HIGH COURT OF GUJARAT

Bench : Honorable Mr. Justice Hasmukh D. Suthar

Date of Decision: 09 April 2024

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 16418 of 2023

MOHEMAD HANIF ABDULSATAR TELIYA … PETITIONER

Versus

STATE OF GUJARAT & ANR. … RESPONDENT(S)

Legislation:

Articles 14, 21, 226, and 227 of the Constitution of India

Section 482 of the Code of Criminal Procedure, 1973 (CrPC)

Sections 279, 304, 304(A), 177, 184, 181(3), 189, 199A(1), 199A(2), 199A(3), 199A(4), and 199A(5) of the Motor Vehicles Act

Subject: Petition to quash FIR and subsequent proceedings related to a traffic accident involving a juvenile, under the claim of abuse of process of law and lack of evidence against the petitioner, the father of the juvenile.

Headnotes:

Petition Under Articles 14, 21, 226, 227 of Constitution and Section 482 of CrPC – Petitioner seeking quashment of FIR and charge-sheet against him in a case where his minor son was allegedly involved in a fatal traffic accident [Para 2.0].

Case Background – The petitioner's minor son accused of rash driving leading to a fatal accident – Petitioner charged as he was the registered owner of the vehicle and guardian of the juvenile [Para 3.0, 3.1].

Defence's Argument – Lack of evidence and wrongful implication of petitioner – All witnesses turned hostile in the juvenile case – Settlement with complainant reached – Argument for application of Section 199A of Motor Vehicles Act only, with already served 9-month imprisonment [Para 5.0].

Prosecution's Argument – Emphasis on petitioner's responsibility as guardian and owner of the vehicle – Relevance of statutory presumption under the Motor Vehicles Act – Non-compoundability of the offence and ongoing trial [Para 6.0].

Court Analysis and Decision – The Court noted absence of direct evidence linking petitioner to the accident – All witnesses in the juvenile case turned hostile – Statutory presumption under Section 199A of the Motor Vehicles Act

rebuttable – Petitioner not present at the accident, not directly involved – Already served 9 months in custody, which is substantial compared to maximum punishment – Proceedings against petitioner quashed subject to payment of Rs.25,000 fine [Paras 7.0-9.1].

Decision – Quashing of Sessions Case No.107 of 2023 against the petitioner, subject to fine payment [Para 10.0].

Referred Cases:

- Rajesh Jain vs. Ajay Singh [(2023) 10 SCC 148]
- Parbatbhai Aahir vs. State of Gujarat [(2017) 9 SCC 641]
- Neeraj Dutta vs. State (Govt. of NCT of Delhi) [2022 LiveLaw (SC) 1029]

Representing Advocates:

Mr. I.H. Syed, Sr. Advocate with Mr. Ruchit J. Vyas for the Petitioner

Mr. Manan Mehta, Addl. Public Prosecutor for the Respondent No.1 – State of Gujarat

JUDGMENT

[1.0] RULE returnable forthwith. With the consent of learned Counsel appearing for respective parties, present petition is taken up for final hearing today.

[2.0] By way of present petition under Articles 14, 21, 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the petitioner has prayed for the following reliefs:

"(b) To quash and set aside the impugned FIR being CR No.11198001230318 of 2023 dated 11.06.2023 registered with Neelambaug Police Station, Bhavnagar, Charge-sheet dated 11.09.2023 (Annexure-A) and Sessions Case No.107 of 2023 pending before the learned 5th Additional District Judge, Bhavnagar and any subsequent proceedings arising thereto;"

[3.0] The case of the prosecution against the petitioner is as under:

