



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2044 OF 2023

Peter Roland Misquitta

... Petitioner.

V/s.

State of Maharashtra

... Respondent.

Ms. Sakshi Mane a/w Ms. Swati Singh, Ms. Arya Sapre for the Petitioner.
Ms. S.D. Shinde, APP for the Respondent-State.

CORAM : A.S. GADKARI &
SHARMILA U. DESHMUKH, JJ.

DATE : 15th September, 2023.

P. C. : (Per Sharmila U. Deshmukh, J.):

1. Heard the learned counsel appearing for Petitioner and learned APP for Respondent State.

2. By this Petition filed under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the Petitioner seeks quashing of C.C.No.PS/230/2023, pending on the file of learned Metropolitan Magistrate, 10th Court, Andheri, arising out of FIR No.217 of 2022, registered with Jogeshwari Police Station for the offences under Sections 279 and 336 of the Indian Penal Code, 1860, and Section 184 of the Motor Vehicles Act, 1988.

3. Ms. Mane, learned counsel appearing for the Petitioner submits that, the allegation in the FIR is that, on 29th April, 2022 at

about 10.10 am, the Petitioner was driving his motorcycle dangerously at high speed in the opposite direction of on-going traffic. She submits that, by the same FIR another driver of two wheeler has also been charged with the same offence. She would submit that, the FIR has been lodged due to a drive undertaken by the police to lodge FIR for wrong side driving. She submits that, prima facie the FIR does not make out the alleged offences. She further submits that, the Petitioner is 22 year old having recently secured employment and prosecuting the Petitioner on the basis of the FIR would amount to abuse of process of law. She draws support from the decision of this Court in the case of *Khizzer Akhtar Shah vs. The State of Maharashtra*, reported in *2016 SCC OnLine Bom 8159*.

4. Ms. Shinde, learned APP submitted that, the charge-sheet has been filed. She would further submit that, first-informant is the Traffic Constable and the Petitioner was found driving the two-wheeler in the opposite direction of on-going traffic.

5. We have considered the submissions and perused the documents.

6. The allegation in the FIR is that, the Petitioner was driving his two wheeler at a high speed in opposite direction of the ongoing

traffic. The offence under Section 279 of the IPC is attracted if the vehicle is driven in a rash or negligent manner as to endanger human life or likely to cause hurt to other person. Except making a bald allegation in the FIR that, the two-wheeler was driven at high speed in opposite direction of traffic there is no act attributed to the Petitioner to indicate that, the driving was in a rash or negligent manner. Considering the allegation in the FIR, as regards the charge for offence under Section 336 of the IPC is concerned, the ingredients of rash or negligent act are not made out from the FIR. As held by this Court in the case of *Khizzer Akhtar Shah vs The State of Maharashtra* (supra), driving of vehicle at high speed may not attract the provisions of Section 279 of the IPC.

7. To sustain a charge under Section 184 of the Motor Vehicles Act, the person has to drive the vehicle at a speed or in a manner dangerous to the public having regard to the circumstances enumerated in the said Section. It is not disputed that, the Petitioner was driving the vehicle on a service road and the said fact would constitute one of the elements to attract the offence under Section 184. In the charge-sheet, prima facie, we do not find the allegations as regards the circumstances to be considered to attract the offence under Section 184 of the Motor Vehicles Act.

8. Upon perusal of the charge sheet, prima facie, we do not find any case made out to sustain the charge for offences under Sections 279, 336 of IPC and Section 184 of M.V.Act. The allegations in the FIR are lacking in the requisite ingredients to constitute the aforestated offences. No statement of independent witness has been recorded. It appears that, in view of the drive undertaken to curb wrong side driving, the FIR has been lodged in a casual manner the FIR does not make out prima facie case of rash or negligent driving in a manner which will endanger human life or likely to cause injury to other person so as to attract the alleged offences. It also needs to be noted that, two persons are impleaded as accused in single FIR although the acts alleged are distinct acts and unconnected with each other.

9. Having regard to the above and considering the decision of Apex Court in the case of *State of Haryana and Ors. vs Ch. Bhajan Lal and Ors.*, reported in *1992 AIR 604*, we are inclined to allow the Petition.

10. Resultantly, C.C.No.PS/230/2023, pending on the file of learned Metropolitan Magistrate, 10th Court, Andheri, arising out of FIR No.217 of 2022, registered with Jogeshwari Police Station is hereby quashed and set aside, subject to payment of costs of Rs.15,000/- to be

paid to Central Police Welfare Fund within a period of two weeks from the date of uploading of this order on the official website of this Court.

11. Stand over to 16th October, 2023 for “reporting compliance of the said Order”.

12. Writ Petition stands allowed in the above terms.

(SHARMILA U. DESHMUKH, J.)

(A.S. GADKARI, J.)