

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

CRIMINAL APPLICATION NO.1093 OF 2015

Khizzer Akhtar Shah

Applicant

versus

The State of Maharashtra

Respondent

Ms.Farhana Shah for Applicant.

Dr.F.R.Shaikh, APP, for Respondent State.

CORAM : A.S.OKA AND P.D.NAIK, JJ.

Date of Reserving the Judgment : 11th April 2016

Date of Pronouncing the Judgment : 6th May 2016

JUDGMENT - (Per : P.D.Naik, J.) :-

1. Rule. Rule is made returnable forthwith. Learned APP appearing for the Respondent-State waives service.
2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 ('Code') preferred by the Applicant challenging the criminal proceedings arising out of CR No.75 of 2014 registered with Shivaji Park Police Station for offence punishable under Section 279 of Indian Penal Code ('IPC') and Section 184 of Motor Vehicles Act, 1988 ('the Act')
3. Brief facts of the prosecution case are as follows.

The complainant is a Police Constable attached to Shivaji Park Police Station. It is alleged that the complainant along with other police personnel were posted for Nakabandi during the night of 23 March 2014 and 24 March 2014 at Baban Prabhu Veer Savarkar Marg, Dadar (West), Mumbai. It is alleged that the accused persons were found recklessly and negligently driving their vehicles on the said road. The accused were apprehended and their vehicles were taken into custody by the police. In view of the aforesaid acts, the offences were registered with Shivaji Park Police Station by registering first information reports ('FIRs') on 24th March 2014. The Applicant was one of the accused who has been impleaded in the said FIR. The police thereafter conducted investigation and the charge sheet has been filed against the Applicant and the proceedings are pending before the Court of Metropolitan Magistrate, 5th Court, Bhoiwada, Dadar, Mumbai vide CC No.728/PS/14.

4. The Applicant has challenged the said proceedings by invoking inherent power of this Court under Section 482 of the Code. It is submitted by the learned counsel appearing for the Applicant that prima facie, the FIR does not make out any of the alleged offences. It is further submitted that it is an abuse of the process of law to prosecute the Applicant on the basis of the impugned FIR. It is also submitted that the entire charge sheet

does not make out the offence either under Section 279 of the Code or under Section 184 of the Act.

5. We have perused the FIR as well as other documents including the statement of the witnesses which form part of the charge sheet. On going through the said documents, it can be seen that no offence is made out against the Applicant, as alleged by the prosecution. In the FIR, it is merely stated that during subject Nakabandi conducted by the Police attached to Shivaji Park Police Station, it was found that the accused was negligently driving his vehicle. Except the said bald statement, there is nothing to establish the alleged offence.

6. It would be necessary to refer to the penal provisions which have been invoked by the investigating machinery against the Applicant. Section 279 of Indian Penal Code reads thus :

"279. Rash driving or riding on a public way :-

Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

On going through the aforesaid penal provision, it is implicit that the requisite ingredients to constitute the said offence are

rash or negligent driving or riding a vehicle, on any public way, in a manner so rash or negligent which may cause danger to human life or likely to cause hurt or injury to any other person. In the charge sheet which has been filed, there is no material whatsoever to show existence of ingredients which constitute the alleged offence under Section 279 of IPC. It is pertinent to note that the alleged incident had occurred while the Police were conducting Nakabandi. It is not the case of the Police that the Applicant did not stop the vehicle at the scene of alleged offence. It is also necessary to note that the incident had allegedly occurred at about 0030 hours in the night and the charge sheet does not disclose anything to indicate that due to the alleged rash driving by the Applicant, either the life of anybody was endangered or was likely to cause hurt or injury to any other person. It is also necessary to consider that during Nakabandi, it would not be possible for a person to drive a vehicle so recklessly or negligently. Hence, there was no evidence to substantiate charge under Section 279 of IPC. Statements of none of the witnesses disclose that anyone had actually seen the Applicant driving rashly and negligently.

7. Section 279 of IPC has two essential ingredients : (i) driving of a vehicle; and (ii) driving must be so rash or negligent as to endanger human life or likely to cause hurt or injury to any other person. A certain aggravated degree of rash or negligent driving is contemplated in the said provision. A

rash act is primarily an over hasty act and is thus opposed to a deliberate act, but it also includes an act which, though it may be said to be deliberate, is yet done without due deliberation and caution. In rashness, the criminality lies in running the risk of doing an act with recklessness or indifference to consequences. Criminal rashness is hazarding a dangerous act with the knowledge that it is so and that it may cause injury, but without intention to cause injury or knowledge that it will be probably caused. The mere fact that the accused was driving a vehicle at a high speed may not attract the provisions of Section 279 of IPC. The fact that a vehicle is driven in speed or the fact that a vehicle is not driven in speed, cannot, by itself, without judging the situation in which the driver had been placed, be a factor to determine rashness or negligence. High speed may not, in each case, be sufficient to hold that the driver is rash or negligent. Negligence means breach of duty caused by omission to do something which a reasonable man guided by those considerations which ordinarily regulate conduct of human affairs would do or doing something which a prudent or reasonable man would not do.