[3.1] Present petitioner is the father of juvenile. It is the case of the petitioner that on 11.06.2023 at around 6.30 a.m., the complainant was informed by his

friend that his father met with an accident while he was driving his Activa and one Maruti Swift Car No.GJ-04-CA-6433 dashed with the Activa and dead body of the deceased father of complainant was lying near the front tyre of the said Swift Car. In this regard, complaint came to be filed. It is the case of prosecution that son of present petitioner was driving the said Swift Car and admittedly he was minor at the relevant point of time and present petitioner is the father of minor juvenile. In this connection, offence being CR No.11198001230318 of 2023 came to be registered with Neelambaug Police Station, District Bhavnagar. After the investigation, evidence came to be collected and charge-sheet came to be filed against the juvenile before the Juvenile Justice Board which culminated into Criminal Case No.129/2023 while against the father – present petitioner the same culminated into Sessions Case No.107/2023 which is pending before the learned 5th Additional Sessions Judge, Bhavnagar. Initially, the complaint came to be filed under Section 279 and 304(A) of the IPC read with Sections 177 and 184 of the Motor Vehicles Act against one Abdul Rehman Hanifbhai Teliya (for short "juvenile") wherein it is alleged that though the present petitioner being father of the juvenile was knowing that juvenile is a minor, he has given the key of car to his son and subsequently report came to be filed to add section 304 of the IPC read with Sections 181(3), 189, 199A(1), 199A(2), 199A(3), 199A(4) and 199A(5) of the Motor Vehicles Act. The said report came to be accepted by the learned Additional Chief Judicial Magistrate and subsequently sections came to be added accordingly.

[4.0] Heard learned Senior Advocate Mr. I.H. Syed assisted by learned advocate Mr. Ruchit Vyas for the petitioner and learned APP Mr. Manan Mehta for respondent No.1 – State of Gujarat.

[5.0] Learned Senior Advocate Mr. I.H. Syed for the petitioner has submitted that present petitioner is the father of juvenile accused and in absence of any evidence, present petitioner is falsely enroped in the offence mainly based on the presumption even there is neither any proof of any negligence on the part of the present petitioner nor on the part of juvenile. Even, the proceedings under the Juvenile Justice Act is tried being Criminal Case No.129/2023 wherein three witnesses have been examined and no one has supported the case of prosecution and all have turned hostile. Even, in the present case also, settlement took place and even witnesses do not have supported the case of prosecution. In view of the above, no purpose would be served to

continue such litigation which is nothing but abuse of process of law. Even, perusing the entire investigation papers, no evidence is collected to show that the said car was being driven by the juvenile. Merely because the complainant and people gathered at the hospital, at the instance of people, the petitioner is falsely enroped in the offence. Lastly, learned Senior Advocate has submitted that even if for the sake of argument without admitting it is assumed that the present petitioner is responsible for the alleged incident even though the learned Sessions Judge has framed the charge for the offence under Sections 279, 304, 304(A) of the IPC and sections 177, 184, 181(3), 189, 199A(1), 199A(2), 199A(3), 199A(4) and 199A(5) of the Motor Vehicles Act. The said charge is also not sustainable in the eyes of law as the petitioner has never driven the vehicle and therefore, section 304 of the IPC is not applicable in any manner. Further, present petitioner is not connected in any manner with the alleged act of the juvenile. Even, the charge itself is defective and merely with a view to increase the severity and gravity of the offence, section 304 of the IPC came to be added. Whatever charge or allegation if accepted as it is, even then the only offence made out is under Section 199A of the MV Act, which is punishable with imprisonment for a term which may extend to 3 years with fine of Rs.25,000 and substantial sentence is undergone by the petitioner and even today the petitioner is ready and willing to pay the fine, if any, as prescribed under the law. Considering the pendency of cases, substantial time being wasted and without any reason present petitioner is detained in custody. So far as presumption is concerned, learned Senior Advocate has submitted the presumption is not a conclusive proof and Court has to consider the presumption based on proved fact. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of **Rajesh Jain vs. Ajay Singh** reported in **(2023)10 SCC 148.** Hence, he has requested to exercise the jurisdiction under Section 482 of the CrPC to quash and set aside the impugned proceeding as the petitioner is in custody since last about 9 months.

