

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

937 CRIMINAL WRIT PETITION NO.96 OF 2022

YOUNUS KAREEM SHAIKH AND ANOTHER
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Petitioners : Mr. Kulkarni Suvidh S.
APP for Respondent 1 : Mr. M M Nerlikar

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CORAM : V.K. JADHAV & SANDIPKUMAR C. MORE, JJ.
Dated: February 23, 2022

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PER COURT :-

1. By way of this criminal writ petition, the petitioner is seeking quashing of the First Information Report bearing No.199 of 2021 registered with MIDC Police Station, Paithan, Tq. Paithan, District Aurangabad on 12.11.2021 for the offence punishable under sections 304-A, 279, 337, 338 of the IPC and section 134, 177 of the Motor Vehicles Act and also the criminal proceedings.

2. On the basis of the complaint lodged by one Baban Kaduba Savant, aforesaid crime came to be registered in respect of the incident allegedly occurred on 12.11.2021 at about 3.20 p.m. It has been alleged in the complaint

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that, on the day of the incident, at about 6.00 am in the morning, the informant alongwith his cousin deceased Mithun Bhimrao Sawant was proceeding towards sugar factory Tq. Newasa, District Ahmednagar for the labour work of cutting the sugarcane. On way on Aurangabad-Paithan road, near Dhorkin, Tq. Paithan, they had taken some refreshment at one Nisarg Hotel. At about 3.20 p.m. when they left the hotel, on the road, one motorcycle coming from Paithan-Dhorkin and proceeding towards Aurangabad of Hero Honda Shine black colour bearing No.MH-20-CZ-8130 gave dash to deceased Mithun Sawant. In consequence thereof, deceased Mithun had sustained serious bleeding injuries on his head, back and right leg. He was immediately taken to Ghati Hospital, Aurangabad in one Ambulance. He was declared dead by the concerned doctor at about 5.00 p.m. on the same day.

3. Learned counsel for the petitioner submits that, on 12.11.2021 petitioner was going towards his agricultural field on his motorcycle bearing registration

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No.MH-20-CZ-8130 and, while crossing the road at Nisarg Hotel situated at Dhorkin on Aurangabad-Paithan road, he had noticed the accident of two motorcycles and crowd of villagers at the spot of the incident. Thus, the petitioner rushed to the spot. He was found one person in injured condition, to whom he was knowing. Thus, the petitioner took him on his motorcycle and went towards the hospital. At that time, someone had taken his photograph. The persons gathered at the spot took another injured person in the ambulance to hospital. Learned counsel submits that the petitioner has no concern with the accident. He was Samaritans, who helped the injured person and has been wrongly implicated in connection with the crime. Learned counsel submits that accident had taken place out of use of the vehicle motor cycle bearing registration No.MH-20-FK-9044, but instead of mentioning said vehicle, somebody had intentionally taken photograph of the petitioner's vehicle and produced before the police. Petitioner has submitted his representation to that effect alongwith the medical papers of respondent no.3.

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4. Learned counsel for the petitioner submits that there were two motor cycles on the spot i.e. MH-20-CZ-8130 and MH-20-FK-9044. Even though, another motorcycle bearing registration No.MH-20-FK-9044 damaged in the accident, the concerned police station without conducting any inquiry and investigation implicated the vehicle of the petitioner in connection with the present crime.

5. Learned counsel submits that in a case of **Save-life Foundation and another Vs. Union of India and another** in Writ Petition (c) No.235 of 2012, the Supreme Court has made observations with regard 'to protect Samaritans i.e. bystanders and passers-by who render the help to the victims of road accidents. The Supreme Court has observed that, these individuals can play a significant role in order to save lives of the victims by either immediately rushing them to the hospital or providing immediate life saving first aid. Learned counsel submits that, even the Supreme Court has framed certain guidelines for protection of the 'Good

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Samaritans' until appropriate legislation is framed by the Union Legislature as detailed in paragraph no.11.

6. Learned counsel submits that the petitioner has taken respondent no.3, who is the owner in possession of the another vehicle bearing registration No.MH-20-FK-9044 to Nitya Seva Hospital, Dhorkin, Tq. Paithan. Respondent no.3 has sustained injuries in the accident and, therefore, he was taken to the hospital. Prescription of the said hospital is placed on record at page no.19. Respondent no.3 was admitted in the said hospital on 12.11.2021 and there is a specific note that he was admitted in the hospital by his relative i.e. present petitioner Younus Kareem Shaikh. History is recorded as road traffic accident and further injuries on his person are also recorded.

