

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.83 OF 2020**

Rhea Kamat

.... Petitioner*Versus*State of Goa, Thr. Officer Incharge,
Panaji Police Station, Panaji & Anr.**.... Respondents.**Shri S. D. Lotlikar, Senior Advocate with Shri Terence Sequeira,
Advocate for the Petitioner.Shri G. Nagvenker, Additional Public Prosecutor for the
Respondents.**Coram : NUTAN D. SARDESSAI, J.****Date : 10th July, 2020**

P.C.:

Heard Shri S. D. Lotlikar, Senior Counsel with Shri Terence Sequeira, Advocate for the petitioner and Shri G. Nagvenker, learned Additional Public Prosecutor on behalf of the State.

2. Shri Lotlikar, learned Senior Counsel on behalf of the petitioner invited attention to the judgment under challenge where the learned Additional Sessions Judge had taken into consideration the fact that the accident took place at the junction and that the accused ought not to have been at a fast speed. It was his contention that there was no justification for the learned Additional Sessions Judge to record a finding that the driver of the

car ought to have exercised caution and slowed down being at a junction and that the fast speed at a location which was a junction would be sufficient to hold that it was prima facie evident that she was rash and negligent in driving the vehicle in question. He adverted to the statement of the complainant and of another, the panchanama of the scene of accident alongwith the sketch and more particularly the panchanama of the Hyundai vehicle in question which showed that there was a dent at the rear door and also produced photographs on record showing the position of the dent on the front right side of the vehicle at the junction of the front and rear door which in his submission ruled out the impact of the Hyundai car with the scooter in question. He placed reliance in **P. Ramchandra Rao v/s. State & Ors.** [(2002)4 SCC 578] and referred to Section 258 CrPC for stopping of the proceedings and besides adverted to the Accident Report Form of the scooter in question which clearly indicated that the front brakes of the scooter were not in order. He placed further reliance in **State of Maharashtra v/s. Goutam** [1977 Cr LJ 403] and that in **Peter v/s. State and Anr.** [Criminal Writ Petition No.6 of 2015] to advance a case that the powers of the Court had to be exercised judiciously in the matter of invoking its jurisdiction under Section 258 CrPC and that therefore it was a fit case to quash the impugned judgment and order the discharge of the petitioner from the proceedings initiated against her under Sections 279, 337, 338, 304A IPC.

3. Shri G. Nagvenker, learned Additional Public Prosecutor on behalf of the State, pointed to the spot of impact being in the middle of the junction by drawing attention to the sketch forming an integral part of the proceedings and submitted that the offending vehicle was a 4 wheeler Hyundai car which was

driven at a fast speed. It was his contention that the Kinetic scooter was driven at a reasonably slower speed being a two wheeler and that the petitioner who was approaching the Miramar Circle from the side road from Dempo College had a duty cast on her to drive with reasonable care while approaching the junction at the Miramar Circle. Her lack of exercise of due care had resulted in the accident and therefore the petition had to be dismissed and no orders could be passed in her favour for her discharge from the proceedings.

4. i have considered the submissions of Shri S. D. Lotlikar, learned Senior Counsel on behalf of the petitioner and those of Shri G. Nagvenker, learned Additional Public Prosecutor and besides also considered the judgments relied upon (supra). More particularly i have also taken into account the panchanama and the sketch showing the spot of impact which admittedly was in the middle of the road at the Miramar Junction leading from the Dempo College side road and the intersection of the main Panaji road coming towards the Circle and leading onwards towards Dona Paula. There can be no dispute that the petitioner was required to exercise reasonable care while driving a 4 wheeler on the road leading from Dempo College towards the Miramar Junction but it cannot be heard on behalf of the State on a perusal of the statement of the complainant and the bystander that the petitioner had not exercised due care and caution while driving the car or more particularly that she was rash and negligent in driving the vehicle from the said road towards the Miramar Circle. It needs no reiteration that speed is not synonymous with rashness and or negligence which is the prerequisite for attracting the offence under Section 279 IPC.

5. It cannot be countenanced in the given facts of the case that the petitioner was rash and negligent particularly looking to the spot of impact on the car which was at the interjection of the two doors, i.e. the front right and the rear door of the Hyundai car on its right which would rather indicate that the Kinetic scooter rider had come and dashed against the car in question. Furthermore, there is every reason to hold so assuming for a moment that the petitioner was driving the car at a fast speed when the scooter rider, since deceased, was equally not in control of the vehicle since the front brakes of his scooter were also not in order as indicated from the inspection report of the vehicle drawn by the Motor Vehicle Inspector.

6. The learned Additional Sessions Judge had otherwise quoted a judgment of the Kerala High Court wherein it was observed that the speed alone was not the criteria for deciding rashness or the negligence on the part of the driver. The learned Additional Sessions Judge rather concluded hastily that because the spot of impact was at a junction that it was prima facie evident that the petitioner was rash and negligent and that the Trial Judge was justified in dismissing the application moved at her instance for stopping the proceedings under Section 258 CrPC. Looking to the judgments relied upon by Shri S. D. Lotlikar, learned Senior Counsel on behalf of the petitioner, the petitioner cannot be forced to go through a long drawn trial only on the specious premise that there is a stray statement of the complainant that the vehicle was driven at a fast speed without enlightening on the aspect of rashness and or negligence at her instance and ignoring the fact that the vehicle on which she was a pillion rider also did not have the brakes in order. The petitioner therefore is entitled to an order in her favour and in view thereof

the impugned judgment and order passed by the learned Additional Sessions Judge is quashed and set aside and the application of the petitioner under Section 258 CrPC is allowed whereby and whereunder she shall stand discharged from the proceedings.

7. In these terms the petition stands disposed off.

Nutan D. Sardesai, J.

msr.