

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 2920 OF 2021

Manas Mandar Godbole ...Petitioner
Versus
The State of Maharashtra ...Respondent

Ms. Tripti R. Shetty for the Petitioner.

Mr. S.S.Hulke, A.P.P for the Respondent-State.

CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.
DATE : 20th DECEMBER, 2022

ORDER (PER REVATI MOHITE DERE J.) :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith, with the consent of the parties and is taken up for final disposal. Learned A.P.P waives notice on behalf of the respondent-State.

3. By this petition, preferred under Article 226 of the Constitution of India and Section 482 of the Code of Criminal Procedure, the petitioner seeks quashing of the FIR bearing C.R. No. 84 of 2020 registered with the Marine Drive Police Station, Mumbai, for the alleged offences punishable under Sections 279, 337, 429 of the Indian Penal Code; Section 184 of the Motor Vehicles Act, 1988 and Section 11(a)(b) of the Prevention of Cruelty to Animals Act, 1960 and consequently, the proceeding pending before the learned Metropolitan Magistrate, 64th Court, Esplanade, Mumbai, being C.C.No. 114/PS/2021.

4. Perused the papers. The petitioner, aged 20 years, is a final year student of Diploma in Electronics and Telecommunication. At the relevant time, he was 18 years of age and was working as a delivery partner in Swiggy. The petitioner's role was to deliver food and to meet his time commitments. The incident took place during the national lockdown of 2020, when the petitioner was delivering an order at the relevant time. It is alleged that the incident took place on

11th April, 2020 at about 8.00 p.m. when the complainant was feeding stray dogs at Marine Drive. The complainant has alleged that at about 8.00 p.m., she saw the petitioner at Abasaheb Garware Chowk, N.S.Road, Marine Drive, riding his bike. She has alleged that the petitioner's vehicle i.e. his bike hit a street dog which was walking on the street, thereby injuring the dog. She has alleged that the dog got injured and fell unconscious and the petitioner's bike skid about 40 meters and the petitioner also fell down and got injured. Pursuant to the said incident, the complainant lodged the aforesaid FIR, as against the petitioner alleging the aforesaid offences.

5. Learned Counsel for the petitioner submits that the petitioner while undertaking his delivery job, was riding at a speed of 45 kmph, wherein, the maximum limit was 65 kmph, near Marine Lines, when suddenly a stray dog came in the front. He submits that in an attempt to save the dog, the petitioner suddenly applied brakes of his bike and veered to the side, however, unfortunately the dog also moved to the same side, and that in the process, the petitioner fell

down and the dog sustained injuries and subsequently passed away.

6. Learned Counsel for the petitioner submits that taking the case as it stands, no offences as alleged is made out against the petitioner. Learned Counsel relied on the Apex Court decision in the case of **State of Haryana and Ors V/s. Bhajan Lal and Ors**¹, to show that the petitioners's case is squarely covered by the said case, warranting quashing of the same.

7. Learned APP opposes the petition.

8. Perused the papers. The relevant Sections applied, read thus;

“Sections 279, 337 and 429 of the Indian Penal Code.

Section 279 – Rash driving or riding on a public way –
Whoever drives any vehicle, or rides, 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, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 337 – Causing hurt by act endangering life or

¹ 1992 Supp (1) Supreme Court Cases 335

personal safety of others – *Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.*

Section 429 – Mischief by killing or maiming cattle, etc., of any value or any animal of the value of fifty rupees - *whoever commits mischief by killing, poisoning, maiming or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.*

Section 184 of The Motor Vehicles Act, 1988

184. Driving dangerously.—*Whoever drives a motor vehicle at a speed or in a manner which is dangerous to the public, (or which causes a sense of alarm or distress to the occupants of the vehicle, other road users, and persons near roads,), having regard to all the circumstances of the case including the nature, condition and use of the place where the vehicle is driven and the amount of traffic which actually is at the time or which might reasonably be expected to be in the place, shall be punishable for the first offence with imprisonment for a term, (which may extend to one year but shall not be less than six months or with fine which shall not be less than one thousand rupees but may extend to five thousand rupees, or with both), and for any second or subsequent offence if committed within three years of the commission of a previous similar offence with imprisonment for a term which may extend to two years, or with fine (of ten thousand rupees), or with both.*

[Explanation – For the purpose of this section, -

- (a) jumping a red light;*
- (b) violating a stop sign;*
- (c) use of handheld communications devices while driving;*
- (d) passing or overtaking other vehicles in a manner contrary to law;*
- (e) driving against the authorised flow of traffic; or*
- (f) driving in any manner that falls far below what would be expected of a competent and careful driver and where it would be obvious to a competent and careful driver that driving in that manner would be dangerous, shall amount to driving in such manner which is dangerous to the public.”*

Section 11 of The Prevention of Cruelty to Animals Act, 1960

11. Treating animals cruelly.—

(1) If any person—

(a) beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering or causes or, being the owner permits, any animals to be so treated; or

(b) [employs in any work or labour or for any purpose any animal which, by reason of its age or any disease], infirmity, wound, sore or other cause, is unfit to be so employed or, being the owner, permits any such unfit animal to be so employed.”

