

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO. 502 OF 2023

Gajanan S/o Manik Varhade

Applicant

Versus

The State of Maharashtra & another

Respondents

Mr. D. A. Mane, Advocate holding for Mr. N. R. Pawade, Advocate for the applicant.

Mrs. V. N. Patil-Jadhav, APP for the State.

**CORAM : SMT. ANUJA PRABHUDESSAI &
R. M. JOSHI, JJ.**

DATE : 23rd FEBRUARY, 2023.

PER COURT :

1. By consent, heard finally at the stage of admission.
2. This is an application under Section 482 of the Code of Criminal Procedure to quash First Information Report Crime No. 7/2023 registered with Pathri Police Station, Dist. Parbhani for the offences punishable under Sections 304-A, 279, 427 of the Indian Penal Code.
3. The aforesaid crime was registered on 9th January, 2023, pursuant to the First Information Report lodged by Urmila Gajanan

Ingle, respondent No. 2 herein. A perusal of the FIR reveals that on 2nd January, 2023, at about 9.00 pm, Arjun Tukaram Ingle, the paternal uncle of respondent No. 2 had informed her that a tractor bearing No. MH-22 AW-4240 had collided with the motorcycle of her husband and that her husband was taken to the Government hospital. She went to the hospital and was informed that her husband had succumbed to the injuries. She further stated that her paternal uncle had also told her that the accident was caused due to the rash and negligent driving of the driver of the tractor. She therefore lodged the FIR against the driver of the tractor for driving the vehicle in a rash and negligent manner and thereby causes death of the husband Mr. Gajanan Ingale.

4. Learned counsel for applicant states that the tractor was not involved in an accident. He submits that the applicant had entered into an agreement dated 27th June, 2022 with a sugar factory and that on the relevant date the tractor was standing in the agricultural field wherein sugarcane was being harvested. He further submits that as per the agreement, it was mandatory for the applicant to install GPS tracker and that the GPS data indicates that the tractor was not involved in the accident.

5. We have perused the records and considered the submissions advanced by learned counsel for the applicant and learned APP for the respondent/State. It is well settled that the powers of High Court under Section 482 of the Code of Criminal Procedure are wide and can be exercised inter alia to prevent an abuse of the process of Court or to secure the ends of justice. In the case of Kaptan Singh Versus State of Uttar Pradesh and others, (2021) 9 SCC 35, the Apex Court has observed that,

“9.2 In Dhruvaram Murlidhar Sonar after considering the decisions of this Court in Bhajan Lal, it is held by this Court that the exercise of powers under Section 482 CrPC to quash the proceedings in an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC. Similar view has been expressed by this Court in Arvind Khanna, Managipet and in XYZ , referred to hereinabove.”

6. In the case of Jitul Jential Kotecha Versus State of Gujarat and others, 2021 SCC OnLine SC 1045, the Apex Court has reiterated that,

“27. It is trite law that the High Court must exercise its inherent powers under Section 482 sparingly and with circumspection. In In the decision in Jugesh Sehgal V. Shamsheer Singh Gogi, this court has held that, “[t]he inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice.” In Simrikhia V. Dolley Mukherjee, this court in another context, while holding that the High Court cannot exercise its inherent powers to review its earlier decision in view of Section 362 of the CrPC, observed that the inherent powers of the High Court cannot be invoked to sidestep statutory provisions. This Court held:

*“5. ...Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. **If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.**”*

(emphasis added)

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31. Recently, in Mahendra KC V. State of Karnataka this Court has reiterated the well settled test to be applied by the High Court for exercise of its powers under Section 482 for quashing an FIR:

“16. ... the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge

conducting a trial would, on the basis of the evidence collected during the course of trial.”

7. In the case of State of Telangana and Habib Abdullah Jeelani and others, (2017) 2 Supreme Court Cases 779, the Hon'ble Supreme Court has referred to and previous decision in Kurukshetra University vs. State of Haryana, (1977) 4 SCC 451, wherein it is held that the powers under Section 482 of the Code of Criminal Procedure do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice and that the statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. The Hon'ble Supreme Court has further reiterated that the power under Section 482 of the Code of Criminal Procedure is to be exercised in a very sparing manner and is not to be used to choke or smother the prosecution that is legitimate.

8. It is thus well settled that the inherent powers under Section 482 of the Code of Criminal Procedure, though wide, are required to be exercised with care and caution. At this stage, the Court cannot enter into a mini trial and analyse, appreciate or marshal the material on record much less, quash the proceedings on

the material produced by the applicant who is alleged to have committed the said offence.

9. In the instant case, the First Information Report prima facie shows involvement of the tractor in the said accident. Investigation is still in progress. In such circumstances, no case is made out to interfere with the investigation or stifle the investigation at a preliminary stage, on the basis of the documents sought to be produced by the applicant or on the premise that the allegations against the applicant are false. Under the circumstances, application has no merit and is accordingly dismissed.

(R. M. JOSHI)
Judge

(SMT. ANUJA PRABHUDESSAI)
Judge

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