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

CRIMINAL APPLICATION NO. 366 OF 2020

Vishal Shankar Rathod,
Aged 24, Indian Inhabitant,
Residing at Room No. 25, Ground Floor,
Mata Parvati Nagar, D. B. Indrajeet Road,
Malabar Hill, Mumbai – 400 006

...Applicant

Versus
The State of Maharashtra

...Respondent

Mr. Bhavesh M. Thakur for the Applicant

Mr. A. D. Kamkhedkar, A.P.P for the Respondent–State

CORAM : REVATI MOHITE DERE, J.
(THROUGH VIDEO CONFERENCING)
MONDAY, 23rd AUGUST 2021

P.C. :

1 Heard learned counsel for the parties.

2 By this application preferred under Section 482 of the Code of Criminal Procedure ('Cr.P.C.'), the applicant seeks quashing and setting aside of the impugned order dated 24th February 2020 passed by the learned Metropolitan Magistrate, 18th Court at Girgaon, Mumbai, below Exhibit 18

in CC No. 461/PS/27, by which, the objection taken to record certain portion of deposition of PW 4-Mudassar Abdulgani Patel, was overruled.

3 Learned counsel for the applicant submits that when the complainant was examined as PW 1 in the present case, there was no necessity for recording a portion of the deposition of PW 4-Mudassar Patel i.e. the Investigating Officer, with respect to the alleged incident as disclosed to him by the complainant. Learned counsel for the applicant submits that PW 4, in his examination-in-chief, has stated what was disclosed to him by the complainant i.e. how the incident took place. He submits that PW 4-Mudassar Patel deposed with respect to the same. The advocate for the applicant raised an objection with respect to recording of the inadmissible portion of the said witness, as it was hit by Section 162 Cr.P.C. He submits that the learned Magistrate could not have overruled the said objection, having regard to the fact that the said evidence of PW 4 could not have been recorded, inasmuch as, the complainant-PW 1 had deposed with respect to the incident and that PW 4 was only the Officer who recorded the FIR.

4 Learned A.P.P does not dispute the legal position. He also does not dispute the fact that the complainant was examined as PW 1 and that

the said complainant has deposed with respect to the incident as had taken place.

5 Perused the papers. The applicant is being prosecuted for the offence punishable under Sections 279 and 337 of the Indian Penal Code r/w Section 134(a)(b) of the Motor Vehicles Act. The trial of the applicant is presently going on before the learned Metropolitan Magistrate, 18th Court at Girgaon, Mumbai. It is not in dispute that the prosecution commenced with the examination of its witnesses and that PW 1 (complainant) was examined as the first witness. The complainant deposed in his examination-in-chief the manner in which the incident had taken place i.e. the accident. The prosecution, then examined PW 4-Mudassar Patel, the Investigating Officer. In his examination-in-chief, PW 4-Mudassar Patel deposed what was disclosed to him by the complainant with respect to how the accident had taken place. The said deposition is in para 1 from 2nd line, which reads thus :

“..... that he was at Girgaon Chowpatty signal with his motorcycle Hero Honda Mystro bearing number MH-04-GB-8662 and he was about to take a turn at a signal and when he was crossing the signal at that time one white colour Scorpio came from Wilson College signal and gave dash to him and left the spot without stopping the vehicle. Due to the dash he fell on the road and sustained injury to his leg.”

PW 4, thereafter, deposed that informant had come to the police station to lodge a complaint and that the said FIR bears his signature and it was recorded as per the say of the complainant. It appears that the defence counsel for the applicant raised an objection that PW 4 could not have deposed what was disclosed to him by the complainant. The said objection was overruled by the learned Magistrate. The applicant is aggrieved by the same. The objection raised by the applicant and the observation of the learned Magistrate read thus:

“(Ld. Defence Counsel raised objection that the contents of the FIR can not be stated by this witness since he is hear say witness and he can not state about he incident. Hence, it is not admissible. The objection raised by Ld. Defence Counsel is not maintainable since the witness is the person who registered the FIR u/sec. 154 of Cr.P.C. and it does not fall u/ sec. 161 and 162 of Cr.P.C. hence the objection is overruled.”

6 Admittedly, the complainant-PW 1 has been examined and he has proved the contents of the FIR (Exhibits 9 and 10). PW 4 is only the Investigating Officer who has recorded the FIR and is examined to prove the registration of the FIR and the investigation carried out by him, pursuant to the registration of the FIR. It was not necessary for learned

A.P.P to ask questions to the said witness with respect to what was disclosed to him by the complainant, inasmuch as, the same would be hearsay and more particularly, when PW 1-complainant had proved the contents of FIR. The disputed portion of the evidence reproduced in para 5 is, infact, of no relevance in view of what is stated hereinabove and hence, needs to be ignored.

7 Application is accordingly disposed of on the aforesaid terms.

8 All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.