[6.0] Learned APP has vehemently opposed the present petition and stated that the present petitioner is the guardian of juvenile. The juvenile has committed the offence though fully aware of that the petitioner has given key of the car to the juvenile, which was driven by the minor in rash and negligent manner and due to this, an innocent person has lost his life. Considering the aforesaid fact, *prima facie* involvement being there and as recording of evidence is in progress, he has requested to dismiss the present petition as

at the time of deciding the proceeding under Section 482 of the CrPC, Court should not weigh the evidence and cannot look into the defence raised by the accused. Further, the Court has only to consider as to whether only *prima facie* offence is made out or not. It is also submitted that even settlement is not a ground to quash the proceedings and that too concerning non-compoundable offence. Insofar as submission as regards issue of presumption is concerned, learned APP has submitted that once presumption is provided under the Motor Vehicles Act, the burden is on the accused to rebut the same. The concerned Investigating Officer has filed a detailed affidavit and opposed the present petition mainly on the ground that, present offence is non-compoundable and material witnesses including Medical Officer and panch witnesses have been examined in Sessions Case and the statements of witnesses disclose the role of the present petitioner and considering the provision of section 199A of the Motor Vehicles Act, the Court shall have to draw the presumption. Merely based on the settlement and accused settled the dispute with the original complainant is not a ground to quash the proceeding in view of the law laid down by the Hon'ble Apex Court in the case of **Parbatbhai Aahir vs. State of Gujarat** reported in **(2017) 9 SCC 641**. In view of the above, he has requested to dismiss the present petition.

[7.0] I have given thoughtful consideration to the arguments canvassed by learned advocates for respective parties.

[8.0] Having heard learned advocates for the respective parties and going through the record, it appears that, it is an undisputed and admitted fact that, the petitioner is the father of juvenile i.e. guardian and against the juvenile initially a complaint came to be registered as he was driving the vehicle. The allegation of rash and negligent driving is on the part of juvenile i.e. son of the present petitioner. In the aid of section 199A of the MV Act, present petitioner is arraigned as an accused, neither the petitioner was present at the place of offence nor he was driving the vehicle.

[8.1] In the proceeding before the Juvenile Justice Board being Criminal Case No.129/2023, all the material witnesses have turned hostile and even the complainant did not support the case of prosecution and juvenile who was driving the vehicle was also not identified before the learned Juvenile Justice Board. In the case of rash and negligent driving the identity of driver of the vehicle is important and material. Who was driving the vehicle is an important

and clinching evidence to connect the accused with the offence. In Criminal Case No.129/2023, the complainant – Sahilbhai Sunderbhai Kukreja, who is examined at Exh.7, has turned hostile; panch witness Lilaram Dadumal Ramlakhyani examined at Exh.9 has also turned hostile; Bhaveshbhai Gagandas Kukreja examined at Exh.10 has also turned hostile. Even, going through the evidence of minor witness Faizan Mohammedhussain Dholiya examined at Exh.11, *prima facie,* it appears that juvenile alongwith the said witness Faizan drove the car on 11.06.2023. Considering the evidence of said witness it appears that on the fateful day, the juvenile was driving the vehicle. The said witness has initiated supported the case of prosecution partially but in cross-examination, he turned hostile and did not support the case of prosecution. Thus, so far as part of juvenile is concerned, the fact that juvenile was driving the vehicle is not established.

[8.2] In the aforesaid background, the petitioner has approached this Court and now dispute is settled with the original complainant and even in the sessions case also, except the Doctor, no one has supported the case of prosecution. Now, herein the question of identity of the petitioner of driving the vehicle does not arise and as the petitioner is arraigned as accused in aid of section 199A of the MV Act, it is worth to refer to provision of section 199A of the MV Act, which reads as under:

*"**199A. Offences by juveniles.-** (1) Where an offence under this Act has been committed by a juvenile, the guardian of such juvenile or the owner of the motor vehicle shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing in this sub-section shall render such guardian or owner liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Explanation.- For the purposes of this section, the Court shall presume that the use of the motor vehicle by the juvenile was with the consent of the guardian of such juvenile or the owner of the motor vehicle, as the case may be.

