

Andreza

**IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO. 01 OF 2022**

Mosam Vadeikar	... Petitioner
<i>Versus</i>	
State, Thr. Officer in charge, Old Goa Police Station, Old Goa & anr.	... Respondents

Mr. Prasheen Lotlikar, Advocate for the Petitioner.
Mr. Mahesh Amonkar, Additional Public Prosecutor for the
State-Respondents.

CORAM: MANISH PITALE, J
DATED: 28th January 2022

ORAL ORDER

1. Heard Mr. Lotlikar, learned Counsel appearing for the Petitioner and Mr. Amonkar, learned Additional Public Prosecutor appearing for the Respondent-State.

2. The Petitioner is aggrieved by concurrent orders passed by the Court of the Magistrate and the Sessions Court in rejecting his prayer for stopping the proceedings under Section 258 of the Code of Criminal Procedure (Cr.P.C.). According to the Petitioner, the settled position of law has been ignored by the two Courts, whilst concurrently holding against him.

3. In the present case, the Petitioner is facing prosecution for offences under Sections 279 and 338 of the Indian Penal Code (IPC) and Section 134(a)(b) of the Motor Vehicles Act, 1988, (*M.V. Act*, for short). According to the prosecution, on 20.06.2019, at about

9.25a.m., the Petitioner was driving Santro car and it met with an accident with a two wheeler scooter driven by the victim who fell down and sustained injuries. It is alleged that the Petitioner fled away from the spot and later was apprehended by local persons. The injured was taken to the hospital for treatment.

4. During the course of investigation, statements of witnesses were recorded. On the basis of the material gathered in the course of investigation, including the recording of spot panchanama, the prosecution against the Petitioner was launched.

5. The Petitioner filed an application under Section 258 of the Cr.P.C., for stopping of proceedings on the basis that the material that had come on record was not sufficient to even make out a *prima facie* case of rash and negligent act on his part and that, therefore, the proceedings needed to be stopped. This was opposed by the Respondent-State.

6. By order dated 07.04.2021, the Court of the Magistrate rejected the application filed on behalf of the Petitioner. Aggrieved by the same, the Petitioner filed a Revision Application before the Sessions Court. By order dated 20.12.2021, the Sessions Court dismissed the Revision Application, thereby confirming the order passed by the Magistrate.

7. The Petitioner has approached this Court being aggrieved by the two concurrent orders.

8. Mr. P. Lotlikar, learned Counsel appearing for the Petitioner, has vehemently submitted that the approach adopted by the two Courts below was in the teeth of settled law. It was submitted that merely because there were bald statements of rashness and negligence made by the witnesses, it would not *ipso facto* mean that the Petitioner would necessarily have to face the rigors of trial. Attention of this Court was invited to the statements of the witnesses, as also the spot panchanama and it was contended that there was no material to even make out a *prima facie* case against the Petitioner for the aforesaid offences. Reliance was placed on order dated 10.07.2020 passed by this Court in the case of ***Rhea Kamat vs. State of Goa, Thr. Officer Incharge, Panaji Police Station & anr.***¹ and Judgment of Hon'ble Supreme Court in the case of ***Sanjay Kumar Rai vs. State of Uttar Pradesh & anr.***².

9. On the other hand, Mr. Mahesh Amonkar, learned Additional Public Prosecutor appearing on behalf of the State-Respondent, submitted that the concurrent orders passed by the two Courts below do not deserve interference, as they were passed on application of law concerning the power to be exercised by the Court under Section 258 of the Cr.P.C. to the facts of the present case.

10. Having heard the learned Counsel appearing for the rival parties, it is obvious that the material on record needs to be appreciated in order to examine the contention raised on behalf of the Petitioner that there is absence of even a *prima facie* case against him for the matter to proceed further before the Magistrate.

¹ WPCR No. 83 of 2020

² 2021 SCC OnLine SC 367

11. A perusal of the documents placed on record shows that according to the complaint leading to registration of the FIR, the incident took place on 20.06.2019 at about 9.25 a.m. The allegation against the Petitioner is that he was driving a Santro car in such a manner that it led to an accident with the two wheeler in which the rider of the two wheeler suffered serious injuries. It is alleged that the Petitioner ran away from the spot but he was later on apprehended by the locals. A perusal of the statements of eye witnesses placed on record shows that the said witnesses claim to have seen the Petitioner driving the car at a high speed and in a rash and negligent manner while giving dash to the two wheeler. It is also stated that after the incident, the Petitioner fled away from the spot and the locals who were present at the spot of the incident, went after him and finally apprehended him. The statements of two eye witnesses are similar in nature. The spot panchanama is also placed on record, wherein it is recorded that the two wheeler in question is found to be lying in a damaged condition and the position of the offending vehicle and the road where the accident took place has been stated in detail. It is also recorded that the car driven by the Petitioner was found to be involved in the accident and that verification of the damages of the car in question showed that the bonnet was damaged and the windscreen was broken.

