



\$~78

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.M.C. 1029/2019 & CRL.M.A. 4141/2019,
CRL.M.A. 2202/2023

YOGESH B. CHAVAN

.....Petitioner

Through: Mr. Prashant Srikant
Kenjale and Ms. Srishty
Pandey, Advs.

versus

STATE (GOVT OF NCT OF DELHI)
& ORS

.....Respondents

Through: Mr. Sunil Kumar Gautam,
APP for the State with SI
Ajit Krishna, PS
Gokulpuri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

23.09.2024

%

1. The present petition is filed seeking quashing Criminal Case No. 463416/2015 pending before the learned Chief Metropolitan Magistrate, North-East, Karkardooma arising out of FIR No. 311/2009 dated 12.10.2009, registered at Police Station Yamuna Vihar / Gokulpuri, for offences under Sections 279/337 of the Indian Penal Code, 1860 (**IPC**).

2. It is not disputed that the subject FIR led to the criminal prosecution as well as the motor accidents claims case being MACT No. 97/2010, which was instituted by the victim.

3. The learned Motor Accident Claims Tribunal (**MACT**) awarded a compensation for a sum of ₹5,68,402/-, payable by the petitioner and one Mr. Ajay Singh Rawat, stated to be the owner

CRL.M.C. 1029/2019

Page 1 of 6



of the offending vehicle.

4. The alleged accident occurred on 11.09.2009 at 11:00 p.m. at Wazirabad road, near Ganda Nala, Gokal Puri, Delhi. The victim had alleged that the accident occurred due to rash and negligent driving of the offending vehicle by the petitioner. The car was stated to be in the name of Mr. Ajay Singh Rawat. The petitioner is an Army personnel and at the relevant time, was posted at Army Camp at Lodhi Road.

5. The award passed by the MACT was challenged by the petitioner before this Court MAC.APP. 523/2016. The Coordinate Bench of this Court, after considering the evidence led before the Tribunal, held as under:

“13. In the considered opinion of this court, DD No.24 (Ex.R1W2/A) belies the case of the claimant about the accident having occurred at 11:00 p.m. on 11.09.2009 as has been his consistent version right from the time of lodging of the belated FIR through the inquiry into the claim case. If the accident had occurred at 11:00 p.m., an information about the such occurrence could not have been received in the Police Station two hours prior thereto as is reflected in the said DD entry.

14. Clearly, it is a case of fabrication of evidence and it will not be just and fair to fasten the liability on its basis against the appellant.”

6. The Coordinate Bench of this Court noted that in the FIR, the particulars of the motor vehicle which was involved in the accident were given as Car bearing Registration No. DL-3CFF-0900 whereas the vehicle with which the petitioner is connected bears Registration No. DL-3CF-0900.

7. The statement in the FIR indicated that the son of the claimant had noted the vehicle number which fled away from the scene after the accident. The son of the claimant was examined and his statement under Section 161 of the Code of Criminal Procedure, 1973 (CrPC) was recorded. He stated that he had



seen the car driver as the window of the car was rolled down.

8. This Court noted that in the MLC of the victim, the presence of his son was not reflected and there is no explanation for such omission. The son of the victim was also not examined before the Tribunal.

9. This Court also noted the manner in which the Test Identification Proceedings (TIP) were conducted. This Court held that proceedings of the TIP were held in jail premises when the petitioner had already been released on bail after formal arrest on 17.11.2009. The TIP was conducted with the victim whereas admittedly the victim had not seen the car driver and the son of the victim was never called to participate in the TIP even though he had been shown as the eye-witness who had seen the car driver.

10. This Court had also doubted the time of the accident as recorded in the FIR. The order passed by this Court has attained finality and has not been challenged by the victim.

11. The law with respect to exercise of power under Section 482 of the CrPC, insofar as quashing of an FIR is concerned, is well-settled. The Hon'ble Apex Court, through catena of judgments, has also laid down several guidelines and summed up principles to be followed by the Courts while deciding a petition seeking quashing of FIRs and criminal proceedings.

12. The present petition is filed under Section 482 of the CrPC. The Hon'ble Apex Court in the case of *State of Haryana v. Bhajan Lal* : 1992 Supp (1) SCC 335 has expounded as to when the inherent jurisdiction of this Court should be exercised to used to quash the proceedings. The relevant portion of the



same is reproduced hereunder:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on



the accused and with a view to spite him due to private and personal grudge.”

(emphasis supplied)

13. It is relevant to note that the adjudication or any other proceeding in regard to the same set of allegations, can continue along with the criminal proceedings and exoneration in one may not *ipso facto* result in the other proceedings being declared as nullity in every circumstance.

14. However, when two proceedings are initiated on the same set of allegations and are also dependent on the identical evidence, the finding in any one will have a bearing on the other.

15. It is not disputed that the MACT proceedings as well as the criminal proceedings arise out of the same alleged incident.

16. Nothing has been brought on record to show that the evidence collected during the course of investigation in the FIR, was not the same as sought to be relied upon during the MACT proceedings.

17. The Hon'ble Apex Court in ***Ashoo Surendranath Tewari v. The Deputy Superintendent of Police, EOW, CBI & Anr. : Criminal Appeal No. 575/2020*** has held as under:

“7. A number of judgments have held that the standard of proof in a departmental proceeding, being based on preponderance of probability is somewhat lower than the standard of proof in a criminal proceeding where the case has to be proved beyond reasonable doubt.....

8. Applying the aforesaid judgments to the facts of this case, it is clear that in view of the detailed CVC order dated 22.12.2011, the chances of conviction in a criminal trial involving the same facts appear to be bleak. We, therefore, set aside the judgment of the High Court and that of the Special Judge and discharge the appellant from the offences under the Penal Code.”

18. In view of the above, the petitioner having being exonerated in the MACT proceedings by order dated 08.05.2018



in MAC Appeal No. 523/2016 passed by this Court, is entitled for seeking quashing of the charges in the FIR which was registered on the same allegations.

19. The present accident seems to be one of the incidents for which the conviction of the petitioner does not appear to be probable. The Court, thus, is of the view that no useful purpose would be served by keeping the dispute alive and continuance of the proceedings would amount to abuse of the process of Court. I am of the opinion that this is a fit case to exercise discretionary jurisdiction under Section 482 of the CrPC.

20. In view of the above, the present petition is allowed and the criminal case being Criminal Case No. 463416/2015 arising out of FIR No. 311/2009 is quashed.

21. Pending application(s) also stand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 23, 2024

'KDK'