



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

33 CRIMINAL APPLICATION NO. 11 OF 2024

Rajesh Bansilal Shah

Age: 57 Years, Occu: Advocate

R/o: H. No.3-14-25, CTS No.8120,

Bansi-kunj, Pandariba, Main Road,

Aurangabad, Dist. Aurangabad.

... Applicant

Versus

1. The State of Maharashtra
Through its Chikalthana Police
Station Rural, Aurangabad,
Dist. Aurangabad.

2. Dinesh Ganeshrao Shinde
Age: 36 Years, Oecu: Agriculturist,
R/o. at present Kumbhefal,
Tal. & Dist. Aurangabad.

... Respondents

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Mr. Patil Vijay Bhalerao, Advocate for Applicant.

Mr. A. D. Wange, APP for Respondent / State.

Mr. I. K. Wagh, h/f Mr. More Kumar Gaurav M., Advocates for Respdt. No.2.

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**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 27th June, 2025.

Per Court:

. Present application has been filed initially for quashment
of the FIR vide C.R. No.212 of 2023, dated 25th May, 2023, registered

with Chikalthana Police Station, Aurangabad (Rural), Taluka and District Aurangabad, for offence punishable under Sections 279, 337, 338 and 427 of Indian Penal Code and Section 134 punishable under Section 177 of Motor Vehicles Act, and thereafter by way of amendment, for quashing the charge-sheet in S.C.C. No.1357 of 2024, pending before the learned Judicial Magistrate First Class, Aurangabad, District Aurangabad, for the offence punishable under Sections 304A, 279, 337, 338 and 427 of Indian Penal Code and Section 134 punishable under Section 177 of Motor Vehicles Act.

2 Heard the learned counsel for the applicant, the learned APP for respondent No.1 / State and the learned counsel for respondent No.2. In order to cut short, it can be stated that all of them have made submissions in support of their respective contentions.

3 The FIR has been lodged by respondent No.2, who is the brother of the deceased. Deceased Manoj was proceeding on Bajaj Motorcycle bearing registration No.MH-20-ER-3908 from Kumbhephal around 09:00 pm on 21st of May 2023 and had not returned. When he made enquiry with Anjali, who is the widow of Manoj, as to whether Manoj has returned, she said no, and then the informant had given phone call on the mobile of Manoj. The said phone was picked up by one Yogesh Kachkure and he informed that Manoj is injured in an

accident that had taken place in front of Akash Hotel on Aurangabad – Jalna Road. The said accident was between motorcycle of Manoj and Zen car bearing registration No.MH-09-S-8230. It was informed that Manoj has sustained severe injuries and he is in unconscious state, admitted to Dhoot hospital. Thereafter, the informant alongwith his brother came to the hospital where they found that Manoj was in unconscious state, taking treatment in ICU. On the basis of information given to him by Yogesh Kachkure and Shivaji Kachkure that the accident had taken place due to sudden application of brakes by the car driver and Manoj's motorcycle, which was following it. Thereafter, that FIR came to be registered on 25th May, 2023 around 14:50 hours.

4 The charge-sheet shows that in between 16:30 to 17:30 hours on 25th May 2023, *Panchanama* of the spot has been carried out with the help of two *Panchas*. Unfortunately, Manoj expired around 10:46 hours on 30th May, 2023. The *in-quest Panchanama* was carried out and the dead body was sent for postmortem. The cause of death is "*death due to multiple injuries sustained*". Thereafter, the statements of witnesses have been recorded including the statements of Yogesh Kachkure, Ashok Shinde, Anjali Manoj Shinde (widow of the deceased) and Ganeshrao Shinde. The fact that is required to be considered is that, since the fact at this stage cannot be taken as

denied that Manoj expired due to multiple injuries he had sustained in the accident and therefore, the enquiry in this matter is restricted to as to whether there is material on record to *prima-facie* attract the ingredients of the offence under which charge-sheet has been filed.

5 In view of the death, we are of the opinion that now Sections 279, 337, 338 and 427 of IPC would get merged into Section 304A of the IPC. The prosecution has not come with the case that the applicant was driving the vehicle in dangerous position. It is the prosecution's story that the accident took place due to sudden application of the brakes, which is stated to be the negligent act on the part of the applicant. In this connection, spot *Panchanama* in normal course would have been helpful, but the fact is that the accident had taken place on 21st May, 2023, but the FIR itself has been registered on 25th May, 2023. Therefore, it is hard to believe that there would have been any traces of the said accident at the time of drawing of the spot *Panchanama*. Perusal of the spot *Panchanama* would show that the police had taken the informant i.e. Dinesh Shinde with them and the informant had shown the said spot to the police. The investigating officer, in fact, ought to have taken Yogesh Kachkure at the time of execution of the spot *Panchanama*. The informant was admittedly not present immediately after the accident at the spot. In fact, he himself had depended on the information that was supplied by Yogesh

Kachkure. Under said circumstance, the spot *Panchanama* is absolutely not helpful in the matter, even to the prosecution.

