

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
[CIRCUIT BENCH AT PORT BLAIR]

PRESENT: HON'BLE JUSTICE KRISHNA RAO

CRR/29/2025

T. Munavvar Hussain

... Petitioner

versus

The State

... Respondent

For the petitioner : Mr. D. Ilango

For the State : Mr. Sumit Karmakar

Heard on : 01.07.2025

Judgement on : 09.07.2025

KRISHNA RAO, J.

1. The petitioner has filed the present revisional application against the judgement and order passed by the learned Sessions Judge, Andaman & Nicobar Islands, Port Blair in Criminal Appeal No. 8 of 2024 dated 19.03.2025 affirming the judgement dated 02.07.2024 passed by the learned Judicial Magistrate First Class 1st Court at Port Blair in GR case No. 778 of 2016 (Trial No. 27 of 2017) wherein the learned Magistrate had found the petitioner guilty for the offence punishable under Section 279/338 of the Indian Penal Code read with Section 3 and 181 of the Motor Vehicle Act, 1988

and convicted under Section 248 (2) of the Code of Criminal Procedure.

2. The learned Magistrate had admonished the case against the petitioner and released the petitioner in accordance with section 3 of the Probation of Offenders Act, 1958 and in terms of Section 5 of the Probation of Offenders Act the petitioner was directed to pay a compensation of Rs. 4000/- to the victim within two months and in addition, the petitioner is also directed to pay a cost of Rs. 1000/- to the State within two months from the date of the order.

3. On the basis of the statement of one Sadaquat Ali recorded by Sub Inspector of Police, the Police of PS Aberdeen registered a FIR No. 361 of 2016 dated 07.06.2016 under Section 279/337 of the Indian Penal Code against the rider of two wheeler having registration No. AN 01 K 9103 on the allegation that the petitioner had driven the Motorcycle in rash and negligent manner and due to which the Motorcycle disbalanced and dashed in front of the car due to which the petitioner being the rider of the Motorcycle as well as pillion rider have sustained injury. The car as well as the Motorcycle was also damaged. On completion of the investigation, police has submitted charge sheet against the petitioner for offence under Section 273/ 337/338 of the IPC read with section 3/181 of the Motor Vehicle Act. During evidence the prosecution has examined

altogether ten witnesses. The petitioner being the accused has not adduced any evidence on the side of his defence.

4. Mr. D. Ilango, learned advocate appearing for the petitioner submit that as per FIR the statement of complainant was recorded at Mazar Pahad, Sea Shore road on 07.06.2016 at 1140 hours and on the basis of which the police had initiated the FIR. Mr. Ilango has drawn the attention of this court to the evidence of the complainant namely Sadaquat Ali who was examined as PW-2. In the examination-in-chief he has stated that at night he came to PS on being called by the police. Police recorded his statement at PS, on the basis of which the present case was initiated. Mr. Ilango by referring the FIR as well as statement of the PW-2 submitted that as per case of the prosecution the police had recorded the statement of the PW-2 at 1140 hours on 07.06.2016 at Mazar Pahad, Sea Shore road which is the alleged place of occurrence, but as per the statement of the complainant the complainant was called at PS in the night and the police has recorded the statement. He submits that if the complainant has called at PS in the night and recorded the statement of the PW-2 on the basis of which the case was initiated then the FIR which has been initiated by the police at 1215 hours on the basis of the alleged statement of the complainant at 1140 hours at Mazar Pahad, Sea Shore road is fabricated one and thus the FIR is not believable.

5. Mr. Ilango has further pointed out the injury report of the victim which is marked as exhibit-P8 wherein when the victim was brought to the hospital for treatment and the duty Doctor who attended the injured, in the injury report the history of the injury has been recorded as road traffic accident. *'Patient brought by police. Patient was hit by four wheeler while riding as a pillion rider'.*

6. Mr. Ilango has also drawn the attention of this Court to the evidence of Doctor being PW-8 wherein during her evidence she has stated that one injured person namely Subham Kumar was brought to me by police in connection with a road traffic accident. As per information, recorded the history of head injury due to hit by a car, while the injured person was riding a motorcycle as a pillion rider. By referring to the injury report as well as statement of the Doctor, learned advocate submits that the case made out by the prosecution is totally different than the history recorded by the Doctor. From the statement of the Doctor and the history recorded by the Doctor in the injury report which reveals that car hit the motorcycle due to which the alleged incident was occurred, but the case made out by the police is contrary to the same.

