

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 572 OF 2021

Mr. Raj Hemant Shah
Aged 23 years, Residing at: E-906,
Orchid Suburbia, Link Road, Bunder
Pakhadi Road, Near Petrol Pump,
Kandivali (W), Mumbai – 400 067.

...Applicant
(Ori.Accused)

Versus

1. State of Maharashtra
(Through Borivali Police Station)
2. Mr. Shashikant Ramakant Pawar
Aged 34 years, Residing at: Ganpat
Bhuva Chawl, Room No.6, Malpa Dongri
No.3, Opp. LIC Colony, Andheri (E),
Mumbai – 400 093.

...Respondents
(Ori.Complainants)

Mr. Abhiraj Parab, for the Applicant.
Mr. V. B. Kondedeshmukh, APP for the State/Respondent
no.1.
Mr. R. S. Darandale, for Respondent no.2.

**CORAM: S. S. SHINDE &
N. J. JAMADAR, JJ.
DATED: 12th AUGUST, 2021.**

JUDGMENT:- PER : N. J. JAMADAR, J.

1. Rule. Rule made returnable forthwith and, with the consent of the learned Counsels for the parties, heard finally.

2. This is an application to quash and set aside CC No.547/PS/2021, pending on the file of the learned Metropolitan

Magistrate, 26th Court, Borivali, Mumbai, arising out of FIR No.1171 of 2020, registered at Borivali Police Station, for the offences punishable under Sections 279 and 338 of the Indian Penal Code, 1860, ("the Penal Code") and Section 134 (A) and 134 (B) of the Motor Vehicles Act, 1988, lodged by Mr. Shashikant Pawar, the first informant – respondent no.2.

3. The background facts can be summarised as under:

(a) The first informant reported that on 10th December, 2020, while he was riding motorcycle bearing registration No. MH-02/FH0414 on New Link Road, Borivali, on his way to Kandivali, a car bearing registration No. MH-47/A-5216, driven by the applicant, gave a violent dash to him. Respondent no.2 sustained injuries on his head and right leg. The applicant drove the car in a rash and negligent manner and sped away without providing medical assistance to respondent no.2 and intimation to police. Hence, crime was registered for the aforesaid offences.

(b) The applicant has approached this Court with the assertions that the dispute between the applicant respondent no.2 has been amicably resolved.

4. Mr. Parab, the learned Counsel for the applicant and Mr. Darandale, the learned Counsel for respondent no.2 made a

joint statement that the parties have amicably settled the dispute in accordance with the Consent Terms (Exhibit-‘B’) annexed to the application. Respondent no.2 has also filed an affidavit (Exhibit-‘C’) giving no objection for quashing the prosecution.

5. Paragraphs 1, 2 and 3 of the Consent Terms read as under:

“1. That the petitioner will make a payment of Rs.4,50,000/- (Rupees Four lakhs and Fifty thousand only) by way of Demand Draft dated 07.07.2021 drawn on ICICI Bank in the name of Respondent No.2 as by way of full and final compensation in the above matter on the date of hearing of the present application.

2. That the respondent no.2 will thereafter withdraw the Application No.228 of 2021 pending before the Motor Accident Claims Tribunal at Thane (MACT) filed against the Petitioner’s father. The Respondent will carry out the withdrawal process within two weeks of quashing of the proceedings of the C.C. No.547/PS/2021 by the present Criminal Application.

3. That the respondent no.2 will not have any kind of claim/rights/compensation against the petitioner and would not file any kind of complaint/petition in future.”

6. Mr. Shashikant Pawar – respondent no.2 appeared before the Court. He was identified by Mr. Darandale, the learned Counsel for respondent no.2. A copy of the UID Card was also tendered for the perusal of the Court.

7. Respondent no.2 stated that he has decided to settle the dispute with the applicant out of his own volition. He has executed Consent Terms and has filed Affidavit voluntarily. He

admitted the contents of the Consent Terms (Exhibit-‘B’) and the Affidavit (Exhibit-‘C’) and execution thereof. He submitted that there was no coercion or duress to enter into the settlement and give consent for quashing the prosecution. Respondent no.2 specifically admitted to have received a sum of Rs.4,50,000/- towards full and final settlement of the claim by way of Demand Draft.

