

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

CRIMINAL WRIT PETITION NO. 2593 OF 2016

Mr.Jahaan Minoo Dastur,
aged about 26 years, residing at Flat No.17,
5th floor, Chateau Marine, 133, Marine Drive,
Mumbai- 400 020. ... Petitioner.

V/s.

1. The State of Maharashtra,
at the instance of MRA Marg
Police Station.
2. Mr.Rohit Rajan Agarwal,
residing at Riddhi Siddhi,
Ratna Kranti Nagar,
Andheri (E), Mumbai- 400 059. ... Respondents.

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Mr.Darius Khambata, Senior Advocate with Zal Andhyarujina,
Senior Advocate, Robin Jaisinghani, Subodh Desai i/b. Husayn
Kopty for the Petitioner.

Mr.K.V.Saste, Assistant Public Prosecutor for the Respondent- State.

Mr.Rohit Agarwal, Respondent No.2 in person.

**CORAM : NITIN JAMDAR AND
 N.R. BORKAR, JJ.**

DATE : 26 August 2022.

JUDGMENT : (Per Nitin Jamdar, J.)

Rule. Rule made returnable forthwith. Taken up for disposal.

2. By this petition filed under Article 226 of the Constitution of India and section 482 of the Code of Criminal Procedure, 1973, the Petitioner is seeking to quash the proceedings in CC No.482/PS/16 pending on the file of Additional Chief Metropolitan Magistrate, 38th Court, Ballard Pier, Mumbai arising out of CR No.355/2015 registered on 23 October 2015 by the MRA Marg Police Station on the complaint filed by Respondent No.2.

3. The FIR was filed by Respondent No.2- Complainant on the following allegations: The Complainant had a case to attend to in this Court. After finishing his case in the court, he was travelling on his motorcycle on Homi Modi Street in the Fort area of the City. At that time, a car in front of him stopped, and the person sitting in the back seat (the Petitioner) opened the door. As the front wheel of the motorcycle hit the door, the Complainant lost his balance and fell down and the left side door of the car hit his right cheek. Complainant received injuries on the head, right cheek, shoulder and neck. The Complainant and the person in the car approached Hutatma Chowk Police Chowky, where a preliminary inquiry was conducted. Complainant requested aid from the

Petitioner but the Petitioner went away from that place. Thereafter, on 23 October 2015, an FIR bearing No.355/2015 came to be filed under section 337 of the Indian Penal Code. On 26 April 2016, a charge sheet was filed by the MRA Marg Police Station in the Court of Additional Chief Metropolitan Magistrate, 38 the Court, Ballard Pier, Mumbai. After that, the Petitioner filed the present petition seeking to quash the proceedings.

4. This petition was filed on 27 July 2016. On 11 August 2016, the Court issued notice to the Respondents and ad-interim relief of staying the proceedings in CC No.482/PS/2016 was granted. On 22 October 2018, when the matter was taken up for hearing, Complainant did not remain present and had sent a communication to that effect. The Petitioner was permitted to renew his passport by way of ad-interim order. On 7 January 2019, when the petition was taken up for consideration, Complainant did not remain present; hence one more notice was issued to the Complainant stating that the petition would be taken up for disposal. On 25 February 2019, Complainant remained present and sought time. On the next date, Complainant did not remain present, and again, by way of ad-interim order, the Petitioner was permitted to travel abroad. On 5 February 2021, the matter was partly heard, and Complainant sought time. After that, when the petition came up on board, Complainant remained present and submitted a reply.

5. We have heard Mr.Khambata, learned Senior Advocate for the Petitioner, Mr.Saste, Assistant Public Prosecutor for the Respondent- State, and Mr.Rohit Agarwal, Respondent No.2-- Complainant, in person.

6. The Petitioner submitted that there is a gross delay of 43 days in filing the FIR. He submitted that though the proceedings were initiated in the year 2016, there is no witness and no evidence whatsoever, which has been accepted even by the Prosecution. He submitted that even going by the FIR, no ingredients of section 337 of IPC have been made out. It is submitted that the Petitioner is an advocate, and because of this FIR lodged with no merits whatsoever, the resultant proceedings have caused immense mental trauma and affected his professional work. Petitioner submitted that keeping the proceedings pending is a gross abuse of process of law and, therefore, this is a fit case where inherent and extraordinary powers of this Court be exercised to quash the proceedings.

7. The learned APP pointed out from the charge sheet that there is no evidence, no statements of witnesses recorded, and no CCTV footage. The learned APP also pointed out from the record that the injuries of the Complainant were simple injuries.

