

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

CRIMINAL REVISION APPLICATION NO.211 OF 2023

Pravin Bhiwa Teli	..Applicant
Versus	
The State of Maharashtra	..Respondent

Mr. Rounak Naik, Advocate, for Applicant.
Mr. N.B. Patil, APP, for State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 26th JULY 2023

PC :

1. Heard Mr. Rounak Naik, Advocate, for the Applicant.
2. The Applicant has challenged the charge framed against him on 5th April 2023 under Section 353 r/w 34 of the Indian Penal Code (for short "IPC").
3. The prosecution case as per the charge-sheet is that the Informant Shantaram Bhosale was a driver on a BEST bus. The incident occurred on 26th August 2018 at about 10 am at Khar. When the Informant was taking the bus on a turning, his bus brushed with the Applicant's Rikshaw. The Applicant started abusing the Informant. At that time, a car came from the opposite

side. Its driver got down from the car and he started abusing the Informant. He entered the driver's cabin and forcibly pulled the Informant outside the bus. In the process, the Informant suffered injuries below the left eye, cheek and nose. On these allegations, the FIR was lodged at Khar Police Station vide Crime No.342 of 2018 under Section 353, 337, 504 r/w 34 of IPC. The charge-sheet was filed under these sections.

4. However, in this background, the charge was framed under Section 353 r/w 34 of IPC as mentioned. Learned Counsel for the Applicant submitted that when the charge was framed, learned Counsel for the Applicant was not present. More importantly the provisions of Section 226 of Cr.P.C. were not followed. There is nothing to show from the roznama that the learned prosecutor opened the case and since the Advocate for the Applicant was not present, there was no submission made on behalf of the Applicant. Learned Counsel further submitted that the prosecution story from the charge-sheet itself is clear that the car driver and the present Applicant had no connection. The act constituting the offence is clearly attributed to the car driver and

not to the present Applicant.

5. Learned APP opposed this submission. He submits that Section 34 of IPC is also applied and, therefore, there was common intention.

6. I have considered these submissions. The story of the Informant is supported by the conductor who is an eye witness. Their statements indicate that the act amounting to offence under Section 353 of IPC was committed by the car driver. However, at this stage, it would not be proper to observe anything further because I am satisfied that the matter deserves to be remanded back for fresh consideration. So that learned Counsel for the Applicant can make his submissions in consonance with the provisions of Section 226 and 227 of Cr.PC.

7. Hence, the following order:

O R D E R

- i) The charge framed against the Applicant, on 5th April 2023, is set aside.

- ii) The learned Sessions Judge shall follow the procedure prescribed under Section 226 and 227 of Cr.P.C.
- iii) The Applicant is at liberty to make an Application for discharge. After hearing learned APP and learned Counsel for the Applicant, the learned trial Judge shall consider the question of framing charge under various sections in accordance with law. All the questions raised on merits of the matter by both the sides are left open.
- iv) With these observations, the Revision Application is disposed of.

(SARANG V. KOTWAL, J.)