8. Paragraphs 1 to 4 of the Affidavit of Respondent No.2 read as under:

“1. That I lodged an FIR NO.1171/2020 against the Petitioner at Borivali Police Station under Sections 279, 338 and 427 of Indian Penal Code, 1860 and Section 134(A) & (B) of Motor Vehicles Act, 1988. That later on charge-sheet was filed under Section 279 and 338 of Indian Penal Code, 1860 and Section 134(A) & (B) of Motor Vehicles Act, 1988 in the case and the same was numbered as C.C. No.547/PS/2021 which is now pending before 26th Hon’ble Metropolitan Magistrate Court, Borivali, Mumbai.

2. That during the pendency of the same, me and the Petitioner have arrived at amicable settlement which are reduced into compromise terms annexed as Exhibit-‘B’.

3. That I state that in view of the compromise, I have no objection, the said criminal proceedings against the Petitioner mentioned hereinabove are quashed.

4. That I state that there is no duress, force or any kind of undue influence on me for this compromise and settlement.”

9. In the light of the aforesaid submissions, statements and assertions in the affidavit, we have perused the material on record. It seems that the incident occurred in an unguarded moment. The parties have entered into a comprehensive settlement. The amount paid by the applicant to respondent

no.2 towards full and final settlement of his claim cannot be said to be unreasonable and unjust.

10. In this view of the matter, having regard to the nature of the occurrence, gravity of the offence and the situation in life of the applicant and respondent no.2 continuation of the prosecution would serve no fruitful purpose. With the settlement of the dispute, it is very unlikely that respondent no.2 would support the prosecution, and it would end in a conviction. Continuation of the prosecution in such circumstances would put an unnecessary burden on the criminal justice system. It would also cause grave prejudice to parties. It would thus amount to abuse of the process of the Court as well.

11. A useful reference in this context can be made to the judgment of the Supreme Court in the case of *Gian Singh vs. State of Punjab and another*¹, wherein the Supreme Court has observed as under;

“61.the criminal cases having overwhelmingly and predominatingly civil flavour stand on a different footing for the purposes of quashing, particularly the offences arising from commercial, financial, mercantile, civil, partnership or such like transactions or the offence arising out of matrimony relating to dowry, etc. or the family disputes where the wrong is basically private or personal in nature and the parties have resolved their entire dispute. In this category of cases, the High Court

may quash the criminal proceedings if in its view, because of the compromise between the offender and the victim, the possibility of conviction is remote and bleak and continuation of the criminal case would put the accused to great oppression and prejudice and extreme injustice would be caused to him by not quashing the criminal case despite full and complete settlement and compromise with the victim. It is further held that, as inherent power is of wide plenitude with no statutory limitation but it has to be exercised in accord with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.”

12. Applying the aforesaid propositions to the facts of the case, it becomes evident that ends of justice would be secured and abuse of the process of the Court would be obviated by quashing the prosecution rather than continuing the same bereft of any purpose. We are thus inclined to allow the application.

13. At the same time, in the totality of the facts and circumstances of the case, in our view, it would be just and proper to direct the applicant to pay costs to be utilised for a worthy cause.

14. Hence the following order:

: ORDER :

The application stands allowed in terms of prayer Clause (a), subject to deposit of costs of Rs.25,000/- (Rupees Twenty-five thousand only) by the applicant, in the below mentioned

account of the Bar Council of Maharashtra and Goa Covid-19,
within a period of two weeks.

Bank Name : Bank of India.
Branch Name : Main Branch, Fort, Mumbai.
A/c. Name : "Bar Council of Maharashtra and
Goa Covid-19"
A/c. No. : 000110110013597
IFSC Code : BKID0000001.

Rule made absolute in the aforesaid terms.

[N. J. JAMADAR, J.]

[S. S. SHINDE, J.]