



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(This judgment is modified according to the order dated
07.01.2024 by way of speaking to minutes)

CRIMINAL APPLICATION NO.4005 OF 2024

1. Riya Jariwala,
Age : 27 Years, Occ. Advocate,
R/o. Plot No. 128, N-3,
CIDCO, Near High Court,
Chhatrapati Sambhajinagar .. Applicant

VERSUS

1. The State of Maharashtra,
Through P. S. Jawahar Nagar,
Chhatrapati Sambhajinagar
2. Sachin S/o Narayan Chavan,
Age : 30 Years, Occ. Private Employee,
R/o. Urban Valley Block No. E-103,
CIDCO Mahanagar -1 Gat No. 174, 175
Tisgaon, MIDC, Waluj, Chh. Sambhajinagar. .. Respondents

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Advocate for the applicant : Mr. S. S. Varma
A.P.P for Respondent No.1 State : Mr. V. K. Kotecha

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CORAM : SMT. VIBHA KANKANWADI AND
ROHIT W. JOSHI, JJ.

RESERVED ON : DECEMBER 12, 2024
PRONOUNCED ON: JANUARY 6, 2025

JUDGMENT (Per Rohit W. Joshi, J.):-

1. The present application is filed under Section 482 of the Code of Criminal Procedure, in order to challenge FIR No. 198 of 2023, registered against the applicant with Jawahar Nagar Police Station, Aurangabad on 07.08.2023 for the offence punishable under Sections

279 and 427 of the Indian Penal Code. (herein after referred to as “IPC” for brevity) along with criminal case registered pursuant to the said First Information Report, bearing S.C.C No. 5546 of 2024 which is pending for adjudication in the Court of learned Judicial Magistrate First Class, Aurangabad.

2. Respondent No.2-informant has lodged the above First Information Report on 07.08.2023, alleging that on 31.07.2023 at about 7.05 p.m., he was driving his car bearing RTO registration No.MH-20-FU-8521 and while the car was standing stationary at Gajanan Maharaj Mandir signal, the applicant who was driving her car bearing RTO registration No. MH-20-EJ-0035, hit his car from the rear side, thereby making a forceful impact resulting in damage to the rear bumper on the right side and breaking of tail light. According to him, the loss incurred due to the said accident was to the tune of Rs.7,000/-. He states in the First Information Report that initially the applicant had agreed to compensate the loss. However, since she was avoiding, he was constrained to lodge the First Information Report after a period of seven days.

3. Respondent No.1 has completed the investigation and filed charge sheet in the matter, pursuant to which S.C.C No. 5546 of 2024 is registered against the applicant and is pending on the file of the learned Judicial Magistrate First Class Aurangabad.

4. The offence under Section 279 of the IPC is cognizable whereas the offence under Section 427 of the IPC is non-cognizable. The applicant has filed the present proceeding challenging the said First Information Report and criminal case.

5. The contention of Shri. S. S. Varma, learned Advocate for the applicant is that the ingredients of Section 279 of the IPC are not made out even if we consider the entire story stated in the First Information Report to be true and correct. He further states that the material gathered during the course of the investigation is also grossly inadequate to establish the ingredients of Section 279 of IPC. He states that having regard to the nature of the impact, it is clear that the applicant was not plying the car in rash or negligent manner. He further states that ingredients of Section 279 of IPC are attracted only if the driving is rash or negligent so as to endanger human life or likely to cause hurt or injury to any person. He points out from the contents of the First Information Report and submits that nobody was hurt or injured in the accident and that there is no allegation as regards endangering human life by the manner in which the vehicle was being plied by the applicant.

6. Per contra, learned A.P.P. Shri.V. K. Kotecha representing respondent No.1 would contend that the record would indicate that the allegation against applicant is that she has dashed a stationary car

standing on the traffic signal which is clearly indicative of the fact that the vehicle was driven by her in a rash and negligent manner. He therefore, submits that the First Information Report and criminal prosecution should not be quashed.

7. With the able assistance of both the learned Advocates we have perused the entire record and adverted to the provisions of law, particularly Section 279 of the IPC. Shri. Varma, the learned Advocate for the applicant has placed reliance on two decisions of this Court, first in the matter of *Khizzer Akhtar Shah Vs. The State of Maharashtra reported in (2016 SCC OnLine Bom. 8159)* and another unreported decision of this Court at Principal Seat in the matter of *Peter Roland Misquitta Vs. State of Maharashtra (Criminal Writ Petition No. 2044 of 2023) decided on 15th September, 2023.* Both these decisions arise out of criminal application and Writ Petition respectively praying for quashing of First Information Report and criminal prosecution. This Court has held in the the matter of *Khizzer Akhtar Shah (supra)* that mere rash or negligent driving would not attract the ingredients of Section 279 of the IPC. In order to attract the said provision, the rash or negligent driving must be in some aggravated form i.e. it must be an over hasty act, which the accused knows that it is likely to cause hurt or injury or endanger human life. It is held that driving a vehicle in high speed will not always amount to rash or negligent driving. Similar view is taken in the matter of

Peter Roland Misquitta Vs. State of Maharashtra (supra).

8. The undisputed facts in the present case viewed in the light of the interpretation of the provision in the aforesaid two judgments would bring us to the conclusion that the essential ingredients of Section 279 of the IPC are not made out in the present case. The record reveals that although it is alleged that the applicant had hit the vehicle of respondent No.2 while it was standing stationary on traffic signal, the nature of impact would clearly suggest that some minor damage has been caused to the vehicle of respondent No.2. Respondent No.2 has not suffered any physical injury, likewise no other person has suffered any physical injury. The statements recorded do not indicate that the vehicle was being plied by the applicant in such a manner as was likely to endanger human life or to cause bodily hurt or injury to any person. Therefore, merely because an accident had occurred, would not mean that the applicant has committed an offence under Section 279 of the IPC. The uncontroverted material gathered during the course of investigation and contents of the First Information Report do not establish essential ingredients of Section 279. The other provision i.e. Section 427 of the IPC is non cognizable. In view of the aforesaid, we are of the considered opinion that the First Information Report in the matter deserves to be quashed along with the criminal case registered pursuant to the said First Information Report.

9. We may also note that respondent no.2 has clearly stated that initially he did not intend to file First Information Report since respondent No.2 had agreed to compensate the monetary loss allegedly suffered by him. He states that the First Information Report is lodged only because the applicant did not keep her promise. It is therefore clear that rather than taking recourse to civil remedy, the respondent No.2 has sought to put criminal law in motion and this is another reason for quashing the First Information Report.

10. In the result, the application succeed.

ORDER

(I) The application is allowed.

(II) The proceeding in S.C.C. No. 5546 of 2024 pending before the learned Judicial Magistrate, First Class, Aurangabad arising out of First Information Report vide Crime No. 198 of 2023 registered with Jawahar Nagar Police Station, Aurangabad dated 07.08.2023 along with charge sheet No. II-11/2024 dated 16.02.2024 for the offences punishable under Sections 279, 427 of the Indian Penal code is hereby quashed and set aside against applicant Riya Jariwala.

(ROHIT W. JOSHI)
JUDGE

(SMT. VIBHA KANKANWADI)
JUDGE

Y.S. Kulkarni