

IN THE HIGH COURT OF BOMBAY AT GOA.

Criminal Writ Petition No.49/2017

Rhushikesh Kalidas Joshi,
Son of Shri Kalidas Joshi,
aged 27 years,
Occupation Service,
Residing at `Shree Shivshakti',
H.No.264/91,
Savlem, Bardez-Goa.

Petitioner

Versus

1. STATE,
Through Police Inspector and
Police Station-in-charge,
Ponda Police Station, Ponda-Goa.
2. Mrs. Shalini Mahesh Gosavi,
of major age, occupation Service,
Residing at 268, Gosavi Wadda,
Usgao, Ponda-Goa.
3. Shri Sitaram Gangaram Redkar,
son of Shri Gangaram Redkar,
aged 43 years, occupation Service,
Residing at H.No.12,
Davorlim, Navelim,
Salcete, Goa.

Respondents

...

Shri S.N.Joshi, Advocate for the petitioner.
Shri S.R.Rivonkar, Public Prosecutor for respondent no.1.
Ms. Sonali Nagvekar, Advocate for respondent no.2.

**CORAM: F.M.REIS &
PRITHVIRAJ K.CHAVAN, JJ.
DATED : 13.06.2017.**

ORAL JUDGMENT (PER PRITHVIRAJ K.CHAVAN, J.):

1. Heard S.N. Shri Joshi, learned counsel appearing for the petitioner, Shri S.R.Rivonkar, learned Public Prosecutor appearing for the respondent no.1 and Ms. Sonali Nagvekar, learned counsel appearing for the respondent no.2.

2. Rule. Rule made returnable forthwith. Heard finally with the consent of the learned counsel appearing for the petitioner and respondents. The learned Public Prosecutor waives notice on behalf of the respondent no.1 and Ms. Sonali Nagvekar, learned counsel waives notice on behalf of the respondent no.2.

3. The petitioner, an Engineer, having completed his M.Tech. is on the threshold of his career as a Probationer, who seeks indulgence of this Court under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure ("Code" for short), to quash and set aside the criminal case pending against him in the Court of Judicial Magistrate First Class at Ponda bearing No.24IPC/S/2016/A.

4. The facts, in brief, can be summarised as follows:

On 24th September, 2015 at about 17.10 hours, the petitioner was driving Volkswagon Polo Car bearing Registration No.GA-07-E-4480 from G.F.C.Farmagudi towards Ponda direction in a rash and negligent manner. His vehicle dashed to the rear

side of the motorcycle bearing Registration No.GA-08-Y-5081 proceeding in the same direction due to which the respondent no.2, a pillion rider, sustained grievous injuries and so also the respondent no.3 who was driving the motorcycle.

5. The petitioner, therefore, booked by the Police Station, Ponda for the offence punishable under Sections 279, 337 and 338 of the Indian Penal Code and came to be charge-sheeted after the investigation. The charge-sheet number is 68/2016.

6. The petitioner and the respondents no.2 and 3 have amicably settled the matter and accordingly made an application under Section 320 of the Code, before the learned Judicial Magistrate First Class, Ponda. The learned Magistrate, by the impugned order, dated 17.12.2017, was pleased to compound the offences punishable under Section 337 and 338 of the Indian Penal Code and acquitted the petitioner of the said charges. However, the learned Magistrate refused to compound Section 279 of the Indian Penal Code, as the same is not compoundable. Hence, this petition.

7. We have perused the petition and relevant record from which it appears that the victims - respondent nos.2 and 3 in their affidavits sworn before the trial Court stated that

considering the age, nature and career prospect of the petitioner/accused, they do not wish to pursue the case and wish to pardon him.

8. Shri Rivonkar, learned Public Prosecutor appearing for the respondent no.1, has no objection to allow the petition, in view of the nature of the offence and in the light of the fact that the victims-respondents no.2 and 3 in their affidavits before this Court also state that they do not want to blame the petitioner for the said accident. The affidavits further reveal that as it was drizzling and there was spillage of oil on the road, Volkswagen Polo Car which was driven by the petitioner got slipped as he lost the control of the steering wheel, ultimately resulting into a dash to the motorcycle. The respondents no.2 and 3 further state that the petitioner and his family members helped the respondents in their hospitalization at Goa Medical College.

9. Taking note of the manner in which the accident occurred, as reflected in the said affidavits and confirmed by the learned Public Prosecutor and taking note that the victim has amicably settled the matter, we find that the offences committed by the petitioner may not be so serious. The Hon'ble Supreme Court, in case of Gian Singh Vs. State of Punjab and another [2012 (10) SCC 303], discussed the scope of the Section 482 of

the Code, in the sense that in which cases inherent powers under Section 482 of the Code can be exercised where the offender and victim have settled their dispute. This aspect is no more res integra and, therefore, in view of the foregoing discussion as well as in view of the facts and circumstances, we are inclined to allow the petition and consequently quash and set aside the Criminal Case No.24IPC/S/2016/A pending before the Judicial Magistrate First Class, Ponda.

10. Rule is made absolute in the above terms. The petition stands disposed of accordingly.

PRITHVIRAJ K.CHAVAN, J.

F.M.REIS, J.

mukund