

(2011) 04 BOM CK 0078

In the Bombay High Court

Case No : Criminal Application No. 124 of 2011

Adwait Surendra Aatre

APPELLANT

Vs

The State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Motor Vehicles Act, 1988 — Section 134

Penal Code, 1860 (IPC) — Section 279, 338

Citation : (2011) 04 BOM CK 0078

Hon'ble Judges : N.D. Deshpande, J

Bench : Single Bench

Advocate : Parvej Menon, instructed by, Majeed Menon and Associate, for the Appellant; M.R. Tidke, APP for the State and Ravi Mishra, for the Respondent

Judgement

N.D. Deshpande, J.—Heard both sides.

2. By consent of the parties taken up for final hearing at the stage of admission.

3. The present application is filed u/s 482 of the Criminal Procedure Code, 1973, invoking inherent powers of this Court in the matter of criminal justice, for quashing of the F.I.R. being C.R. No. 107 of 2010 registered by the Kherwadi Police Station, of offences u/s 279, 338 I.P.C., read with 134(a)(b) of the Motor Vehicles Act against the applicant, on a complaint of one Mr. Nitin Satish Kale.

4. The applicant is a student aged 23 years, having valid driving licence and it is alleged that while he was driving a motor vehicle (Mahindra Scorpio), it gave a dash to the complainant on a road and thereby caused some minor injuries to his leg and shoulder. The matter was therefore, reported to Kherwadi Police station, which was subsequently inquired and investigated. Concerned Investigating Officer of the Kherwadi Police station is present. He informed that investigation is complete and charge sheet is ready for filing.

5. It is admitted that the offences, as per the investigation and the chargesheet,

are stated to be mainly u/s 279 and 338 of I.P.C. Learned Counsel for the applicant accused relied on the affidavit filed in his favour along with this application for compounding of the offences registered against the applicant as mentioned above. Learned Counsel for the complainant also agreed for compounding of the offence when asked. However, it has been stated that such compounding is not possible at this stage because the chargesheet is yet to be filed and one of the offences being u/s 279 of I.P.C., is non compoundable in law although it is punishable up to six months imprisonment only, besides it is bailable and triable by the magistrate. Another major offence u/s 338 of IPC is no doubt compoundable, bailable and triable by any magistrate and punishable upto two years imprisonment. It can be compounded by the complainant who is injured (victim) with the permission of the Court. Therefore, there is an apprehension in the mind of both, the applicant/accused and complainant, that even by approaching the trial Court, they may not be allowed compounding the entire proceeding because of inclusion of Section 279 I.P.C which is stated to be non compoundable.

6. Relevant Sections 279 and Section 338 of I.P.C. read thus:

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:

Classification of Offence: The offence under this section is cognizable, bailable, non compoundable and triable by any magistrate.

338. Causing grievous hurt by act endangering life of personal safety or others._ Whoever causes grievous 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 two years or with fine which may extend to one thousand rupees, or with both:

Classification of Offence._ The offence under this section is cognizable, bailable, compoundable with permission of the court before which any prosecution of such offence is pending and triable by any magistrate.

7. After minute reading of both these sections, it is seen that the alleged act of rash and negligent driving, endangering human life, is required to be proved as necessary ingredient to constitute offence u/s 279 I.P.C. and by allegedly doing any act rashly or negligently as to endangering the human life are also the same ingredients to constitute the offence u/s 338 I.P.C. Therefore, such ingredients which are common, cannot be separately dealt with. The requirement of offence u/s 338 is all that is covered in Section 279 of IPC. As specifically mentioned in the Code, when the offence u/s 338 is compoundable, there cannot be any impediment or bar to hold that the alleged offence u/s 279 of I.P.C. read with 338 of IPC could also be compounded. It is not a different act complained of to

constitute a separate offence but are the essential ingredients of Section 338 of I.P.C. in the present case. In short, the offence u/s 338 I.P.C. is compoundable with permission of the Court, which, amounts to acquittal. After such compounding with the consent of the aggrieved party injured complainant, the accused cannot be prosecuted or tried for the same act which are complained of by different title or head u/s 279 of I.P.C. Though it may not be a second trial, but the accused, who is once acquitted from the charge u/s 338 IPC upon compounding of the charge based on the same evidence, would be vexed, if he is directed to under go further trial u/s 279 for lesser punishment. Thus, by the present application, the applicant has made out a case for compounding of offence. However, the present application is filed by the accused alone and not by the complainant who is the complainant since aggrieved person in a complaint case, and therefore he alone has a right to compounding. Merely because the complainant is made as party Respondent No. 2 and having filed his affidavit in support of the application would not be enough. The matter needs to be verified by the court for compounding, which is like a compromise for desired order or judgment of acquittal by the Court so as to put an end to the proceedings. Both the parties are, therefore, directed to appear before the trial Court because this Court would not record evidence or verify compromises. It is the trial court who is competent to record evidence and verify the compromise for compounding, if satisfied. After compounding of the offence u/s 338 of I.P.C. which amounts to acquittal of accused in law, in my opinion in the present case, such charge sheet u/s 279 of I.P.C alone would sustain in law for further continuation of proceedings or trial on the basis of same evidence for Section 338 of I.P.C.

8. Since both the parties have submitted that the charge sheet is ready and it is going to be filed in the next week, I therefore, direct the parties to appear before the learned Magistrate's Court. Liberty is given to both the parties to file a joint purshis/application for compounding of the offence u/s 338 IPC. So far as Section 279 IPC is concerned, that would give rise to some difficulty despite the observation made by this Court and the parties would be harassed and troubled. In order to avoid that, I am satisfied that once the offence u/s 338 IPC is compounded, nothing survives for trying the offence u/s 279 IPC. The FIR or Charge sheet for additional Section 279 would be meaningless when the cognizance is taken u/s 338 of IPC. The proceedings for the offence u/s 279 IPC, therefore deserves to be quashed and set aside.

9. In that view of the matter, the application is partly allowed.

10. The FIR, the charge sheet and the proceedings u/s 279 is liable to be quashed and accordingly it is quashed and set aside to that extent.

11. The parties are directed to appear before the learned Magistrate in the next week. The parties shall be at liberty to file an application for compounding of the offence u/s 338 I.P.C. and the same shall be verified and decided by the trial Court in the light of the observations made herein above.

12. The application is accordingly disposed of.