IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

17 CRIMINAL WRIT PETITION NO.628 OF 2022

SAKHARAM NAMDEV SHINDE
VERSUS
ROHISH KAMALNAYAN SABLOK AND OTHERS

Mr.H.V. Tungar, Advocate for the petitioner.

CORAM : KISHORE C. SANT, J.
DATED : 09.03.2023

PC :-

01. Heard learned Advocate for the petitioner. The petitioner has challenged an order dated 21.03.2022 passed by the learned Additional Sessions Judge, Beed, dismissing the revision application. The revision application was preferred against an order passed by the learned Chief Judicial Magistrate, Beed, dismissing complaint under section 203 of the Cr.P.C.

02. In short the complaint of the petitioner was that he purchased a vehicle claiming that respondent No.2 is a manufacturer and respondent No.1 is a dealer of the said vehicle. It is alleged that the vehicle namely, Mahindra Scorpio, developed certain faults in the running. It is is allegation that the vehicle was required frequent repairs as the parts in the vehicle are duplicate.

Because of that the petitioner met with an accident due to short-circuit. He, therefore, filed complaint for the offences punishable under sections 336, 337, 406, 415, 416, 417, 418, 419, 420, 425, 426, 504, 506, 34 of the Indian Penal Code against the dealer and the manufacturer. The learned Trial Court on recording verification found that no case is made out to issue summons to the accused persons as no offence is made out.

03. Being aggrieved by the order passed by the learned Chief Judicial Magistrate, the petitioner filed Criminal Revision bearing No. 66 of 2020 in the Court of learned Sessions Judge, Beed. The learned Additional Sessions Judge recorded that no offence is made out and held that the learned Trial Judge has not committed any mistake in dismissing the complaint.

04. The learned Advocate for the petitioner vehemently argued that clearly a case was made out to issue notice. Both the respondents had knowledge about the quality of the vehicle that it would cause damage and this act clearly falls under definition of mischief given under section 425 of the IPC. He submits that no intention is required to be alleged in a case of mischief. He also submits that in view of explanation-1 that it is not essential

that the vendor should intend to cause loss or damage to the property. Only knowledge is sufficient. He also relied upon judgment reported in **1993 Supp. (1) SCC 621 in the case of Commissioner of Income Tax (Addl) Gujarat Vs. M/s. I.M. Patel & Co.**, to submit that in the offence under mischief, intention is immaterial. The Hon'ble Apex Court in para 10 of the judgment has considered judgment in the case of CIT Vs. Gujarat Travancore Agency, reported in (1976) 103 ITR 149. The Hon'ble Apex Court in that case held that unless there is something in the language of the statute indicating the need to establish the element of *mens rea*, it is generally sufficient to prove that a default in complying with the statute has occurred. The Apex Court considered section 271(1)(a) of the Income Tax Act, 1961.

05. This Court finds that the case referred above is under taxation law and said analogy cannot be applied to the general law, that too for the offence under the IPC. This Court finds that both the Courts have rightly passed the order. No interference is called for. The petition is dismissed.

[KISHORE C. SANT, J.]