8. From the charge sheet, therefore, it cannot be said that any of the requirements of Section 279 of IPC were made out against the accused. Except a bald statement that the accused was driving negligently, there is no evidence to substantiate the charge under Section 279 of IPC.

9. Section 184 of the Act reads as follows :

"184. Driving dangerously :-

Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both."

On perusal of the aforesaid provision, it is clear that a person has to drive a vehicle at a speed or in a manner which is not dangerous to the public having regard to all the circumstances including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place. In the charge sheet there is absolutely nothing to justify any of the aforesaid elements which are required to constitute the offence under Section 184 of the Act.

10. We are, therefore, satisfied that the prosecution has not made out any case against the Applicant for any of the alleged

offences. Taking material in the charge sheet as it is, no case of commission of offences alleged is made out. It would be an abuse of the process of law to continue such proceedings against the Applicant. The provisions are invoked by Police in the most casual manner. We find that this is a fit case to exercise inherent power of this Court under Section 482 of the Code.

11. The main purpose of exercising power to quash proceedings under Section 482 of the Code is to prevent the abuse of process of Court or to secure ends of justice. Wherever the FIR or the proceeding arising out of such FIR, does not make out a prima facie case against an accused, the Court can invoke the inherent power, when it is satisfied that continuation of proceedings will be abuse of process of law. The prosecution of the accused in such proceedings would be tantamount to undue harassment and, therefore, to prevent such abuse of process of law, invocation of inherent power is warranted.

12. In case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**¹, the Apex Court has categorized the cases by way of illustration in which the Courts can exercise powers of quashing. A reference is made to two categories which are apt in the present proceedings, which are as follows :

"108. ... (1) Where the allegations made in the First Information Report or the complaint even if they

¹ AIR-1992-SC-604

are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2)

(3)

(4)

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused."*

13. In case of **Inder Mohan Goswami and another Vs. State of Uttaranchal and Others**², while referring to the law on scope and ambit of Court's power under Section 482 of the Code and the principles governing for quashing of the criminal proceedings, the Apex Court has observed that every High Court has inherent power to act '*ex debito justitiae*' to do real and substantial justice for the administration of which alone it exists, or to prevent abuse of the process of the Court. The authority of the Court exists for the advancement of justice and if any abuse of the process leading to injustice is brought to the notice of the Court, then the Court would be justified in preventing injustice by invoking inherent powers in absence of specific provisions in the Statute.

14. We have perused the charge sheet and other documents on record and we are satisfied that this is a fit case where power under Section 482 of the code is required to be exercised. On

² AIR-2008-SC-251

reading the charge sheet, it is apparent that prima facie no case constituting the offence either under Section 279 of IPC or under Section 184 of the Act is made out. The FIR and other documents, which form the part of the charge sheet, do not satisfy the requisite ingredients to constitute the said offences. The Police have mechanically exercised the power of registration of the FIR against the Applicant in the most casual and cavalier manner. The registration of FIR has caused undue harassment to the Applicant-accused. It is apparent that the Applicant was subjected to arrest and was required to face proceedings before the competent Court. In view of the fact that no case is made out of the commission of the alleged offences, this application is required to be allowed and criminal proceedings arising out of impugned FIR are required to be quashed and set aside. One more aspect showing the casual approach of Police in incarcerating the person in criminal proceeding which is required to be deprecated, is that two persons are impleaded as accused in single FIR, although, the acts allegedly committed by them have no connection inter se being distinct acts and distinct offences. The approach of Police speaks volumes.

15. Hence, we pass following order :

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

(A) This Hon'ble Court be pleased to quash and set aside the FIR bearing No.75/2014 dated 24.03.2014 for offences u/s 279 of IPC r/w 184 of Motor Vehicles Act, registered by Shivaji Park Police Station, Mumbai and to quash the said Case No.728/PS/14 pending on the file of Learned Metropolitan Magistrate, 5th Court, Bhoiwada, Dadar, Mumbai."

(ii) All concerned to act on an ordinary copy of this order duly authenticated by the registry of this Court.

(PD.NAIK, J.)

(A.S.OKA, J.)

MST