8. The Complainant submitted that it is unbelievable that there are no witnesses and that there is no CCTV footage as the

incident had occurred in a busy locality and, therefore, the investigation carried out by the police authorities is not proper. The Complainant stated in the reply that on 10 September 2015, he had sent an email to the Senior Inspector of Police, MRA Marg Police Station, that he was injured and an FIR should be lodged. The Complainant stated that the sections applied under IPC had been diluted. It is also stated that Respondent No.1 had kept the motorcycle involved in the accident for almost a week for RTO inspection, but the same was not done. It is further stated that the Complainant had filed Writ Petition No.1457/2011 in respect of his employer and dues, and the legal firm of which the Petitioner is a part is opposing his petition. After that, in reply, he made general allegations against the Petitioner and other advocates. Based on the reply, the Complainant submitted that the FIR should not be quashed as all ingredients of the offence are made out, and the trial is necessary.

9. We have considered the rival submissions. It is settled by various decisions of the Hon'ble Supreme Court that the power of the High Court under Article 226 of the Constitution of India and section 482 of Cr.P.C. to quash the FIR is not to be used in a routine manner. However, it is available to stop the abuse of process of law. In the case of *State of Haryana v. Bhajan Lal*¹, the Hon'ble Supreme Court has given certain illustrations as categories of cases where extraordinary and inherent powers can be exercised. The primary

1 1992 Supp. (1) SCC 335

and dominant purpose for the exercise of such powers is to prevent abuse of process of law or to secure ends of justice. The Supreme Court observed that it may not be possible to lay down any precise, clearly defined, and sufficiently channelized inflexible guidelines, and there could be various cases in which such power needs to be exercised, such as where allegations made in the FIR 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 any case against the accused.

10. As per the FIR, the incident occurred on 10 September 2015, and the statement of the Complainant was recorded on 23 October 2015, i.e. 43 days after the incident. The statement of the driver of the car, Mr.Subhash Jadhav, was recorded on 10 September 2015 at 12.40 p.m. when it was entered in the daily police diary that when the Petitioner was getting down from his car from the left-hand side, one two-wheeler with excessive speed came and applied brakes.

11. In the present case, the investigation is complete, and a charge sheet has been filed. The Petitioner has argued, which is confirmed by the learned APP, that there is no evidence whatsoever despite the charge-sheet being filed and the investigation being completed. No Panchanama was recorded, and no statement of the Petitioner or the driver was recorded. No CCTV footage is on record, and as per the prosecution, no eyewitnesses could be found.

12. The contention of the Complainant is primarily of faulty investigation. On Complainant's own showing, he is prosecuting his service dispute before the Court and is aware of the process of law. During the argument, Respondent No.2 was clear about the scheme of Cr.P.C. and that he had remedies open if the police authorities were not lodging the FIR or what to do when the investigation is improper. But then, Respondent No.2 has not taken any steps for the last seven years to direct further investigation or re-investigation. Therefore, his argument regarding the faulty investigation cannot be considered in the petition filed for quashing of FIR.

13. Even going by the FIR, the only statement of the Complainant, no offence under Section 337, is made out as alleged in the charge-sheet. Section 337 of IPC, which is applied in the present case, punishes that act which causes hurt to any person by doing any act so rashly or negligently as to endanger human life. There is a difference between an accident simpliciter and committing an offence of activity so rashly and negligently to endanger human life. Taking the statements in the FIR as it is, Respondent No.2 was travelling on his motorcycle; the car in front of him stopped, and the person in the back seat opened the left side door of the car. Respondent no.2 tried to state that the car stopped in the middle of the road, but it is not so stated in the FIR. There are no witnesses who say so. There is no evidence on record for the last seven years.

As per the FIR, the Petitioner alighted from the car by opening the left side door, and Respondent No.2 was trying to move past the car and got injured. Thus even as per the FIR, the Petitioner alighted from the car from the correct side. Per the FIR and the investigation, the Petitioner suffered minor injuries on his cheek and shoulder. The FIR, if read as it is, does not show the ingredients of section 337 are made out and shows that it was more a case of misjudgment on the part of Respondent No.2.

14. The resultant position is that the FIR and the charge sheet makes out no offence, FIR has been filed after a gross delay of 43 days, the investigation is complete, and no evidence is brought on record. This petition has remained pending for more than six years because, on many occasions, it was adjourned for the absence of Respondent No.2. The petitioner had to make an application to travel abroad and get the passport renewed, causing sheer harassment to the Petitioner. Keeping the proceedings pending further in this state of affairs is an abuse of the process of law. According to us, this is a fit case where inherent and extraordinary powers of this Court need to be exercised.

15. In the result, the petition is allowed. Rule is made absolute in terms of prayer clause (b).

(N.R-. BORKAR, J.)

(NITIN JAMDAR, J.)