7. The learned APP submits that the informant himself is an eye witness and he has specifically mentioned the vehicle no.MH-20-CZ-8130 in the complaint. The learned APP submits that said vehicle bearing registration No.MH-20-CZ-8130 came to be

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seized by drawing the seizure panchnama on 15.11.2021, wherein damage on the front mudguard was also noticed. The learned APP submits that, there are eye witnesses to the incident. Bhagwan Sakharam Savant and Raju Asaram Savant have witnessed the incident and also mentioned the number of the vehicle bearing registration No.MH-20-CZ-8130 as a vehicle involved in the accident, during recording of their police statement.

8. The learned APP submits that, it transpired during the police investigation that the vehicle owned and possessed by the present petitioner is not insured on the date of the accident, and, it was subsequently insured. The learned APP submits that, in order to get rid of the claim of compensation likely to be filed on account of the accidental death of deceased Mithun Savant, the petitioner with some oblique motive has filed present writ petition.

9. The petitioner has submitted before us the extraneous material such as the prescription of said Nityaseva Hospital in respect of the treatment given to

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the respondent no.3, who has allegedly sustained injuries in the road traffic accident and also certain photographs. The informant himself is an eye witness and there are other eye witnesses to the incident. The petitioner on the basis of some extraneous material has raised his defence that he is a Samaritans to be protected in view of the observations of the Supreme Court in the above cited case. However, we cannot ignore the allegations made in the First Information Report specifically mentioning the registration number of the vehicle involved in the accident and the statement of other witnesses. We cannot conduct mini trial here to find out the truthfulness into the allegations. So far as the proposed defence raised by the petitioner is concerned, it is for him to establish the said defence during the course of the trial.

10. In a case of **State of Odisha Vs. Pratima Mohanty etc** in Criminal appeal Nos.1455-1456 of 2021 decided on 11.12.2021, the Supreme Court in paragraph nos.6.1 and 6.2 has made following observations :-

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- “6.1 Looking to the allegations in the present case against the respondents – accused and considering the fact that charge-sheet has been filed by the Vigilance Cell after a thorough investigation, it cannot be said that the case falls within any of the exceptions as carved out by this Court in para 102 in the case of BhajanLal (supra). It cannot be said that the criminal proceedings initiated against the respondents–accused are an abuse of process of any court. On the contrary, the allegations are an instance of abuse of the powers with a mala fide intention and allotment of the plots to the family members by hatching a criminal conspiracy and to allot the plots to the family members at throw away price causing loss to the B.D.A. and the public exchequer.”
- 6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the charge-sheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.”

11. In the case of **State of Haryana and Others Vs. Bhajan Lal and Others**, reported in 1992 Supp. (1) SCC 335, in para 102, the Supreme Court has given the categories of cases by way of illustrations wherein such quashing power under Section 482 of Cr.P.C. could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice. Following are the categories mentioned by the Supreme Court :-

- “(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. In the instant case, looking into the allegations and considering the investigation carried out so far, it cannot be said that the case falls within any of the exceptions as carved out in paragraph no.102 of the case of **State of Haryana and Others Vs. Bhajan Lal and Others**, reported in 1992 Supp. (1) SCC 335.

13. Prima facie, we find no reason for the informant and other eye witnesses, who are the sugar cutting labourers to mention the vehicle number involved in the accident falsely with certain ulterior motive. On the other hand, since the vehicle allegedly involved in the accident is without insurance, the informant and witnesses would have mentioned the number of the

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other vehicles with full insurance with some ulterior motive to protect their claim for compensation. Apart from this, we cannot go into the merits of the allegations and/or the evidence in detail as if conducting mini trial here.

14. It is well settled that, the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an inquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.

15. So far as the observations made by the Supreme Court in a case Save-life Foundation and another Vs. Union of India and another (supra), those guidelines have been framed to protect 'Good Samaritans' from harassment on the actions being taken by them to save the life of the road accident victims. On the basis of the

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extraneous material we cannot jump on the conclusion that the petitioner is a Good Samaritans and he should be protected by all means. It is necessary for the petitioner to establish the said defence by leading appropriate evidence before the Court. Hence, we proceed to pass the following order.

ORDER

- I. Criminal Writ petition is hereby dismissed.
- II. Criminal Writ Petition accordingly disposed off.

(SANDIPKUMAR C. MORE, J.) (V.K. JADHAV, J.)

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