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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.73 OF 2018

Sukhinder Jaswant Singh Riyat	..Applicant.
V/s.	
The State of Maharashtra	..Respondent.

Mr.D.D.Rai with Mr.R.N.Gaonkar for the applicant.

Mr.S.S.Pednekar for the respondent.

CORAM: NITIN W.SAMBRE, J.

DATE : FEBRUARY 28, 2018

PC.:-

Heard learned counsel for the parties.

2. The applicant herein has moved an application at Exhibit-7 for discharge in Sessions Case No.285/2016 which came to be partly allowed by the learned Additional Sessions Judge, Mumbai discharging the applicant for offences punishable under section 279 and 420 of the Indian Penal Code and section 188 and 189 of the Motor Vehicles Act. The case of the applicant for

discharge for offence punishable under section 336, 337, 338, 307 read with 34 of the Indian Penal Code came to be turned down. As such, he is prosecuted for the aforesaid offences.

3. Mr.Rai, the learned counsel for the revisional applicant would urge that the basic ingredients of offence punishable under sections 336 to 338 and 307 read with 34 of the Indian Penal Code are not satisfied. He would submit that he was a pillion rider on the two wheeler and he was not responsible for the offence / accident in question. According to him, none of the witnesses implicate him nor there is any identification parade in the matter. He submits that the applicant is entitled for discharge in the matter.

4. *Per contra*, the learned APP submits that from the investigation papers it reflects that the accident occurred at about 2.15 a.m. on Bandra-Worli Sea link on April 14, 2015 when the bike rider of MH-02-BC-5207 was driven by the said bike rider in a rash and negligent manner. When was asked to stop the vehicle, resisted and hit a constable who was discharging his public / official duty. He would submit that there is enough material on

record collected during the investigation, including the statements of the complainant and other eye witnesses, viz. police constables on duty and the medical evidence which would *prima facie* demonstrate the involvement of the applicant in the crime in question. He submits that the revision be dismissed.

5. The submissions made by Mr.Rai, the learned counsel for the applicant, are required to be analysed in the backdrop of section 397 of the Code of Criminal procedure viz. the revisional jurisdiction.

6. Perusal of the impugned order depicts that the present applicant / accused stands discharged from part of the offence and his claim for entire blanket discharge came to be rejected. Perusal of the order discloses that there is application of mind on the part of the learned Sessions Judge and it is upon satisfaction of the ingredients of the sections for which the applicant is prosecuted, has reached to a conclusion that sufficient evidence is available to proceed against him.

7. Though Mr.Rai was right in pointing out that

identification parade was not held or that he was a pillion rider and had no control over the driving of the main rider, this can very well form to be the defence of the applicant at the stage of facing the trial.

8. The medical evidence and the report viz. the injury certificate of the applicant is of the same date of incident discloses that he suffered injuries in the incident and perhaps has run away from the spot and then later on apprehended. The conduct on the part of the applicant speaks of *mens rea*.

9. There is sufficient evidence on record to infer *prima facie* involvement of the applicant in the crime in question. No interference is warranted in the impugned order as no jurisdictional error is noticed. The revision fails and hence is dismissed.

(NITIN W.SAMBRE, J.)