



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO.1260 OF 2025

Gopal S/o Subhashchandra Agrawal,
Age-44 years, Occu:Business,
R/o-Gut No.866/1 FL No.E-806 Hill
Shire Kesnand Rd, Wagholi,
Taluka-Haveli, District-Pune.

...APPLICANT

VERSUS

- 1) The State of Maharashtra,
Through Police Station Officer,
Waluj Police Station,
Taluka-Gangapur,
District-Chhatrapati Sambhajinagar,
- 2) Ravi S/o Bhimsen Dongardive,
Age-27 years, Occu:Making Banner,
R/o-Flat No.601, Trimbakeshwar Hights,
Bhosari, Taluka-Haveli, District-Pune.

...RESPONDENTS

...
Mr. Sudheer R. Zambare Advocate for Applicant.
Mr. A.M. Phule, A.P.P. for Respondent No.1.
Mr. Vijay B. Kale Advocate for Respondent No.2.
...

**CORAM: SMT. VIBHA KANKANWADI AND
MANJUSHA DESHPANDE, JJ.**

DATE : 17th APRIL, 2025

ORDER [PER SMT. VIBHA KANKANWADI, J.] :

1. Heard learned Advocate for the applicant. Learned

Advocate Mr. Kale appears *suo moto* for respondent No.2 and tenders his Vakalatnama with affidavit-in-reply on behalf of respondent No.2. It is taken on record.

2. Perusal of the First Information Report (for short "the FIR") would show that respondent No.2 proceeded on his friend's car along with his family members around 9.00 a.m. on 31st October 2024. They were proceeding to Washi via Ahmednagar, Chhatrapati Sambhajinagar. When they were near Jikthan Phata, Taluka-Gangapur, District- Chhatrapati Sambhajinagar, around 2.30 p.m., the informant who was driving the vehicle, slowed down the car as there were speed breakers. However, his vehicle was dashed by a Mercedes car bearing No.MH-12-QY-7815. The dash was so severe that the informant's car crossed the divider and went to the opposite track. The informant any how could balance the vehicle and as no vehicle was coming in the opposite direction, the informant and the passengers in his car were saved and had not sustained any injury. People gathered, so also police came at the spot. The driver from the Mercedes car was made to get down from the car. He was asked his name, address etc. and he was the applicant. It is alleged in the FIR that at that time the informant was found to be under the influence of liquor.

His movements were also indicating the same and he was talking irrelevantly. The drivers of the vehicles which had come after a while at the spot, informed that the applicant was driving the vehicle in rash and negligent manner. Liquor bottles and glasses found in the car of the applicant.

3. At this stage, it appears that the investigation is still pending and the charge-sheet is not filed.

4. The learned Advocate appearing for the applicant vehemently submits that none of the passengers including the informant had sustained any injury. Even the damage that was caused to the car driven by the informant is not above Rs.1,00,000/- and therefore, Section 324(5) of the Bharatiya Nyaya Sanhita 2023 (for short "the BNS") is not attracted. So also the offence under Section 110 of the BNS is not attracted and therefore, it would be unjust to ask the applicant to face the trial. He also submits that the matter has been settled between respondent No.2 and the applicant and on this point also the applicant is seeking quashment of the FIR.

5. Learned Advocate appearing for respondent No.2 relies on

the affidavit-in-reply by respondent No.2, wherein it is stated that due to some misconception the FIR has been lodged by him. Now, he has settled the matter amicably and he do not want to proceed against the applicant.

6. At the outset, from the above referred facts those have been given in the FIR, it can be certainly seen that the offence has been made out. Now, it is under which section is not our job strictly, but it can be revealed by the trial Court. Yet, prima facie from the contents of the FIR, Section 281 of the BNS (old Section 279 of the Indian Penal Code) is made out which prescribes punishment for driving any vehicle on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person. Section 110 of the BNS has been invoked by the police, which provides punishment for attempt to commit culpable homicide. It provides that whoever does any act with such intention or knowledge and under such circumstances that, if he by that act caused death, he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment. Here, certainly the acts do not show culpable homicide but he had knowledge or consequences of his act of driving the vehicle rashly and

negligently under the influence of liquor, then would have caused injuries to the persons and it might have also caused death of a person. It will not be out of place to mention here that the facts in the FIR appears to be attracting offence under Section 105 of the BNS, which provides punishment for culpable homicide not amounting to murder (earlier Section 304 of the Indian Penal Code), wherein even knowledge would be then sufficient. For that we must consider Section 100 of the BNS, which defines culpable homicide and for our purposes the ingredients would be, 'whoever with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide'.

7. Another Section which has been invoked by the police is Section 324(5) of the BNS which states about mischief and loss or damage to the amount of Rs.1,00,000/- or upwards. At this stage, there is no evidence before this Court, as to whether how much loss has been caused to the car driven by the informant.

8. Under such circumstance, when certainly serious offence is made out as per the contents of the FIR, we do not find this to be a fit case where we should exercise our powers under Section 482 of the Code of Criminal Procedure. Further, when

the accident has taken place on a State Highway, then mere statement of respondent No.2 that under some misconception he lodged the FIR is not acceptable. In fact we deprecate such behaviour of the informants and if we allow this kind of compromises to take place, then on one aspect it would give a clean chit to the behaviour of the applicant and then he would be at liberty to behave in the same fashion in the future and therefore, this is absolutely not a case wherein inherent powers to be exercised as per the guidelines laid down in ***State of Haryana vs. Bhajanlal, 1992 AIR(S.C.) 604.***

9. The Application stands dismissed at the threshold.

[MANJUSHA DESHPANDE]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

asb/APR25