5. A perusal of the aforesaid sections clearly show none of

these Sections, reproduced hereinabove, would apply to the facts of this case. As far as, Section 279 of the Indian Penal Code is concerned, it speaks about whoever drives any vehicle on any public way in a manner so as to endanger human life or to be likely to cause hurt or injury to any other person. As far as Section 337 of the Indian Penal Code is concerned, the said section also speaks about endangering human life. No doubt, a dog/cat is treated as a child or as a family member by their owners, but basic biology tells us that they are not human beings. Sections 279 and 337 of the Indian Penal Code pertains to acts endangering human life, or likely to cause hurt or injury to any other person. Thus, legally speaking the said Sections will have no application to the facts in hand, this essential ingredient necessary to constitute the offences, being amiss. The said sections do not recognize and make an offence any injury caused otherwise than to human being. Thus, insofar as the injury/death caused to the pet / animal is concerned, the same would not constitute offences under Sections 279 & 337 of the Indian Penal Code.

6. As far as application of Section 429 of the Indian Penal Code is concerned, the same will also have no application, inasmuch as, the essential ingredients (i.e. causing loss and damage to a person or the property), warranting application of this Section, are amiss. The term 'mischief' is defined under Section 425 of the Indian Penal Code and is necessary to constitute the offence under Section 429 of the Indian Penal Code reads thus;

“Section 425. Mischief.- Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.

Explanation 1.- It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.- Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.”

A perusal of the said definition clearly shows that the ingredients necessary to constitute the offence under Section 429 of

the Indian Penal Code are also amiss. The manner in which, the incident has taken place, *mens rea* also an essential ingredient of this Section is warranting. As noted above, the incident took place during the lockdown restrictions of the COVID-19 pandemic. A perusal of the said section i.e. Section 429 shows that the same has no application as there was no intent whatsoever to commit the said offence.

7. In order to attract Section 184 of the Motor Vehicles Act, the explanation is to be seen. The Explanation to this Section has been reproduced hereinabove in para 4. Neither the circumstances stipulated in the Explanation nor the provision are made out/disclosed, in the facts.

8. Lastly, coming to Section 11(a)(b) of Prevention of Cruelty to Animals Act is concerned, in the facts, even taken at its face value, would have no application. As far as, Section 11(a) and (b) of the Prevention of Cruelty to Animals Act, 1960 is concerned, the same

would also not apply having regard to the manner in which, the incident has taken place. Clearly, there was no intent whatsoever of the petitioner to cause the death of the dog which intersected the road when the petitioner was on his bike, on way to deliver a food parcel. Nothing is shown by the prosecution to show that the petitioner was driving beyond the speed limit stipulated on the said road. The incident shows that the dog crossed the road, as a result of which, the petitioner's bike due to sudden braking, skidded and as such the petitioner sustained injuries on his person in the said incident and the dog got injured and later succumbed to the same.

9. Considering the aforesaid, the case of the petitioner stands squarely covered by clauses 1 and 3 of para 102 of the Apex Court decision in the case of *State of Haryana and Ors V/s. Bhajan Lal and Ors(supra)*. The relevant clauses 1 and 3 read thus;

“ 102.

(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 to not prima facie constitute any offence or make out a case against the accused.

(2) ...

(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.”

10. Thus, taking the case as it stands, no offences as allegedly are disclosed *qua* the petitioner and as such, the impugned FIR/prosecution/proceeding cannot be sustained. The application of these Sections by the Marine Drive Police clearly shows non-application of mind. How Sections 279, 337, 429 of the Indian Penal Code could have been applied to the case in hand, even from a bare perusal of these Sections, defies logic. The police being the custodian of law, need to be more circumspect and cautious whilst registering FIR's and ofcourse later, whilst filing chargesheet.

11. For the reasons set out hereinabove, the petition is allowed and the FIR bearing C.R. No. 84 of 2020 registered with the Marine

Drive Police Station, Mumbai and consequently, the proceeding pending before the learned Metropolitan Magistrate, 64th Court, Esplanade, being R.C.C. No. 114/PS/2021, are quashed and set-aside.

12. Considering that the police had lodged the said prosecution despite no offence having been disclosed, we deem it appropriate to direct the State Government to pay costs of Rs.20,000/- to the petitioner. However, the said costs shall be recovered from the salary of the concerned officers responsible for lodging the FIR and later approving filing of chargesheet.

13. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

14. Matter to be listed on **13th February, 2023** for recording compliance of the order of payment.

15. All concerned to act on the authenticated copy of this order.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.