(2) In addition to the penalty under sub-section (1), such guardian or owner shall be punishable with imprisonment for a term which may extend to three years and with a fine of twenty-five thousand rupees.

(3) The provisions of sub-section (1) and sub-section(2) shall not apply to such guardian or owner if the juvenile committing the offence had been granted a learner's licence under section 8 or a driving licence and was operating a motor vehicle which such juvenile was licensed to operate.

(4) Where an offence under this Act has beencommitted by a juvenile, the registration of the motor vehicle used in the commission of the offence shall be cancelled for a period of twelve months.

(5) Where an offence under this Act has beencommitted by a juvenile, then, notwithstanding section 4 or section 7, such juvenile shall not be eligible to be granted a driving licence under section 9 or a learner's licence under section 8 until such juvenile has attained the age of twentyfive years.

(6) Where an offence under this Act has beencommitted by a juvenile, then such juvenile shall be punishable with such fines as provided in the Act while any custodial sentence may be modified as per the provisions of the Juvenile Justice Act, 2000."

From the plain reading of section it appears that the presumption is rebuttable one and onus is on accused to disprove the said fact. The onus is on accused to prove the fact that the offence is committed without his knowledge and due diligence to prevent the commission of offence on his part. In addition, if juvenile having the learning license then provisino is made under Section 199(5) of the MV Act including the cancelation of the registration and withholding of license till juvenile attains the age of 25 years. Thus, provision under Section 199(4) of the MV Act is cancelation of registration for a period of 12 months and section 199(5) is against the juvenile. In the present case, juvenile having no any learner license and petitioner – accused is the registered owner of the vehicle involved in the offence.

[8.3] Now, turning back to the facts of the case, it appears that the present petitioner is arraigned as an accused based on 'principle of vicarious liability', which is an exception of general rule. Generally, a person at whose behest act is done as well as the person who does the act both are liable like relation of master and servant, employee and employer and they are also liable to pay damage or compensation in a case of a civil wrong and in criminal proceedings if they held guilty then they can be sentenced and imposed fine as provided under the particular statute.

[8.4] In other words, vicarious liability means holding someone else responsible for the act committed by the other. Herein, alleged act is committed by juvenile son and for that prosecution being lodged against the present petitioner as a guardian to hold him as vicariously liable. In the criminal offence, generally, no one can be held responsible for an offence committed by other except in the case of criminal conspiracy or abetment. Herein, with the aid of section 199A of the MV Act, petitioner is arraigned as accused based on the relationship of father and son as a gaurdian.

[8.5] In order to saddle the petitioner – accused with the criminal liability under the penal law, prosecution has to show "*mens rea" a guilty mind* and an intention to commit an offence which is must and action on the part of accused i.e. *actus reus* is also important, such act also includes the omission on the part of the guardian and he ought to have omitted such degree of care or fails to act diligently and due to such omission, in absence of any *mens rea* the guardian being held responsible. The section 199A of the MV Act provides punishment upto 3 years and to pay fine of Rs.25,000. Herein also, no case of the petitioner that the juvenile was having learning license and drove the vehicle. As per section 3 of the MV Act, no person shall drive the motor vehicle in any public place unless he holds an effective driving license. The section 4 of the MV Act provides the age limit in connection with the driving of the motor vehicle to be of 18 years, the section 5 of the MV Act fix the responsibility of owners of motor vehicle for the contravention of sections 3 and 4 of the MV Act. While section 180 of the MV Act provides allowing unauthorized persons to drive the vehicle is an offence punishable with imprisonment of term which may extend to 3 months or with fine or both. Application of section 181 of the MV Act is against the minor as without the license the minor was driving the vehicle. Section 177 of the MV Act is a general provision for punishment of offence of breach of any rule, regulation or notification and no specific penalty is provided for such breach or contravention of any regulation. Section 184 of the MV Act provides for the dangerous driving which may not be less than six months but extend to one year with fine and add the section or subsequent offence minimum punishment of three years is provided. Section 189 of the MV Act is for racing of vehicle for trial of speed without written consent of the State Government or whoever takes part in race for the trial of speed of any kind between the motor vehicle in any public place shall be punished with imprisonment for term which may extend to three months. The alleged role attributed to juvenile to attract sections 177, 184, 189, 181(3) of the MV Act, as present petitioner was not driving the vehicle and has not taken part in race or for the trial of speed at the public place. Hence, in the event, if the prosecution succeeds in proving alleged act on the part of juvenile then accused can be held guilty only.