7. Learned advocate appearing for the petitioner has referred the evidence of the PW-9 who is victim/injured in the instant case. He submit that during the cross examination he has stated that *'it is a fact that after my discharge from the hospital after undergoing prolong*

treatment, police never recorded my statement'. By referring the said portion of cross examination, Mr. Ilango, submits that as per the case of the prosecution, the injured was unconscious and he regain conscious when he was in Appollo Hospital at Chennai. Thus from the said evidence it is proved that after the incident no statement of PW-9 was recorded by the Police under Section 161 of the Cr.P.C. It is admitted by PW-9 that after return from Chennai no statement of the said witness is recorded. Thus the evidence cannot be taken into consideration as he has not been examined by the police during investigation.

8. Learned advocate appearing for the petitioner further submits that as per seizure memo the motorcycle i.e. two wheeler was seized by the police at the spot at 1320 hours on 07.06.2020 in presence of two witnesses namely Srinivasan and Mohammed Ismail. He referred the evidence of Srinivasan, who is one of the seizure witnesses, wherein he stated that he has signed in the detention memo and the seizure list at the Police Station. Mr. Ilango submits that the document which the prosecution had relied upon with regard to the seizure of the Motorcycle is contrary from the evidence of the seizure witness as well as seizure memo and as such the seizure memo cannot be relied upon.

9. Mr. Ilango, learned advocate representing the petitioner submits that the learned Magistrate fail to consider the evidence on

record and has wrongly come to the conclusion that the petitioner has committed the alleged offence.

10. Mr. Ilango further submits that the learned Sessions Judge being the appellate court has also not taken into consideration the above facts and has wrongly upheld the order of conviction of the petitioner passed by the learned Magistrate.

11. *Per contra*, Mr. Sumit Karmakar, learned Public Prosecutor submits that the alleged offence was occurred in the year 2016 and the witnesses were examined in the year 2023, during the period of seven years it is not possible for the witnesses to give accurate evidence and as such mere small contradictions it cannot be said that prosecution had failed to prove the case. Mr. Karmakar submits that the Doctor has only recorded the history that the patient was hit by four wheeler while riding as pillion rider, but the petitioner during the cross examination has not put any question from where the Doctor has got the said information. He submits that merely wrongly recording the history of the incident cannot be said that the police had initiated a false case.

12. Mr. Karmakar submit that FIR is a written document wherein it is categorically mentioned that the statement of the complainant was recorded at the place of occurrence at 1140 hours and on the basis of the said statement the police has immediately initiated an

FIR at 1215 hours and as such there is no delay in registration of the FIR from the time of accident. He submit that though the witness i.e. PW-2 has stated that at night he was called to the police station for recording the statement, that might be the statement under Section 161, but it cannot be said that no statement is recorded by the police at the place of occurrence.

13. Mr. Karmakar further submits that the seizure of the offending vehicle i.e. two wheeler was made at the place of occurrence i.e. Sea Shore road near Mazar Pahad at 1320 hours i.e. after initiation of FIR and during investigation. The said seizure was made in presence of two witnesses. PW-4 has not denied that the offending vehicle was not seized in his presence. He has categorically stated in the examination in chief that the offending vehicle i.e. motorcycle was seized and as well as another vehicle i.e. the car was detained wherein he has put his signature. He further submit that the another seizure witness namely Mohammed Ismail who has examined as PW-5 has corroborated the statement of PW-4 where in it is proved that the seizure was made in presence of both the witnesses at the place of occurrence and the seizure is proved.

14. Mr. Karmakar submit that the learned Magistrate considering the total document and the evidence available on record has come to the conclusion that the petitioner has committed the offence and the same was duly affirmed by the learned Sessions Judge and the said

conviction of the petitioner is concurrent finding of both the Courts, thus this Court cannot interfere with the conviction of the petitioner in the revisional jurisdiction.

