

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 1294 OF 2016**

R. Krishna Ganga Raju

..Petitioner

v/s.

The State of Maharashtra,
through Mahim Police Station.

..Respondent

Mr. Victor Chettiar for the Petitioner.

Mr. K.V.Saste, APP for the Respondent- State.

**CORAM : A.S.OKA & ANUJA PRABHUDESSAI, JJ.
RESERVED ON : 8th MARCH, 2017
PRONOUNCED ON : 17th APRIL, 2017**

JUDGMENT (PER ANUJA PRABHUDESSAI, J.)

1. Rule. Rule made returnable forthwith. By consent of parties taken for hearing.

2. This is a petition filed under Article 226 of the Constitution of India, 1950 and Section 482 of Code of Criminal Procedure for quashing the FIR No. 87 of 2015 registered with Mahim Police Station for the offences punishable under Section 279, 338 and 304 of the Indian Penal Code.

3. At the outset it may be mentioned here that the Petitioner herein has relied upon the affidavits of Cline Sinclair Valadares, and Clint Sinclair Valadares, sons of the deceased Sinclair Valadares. stating that the accident was caused as their father had turned back on seeking a heavy vehicle coming towards him and in the process dashed against the motor cycle driven by the Petitioner. They have stated that the accident was not caused due to rash and negligent driving by the petitioner. They have given their no objection for quashing the chargesheet.

4. It is to be noted that the offence under Section 304A of IPC presents a situation where a victim has lost his life due to the rash and negligent act of the accused. The offence under Section 304A of Indian Penal Code is not an offence which is private in nature, but is an offence which has serious impact on the society as whole. Hence, the offence of such nature cannot be quashed on the ground that the legal representatives of the deceased have entered into a settlement or compromise or that they have given no objection for quashing. In our view, quashing such chargesheet for offence under Section 304A

of Indian Penal Code on the ground of compromise or settlement would militate against all canons of law. Hence we decline to quash the chargesheet on the ground of settlement.

5. In this case, the quashing of the proceeding is sought on merits as well. It may however be mentioned here that the powers under Section 482 of Cr.P.C. are wide and can be exercised to quash the complaint/FIR/chargesheet or the proceedings on merits despite rejection of the prayer of quashing on the ground of settlement or compromise. Needless to state that these powers have to be exercised sparingly, cautiously and in consonance with settled principles of law in order to prevent abuse of process of law or to secure ends of justice. The principles relating to quashing of FIR/complaint, charge sheet and proceedings have been stated and reiterated by the Apex Court in catena of decisions. To state a few in *R.P.Kapoor vs. State of Punjab* AIR 1960 SC 866, *State of Haryana vs. Bhajanlal* 1992 Supp.(1) SCC 335, *Prashant Bharti vs. State of NCT of Delhi* 2013 (1) Supreme 493.

6. Reverting to the facts of the present case, it is the case of the prosecution that on 21st March, 2015 at about 17.30 hours the petitioner herein drove his Royal Enfield (Bullet) Motor Cycle No. MH-01-BL-5453 in a rash and negligent manner and dashed against one Mr. Sinclair Samuel Valladares. It is alleged that said Sinclair Valladares expired as a result of the injuries sustained in the said accident. The Petitioner is therefore prosecuted for driving the vehicle in a rash and negligent manner and thereby causing the death of Mr. Sinclair Samuel Valladares.

7. Mr. Chettiar, the learned Counsel for Petitioner has submitted that there is absolutely no material on record to indicate that the Petitioner had driven the vehicle in rash and negligent manner, or that the death of Sinclair Samuel Valladares was caused due to rash and negligent act of the Petitioner. He therefore submits that continuation of the proceedings against the Petitioner would be sheer abuse of the process of law.

8. We have perused the FIR as well as the statements of the

witnesses recorded under Section 161 of Code of Criminal Procedure and the other documents, which form part of the chargesheet.