[8.6] So far, offence under sections 304A and 304 of the IPC is concerned, as the petitioner was not driving the vehicle and he has neither caused death by driving the vehicle in negligent manner nor has committed any culpable

homicide amounting to murder, both the sections i.e. section 304 and 304A of the IPC would not get attract to hold guilty or responsible to accused for any such alleged offence. However, the fact remains that, the petitioner is arraigned as an accused with the aid of section 199A of the MV Act. If we consider the provision of section 199A of the MV Act in its true letter and spirit, it appears that explanation provides that Court shall presume that use of vehicle with the consent of guardian and with a view to increase moral and ethical responsibility of parents, who allow wards to drive and give two wheeler or any other vehicle in a routine manner i.e. without any sense of responsibility for going to school, tuition class, to bring grocery from market or sometime for a joy ride also, without any driving experience or license due to such act not only dangerous for their lives but life of third party also, which is apart from violation of law and sometimes juveniles violate their parents' instructions. Considering the aforesaid fact and increase in road rages and hit and run cases, though amendment under the MV Act, stringent provisions being made.

[8.7] At the same time, section 4 of the MV Act provides that the minors below the age of 18 years to drive the vehicle having 50 c.c. capacity but today in market no such two wheeler of 50 c.c. is available. Considering the pre-occupied engagements or job or livelihood, people are making the ends to meet due to which ethical and moral responsibilities being increased. The section 180 of the MV Act is attracted as knowinly or unknowingly the person gives the vehicle to unauthorized person to drive the vehicle but in section 199A of the MV Act, word used is "consent". The Court shall have to presume the explanation to section 199A of the MV Act provides for the purpose of this section, Court shall presume that the use of motor vehicle by the juvenile was with the consent of guardian. The said explanation provides the intention of legislature and statutory presumption about the consent. Considering the reality it appears that this is a high time to amend the provisions of the MV Act and upgrade the capacity of two wheelers from 50 c.c. to 125-150 c.c. for driving license. It is needless to say that in the case of statutory presumption, Court is left with no any option but only to draw the presumption as under Section 4 of the Indian Evidence Act explained word "shall presume". The word "shall" is mandatory which is a strong assertion for determination of the said presumption is rebuttable. The said presumption is about the act of believing that something is true without having any proof but accused has

right to rebut the said presumption. It is needless to say that the said presumption is not conclusive proof unless the said presumption is rebutted, the Court shall presume about the existence of certain facts. The said presumption is provided by the legislature through explanation. The explanation makes the intention of legislature clear and the purpose of statute is brought into force. The Court has to interpret the law keeping in mind the literal rules of the interpretation as well as to consider the purposive approach while interpreting the law. Even, the said provision is inserted with a view to achieve remedial measures to promote the general welfare for bringing social reforms to avoid road accident through minors. The said provisions have been made with a view to make the parents answerable. Hence, the said provision is also required to be interpreted in the true letter and spirit. The scope of statutory presumption is discussed in context of section 4 of the Indian Evidence Act and explained the word “shall presume” by the Hon’ble Apex Court in the case of **Neeraj Dutta vs. State (Govt. of NCT of Delhi)** reported in **2022 LiveLaw (SC) 1029,** wherein the 5 Judges’ Bench of the Hon’ble Supreme Court discussing various provisions of Section 139 of the Negotiabe Instruments Act and section 20 of the Prevention of Corruption Act, has observed and held as under:

