

Vidya Amin.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION No. 916 OF 2018

Jinesh Sanjay Gori ... Applicant

VS.

The State of Maharashtra ... Respondent

Mr. Rounak Naik, Advocate for the applicant.

Mr. Vinod Chate, APP for the respondent/State.

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: 10th January, 2019

ORAL ORDER :

This Criminal Application is moved against the order dated 27th June, 2018 passed by the Additional Sessions Judge, Greater Mumbai in Criminal Revision Application No. 183 of 2018 thereby rejecting the Application for discharge and also the judgment of learned Metropolitan Magistrate, 50th Court, Vikhroli, Mumbai passed on 15th January, 2018 in C.C. No. 334/PS./2016.

2. The applicant/accused is facing prosecution under sections 279, 304A and 337 of the Indian Penal Code and under section 184 of Motor Vehicles Act for the incident dated 28th October, 2015.

In the accident, the pillion rider of the other vehicle, who has sustained skull injury died after four days and the rider of the motor

cycle is injured. The applicant/accused, who was riding the offending motorcycle, has moved the Application for discharge, however, it was rejected.

3. The learned counsel for the applicant/accused made many submissions on the points of merits of the case. He has submitted that the name of the applicant/accused is not mentioned in the FIR. The name is appearing in the proforma under section 154 of Cr. P.C. The pillion rider of his motorcycle has approached the police station to lodge the complaint against the injured person, as two motor cycles collided on Eastern Express Highway at the signal. There is nothing on record to show that the applicant/accused was driving his vehicle in rash and negligent manner and he is responsible for the accident. The learned counsel has submitted that the ingredients under section 279 of Indian Penal Code and section 184 of Motor Vehicle Act are not found in the entire charge sheet and if the offence under section 279 of Indian Penal Code and section 184 of Motor Vehicle Act are not proved, the offence under sections 304A and 337 of Indian Penal Code also should collapse. He has submitted that the manner in which the complainant and deceased entered the

highway, it was their responsibility to be more careful when the applicant/accused was riding the vehicle on the highway.

4. The learned APP opposed the Application and has relied on the FIR and statement of the witnesses.

5. On the basis of FIR and the statements, it is found that *prima facie* there is evidence to frame charge under the relevant sections against the applicant/accused. The submissions made by the learned counsel for the applicant/accused can be advanced and may be useful at the stage of trial, as it is a defence of the applicant/accused and not at the stage of discharge. Hence, Criminal Application is dismissed.

6. The learned Metropolitan Magistrate, 50th Court, Vikhroli, Mumbai is directed to take up the matter, as this incident is of 2015 and conclude the matter on or before 5th April, 2019.

(MRIDULA BHATKAR, J.)