12. With this nature of material available before the Magistrate, the Petitioner moved the application of stopping proceedings under Section 258 of the Cr.P.C. The Magistrate referred to the material on record and then dealt with the Judgments upon which the learned Counsel appearing for the Petitioner placed reliance. Thereafter, the Magistrate referred to Sections 279 and 338 of the IPC as also Section 134(a)(b) of the M.V. Act. After analyzing the ingredients of the

aforesaid offences, the Magistrate came to the conclusion that the material on record was sufficient to indicate that a *prima facie* case was indeed made out and that no case was made out of exercising power under Section 258 of the Cr.P.C. The Sessions Court considered the challenge raised on behalf of the Petitioner. The said Court also referred to the spot panchanama as also statements of witnesses. Thereupon, the Sessions Court observed that since the Magistrate had discussed the Judgments upon which the Petitioner had placed reliance and since the Sessions Court agreed with the findings of the Magistrate that the facts of the present case could be distinguished, the said Judgments were not being referred to.

13. This Court has also considered the material on record. The statements of the witnesses indeed show that the incident in question did take place, which involved the car driven by the Petitioner. As per the statements recorded during the course of investigation, the Petitioner was allegedly driving the said car at a high speed and in a rash and negligent manner leading to the incident in question. The spot panchanama also records the manner in which the vehicles were found at and near the spot of incident and the extent of damage to the vehicles. It is also recorded that the rider of the vehicle indeed suffered serious injuries, requiring hospitalisation.

14. The Court can exercise power under Section 258 of Cr.P.C. at any stage of the proceedings to stop further progress in the matter and release the accused. The said release of the accused has the effect of discharge. The learned Counsel appearing for the Petitioner has placed reliance on the Judgment of the Hon'ble Supreme Court in the case of ***Sanjay Kumar Rai vs. State of Uttar Pradesh & anr.*** (supra), which concerned exercise of power to discharge an accused on the basis of

well settled principles enunciated in the case of *Union of India vs. Prafulla Kumar Samal*³. It is laid down in the said line of Judgments that the Court at this stage can certainly sift through the material brought on record by the prosecution to reach a conclusion whether a *prima facie* case is made out against the accused. If it is found that the ingredients of the alleged offence are not even *prima facie* made out, power can certainly be exercised to stop the proceedings, having the effect of discharging the accused so that the accused is not made to face the rigours of trial. In the case of *Rhea Kamat vs. State of Goa* (supra), the learned Single Judge of this Court considered the question of exercise of power under Section 258 of the Cr.P.C. when the accused was alleged to have committed the offence under Sections 279, 337, 338 and 304A of the IPC. A perusal of the said order of this Court shows that in the facts of the said case, this Court came to a conclusion that not even *prima facie* case was made out and that the material on record did not indicate that there was a case of rashness or negligence on the part of the accused and that the matter did not deserve to proceed further.

15. There can be no dispute about the fact that no two cases can be similar on facts. The position of law referred to above has to be applied to the facts of each case. In the present case, the learned Counsel appearing for the Petitioner has placed much reliance on the contention that merely because the witnesses used the words “*rashness and negligence*”, it could not be said that a *prima facie* case was made out against the Petitioner.

16. This Court has perused the material on record, including the statements of the eye witnesses and the spot panchanama. A perusal

³ (1979) 3 SCC 4

of the same cannot lead to the conclusion that not even a *prima facie* case is made out against the Petitioner. The statements together with the spot panchanama *prima facie* show the involvement of the Petitioner, indicating the manner in which he was driving the car, which was involved in the incident. The extent of damage to the car as also the two wheeler involved in the accident, also shows the extent of the impact. The record also shows that the rider of the two wheeler i.e. the victim, indeed suffered serious injuries and he had to be hospitalised. Such material is enough at this stage to indicate that the prayer for stoppage of proceedings under Section 258 of Cr.P.C., cannot be granted and that the two Courts below have concurrently applied the position of law properly to the facts of the present case to hold against the Petitioner.

17. In view of the above, the Writ Petition is dismissed.

18. Needless to say, the Magistrate shall proceed further in the matter without being influenced by the observations made in the present order or in the impugned orders.

MANISH PITALE, J