

IN THE COURT OF THE JUDICIAL MAGISTRATE,
(FIRST CLASS), 71ST COURT, BANDRA, MUMBAI.

CNR NO.MHMM18-009690-2019

C. C. NO.2895/PS/2019

The State (At the instance of
police station-B.K.C.)
C. R. No.169/2018.

.....

Prosecution.

V/s.

Bijendra Shankarsingh Yadav.

.....

Accused

ORDER BELOW EXH.-5

The accused has filed the present application under section 258 of the Code of Criminal Procedure to stop the proceeding against him contending that, the informant is died on 26/10/2020 due to cardio-genic shock. Further, the cited witnesses in the chargesheet are not eye witnesses of the incident and their evidence would be hearsay evidence. It is further contended that, in absence of informant F.I.R. cannot be proved nor the contents of said F.I.R. cannot be proved at the mouth of Investigating Officer. Therefore, no purpose would be served by continuing the case. Lastly, it is prayed that, the proceeding be stopped by invoking provision of section 258 of Code of Criminal Procedure.

2. Ld. A.P.P. Shri Joshi for the State resisted the application contended that, the plea of accused is recorded and no summons have been issued to witnesses. It is contended that, Investigating Officer has recorded the statements of eye witnesses. The prosecution may examine the witnesses who had written or type the F.I.R. Therefore, no case made out for stopping proceeding, as prayed.

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3. Ld. Advocate Shri Tejas Kothalikar for accused submits that, in absence of evidence of informant the F.I.R. cannot be proved against accused. The cited witnesses are hear say witnesses. Therefore, no purpose would be served by continuing the proceeding. He further submits that, the contents of F.I.R. cannot be proved at the mouth of the Investigating Officer. Therefore, it is fit case to invoke provisions of 258 of Code of Criminal Procedure and to stop the proceeding. In support of his arguments he relied on the case of Mulchand Motilal Raka V/s. State of Maharashtra & Ors., 1996 (1) Bom CR 316, wherein it has been held that, where the Magistrate finds it difficult to decide the case on merit without any hindrance in the normal manner, as per the procedure under the Code the provision of section 258 of the Code can be resorted.

4. Ld. Advocate further relied on the case of Lalita V/s. Vishwanath & Ors. in Criminal Appeal No.1086/2017 dated 30/01/2025, where in Hon'ble Apex Court laid down that, in case the death of informant has no nexus with the complaint lodged i.e. he died a natural death and did not succumb to the injuries inflicted on him in relation to a matter. The contents of F.I.R. would not be admissible in evidence. In such circumstances the contents cannot be proved through the Investigating Officer.

5. Per contra, Ld. A.P.P. Shri Joshi for the State submits that, the chargesheet under section 279, 338 of Indian Penal Code and under the provisions of M.V. Act came to be filed against accused. The plea of accused is yet to be recorded. The summons to the witnesses are not issued. Though the informant is died prosecution can prove the case by examining other witnesses, therefore, no case made out for stopping the proceeding as prayed.


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6. Perused the record. The F.I.R. at the instance of informant Narendra Pateshwariprasad Vishwakarma came to be lodged in police station-B.K.C. on 14/06/2018, wherein it is alleged that, on 10/06/2018, at around 11.45 a.m., he was proceeding by his motorcycle on C.S.T. Road. At that time, near Northern Gate of Mumbai University the car bearing registration No.MH-01-BY-3565, which was driven by accused, came in high speed and without giving any indicator, suddenly turned to the right side and gave dash to the motorcycle of informant. Due to which he fall down and received grievous injuries to his left leg. The accused took him at Durga hospital.

7. The Investigating Officer paid visit to the spot of incident and carried out the panchnama in the presence of panchas. He also recorded the statement of witnesses. He collected the medical certificate and fitness certificate of vehicles involved in the offence and after completion of the investigation filed the chargesheet.

8. For better appreciation of the provision of section 258 of Code of Criminal Procedure, I would like to quote here section 258 of Code of Criminal Procedure, which reads as under---

In any summons-case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a

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judgment of acquittal, and in any other case release, the accused, and such release shall have the effect of discharge.

9. No doubt the Magistrate has power to stop the proceeding, as per provision of section 258 of Code of Criminal Procedure, where the Magistrate does not find it possible to dispose off the matter by normal procedure, contemplated by the Code of Criminal Procedure. I would like to state here that, admittedly the informant reported to be died on 28/10/2020. However, it does not mean that, in absence of evidence of informant prosecution could not prove it's case. Further, the evidence means and includes all statements which the Court permits or requires to be made before it by witnesses in relation to the matter of fact under inquiry, such statements are called oral evidence.

10. In present case at hand the opportunity of being lead the evidence is ye to be given to the prosecution. I have gone through the statements of witnesses. Therefore, without recording their evidence at this stage, the evidence of proposed witness cannot be said to be hearsay evidence and inadmissible.

11. It is to be noted that, in cited case of Mulchand Motilal Raka V/s. State of Maharashtra & Ors., the Hon'ble Bombay High Court has set aside order passed by the trial court to stop proceeding under section 258 of Code of Criminal Procedure and directed that, to dispose of the case in accordance with law. Therefore, the ratio laid down in above case is not useful to the accused.

12. Further, the ratio laid down in case of Lalita V/s. Vishwanath & Ors. is concerned the said ratio can be considered at the time of recording evidence of Investigating Officer as well as at the time of final adjudication of the matter. Therefore at this stage, the ratio laid down in case of Lalita supra is also not useful to the accused.

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13. It is to be noted that, the hearing of the matter is yet to be commenced. The witness summons are yet to be issued. Therefore, at this stage it cannot be said that, it is difficult to decide the matter on merit and it can be stopped by invoking provision of section 258 of the Code of Criminal Procedure. Therefore, I hold that, no case made out by accused to stop the proceeding as prayed. Hence, I proceed to pass following order.

ORDER

1 The application is rejected.

Mumbai.
Date : 29/10/2025.
SRD.


(A. B. Jadhav)
Judicial Magistrate, (First Class),
71st Court, Bandra, Mumbai.
Date : 29/10/2025.

Dictated on :- 29/10/2025.
Transcribed on :- 29/10/2025.
Checked on :- 29/10/2025.
Signed on :- 29/10/2025.
SRD