6 Taking into consideration the statement of Yogesh Kachkure, it can be seen that he is the owner of Akash Hotel, which is on Aurangabad – Jalna Road and it is stated that the accident had taken place in front of his hotel. He states that around 09:00 pm when he was in his hotel, he found that there was an accident on the road between motorcycle and the car and therefore, he went to the spot immediately. He gives the number of both the vehicles and states that he himself and the people on the road had tried to catch the driver of the car, but the said driver managed to flee away. He then states that he could get the Aadhaar card in possession of the injured and therefore, he could know the name of the injured and from his mobile, he gave a phone call to the informant and one Ashok Shinde. We may not go into the discrepancy as to who had called whom, but the fact is that he states that on phone he informed that the accident took place because of the sudden application of the brakes by the car driver. The other three witnesses are admittedly the relatives of the informant and the deceased, who were not present or eyewitnesses to the accident. Here, in order to bring the offence under Section 304A of IPC, the prosecution will have to prove that the death has been caused due to rash or negligent act not amounting to culpable homicide. It is settled

law that mere high speed is not the criteria to conclude that the act is rash or negligent. When it is stated that the dash of the motorcycle was to the rear side of the car and the cause is stated to be the sudden application of brakes, then what were the circumstances on the road at the relevant time, speed of both the vehicles, whether any safe distance was kept by the motorcycle driver, are the aspects, on which there should be evidence. It cannot be left to be adduced at the time of trial. In the statement recorded under Section 161 of the Cr.P.C. of witness Yogesh Kachkure, there is nothing to indicate the circumstances on road, approximate speed of the vehicles and whether safe distance was kept by the motorcycle driver from the car or not. It would be hard to expect that the investigating officer ought to have recorded the statement of the driver of any vehicle which was around the motorcycle at the relevant time. The people are, in fact, reluctant to come forward and give statements, though they might have witnessed an incident. But unless name of such person, who had witnessed the accident is made known to the investigating officer, he is not expected to record statement of such witness.

7 In order to hold a person criminally liable, it has to be proved by the prosecution, as held by the Honourable Supreme Court in the case of ***The State of Arunachal Pradesh Vs. Ramchandra Rabidas @ Ratan Rabidas and another***, reported in, ***(2019) AIR***

(SC) 4954, which reads as under:-

“5.12 Where the rash or negligent driving, results in the death of a person, without the knowledge that the said act will cause death, Section 304A IPC would be applicable. In other words, Section 304A applies to cases where there is no intention to cause death, and no knowledge that the act done in all probability will cause death. Negligence and rashness are essential elements of Section 304A. **Naresh Giri vs. State of M.P. (2008) 1 SCC 791; Rathnashalvan vs. State of Karnataka, (2007) 3 SCC 474 : (2007) 2 SCC (Cri) 84.**

The three ingredients of Section 304-A, which are required to be proved are: (1) the death of a human being; (2) the accused caused the death; and (3) the death was caused by the doing of a rash or negligent act, though it did not amount to culpable homicide of either description. **Mister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953**

The requirement of culpable rashness under S. 304A IPC is more drastic than negligence sufficient under the law of tort to create liability. **N.K.VBros (P) Ltd. vs. M. Karumai Animal & Ors. (1980) 3 SCC 457.** Criminal or culpable rashness means hazarding a dangerous or wanton act with the knowledge that it is dangerous or wanton, and the further knowledge that it may cause injury, but done without any intention to cause injury or knowledge that the act would probably cause. **Rathnashalvan vs. State of Kamataka, (2007) 3 SCC 474 : (2007) 2 SCC (Cri) 84."**

8 *Mens-rea* is not the ingredient of offence under Section 304A of IPC, since this Section by its own definition, totally excludes the ingredients of Sections 299 or 300 of IPC. An accident is an accident, but in order to bring it within the purview of an offence, the negligence is required to be proved which can be gathered only upon the proof of circumstances and the other criteria, which are missing in the present charge-sheet.

9 Though we are aware that the delay alone cannot be the ground for quashing the FIR, yet the fact which is coming on record in this case is that Yogesh Kachkure, initially who had taken the injured to Dhoot Hospital, was aware about the accident and certainly he would have given the said history to the hospital who was duty bound to register the MLC and intimate the same to the police. Manoj was admitted in the same hospital on 21st May, 2023 and as per the FIR on the same day, when the informant went around 09:30 pm and met Yogesh Kachkure, he also came to know about the accident. Still, it appears that neither the police themselves (after receiving the MLC) nor the informant had gone to police station to lodge the FIR. By the time the FIR was registered, the circumstances on road got vanished. The benefit of this aspect will have to be given to the applicant.

10 No doubt, there appears to be *prima-facie* evidence about the offence under Section 134 of the Motor Vehicles Act punishable under Section 177 thereof by the applicant, it appears that his car is definitely involved in the accident and therefore, it was his duty to take the injured to the hospital and inform the accident to the police. Taking into consideration the punishment prescribed under Section 177 of the Motor Vehicles Act and the second schedule of the Cr.P.C., the said offence under Section 134 of the Motor Vehicles Act becomes a non-cognizable offence for which the FIR under Section 154 of the Cr.P.C. is not maintainable. Therefore, taking into consideration all these aspects, it would be an abuse of the process of law if the applicant is asked to face the trial. Therefore, this is a fit case where we should exercise our inherent powers under Section 482 of the Cr.P.C. for quashing the proceedings. Hence, the following order is passed:-

ORDER

- I. The application stands allowed.
- II. The proceedings in S.C.C. No.1357 of 2024, pending before the learned Judicial Magistrate First Class, Aurangabad, District Aurangabad, for the offence punishable under Sections 304A, 279, 337, 338 and 427 of Indian Penal Code and Section 134 punishable under Section 177 of Motor Vehicles Act, arising out

of FIR vide C.R. No.212 of 2023, dated 25th May, 2023, registered with Chikalthana Police Station, Aurangabad (Rural), Taluka and District Aurangabad, for offence punishable under Sections 279, 337, 338 and 427 of Indian Penal Code and Section 134 punishable under Section 177 of Motor Vehicles Act, stands quashed and set aside as against the applicant.

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[SANJAY A. DESHMUKH, J.] [SMT. VIBHA KANKANWADI, J.]