses of the second Respondent were borne by the Applicant.

7 Therefore, considering the peculiar facts of the case, we are of the view that the power under Section 482 of the Cr.PC deserves to be exercised in this case. Accordingly, we pass the following order :-

ORDER

(i) Rule is made absolute in terms of prayer clause (A)

which reads thus :-

“(A) Call for the Record and Proceedings in C.C. No.151/PS/2009 pending before the Ld. Metropolitan Magistrate's 10th Court at Andheri, Mumbai and after perusing the same quash the charge-sheet filed in the case.”

(ii) All concerned to act upon an authenticated copy of this order.

(P. D. NAIK, J)

(A.S. OKA, J)