



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
CRIMINAL WRIT PETITION NO.85 OF 2022**

Punjaram S/o Kadu Borade,
Age-55 years, Occu.: Agril,
R/o. Wadgaon (Rampuri) Tq. Gangapur,
Dist. Aurangabad.

..Applicant

Versus

1. The State of Maharashtra,
Through The Secretary,
Home Department Mantralaya Mumbai-32
2. The Director General of Police,
Maharashtra State, Mumbai.
3. The Commissioner of Police,
Aurangabad Tq & Dist. Aurangabad.
4. The Superintendent of Police,
Aurangabad (Rural) Tq. & Dist. Aurangabad
5. The Police Inspector,
Gangapur Police Station,
Tq. Gangapur, Dist. Aurangabad. ..Respondents

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Mr. R. V. Gore, Advocate for the Petitioner.
Ms. R. P. Gaur, APP for Respondents.

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**CORAM : SMT. VIBHA KANKANWADI AND
S. G. CHAPALGAONKAR, JJ.
DATED : 05th SEPTEMBER, 2024.**

ORDER (Per S. G. Chapalgaonkar, J.):

1. The petitioner approaches this Court under Article 226 of the Constitution of India with following prayers:-

“B. Issue a Writ of Mandamus or any other appropriate writ order, directions to the respondent authorities to re-investigate Crime No. 63/2021 registered with Gangapur Police Station for the offence punishable under Section 279, 338, 304-A of IPC and under Section 134, 177 of the Motor Vehicle Act.

C. By way of appropriate writ, order or directions in the like nature, this Hon'ble High Court may kindly be hold and declare that, the police officers are involved in adding dummy accused in Crime No. 63/2021 registered with Gangapur Police Station for the offence punishable under Section 279, 338, 304-A of IPC and under Section 134, 177 of the Motor Vehicle Act, hand in gloves with driver and owner of offending vehicle bearing number MH-14-CK-7583 and therefore, persons who are involved in preparation of forged record and documents are required to be dealt with law."

2. The petitioner lodged FIR dated 18.02.2021 vide Crime No.63/2021 with Gangapur Police Station, Dist. Aurangabad for the offences punishable under Sections 249, 338, 304-A of the Indian Penal Code with allegation that his cousin brother Babasaheb Borade had been to village Lakhamapur on his motorcycle bearing Registration No.MH-20-AX-7944. At about 11.00, he received telephonic call from unknown person informing that rider of motorcycle bearing Registration No.MH-20-AX-7944 has met with an accident and he is laying near Radhika Petrol Pump on Aurangabad-Ahmednagar Highway. In pursuance to such information, he reached to the spot and noticed that motorcycle of his brother and a Hyundai car bearing Registration No.MH-14-CK-7583 were laying on the spot in damage condition. His brother was seriously injured, therefore, he was shifted to Civil Hospital at Gangapur. He came to know from the discussion that offending car was driven by Amarjit Devising Baviskar and he was responsible for the accident. Accordingly, FIR was registered against driver of offending car i.e. Amarjit Devising Baviskar.

3. The investigation progressed in the matter. However, charge-sheet came to be filed against one Ravi Soniram Kakade alleged rickshaw driver. The gist of the charge-sheet suggests that auto rickshaw bearing Registration No.MH-28-B-9448 had dashed against motorcycle of Babasaheb. Consequently, motorcycle

collided with road divider and toppled on the other side of the road. At the same time, Hyundai car moving from Ahmednagar towards Aurangabad dashed against motorcycle. The auto rickshaw driver flee away from the spot. During the course of investigation, rickshaw driver was traced. Accordingly, he has been charge-sheeted, whereas accused named in the FIR has been exonerated.

4. Mr. Gore, learned Advocate appearing for the petitioner submits that petitioner had lodged FIR naming Mr. Amarjit Devising Baviskar being offender and responsible for accident being driver of Hyundai car. The damaged car was found on the spot. However, Mr. Amarjit Devising Baviskar being son of police officer, he has been replaced by accused Ravi Kakade-alleged rickshaw driver being offender. According to Mr. Gore this is a fit case to direct reinvestigation as swapping of drivers and offenders is writ large. According to him, charge-sheet is based on concocted version and evidence.