“46. Courts are authorised to draw a particular inference from a particular fact, unless and until the truth of such inference is disproved by other facts. The court can, under Section 4 of the Evidence Act, raise a presumption for purposes of proof of a fact. It is well settled that a presumption is not in itself evidence but only makes a prima facie case for a party for whose benefit it exists. As per English Law, there are three categories of presumptions, namely, (i) presumptions of fact or natural presumption; (ii) presumption of law (rebuttable and irrebuttable); and (iii) mixed presumptions i.e., “presumptions of mixed law and fact” or “presumptions of fact recognised by law”. The expression “may presume” and “shall presume” in Section 4 of the Evidence Act are also categories of presumptions. Factual presumptions or discretionary presumptions come under the division of “may presume” while legal presumptions or compulsory presumptions come under the division of “shall presume”. “May presume” leaves it to the discretion of the court to make the presumption according to the circumstances of the case but “shall presume” leaves no option with the court, and it is bound to presume the fact as proved until evidence is given to disprove it, for instance, the genuineness of a document purporting to be the Gazette of India. The expression “shall presume” is found in Sections 79, 80, 81, 83, 85, 89 and 105 of the Evidence Act.

47. Similarly in a trial under Section 138 of the NegotiableInstruments Act, a presumption will have to be made that every negotiable instrument was made or drawn for consideration and that it was executed for discharge of debt or liability once the execution of negotiable instrument is either proved or admitted vide Kumar

Exports vs. Sharma Carpets (2009) 2 SCC 513 ("Kumar Exports"). Further, the question as to whether the presumption stood rebutted or not must, therefore, be determined keeping in view the other evidence on record. [Krishna Janardhan Bhat vs. Dattatraya G Hegde (2008) 4 SCC 54 ("Krishna Janardhan Bhat")].

48. Section 20 of the Act deals with presumption wherepublic servant accepts gratification other than legal remuneration. It uses the expression "shall be presumed" in sub-section (1) and sub-section (2) unless the contrary is proved. The said provision deals with a legal presumption which is in the nature of a command that it has to be presumed that the accused accepted the gratification as a motive or reward for doing or forbearing to do any official act etc., if the condition envisaged in the former part of the Section is satisfied. The only condition for drawing a legal presumption under Section 20 of the Act is that during trial, it should be proved that the accused had accepted or agreed to accept any gratification. The Section does not say that the said condition should be satisfied through direct evidence. Its only requirement is that it must be proved that the accused has accepted or agreed to accept gratification.

49. In State of Madras vs. A. Vaidyanatha Iyer AIR 1958 SC61 ("A. Vaidyanatha Iyer"), it was observed that the presumption under Section 4(1) of the 1947 Act which is similar to Section 20 of the Act under consideration would arise where illegal gratification has been accepted, then the presumption introduces an exception to the general rule as to the burden of proof in criminal cases and shifts the onus on to the accused. The legislature has used the words "shall presume" and not "may presume" which means that the presumption has to be raised as it is a presumption of law and therefore it is obligatory on the court to raise this presumption. Further, the presumptions of law constitute a branch of jurisprudence unlike a case of presumption of fact which is discretionary.

50. Distinguishing a presumption under Section 4(1) of the1947 Act with a presumption under Section 114 of the Evidence Act, it was observed in Dhanvantrai Balwantrai Desai vs. State of Maharashtra AIR 1964 SC 575 ("Dhanvantrai Balwantrai Desai") that a presumption under Section 114 of the Evidence Act is discretionary in nature inasmuch as it is open to the court to draw or not to draw a presumption as to the existence of one fact from the proof of another fact. This is unlike a presumption under Section 4(1) of the 1947 Act or Section 20 of the Act where the court has to draw such presumption, if a certain fact is proved, that is, where any illegal gratification has been received by an accused. In such a case the presumption that has to be drawn that the person received that thing as a motive of reward. Therefore, the court has no choice in the matter, once it is established that the accused has received a sum of money which was not due to him as a legal remuneration. Of course, it is open to the accused to show that though that money was not due to him as a legal remuneration it was legally due to him in some other manner or that he had received it under a transaction or an arrangement which is lawful. The burden resting on the accused in such a case would not be as light as it is where a presumption is raised under Section 114 of the Evidence Act and cannot be held to be discharged merely by reason of the fact that the explanation offered by the accused is reasonable and probable. It must further be shown that the explanation is a true one. The words "unless

the contrary is proved" which occur in this provision make it clear that the presumption has to be rebutted by "proof" and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when upon the material brought before it, the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted.