15. Heard the learned counsel for the respective parties. Perused the materials on record.

16. The case of the prosecution is that on 7th June 2016, at about 1100 hours when the complainant reached near the speed breaker of MazarPahar,Sea Shore Road, one car bearing Registration No. AN01-7170 stopped in the left side of the road and on seeing that the complainant stopped his vehicle at the left side and saw that one person driving a two wheeler in rash and negligent manner with a pillion rider and due to dis-balance the scooty fell down in front of the car and both rider and pillion rider sustained injury. Thereafter both were shifted to hospital for treatment. From the FIR it reveals that on receipt of information of the said accident, the police had been to the place of occurrence and recorded the statement of one Sadaquat Ali at 1140 hours on 07.06.2016 and on the basis of the said statement, FIR was chalked out. In the FIR it is recorded under the heading note '*statement recorded at Mazar Pahad, Sea Shore road on 07.06.2016 at 1140 hours*'.

17. PW-1 namely SI Abhisheek Menon in his evidence has stated that he was posted at PS Aberdeen as duty officer. On that day in

the morning he received a phone call that one accident took place at Mazar Pahad area. Accordingly, he along with his team rushed to the spot and found that one truck, one car and one two wheeler were at the spot. The accused and the pillion rider were taken into PCR and he has recorded the statement of the truck driver namely Sadaquat Ali. He has further stated that after reduce into writing the same he has read over and explained the statement to Sadaquat Ali and thereafter he has signed the said statement. The statement is marked as Exhibit 1. During the cross examination of PW-1 a suggestion was made to PW-1 that *“Not a fact that I have stated falsely that I have recorded the statement of Sadaquat Ali on the spot”*.

18. Sadaquat Ali was examined as PW-2 wherein he has stated that when he reached the turning near Sinclairs Hotel one car bearing registration No. AN 01 J 7170 which was proceeding in front of his vehicle, suddenly stopped on the road side, for which he has stopped his vehicle. At that time, two persons coming from the opposite direction on a scooty. The rider of the scooty suddenly lost control and the scooty along with the rider and pillion rider dashed against the car and fell down on ground and sustained injury. The driver of the car called PCR. Police came and they all took the rider of the scooty and the pillion rider to G.B.Pant Hospital for treatment. Thereafter he had attended his duty. At night, he came to the PS

Aberdeen on being called by police. Police recorded his statement at PS on the basis of which present case was initiated. He has identified his statement and his signature is marked as exhibit P1/2.

19. As per the evidence of PW-1, he went to the place of occurrence and has recorded the statement of the PW-2 at 1140 hours. PW-2 has not stated anything regarding the recording of his statement by the police at the place of occurrence at 1140 hours wherein in contrary the PW-2 has stated that police has called him at the police station at the night and his statement was recorded and he has identified his signature. Thus the case made out by the prosecution that the statement of the PW-2 was recorded at the place of occurrence is doubtful. The submission made by the public prosecutor that there might be statement recorded by the police under section 161 and not the fradbayan is also cannot stand.

20. As per evidence of PW-1 and PW-2 the pillion rider as well as the rider of the motorcycle who have sustained injuries in the said accident were sent to the hospital for treatment. Doctor who has examine the pillion rider i.e. PW-9 in her injury report i.e. exhibit P8 has stated that *"Patient was hit by four wheeler while riding as a pillion rider"*. The Doctor is examined as PW-8 and she has corroborated her recording of history of injury in her statement wherein she has stated that *"As per information recorded history of*

head injury due to hit by a car, while the injured person was riding the Motorcycle as a pillion rider”.

21. The prosecution has not made any endeavour for clarification of the history recorded by PW-8 in the injury report and, in the statement made before the Court. From the evidence of the Doctor as well as from the injury report there is a doubt whether the Scooty dashed the car or the car dashed the scooty against which the rider of motorcycle as well as the pillion rider have sustained injury.