5. Per contra, Mr. Kotecha, learned APP appearing for the respondents submits that during the course of investigation, the role of rickshaw driver has been surfaced. The rickshaw driver has candidly admitted the fact that his rickshaw was involved in an accident and initially dashed against the motorcycle. By inviting attention of this Court to the statement of occupants of auto rickshaw, he submits that there was no sufficient material to conclude that accident occurred due to rash and negligent driving of rickshaw driver and no fault could be found with car driver.

6. We have considered submissions advanced, apparently petitioner is the first informant. He reached on the spot after receiving telephonic information of the accident. He noted the

presence of car and motorcycle having corresponding damages. However, his information as regards to the person on the driver's seat of car appears to be hearsay, but FIR was registered naming Amarjit Devising Baviskar being driver of offending car. Perusal of charge-sheet shows that spot panchanama was drawn by the police. The presence of motorcycle and car has been recorded with respective damages. The front bumper of car sustained damages and blood stains were also observed on it. The driver side wheel of the car was also damaged. The spot of accident is shown on strip of Tar road going towards Aurangabad from Ahmednagar, which was direction of moving car. The investigation papers depict that detailed accident report was called. The vehicle inspection report of Technical Officer notes damage to the motorcycle as well as car. However, no damage is observed on so called offending auto rickshaw during the investigation. The charge-sheet contains statements of witnesses. The 161 statement of Ravi Kakade i.e. accused autor driver is made part of charge-sheet, which is in the nature of confession, wherein he states that his auto rickshaw had brushed the motorcycle due to which motorcycle was toppled and rested to other side of the road where another four wheeler dashed it. Thereafter, he left the spot. The affidavit-in-reply filed by Investigating Officer shows that the statement of one Mr. Pravin Kakade has been recorded during the course of investigation, who claims to be occupant of auto rickshaw, who has also concurred with the statement of rickshaw driver. Pertinently, said Pravin Kakade is real brother of accused named in the charge-sheet.

7. The material in the charge-sheet would clearly demonstrate that as per initial report only two vehicles were involved in the accident i.e. car and motorcycle. There is nothing in the charge-sheet to show as to how Investigating Officer reached to the

conclusion that third vehicle i.e. auto rickshaw was involved in the accident and it was driven by accused named in the charge-sheet. The Investigating Officer explains that car driver informed him about involvement of rickshaw. Surprisingly, the statement of car driver is not made part of the charge-sheet. In light of the aforesaid observations, possibility of undue favour to the accused named in the FIR by the Investigating Agency cannot be ruled out. However, it would be futile to direct reinvestigation after lapse of more than three years.

8. Mr. Gore, learned Advocate appearing for the petitioner submits that there is no progress in the trial, as accused named in charge-sheet is not appearing before the Court. We find that learned Magistrate is empowered to take necessary steps to secure presence of accused.

9. On the basis of aforesaid observations, we are of the, *prima facie*, opinion that when involvement of Hyundai car in the said accident is not disputed and person named as accused in FIR was driver of the car, the Investigating Officer could have added him as accused in the charge-sheet. The question of negligence could have been left for decision of the Trial Court. The Investigating Officer had no business to exonerate car driver and file charge-sheet against third person i.e. alleged rickshaw driver. We are, therefore, of the opinion that aforesaid question can be left for consideration of the learned Magistrate, who is empowered to direct addition of accused person during the course of trial looking to the evidence and material tendered before him. Section 319 of Criminal Procedure Code empowers learned Magistrate to proceed for trial against any person not named as accused, if it is found necessary during the course of any enquiry into or trial of an

offence. We deem it appropriate to keep this issue open for consideration of learned Magistrate, who is in-charge of the trial. In that view of the matter, we proceed to pass following order:

ORDER

- a. Writ Petition is partly allowed.
- b. The learned Magistrate, who is in-charge of trial in SCC No.344/2021 after making necessary enquiry or recording evidence shall consider if accused named in the FIR to be tried alongwith accused named in the charge-sheet and pass further orders in accordance with law. The learned Magistrate shall expedite the trial and shall conclude the same within a period of one year from the date of this order.
- c. Writ Petition is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE