

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO. 1499 OF 2016

Siddharth P. Pandya ... Petitioner

Versus

State of Maharashtra and Anr. ... Respondents

Mr. S.S. Parab a/w Adv A.S. Pai and Mudit Gupta I/by Metha & Padamsey for the Petitioner.

Adv Pooja Yadav I/by Praneet Mhaske for R. No. 1.

Mr. K.V. Saste, APP for the respondent State.

**CORAM : B.P. DHARMADHIKAKRI &
REVATI MOHITE DERE, JJ.**

DATE : JANUARY 11, 2019

P.C.:

Heard the respective counsel.

2. On 6/10/2016, this court has passed the following order :

“Not on board. Taken on board.

1. The First Information Report and the charge sheet cannot be quashed on the ground of settlement for the simple reason that the real victim of the offence is no more and therefore, there cannot be a settlement.

2. The learned counsel for the petitioner relies upon the order dated 27th June, 2011 in Criminal Writ Petition No. 3162 of 2010 (Nikhil Deepak Bajaj Vs. Prakash Sahadeo Satam and another). He submits that the learned Single Judge quashed the FIR where offence was under section 304-A of the IPC. We have perused the said order. Though incidentally, the learned Single Judge has mentioned the

payment made by the applicant to the first informant, from paragraph 5 of the order, it becomes crystal clear that the FIR has been quashed not on the ground of settlement but on the basis of the finding that there is no material to show that the accused was driving the vehicle in rash and negligent manner.

3. The learned counsel for the petitioner submits that the petition may be heard on merits.

4. Accordingly, we direct that the petition shall be listed on 18th October, 2016 under the caption of "Fresh matters".

3. Learned counsel for the petitioner submits that the material on record does not show any rash and negligent act on the part of the petitioner. He has taken us through the statement of respondent no. 1 daughter who was present with the victim at the time of accident and also statement of witness Hussein.

4. Learned counsel for respondent no.1 states that respondent no.1 has already given no objection for quashing of the proceedings and reiterates that prayer even today.

5. Learned APP relies upon the very same statement in an effort to show that after dash the vehicle did not stop immediately and therefore, there is rash and negligent driving.

6. The facts at hand show that the deceased an elderly person was in the area and while returning home, he urgently felt need to visit the wash room. He therefore, asked respondent no.1 to wait and started crossing the road. There were cars moving in lanes

and he crossed the first, second and third lane. While crossing the 4th lane, unfortunate accident occurred. The car gave dash to him and he fell down. Respondent no.1 has then stated that that car did not stop but went away. In latter part of statement, she mentions that the said driver then came to the hospital where her father was admitted and also disclosed his identify and vehicle number.

7. The witness Authur Ali Hussain states that the vehicle giving dash was taken by its driver to the left hand side of road and stopped there. When he went near the car, driver was sitting in frightened condition. The woman, occupier of the car with the said driver then drove the car and took that person to hospital for treatment.

8. This material therefore, does not show that there was any rash and negligent act on the part of the driver of the car on the contrary, it appears that the deceased in hurry was trying to cross the road and he was not even near any zebra crossing.

9. In this situation, we make the rule absolute in terms of prayer clause (a) and allow the petition.

(REVATI MOHITE DERE, J.) (B.P. DHARMADHIKARI, J.)