22. During investigation the police has seized the offending vehicle i.e. the motorcycle and the car was detained by the police. The Police has prepared seizure memo as well as detention memo. The seizure memo was prepared at 1320 hours at the place of occurrence i.e. Sea Shore road near Mazar Pahad in presence of two witnesses namely Srinivasan and Md. Ismail. Both were examined as PW-4 and PW-5. The police has detained the car by preparing a detention memo at 1330 hours on 07.06.2016 at the place of occurrence i.e. Sea Shore road near Mazar Pahad. Though the detention memo was prepared just within ten minutes after the preparation of the seizure list of the offending vehicle, but in the detention memo the Investigating Officer has made Mohammed Ismail as witness. In the detention memo only Sadaquat Ali, is shown as witness though Srinivasan and Mohammad Ismail were present. Sadaquat Ali is examined as PW-2 but he has not stated that the car was detained

by police in his presence. The police has not taken any signature of other two witnesses who were present and as such this also create doubt whether the seizure memo as well as detention memo was actually prepared at the place of occurrence or at the police station.

23. This Court has also gone through the site plan prepared by the Investigation Officer during the investigation. As per the case of the prosecution the car was moving from Sinclairs Hotel towards Mazar and the offending motorcycle was coming from Mazar towards Sinclairs Hotel. As per evidence of PW-2 the car was moving in front of the truck of the PW-2. Near Sinclairs Hotel the car had suddenly stopped and accordingly PW-2 has also stopped his truck and in the meantime the offending motorcycle/scooty has dashed against the car. But the site plan shows otherwise. In the site plan though it is showing that the car is moving towards Mazar, but in the back portion of the car the Investigating Officer has shown the skid mark about 3.30 mtrs. from left side to right side. If the car has stopped at the road how the 3.30 mtrs. skid mark is shown by the Investigating Officer from the right side to left side of the car and in the opposite the Investigating Officer has shown the skid mark from right side to left side of the scooty of about 11 mtrs. Considering the site plan and skid mark shown by the Investigating Officer this Court finds that the car was on the right side of the road and has applied the break and went on the left side and the scooty was on left side of road and

has applied break and went on the right side, but this is not the case of the prosecution. The case of the prosecution is that the car has stopped, while the car was moving from Sinclairs Hotel to Mazar Pahad. If the car was moving from the Sinclairs Hotel to Mazar Pahad as to why the skid mark is shown by Investigating Officer from the back side of the car from right side to left side at about 3.30 mtrs. The site plan prepared by the Investigating Officer is also creates doubt whether actually the accident was happened due to rash and negligent driving of the petitioner or due to skid by car as well as motorcycle. Site plan prepared by the Investigating Officer proved the version of Doctor, PW-8 who has recorded in her injury report that the patient was hit by four wheeler.

24. Normally the Court is slow in interfering with the concurrent finding of both the courts in revisional jurisdiction but in the present case this Court finds that both the Courts have not properly considered the evidences and the documents. The FIR shows that the statement of complaint was recorded at the place of occurrence just after the incident but as per the statement of complaint before the Court that his statement was recorded at night at police station. The history recoded by doctor in the injury report says the patient was hit by four wheeler. As per seizure memo and detention memo of the vehicles were prepared at the place of occurrence but as per evidence of seizure witness, the he has signed at the police station.

The site plan of the place of occurrence is different than the case of the prosecution.

25. Considering the above this Court finds that the learned Magistrate as well as learned Sessions Judge have not properly considered the evidence on record and have wrongly come to the conclusion that the petitioner has committed an offence under Section 279 /338 of the IPC.

26. As regard the offence under Section 3/181 of the Motor Vehicle Act, 1988 from the evidence it is established that the petitioner was driving the scooty and during his examination under Section 313 of Cr.P.C he has admitted that *“he was not having driving licence at the time of incident”*.

27. In view of the above the judgement passed by the learned Magistrate in GR case No. 778 of 2016 (Trial No. 27 of 2017) dated 02.07.2024 and the judgement passed by the learned Sessions Judge in Criminal Appeal No. 8 of 2024 dated 19.03.2025 are modified by setting aside the conviction of the petitioner for the offence under Section 279/338 IPC but is convicted for the offence under Section 3/181 of Motor Vehicle Act, 1988 and directed the petitioner to pay fine of Rs. 200/- (Two hundred only) in default to suffer simple imprisonment for one month.

28. CRR/29/2025 is disposed of.

29. Records of the Trial Court be send back immediately.

(KRISHNA RAO, J.)