9. Before advertng to the facts of the case, it would be advantageous to refer to the penal provisions invoked against the Petitioner. Section 279 reads as under:

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.

Section 304A reads as under:

304A. Causing death by negligence.—Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

10. In order to constitute offence under Section 279 of Indian Penal Code it has to be established that the accused was driving the vehicle on a public way, and that the vehicle was driven in a rash and negligent manner as to endanger human life or as to cause hurt or

injury to any person. Similarly, Section 304A of IPC postulates rash and negligent act, which does not amount to culpable homicide, entailing death of another. Thus, rash or negligent driving/act is the gravamen of these provisions.

11. In Mohd. Aynuddin @ Myran vs. State of A.P. (2000) 7 SCC 72, the Apex Court has drawn the distinction between rash and negligent act as under:

" A rash act is primarily an over hasty act. It is opposed to a deliberate act. Still a rash act can be deliberate act in the sense that it was done without due care and caution. Culpable rashness lies in running the risk of doing an act with recklessness and with indifference as to the consequences. Criminal negligence is the failure to exercise duty with reasonable and proper care and precaution guarding against injury to the public generally or to any individual in particular."

12. In the instant case, the records reveal that Mr. Vishnu Dhondiram Lahane, Police Sub Inspector, attached to Mahim Police Station, received information that one person aged about 70 years was lying on the road in an injured condition near Mahim Causeway foot bridge. He proceeded to the place of incident and noticed that

the said person had sustained head injury. The Petitioner, alongwith his Royal Enfield (Bullet) Motor Cycle No. MH-01-BL-5453 was present at the place of the incident. He admitted the injured in the hospital and thereafter lodged a report against the Petitioner for driving the vehicle in rash and negligent manner and thereby causing serious injuries to the said pedestrian. The said injured person expired while undergoing treatment.

13. The material on record reveals that the Petitioner herein was a rider of the Royal Enfield (Bullet) Motor Cycle No. MH-01-BL-5453. The said motor cycle was driven on General Arunkumar Vaidya Road, which is a public way. Said motor cycle was involved in an accident, wherein a pedestrian by name Sinclair Samuel Valladares sustained injuries and latter succumbed to the injuries sustained in the said accident. The question therefore, is whether the death of said Sinclair Valladares was caused due to rash or negligent driving of the Petitioner.

14. In this regard the prosecution has relied upon the statement of

the sole eye witness, namely Thomas Francis Remdix, whose shop is situated close to the place of incident. He has stated that on 21st March, 2015 at about 2.00 p.m. one 70 year old man was crossing General Arun Kumar Road. When the said pedestrian reached near the divider, he turned back on seeing some vehicle coming from the Opposite lane, and in the process, he lost his balance and dashed against the motorcycle.

15. The statement of this witness does not indicate that the Petitioner had driven the vehicle at a high speed or recklessly or negligently, without due care and caution as to endanger the life of the public. On the contrary, his statement indicates that the pedestrian who was crossing the road had turned back on seeing an oncoming vehicle from the opposite lane and that he had lost his balance and dashed against the motor-cycle of the petitioner. The spot panchanama also reveals that the accident spot was at a distance of about 5 feet from the divider. This fact is in consonance with the statement of the witness that the accident was caused while the pedestrian was trying to cross the road.

16. The material in the chargesheet taken at its face value does not indicate that the Petitioner had driven the motor cycle in a rash or negligent matter or that the death of the pedestrian Sinclair Samuel Valladares was caused due to rash and negligent act of the Petitioner. The charge sheet does not disclose essential ingredients of offence under section 304 A of the Indian Penal Code. Under such fact and circumstances, continuation of proceedings against the Petitioner would be abuse of process of law.

17. Hence, the petition is allowed. The FIR No.87 of 2015, registered with Mahim Police Station and the chargesheet/further proceedings emanating from the said FIR are hereby quashed and set aside.

(ANUJA PRABHUDESSAI, J.)

(A.S.OKA, J.)