



Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO.527/2024 (F)**

MRS UMBELINA ORTULANA AURITA
MENEZES, mother of late Antonio Loreto
Nascimento Da Costa, 54 years of age, r/o
C/o Monzon, Curtorm, Salcete, Goa.

... PETITIONER

Versus

1. POLICE INSPECTOR, Maina Curtorim
Police Station, Curtorim, Salcete, Goa.

2. STATE, through PP, High Court of
Bombay at Porvorim, Goa.

... RESPONDENTS

Mr Arun Bras De Sa with Mr Mark Valadares, Advocates for the
Petitioner.

Mr S. Karpe, Additional Public Prosecutor for the State.

CORAM: **BHARAT P. DESHPANDE, J.**

DATED: **21st NOVEMBER 2024**

ORAL JUDGMENT:

1. Heard Mr Arun Bras De Sa for the petitioner and Mr S. Karpe, learned Additional Public Prosecutor for the State.
2. Rule. The rule is made returnable forthwith. Heard the petition finally with consent.

3. A short issue has been raised in the petition filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) and since it is of much importance for the purpose of considering whether the investigation carried out by the concerned police officer could be closed on the basis of the grant of A-Abated summary.

4. Mr De Sa appearing for the mother of the deceased motorcycle rider, submitted that the report filed by the concerned investigating officer under Section 173 of the Cr.P.C. before the learned Magistrate seeking A-Abated final summary, is itself wrong. He submits that the learned Magistrate completely failed to consider the submissions/brief facts of the case, mentioned in paragraph 16 of the Final Report and allowed the request of A summary by order dated 30.03.2024.

5. Mr De Sa submitted that the matter is required to be closed since the investigation carried out shows that the person who was considered to be rash and negligent in driving the motor vehicle expired so also the person who was riding the other vehicle died while taking treatment. He submits that at the most the report could have been filed for closing the matter as abated in view of the death of the accused. However, the A summary could not be properly classified.

6. Per contra, Mr Karpe, learned APP appearing for the State while submitting the contentions raised by the investigating officer (IO) submitted that the report was rightly filed however, the request of grant of A-Abated summary was improper.

7. Facts in the present matter would go to show that a vehicular accident took place on 09.07.2023 at around 17.15 hrs., near Valankani General Stores, Curtorim between two vehicles. One Mr Abel Sequeira was the rider of the Activa Scooter bearing registration no.GA-08-AL-2118 whereas Mr Antonio Da Costa was the rider of the Yamaha motorcycle bearing registration no.GA-07-D-7500. It is alleged that the Yamaha motorcycle skidded and dashed against the Activa scooter and during the said accident, the riders of both the vehicles suffered grievous injuries. The rider of the Yamaha motorcycle when shifted to the hospital was declared “brought dead” whereas the rider of the Activa scooter was admitted for treatment but he succumbed to the injuries after a period of two days.

8. The IO conducted inquiry and recorded statements including the statement of the pillion rider of Activa scooter. Similarly, the CC Tv footage from the nearby shop was obtained and thereafter it was observed that the accident was caused due to the rash and negligent riding of the Yamaha motorcycle by Antonio Da Costa. However, since the said Antonio died when shifted to the hospital, a request was made to the learned Magistrate to close the report as A-Abated final summary.

9. Mr Karpe pointed out that the provision with regard to the granting of A, B and C Summary is in fact found in the Bombay Police Manual, 1959 which reads thus:-

“ **A**” - True, undetected (where there is no clue whatsoever about the culprits or property or where the accused is

known but there is no evidence to justify his being sent up to the Magistrate (for trial)).

“B” - Maliciously false.

“C” - Neither true nor false, e.g. due to mistake of fact or being of a civil nature.

“Non-cognizable” – Police investigation reveals commission of only a non-cognizable offence.”

10. Accordingly, the A Summary deals with when the case is true but not detected. Mr Karpe also cited the decision of the Hon’ble Supreme Court in the case of *Arnab Manoranjan Goswami v/s. State of Maharashtra – (2021) 2 SCC 427* in this regard.

11. The matter in hand would clearly go to show that the case is detected and it is also true but no prosecution could be launched since the accused expired during the said accident. Thus the classification of A-Abated summary is incorrect. At the most the report filed under Section 173 Cr.P.C. could have been considered and the proceeding could have been closed as abated but not by classifying it as A-Abated final summary.

12. Learned Magistrate while accepting the report, granted A-Abated summary which is in fact again a mistake. At the most the Magistrate could have observed that since the case is detected and true however, cognizance cannot be taken since the accused expired and therefore the matter stands abated.

13. Since the mistake is apparent while making a prayer and its acceptance by the Magistrate, it needs to be corrected by exercising the extraordinary powers of this Court. Accordingly, the report filed by the concerned police officer before the concerned Magistrate is found to be true and detected but the matter stands abated as the accused expired.

14. In view of the above observation, the petition stands disposed of. Learned Magistrates are therefore directed to take note of the above observations in future.

BHARAT P. DESHPANDE, J.