51. One of the modes through which a fact can be proved.But, that is not the only mode envisaged under the Evidence Act. Proof of the fact depends upon the degree of probability of it having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him.

52. As opposed to the expressions "may presume" and "shallpresume", the expression "conclusive proof" is also used in Section 4 of the Evidence Act. When the law says that a particular kind of evidence would be conclusive, that fact can be proved either by that evidence or by some other evidence that the court permits or requires. When evidence which is made conclusive is adduced, the court has no option but to hold that the fact exists. For instance, the statement in an order of the court is conclusive of what happened before the presiding officer of the court. Thus, conclusive proof gives an artificial probative effect by the law to certain facts. No evidence is allowed to be produced with a view to combat that effect. When a statute makes certain facts final and conclusive, evidence to disprove such facts is not to be allowed."

[9.0] Insofar as consent is concerned, the accused has the right to take the available defence and also rebut the presumption about the consent. It is pertinent to note that consent means free and express consent. As to whether consent was given under misconception or otherwise it can be proved as defence. Sometimes, consent may be implied also. Herein, it is not in dispute that, present petitioner is registered owner of the vehicle involved in the alleged offence and even otherwise factum of alleged incident is also not in dispute. In view of the above, present petitioner is not only guardian but registered owner of the vehicle also and said fact has also remained undisputed. Herein, accused has not drove the vehicle in rash and negligent manner and has not committed any offence. In the present case, as five witnesses are examined and all have turned hostile though learned advocate for the petitioner has fairly submitted in light of preumption under Section 199A of the MV Act that, accused has already undergone substantial sentence for about 9 months as against maximum punishment of three years. As all the witnesses have turned hostile before the Juvenile Justice Board and if juvenile is exonerated then no purpsose would be served to convict the accused on the basis of said evidence in absence of any identity or

establishment of the driving of the vehicle by juvenile. If juvenile is not held guilty then question to convict the present petitioner also does not arise based on principle of vicarious liability.

[9.1] Considering the peculiar fact of the case and as the accused has undergone substantial sentence of about 9 months and even the accused is also ready and willing to deposit the fine, if he is held guilty in that event also, as discussed in earlier part of the order, no offence under Section 304 or 304A or any other sections of the IPC is made out. Section 304 of the IPC gets attracted when any act is done with the intention of causing death or causing such bodily injury which is likely to cause death. Herein, no any direct act or role attributed to the present petitioner – accused that he has done any such act or abettment with intention to cause death. Even, if the case of the prosecution is accepted as it is, even though as the petitioner was absent and not driving the vehicle, no any direct nexus with the offence. Present petitioner – accused is not facing charge under Section 180 of the MV Act. So far as section 199A of the MV Act is concerned, punishment of upto 3 years with fine of Rs.25,000 is provided and as the petitioner is ready to pay the fine, in the peculiar facts of the case, no purpose would be served to continue further such litigation and to protract the incarceration of the present petitioner – accused, as he has already undergone substantial part of the sentence. Hence, present case deserves to be considered in exercise of jurisdiction under Section 482 of the CrPC.

[10.0]In wake of aforesaid discussion, the proceedings of Sessions Case No.107 of 2023 pending in the Court of learned 5th Additional District Judge, Bhavnagar stands terminated *qua* present petitioner, subject to the petitioner shall have to pay a fine amount of Rs.25,000 with the Nazir of the District & Sessions Court, Bhavnagar forthwith. The petitioner, who is reported to be behind the bars since last about 9 months, be treated as undergone and shall be released forthwith, if his presence is no longer required in any other case. Present petition stands disposed of accordingly. *Rule accordingly.*