

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

CRIMINAL APPLICATION NO. 49 OF 2023

Raju Suresh Gupta	...	Applicant
Versus		
State of Maharashtra & Anr.	...	Respondents

Mr. Vikas Khanolkar a/w Kanchi K. Joshi i/by Manasvi Tilwani for the Applicant.

Mrs. S. D. Shinde, APP for the Respondent No.1-State.

**CORAM: NITIN W. SAMBRE AND
R. N. LADDHA, JJ.**

DATE : 18th AUGUST, 2023

P.C. :-

. The prayer is for quashing the FIR in Crime No. 253 of 2022 for the offence punishable under Sections 279, 336 of the Indian Penal Code and Sections 15(2)(9) and 177 of the Motor Vehicles Act, 1988.

2. The genesis of the offence alleged against the applicant is the applicant was driving his motor vehicle bearing registration No. MH 01 DE 8192 in rash and negligent manner by endangering the life of the other vehicle owners and the pedestrians, resulting into registration of the offence.

3. The applicant is already charge-sheeted.

4. We have heard this matter at length on 17th August 2023 and since this Court was not inclined, posted the same for withdrawal for

today after accepting the request of the learned counsel for the applicant.

5. Today, when the matter is called out, the another counsel appeared in the matter and has canvassed the arguments on merit.

6. Amongst other, the submissions are the Motor Vehicles Act is a special statute and the offence of driving on the wrong side of the road is already punishable under the said provisions. In view of above, the applicant's prosecution under the provisions of the Indian Penal Code cannot be said to be maintainable when the area is covered by the special statute. In addition, the contentions of the learned counsel for the applicant are that the offences are lodged pursuant to the instructions of the Commissioner of Police. The Commissioner of Police under the Bombay Police Act has not issued any notification thereby making the offence of driving the vehicle on the wrong side to be punishable under the provisions of the Indian Penal Code.

7. Further contentions are that anywhere in the country the offence of driving on the wrong side since is not made punishable under the provisions of the Indian Penal Code, the prosecution of the applicant is in violation of Article 14 and that being so, the prosecution against the applicant is not sustainable. According to him, unless the accident because of rash and negligent driving occurs, the applicant cannot be booked for the offence.

8. So as to substantiate the aforesaid contentions, the learned counsel for the applicant has drawn support from the judgment of Apex

Court in the matter of ***State of Haryana & Ors. v/s. C.H. Bhajan Lal & Ors.***, reported in ***1992 SCC Supl. (1) 335***, and also the judgments of Karnataka High Court in ***Prathap Kumar.G s/o Yele Govindappa v/s. State of Karnataka & Anr.***, dated 21st October 2022 passed in Criminal Petition No. 1133 of 2019 and this Court in ***Manas Mandar Godbole v/s. The State of Maharashtra***, dated 20th December 2022 passed in Criminal Writ Petition No. 2920 of 2021 and in ***The State of Maharashtra v/s. Kuldeep Subhash Pawar***, dated 3rd March 2023 passed in Criminal Appeal No. 1238 of 2012.

9. The learned APP would urge that the applicant's prosecution under the provisions of the Indian Penal Code cannot be said to be barred as the act of negligent driving can be inferred in view of the driving of a four wheeler by the applicant on wrong side of the road. According to her, whether the applicant on merit has committed an offence or not based on the available evidence could be looked into during the trial and that being so, application is liable to be dismissed.

10. We have appreciated the submissions.

11. Merely because the offence is made punishable under the provisions of the Motor Vehicles Act that by itself will not take away the claim of the respondent to book and try the applicant under the provisions of the Indian Penal Code. There is no statutory embargo as such brought to the notice of this Court by the applicant. In our opinion, the learned APP is justified in relying on the provisions of Section 5 of the Cr.P.C. as the trial under both these statute can be held together against the applicant.

12. Apart from above, the claim of the learned counsel for the applicant that there has to be a notification under the provisions of the Indian Penal Code thereby authorizing the Commissioner of Police to make an offence of rash and negligent driving on wrong side made punishable under the provisions of the Indian Penal Code is concerned, in absence of there being any statutory provisions or mechanism for issuance of such notification prescribed under any of the statute, it cannot be said that the provisions of the Indian Penal Code cannot be invoked against the applicant. When confronted, applicant is not in a position to demonstrate any such statutory requirement, hence said contentions are rejected.

13. The available material on the record depicts that the applicant was driving his four wheeler on the wrong side of the road and thereby endangered the life of such persons who were driving the vehicles on the right side of the road and the pedestrians who were also walking. There is sufficient material to infer the *prima-facie* involvement of the applicant in the offence in question. Hence, the satisfaction of necessary ingredients of the offence can be inferred.

14. As far as reliance on the judgments cited supra are concerned, same are pertaining to wherein a prosecution for an offence punishable under Section 279 and 336 of the Indian Penal Code, a dog can be treated as human being which on facts is not a case in hand.

15. That being so, no case for quashing is made out. Accordingly, the application stands dismissed.

16. Considering the conduct as reflected herein above, we deem it appropriate to saddle the cost of Rs.5,000/- on the applicant to be paid with the High Court Legal Services within a period of four weeks from today.

[R. N. LADDHA, J.]

[NITIN W. SAMBRE, J.]

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