

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

15 CRIMINAL APPLICATION NO. 1881 OF 2017

THE STATE OF MAHARASHTRA .. Applicant

VERSUS

HIRALAL VISHNU MORALE .. Respondent

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APP Shri R.B. Bagul for the Applicant - State
Adv. Shri A.R. Gaikwad h/f. Adv. Shri S.G. Kawade for the respondent

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CORAM : P.R. BORA, J.

DATE : November 09, 2017

PER COURT :

1. Heard the learned APP appearing for the State and the learned Counsel appearing for the respondent.

2. By filing the present application, the State is seeking leave to appeal against the Judgment and order passed by the Court of Judicial Magistrate, First Class (hereinafter referred to as the 'Magistrate') Washi in Summary Criminal Case No.151 of 2014 decided on 04.01.2017.

3. The respondent was prosecuted in the aforesaid Criminal Case for the offences under Section 279, 304-A of the Indian Penal

Code with certain other offences under the Motor Vehicles Act. The complaint was filed in relation to the accident happened on 12th August, 2014. It was alleged that, on the said date, the respondent was plying 6 sitter rickshaw bearing registration no. MH-25-M-1353 in a high speed and in a rash and negligent manner, which resulted in occurrence of an accident, wherein one person suffered the death.

4. In order to prove the guilt of the respondent - accused, as many as 9 witnesses were examined by the prosecution. The learned Magistrate however after having assessed the evidence brought before it acquitted the respondent of the charges levelled against him. It is the contention of the learned APP that, the trial Court has failed in appreciating the evidence in proper perspective and that has resulted in unmeritorious acquittal of the present respondent. The Ld. APP submitted that, the eye witnesses to the alleged incident were examined by the prosecution, who have categorically deposed that, the respondent was plying 6 sitter rickshaw in a high speed and as because he suddenly applied the brake, one boy namely Sanket Ramrao Jadhvar failed down from the said rickshaw and was crushed below the rear wheels of the said rickshaw. The learned APP submitted that, the evidence on record

was clearly establishing the guilt of the accused, however, disbelieving the evidence of the prosecution witnesses, the learned Magistrate has wrongly recorded the conclusion and as such, the appeal needs to be admitted, so that the entire evidence can be re-appreciated by this Court.

5. The learned Counsel for the respondent has supported the impugned Judgment and order. The learned Counsel submits that, a well reasoned order has been passed and a possible view has been taken by the learned Magistrate and as such, no case is made out for granting leave to appeal.

6. After having considered the submissions advanced by the learned APP, the learned Counsel appearing for the respondent and on perusal of the impugned Judgment, it does not appear to me that, any case is made out by the applicant for granting leave to appeal. I have carefully perused the impugned Judgment and the evidence on record. Even if the evidence of the eye witnesses as was canvassed by the learned APP is accepted as it is, the only fact which has been stated by these witnesses that, the respondent was at the relevant time plying the said 6 sitter rickshaw in a high speed. To drive a vehicle at high speed itself cannot be held to be a rash and negligent

act so as to attract an action under Section 279 and 304-A of Indian Penal Code. Further, the oral evidence of Shivanjali Jadhvar and Priti Jadhvar, which has been heavily relied upon by the learned APP, to urge that, both these witnesses have deposed before the Court that, the respondent was driving the auto rickshaw at a high speed has been rightly not relied upon by the learned Magistrate observing that, the investigation papers do not disclose that, during the course of investigation the statements of the aforesaid two witnesses were recorded. The Investigating Officer in his evidence before the Court has stated that, he did not record statements of said Shivanjali Jadhvar and Priti Jadhvar. In the circumstances, the learned Magistrate has declined to rely upon the testimonies of the said witnesses to hold the respondent guilty of the offences charged against him.

7. After having considered the entire material on record, it does not appear to me that, the learned Magistrate has committed any error in acquitting the respondent. The view taken by the trial Court is reasonable and proper. The reasons assigned by the trial Court are valid and consistent. On the basis of evidence which has come on record, it does not appear to me that, it is possible to record any other conclusion than has been recorded by the learned trial

Court. For the reasons above, I am not inclined to allow the present application. Hence the following order.

ORDER

- i) The application is rejected.

(P.R. BORA, J.)

ggp