

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

Criminal Writ Petition No.652 of 2010

- 1) Narhar Supdu Bhadane,
Age 55 years,
Occupation: Service,
R/o Jebapur, Taluka Sakri,
District Dhule.
- 2) Alkabai Narhar Bhadane,
Age 36 years,
Occupation: Household,
R/o Jebapur, Taluka Sakri,
District Dhule.

.. Petitioners.

Versus

- 1) The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai.
- 2) The Special Inspector General
of Police Nashik Range, Nashik.
- 3) The Superintendent of Police,
Dhule, District Dhule.
- 4) The Police Sub Inspector,
Pimpalner Police Station,
Pimpalner, Taluka Sakri,
District Dhule.
- 5) Bhagwan Devchand Salve,
Age Major,
Occupation: Service
Police Constable B.No.820
C/o Pimpalner Police Station
Pimpalner, Taluka Sakri
District Dhule.

6) Yasin Husain Shaikh,
Age Major,
Occupation: Service
Police Constable (Driver)
C/o Pimpalner Police Station,
Pimpalner, Taluka Sakri,
District Dhule.

7) Police Inspector,
Azadnagar Police Station,
Dhule, District Dhule.

.. Respondents.

Shri. N.B. Suryawanshi, Advocate, for petitioners.

Shri. P.G. Borade, Additional Public Prosecutor, for
respondent Nos.1 to 4 and 7.

Shri. R.S. Deshmukh, Advocate, for respondent Nos.5 and
6.

**Coram: T.V. NALAWADE &
A.M. DHAVAL, JJ.**

Date: 3 November 2017

JUDGMENT (Per T.V. Nalawade, J.):

1) The petition is filed for setting aside and quashing of the first information report of CR No.39/2010 registered with Pimpalner Police Station against petitioner No.1 for offences punishable under sections 279, 338 etc. of Indian Penal Code and section 184 of the

Motor Vehicles Act. Relief is also claimed for giving direction to respondent Nos.3 to 5, concerned police station and their superior officer to register crime on the basis of statement given by petitioner No.2 dated 17-5-2009 and relief is also claimed for giving direction against respondent No.1 for starting departmental action against the concerned police officers of Pimpalner Police Station for dereliction of duty, for not taking proper action. Learned counsel for the petitioners and learned Additional Public Prosecutor are heard.

2) It is the case of the petitioners who are husband and wife that on 17-5-2009 at about 10.00 a.m. they were proceeding towards Nampur from Pimpalner side on a motor cycle with their daughter aged about 6 years. It is their contention that when the motor cycle was proceeding by the side of Shelbari Canvas Police Help Centre and when the motor cycle was on correct side of the road, police jeep of Pimpalner Police Station attempted to overtake from the right side of the motor cycle and the accident took place. It is their case that due to the dash given to motor cycle from back side, all the

three persons who were present on the motor cycle were virtually thrown away and due to that petitioner No.1 sustained grievous injuries and their daughter Purva also sustained injuries. It is their case that husband, petitioner No.1, was required to undergo operation and treatment was required to be given including operation to Purva.

3) It is the case of the petitioners that as the jeep of Pimpalner Police Station was involved in the accident, police created false record and they registered the crime against petitioner No.1 in respect of the accident. It is their contention that even when the statement of petitioner No.2 was recorded in the hospital from Dhule by police of Azadnagar Police Station, Dhule, that statement was not sent to Pimpalner Police Station and no crime was registered against the driver of the police jeep. It is the contention of the petitioners that false record is created against petitioner No.1 and so the F.I.R. needs to be quashed and set aside.

4) During arguments, learned counsel for the petitioners admitted that a private complaint was filed by the petitioners in respect of the accident and direction

was given by the Magistrate to make investigation of the matter. He submitted that after making investigation summary report is filed by police under section 169 of the Cr.P.C. in the matter. In view of this admitted circumstance there is no question of giving any relief mentioned in prayer clause (c).

5) The papers of investigation which are filed along with the present proceeding show that on 17-5-2009 itself on the basis of the complaint given by Police Head Constable Bhagwan Salve crime came to registered against petitioner No.1. He informed that at the relevant time the jeep driver, Yasin Shaikh was attempting to park the police jeep near Police Chowki and at that time the motor cycle of petitioner No.1 which was proceeding towards Satana side gave dash to the cleaner side and the accident took place. In the FIR it is mentioned that in the accident the rider of the motor cycle, petitioner No.1, his wife and his daughter sustained injuries and they were shifted to Rural Hospital Pimpalner by police for giving them treatment. Copy of panchanama dated 17-5-2009 is produced and it shows that on eastern side of the side

patti one motor cycle was standing. Blood was lying on the side patti of the road which was having width of 10 feet. The motor cycle had slid to side patti of the road and the broken pieces of indicator of the motor cycle were lying there. The tar road had width of 18 feet. Thus, the point of impact is not shown on the tar road.

6) The learned counsel for the petitioners showed the photographs of the jeep involved in the accident and the motor cycle of petitioner No.1 and submitted that the story given in the F.I.R. by Police Head Constable does not appear to be probable in nature and the damage to the vehicles on particular side appearing in the photographs creates probability that the dash was given to the motor cycle by the jeep from front side of jeep. The learned counsel submitted that the petitioners had raised grievance with the District Superintendent Police, Dhule as there was possibility of misusing the posts by the police officers of Pimpalner Police Station but no action was taken by the District Superintendent of police in that regard.

7) At present there are papers of investigation which are against petitioner No.1, the rider of the motor cycle. In the reply filed, the present proceeding is opposed by contending that there is more than sufficient evidence to make out a prima facie case against petitioner No.1 for the aforesaid offences. There are statements of some persons who had no connection with police that it was the negligence of petitioner No.1. In view of these circumstances, it is not possible to infer at this stage in a proceeding like present one that mischief is played by concerned police station and false record is created against the petitioner No.1. This Court holds that it is not possible to quash the F.I.R. filed against the petitioner No.1.

8) When two vehicles are involved in motor vehicle accident it is always open to both sides to give F.I.R. and it is up to the police to make investigation and take appropriate action on the basis of the material collected during investigation. It is already observed that a private complaint was already filed by petitioner No.1 as no crime was registered and necessary order was made

by the learned Judicial Magistrate. Even summary report is filed under section 169 of the Cr.P.C. It is up to the Magistrate to decide as to whether the report needs to be accepted or further orders in favour of the petitioners need to be passed. The petitioners will get proper opportunity before the Judicial Magistrate in that regard. In view of this position law, this Court holds that no direction as such can be given to the respondents as claimed by the petitioners. In the result, the petition stands dismissed. Rule is discharged.

Sd/-
(A.M. DHAVALA, J.)

Sd/-
(T.V. NALAWADE, J.)

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